



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

Case No. IT-05-87-T
Date: 26 February 2009
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IN THE TRIAL CHAMBER

Before: Judge Iain Bonomy, Presiding
Judge Ali Nawaz Chowhan
Judge Tsvetana Kamenova
Judge Janet Nosworthy, Reserve Judge

Acting Registrar: Mr. John Hocking

Judgement of: 26 FEBRUARY 2009

PROSECUTOR

v.

**MILAN MILUTINOVIĆ
NIKOLA ŠAINOVIĆ
DRAGOLJUB OJDANIĆ
NEBOJŠA PAVKOVIĆ
VLADIMIR LAZAREVIĆ
SRETEN LUKIĆ**

PUBLIC

JUDGEMENT

Volume 2 of 4

The Office of the Prosecutor:

Mr. Thomas Hannis
Mr. Chester Stamp

Counsel for the Accused:

Mr. Eugene O'Sullivan and Mr. Slobodan Zečević for Mr. Milan Milutinović
Mr. Toma Fila and Mr. Vladimir Petrović for Mr. Nikola Šainović
Mr. Tomislav Višnjić and Mr. Norman Sepenuk for Mr. Dragoljub Ojdanić
Mr. John Ackerman and Mr. Aleksandar Aleksić for Mr. Nebojša Pavković
Mr. Mihajlo Bakrač and Mr. Đuro Čepić for Mr. Vladimir Lazarević
Mr. Branko Lukić and Mr. Dragan Ivetić for Mr. Sreten Lukić

positions in the nearby Mučibaba mountain pass.²⁸³⁵ Ljubivoje Jokšić, also of the MUP, testified that people of all ethnic backgrounds, frightened by the NATO bombings, started leaving Priština/Prishtina town.²⁸³⁶

1156. In spite of these claims, and having made the above findings in relation to each of the 13 municipalities where specific crimes were charged, the Trial Chamber is satisfied that there was a broad campaign of violence directed against the Kosovo Albanian civilian population during the course of the NATO air-strikes, conducted by forces under the control of the FRY and Serbian authorities. The witnesses who testified both about their own experiences and that of their families, friends, and neighbours, in the few weeks between 24 March and the beginning of June 1999, gave a broadly consistent account of the fear that reigned in towns and villages across Kosovo, not because of the NATO bombing, but rather because of the actions of the VJ and MUP forces that accompanied it. In all of the 13 municipalities the Chamber has found that forces of the FRY and Serbia deliberately expelled Kosovo Albanians from their homes, either by ordering them to leave, or by creating an atmosphere of terror in order to effect their departure. As these people left their homes and moved either within Kosovo or towards and across its borders, many of them continued to be threatened, robbed, mistreated, and otherwise abused. In many places men were separated from women and children, their vehicles were stolen or destroyed, their houses were deliberately set on fire, money was extorted from them, and they were forced to relinquish their personal identity documents.

1157. For example, at the end of March 1999 an extremely threatening and violent environment was created in Peć/Peja town by police and military forces, burning houses, firing weapons, and abusing the local Kosovo Albanian population. A significant number of the town's residents thus fled or were ordered out of their homes, some of them being directed to go to Montenegro and others being sent to the centre of the town where they were put on buses and driven to the Albanian border. As discussed above, Ndrec Konaj described the fear and panic created among the local residents, including himself and his family, as they did not know what was going to happen to them. When these Kosovo Albanians returned to Peć/Peja after the end of the conflict, they found that many of their houses had been burned, although the houses belonging to Serbs in the town were undamaged.

1158. In Dečani/Deçan municipality, immediately to the south of Peć/Peja municipality, similar events transpired in the village of Beleg at the end of March 1999. There the Kosovo Albanian

²⁸³⁵ Dušan Gavrančić, T. 22680–22681 (18 February 2008).

²⁸³⁶ Ljubivoje Jokšić, T. 21958 (8 February 2008).

residents were rounded up by police and army personnel, including VJ reservists, in the course of which some men were killed. A large group of predominantly Kosovo Albanian women and children was detained and mistreated: some of the women were sexually assaulted; and some men were physically abused. The next day most of the people from the group were ordered to go to Albania, and those that remained have not been heard from since.

1159. South of Dečani/Dečan, in Đakovica/Gjakova town, a prevailing atmosphere of terror was created by police and VJ forces from the commencement of the NATO bombing campaign. These forces engaged in the selective looting and burning of buildings, and MUP forces killed Kosovo Albanian residents of the town, including a group of 20 women and children in a basement in Miloš Gilić/Milosh Giliq Street at the beginning of April. As a consequence, a large number of Kosovo Albanians fled the town and travelled to and across the Albanian border. During their journey their personal identity documents were taken from them by VJ and MUP forces. Kosovo Albanian residents of villages in Đakovica/Gjakova municipality were also expelled from their homes by army and police forces in April 1999, in particular during a joint operation in the region known as the Reka/Caragoj valley at the end of the month. In the course of that operation a number of Kosovo Albanians were killed by members of the police and VJ, and the bodies of 287 people who went missing from Meja and the surrounding area at that time were subsequently found in mass graves at Batajnica, close to Belgrade.

1160. It is uncontested that a broad operation was conducted by the VJ and MUP at the end of March 1999 in an area covering parts of Prizren, Suva Reka/Suhareka, and Orahovac/Rahovec municipalities. During the course of that operation, on 25 March 1999, Kosovo Albanian villagers from Pirane/Pirana (in Prizren municipality) fled their homes as a consequence of the shelling of the village and the torching of houses by VJ and MUP forces. The same day MUP and VJ forces attacked the village of Celina (Orahovac/Rahovec municipality), looting and setting the majority of houses on fire. Members of the police also deliberately destroyed the local mosque. These forces terrorised the inhabitants of the village, killing a number of people. The Trial Chamber notes that witnesses to the attack on Celina, as well as to attacks on several other towns and villages in Kosovo, described the use of a special weapon, like a flame-thrower, by the forces of the FRY and Serbia, for the purposes of torching buildings. In light of this consistent evidence, the Chamber does not accept that such weapons had been decommissioned by the VJ in the 1950s, as claimed by Božidar Delić.²⁸³⁷ People from Celina who had fled their homes and taken shelter in nearby woods

²⁸³⁷ Božidar Delić, T. 19356 (29 November 2007).

were later rounded up and robbed of their valuables and identity documents. Some of them were physically abused and they were sent towards the Albanian border.

1161. The same day as Celina and Pirane/Pirana were attacked, nearby Bela Crkva/Bellacërka (Orahovac/Rahovec municipality) was also targeted by VJ and MUP forces, which shelled the village and burned houses, causing the inhabitants to flee. During the course of this attack, police forces brutally killed a number of men, women, and children who were trying to hide. The village of Mala Kruša/Krusha e Vogel, to the south of Celina and Bela Crkva/Bellacërka, and to the north of Pirane/Pirana, was also surrounded by VJ and MUP forces on 25 March 1999, and the MUP then entered the village, looting and setting houses on fire with the assistance of local Serbs. The Kosovo Albanian residents of the village went to hide in a wooded area and were later rounded up, the women and children being told to go to Albania. More than 100 men were robbed of their valuables and identity documents, mistreated, and then shut in a barn and shot by local members of the police, after which the barn was set on fire. Only eight men survived. Lutfi Ramadani, one of these survivors, described how, when he returned to Mala Kruša/Krusha e Vogël,

[i]t was in a pitiful condition. All the houses were burned. It was a very desperate view to look at. Not a house was—not a single house was intact. Some were—only the roofs were burned. Some were burned in other parts, but the entire village was burned ... the houses of Albanians, not the houses of the Serbs.²⁸³⁸

1162. Around the same time, the residents of Dušanovo/Dushanova, a neighbourhood of Prizren town, were expelled from their homes, beaten, threatened, and robbed, and directed towards Albania. Later, in April 1999, people who had been displaced from Pirane/Pirana during the operation and who were sheltering in nearby Srbica/Sërbica, were also ordered to leave the village and go to Albania.

1163. In the course of the operation at the end of March 1999, PJP forces were engaged in and around Suva Reka/Suhareka town. On 26 March local MUP personnel targeted members of the Berisha family in the town, killing 45 men, women, and children near their homes, and as they fled past a bus station and took shelter inside a local pizzeria. The bodies of the majority of these people were also later found in a mass grave in Batajnica, near Belgrade. In the days following the killings, the Suva Reka/Suhareka mosque was damaged and many of the remaining Kosovo Albanian residents of the town left their homes as the police and VJ forces set fire to houses, stole money and valuables, and ordered them to go to Albania.

²⁸³⁸ Lutfi Ramadani, T. 4310 (28 September 2006).

1164. Kosovo Albanian civilians were forcibly displaced from villages in Srbica/Skenderaj municipality at the end of March and in April 1999. On 26 March 1999 Turićevac/Turiçec village was shelled, and its inhabitants formed a convoy and left in the direction of Tušilje/Tushila to the east. MUP and VJ forces then arrived in Tušilje/Tushila, and another convoy was formed, which started moving towards Klina. Around this time a large number of displaced people had gathered in a field on the outskirts of Izbica. Police forces surrounded the group, ordering the women and children to go to Albania, and detaining the men. They then lined up and shot the men in two groups, killing at least 89 of them. Around mid-April, a group of women held by VJ or MUP forces in the village of Kozica/Kozhica after it had been shelled, was taken to Ćirez/Qirez. At least four of these women were sexually assaulted, and eight of them were then killed by being thrown into three wells. At the end of April another offensive took place near Baks, close to Ćirez/Qirez. In the course of this attack a large group of Kosovo Albanian men were detained and mistreated.

1165. As soon as the NATO campaign began, prominent Kosovo Albanians in Kosovska Mitrovica/Mitrovica town in the north of the province were targeted, and some killed, by the police. Kosovo Albanian houses were also burned by the police, and a large number of Kosovo Albanians were expelled from parts of the town. Some subsequently returned to the town, and then left again at the beginning of April, travelling on buses to Montenegro. In mid-April 1999 many Kosovo Albanians living or temporarily sheltering in Žabare/Zhabar and other nearby villages were forced to form convoys and leave Kosovo by MUP and VJ forces which began to burn houses in the villages. Many of these people had to make their way on foot across Kosovo and south to the Albanian border, and they were robbed and further mistreated along the way.

1166. On 27 March 1999 VJ and MUP forces burned houses and at least one mosque in Vuçitrn/Vushtrria town, and expelled Kosovo Albanian residents of the town. MUP forces also robbed and mistreated Kosovo Albanians in a large convoy moving from villages in Vuçitrn/Vushtrria municipality towards the south. On the night of 2 May 1999 MUP forces killed at least two people in the convoy, which was then directed to some nearby buildings, where its members were held overnight. The following day one other person from the group was killed and the MUP directed the women, children, and elderly people to continue on to Albania. They detained and mistreated the Kosovo Albanian men of military age for approximately three weeks in Smrekovnica/Smrakonica prison, before forcing them to cross the border into Albania.

1167. In Priština/Prishtina town, the administrative centre of Kosovo, the pattern of expulsion of Kosovo Albanians was repeated. Many people were directly evicted from their homes, while others fled out of fear of the violence around them caused by forces of the FRY and Serbia. The

expulsion from Priština/Prishtina was carried out in an organised manner, with hundreds of Kosovo Albanians channelled to the train station and on to overcrowded trains that took them to the Macedonian border. In the course of this operation at least three Kosovo Albanian women were sexually assaulted by VJ and MUP personnel.

1168. Villagers from Žegra/Zhegra and Prilepnica/Përlepnica, in Gnjilane/Gjilan municipality, were also forcibly removed from their homes. In Žegra/Zhegra the VJ, MUP, and other irregular forces, including local Serb civilians, drove out the Kosovo Albanian residents by way of threats, beatings, and killings, at the end of March 1999. Many of the displaced people made their way to Macedonia. When they returned to their homes at the end of the conflict, they found that most of the Kosovo Albanian houses in the village had been burned and damaged to some degree, whereas the Serb houses remained untouched. Around the same time the mosque in nearby Vlačica/Llashtica was burned down by the VJ and local MUP reservists; while in Vladovo/Lladova, houses were looted and burned, and its residents also fled and travelled to Macedonia, escorted by MUP and VJ forces. The residents of Prilepnica/Përlepnica were ordered to leave the village first on 6 April and again on 13 April 1999.

1169. In Uroševac/Ferizaj municipality, south-west of Gnjilane/Gjilan, villages were also attacked in late March and during April 1999. In Sojevo/Sojeva, VJ, police, and other armed individuals working together with them, burned houses and killed several people, while the local residents were forced to travel in convoys on foot and in vehicles towards Uroševac/Ferizaj town. Some of these people continued on by bus to the Macedonian border. At the beginning of April approximately 1,000 displaced people arrived in Mirosavlje/Mirosala. When military forces then approached Mirosavlje/Mirosala, its inhabitants and the others sheltering there formed convoys and travelled towards Uroševac/Ferizaj town, passing destroyed vehicles and burning houses. Some eventually left Uroševac/Ferizaj by bus and travelled south to and across the Macedonian border. Also at the beginning of April the village of Staro Selo was occupied by VJ forces, which stayed for a few days and then left, burning houses as they departed. Shortly thereafter a group of VJ volunteers arrived in the village and ordered local men to dig trenches, confiscated vehicles, and extorted money from the inhabitants. The villagers left their homes out of fear, and walked to Uroševac/Ferizaj town. Many later boarded trains that took them to the Macedonian border.

1170. Finally, in Kačanik/Kaçanik municipality, in the south of Kosovo bordering Macedonia, Kosovo Albanians were expelled from the town and surrounding villages from the beginning of the NATO air campaign. VJ and MUP forces attacked Kotlina on 24 March, sending the local women and children by truck and on foot towards Kačanik/Kaçanik town. Other villagers who escaped

detection fled towards Macedonia at the time of the attack. A few days later, VJ and MUP forces entered Kačanik/Kaçanik town and fired towards some houses from positions in a local factory. Isa Raka, a Kosovo Albanian man who witnessed these events in Kačanik/Kaçanik town, described how his pregnant wife was shot during this attack, and subsequently died as a result of her injuries. The following day, the residents of this part of the town decided to leave their homes out of fear of the MUP forces, and travelled on foot to Macedonia.

1171. In April 1999 VJ and MUP units entered the village of Vata/Vataj and looted houses there. On 21 May 1999, VJ and MUP forces attacked Stagovo/Stagova, and on 25 May also attacked Dubrava/Lisnaja. The residents of Dubrava/Lisnaja decided to go to Macedonia, because they knew and feared what had happened in other villages. The women, old men, and children formed a convoy, while the younger men hid in the woods nearby. Several people were shot near Reka close to Dubrava/Lisnaja at the time of this attack, including a girl who died, and a 12 year-old boy who was seriously injured.

1172. In addition to the evidence pertaining to the specific crime sites set out in the Indictment, the Chamber has heard evidence going to the broad pattern of violence and intimidation of the Kosovo Albanian population during the NATO campaign from witnesses who were members of the VJ and MUP forces in Kosovo at that time. For example, three former members of the VJ, witnesses K90, K73, and K54, admitted that they were involved in the expulsion of Kosovo Albanians from their homes during the NATO campaign. K90 described how his unit expelled—later insisting on using the word “relocated”—Kosovo Albanians from their homes in Đakovica/Gjakova municipality during April 1999.²⁸³⁹ He did so in accordance with orders that he received orally.²⁸⁴⁰ K73 also described his involvement in expelling Kosovo Albanian civilians and the deliberate burning of houses in villages in Đakovica/Gjakova municipality during April 1999.²⁸⁴¹ He stated,

all of us who took part in that operation, found it, if I can say, unpleasant to expel women, children, elderly persons and invalids. I know the KLA pretty well and I've not seen a single woman of 70 years old or a child or anybody in the KLA, people like that cannot be fighters and terrorists. Or people in wheelchairs. But we expelled them all

²⁸³⁹ K90's evidence was consistent with that of Fuat Haxhibeqiri, K73, Nike Peraj, Merita Deda, Lizane Malaj. The attempts to impeach K90's credibility through Vlatko Vuković lacked foundation. Challenges mounted as to K90's presence during the Reka/Caragoj valley operation were based upon statements from individuals not called as witnesses or unadmitted documentation that was cursory and lacking in detail. Consequently, the Chamber finds K90 generally credible and reliable on the issues from his witness statement, which he re-confirmed in his oral evidence.

²⁸⁴⁰ K90, P2460 (witness statement), para. 41.

²⁸⁴¹ K73, T. 3328–3335 (13 September 2006) (closed session), T. 3381–3383 (14 September 2006) (closed session), P2440 (witness statement dated 2 December 2005), para. 42.

from the baby in the cradle to the elderly people in wheelchairs and that's the problem that I have today.²⁸⁴²

K54 testified that his unit expelled people from a settlement near Prizren called Petrovo Selo/Petrovasella, following the bombing of the Prizren barracks and so that the settlement could be occupied by the VJ.²⁸⁴³

1173. Goran Stoparić, a former member of the paramilitary group known as the Scorpions, described how in late March 1999 his unit was incorporated into the ranks of the SAJ and sent to Kosovo. There members of the unit killed at least a dozen civilians in the town of Podujevo/Podujeva.²⁸⁴⁴ Witnesses K54 and K82 recounted an operation in which they participated in the village of Trnje/Tërm (Suva Reka/Suhareka municipality), also in late March 1999, during which their unit burned houses and killed a group of around 15 Kosovo Albanian men, women, and children.²⁸⁴⁵ Both witnesses gave evidence that this killing was not an isolated incident, but that other killings occurred throughout the village as it was cleared out by the VJ and MUP.²⁸⁴⁶ K54 also described his own participation in the stealing of cars in Kosovo,²⁸⁴⁷ and in setting civilian property on fire, on the orders of his superior officer.²⁸⁴⁸

1174. Former chief of the Kosovska Mitrovica SUP, Ljubinko Cvetić, also acknowledged that in the early days of the NATO air campaign members of the police, particularly police reservists, engaged in the expulsion of Kosovo Albanians from their homes. He testified, however, that such expulsions were not part of a policy or plan, and that there were other reasons for the mass movement of the Kosovo Albanian population at this time, such as the NATO bombing and pressure from the KLA.²⁸⁴⁹

1175. The Trial Chamber is mindful of the fact that in some parts of Kosovo, both within the 13 municipalities discussed in this Judgement and elsewhere, people may have left their homes for different reasons, such as instructions from the KLA, the desire to avoid being present while

²⁸⁴² K73, T. 3381–3382 (14 September 2006) (closed session).

²⁸⁴³ K54, T. 10598 (27 February 2007).

²⁸⁴⁴ Goran Stoparić, T. 702–703 (12 July 2006), P2224 (witness statement dated 6 July 2006), paras. 35, 51–56. *See also* Aleksandar Vasiljević, T. 8717 (19 January 2007); 3D1055 (Supreme Command Staff, Report on the Activities of the Slobodana Medić-Boce Paramilitary Formation, 13 May 1999).

²⁸⁴⁵ K82, T. 11747–11748 (15 March 2007), P2863 (witness statement), paras. 7–23; K54, T. 10585–10588 (27 February 2007) (private session), P2883 (witness statement dated 26 April 2002), pp. 5–6, P2884 (witness statement dated 16 July 2002), p. 1. *See* para. 470 above for the Chamber's assessment of their credibility.

²⁸⁴⁶ K54, P2883 (witness statement dated 26 April 2002), pp. 5–6; K82, P2863 (witness statement), paras. 13–14, 16, 26, 28–29.

²⁸⁴⁷ K54, T. 10514 (open session), T. 10515 (private session), T. 10516 (open session) (26 February 2007), P2883 (witness statement dated 26 April 2002), p. 7.

²⁸⁴⁸ K54, T. 10590 (27 February 2007), P2883 (witness statement dated 26 April 2002), p. 6.

²⁸⁴⁹ Ljubinko Cvetić, T. 8179–8180 (8 December 2006).

combat between the KLA and forces of the FRY and Serbia was taking place, or indeed the fact that NATO was bombing targets close to where they lived. However, despite the arguments by the Defence that these were the primary reasons for the massive movement of people within Kosovo and across the borders with Albania and Macedonia, none of the Kosovo Albanians who testified cited the NATO bombing as among the reasons for their departure, and in only one area of Vučitrn/Vushtrria municipality and another area of Suva Reka/Suhareka municipality discussed above has the Chamber found that people were moving as a consequence of the actions of the KLA. The Chamber gives little weight to anonymous hearsay from VJ and MUP officers about the reasons for the departure of Kosovo Albanians from their homes, and notes in addition that such officers would have been in uniform at the time of any conversations with displaced Kosovo Albanians who might have been reluctant to give these officers the real reasons for their flight. The Kosovo Albanian witnesses, who testified about their own expulsion and that of many others from Kosovo, came from a broad cross-section of that community, generally with no connection to one another beyond their victimisation, and it is inconceivable that they could or would all have concocted such detailed and consistent accounts of the events that they experienced and witnessed.

1176. Furthermore, NATO bombs struck targets across the FRY, with Belgrade suffering the most destruction, according to Spasoje Smiljanić, former Commander of the VJ Air Force and Air Defence, and yet people did not leave Belgrade, or other parts of the FRY, in the massive numbers which fled Kosovo.²⁸⁵⁰ The Chamber finds, therefore, that the NATO bombing was not the primary reason for the mass displacement of Kosovo Albanians from Kosovo.

1177. While there was a continuing armed conflict between the KLA and the forces of the FRY and Serbia, at the same time as the NATO air campaign, the Chamber also does not consider that this conflict was the primary cause of the flight of hundreds of thousands of Kosovo Albanians from late March to early June 1999. Indeed, as discussed elsewhere in this Judgement, the conflict between the KLA and the VJ and MUP commenced in mid-1998 and intensified through July, August, and September of that year. While many Kosovo Albanians were displaced at that time, most stayed within the boundaries of Kosovo, and there was not the massive flood of people across the borders that began on 24 March 1999. The Chamber further recalls that, while the KLA was, at various times and in various locations, a force to be reckoned with, its numbers were small in comparison to the quantity of VJ and MUP personnel deployed to Kosovo in March to June 1999, nor did it have the kinds of heavy equipment that the state forces had access to.²⁸⁵¹

²⁸⁵⁰ Spasoje Smiljanić, T. 15776–15777 (17 September 2007).

²⁸⁵¹ See Section VI.B.

1178. The manner in which the VJ and MUP dealt with the KLA was often heavy-handed and involved indiscriminate violence and damage to civilian persons and property, further exacerbating rather than ameliorating the situation in Kosovo. The consistent eye-witness accounts of the systematic terrorisation of Kosovo Albanian civilians by the forces of the FRY and Serbia, their removal from their homes, and the looting and deliberate destruction of their property, satisfies the Chamber that there was a campaign of violence directed against the Kosovo Albanian civilian population, during which there were incidents of killing, sexual assault, and the intentional destruction of mosques. It was the deliberate actions of these forces during this campaign that caused the departure of at least 700,000 Kosovo Albanians from Kosovo in the short period of time between the end of March and beginning of June 1999. Efforts by the MUP to conceal the killing of Kosovo Albanians, by transporting the bodies to other areas of Serbia, as discussed in greater detail below, also suggest that such incidents were criminal in nature.

O. LEGAL FINDINGS

1179. Having made the above factual findings on events between March and May 1999 in 13 of the municipalities in Kosovo, the Trial Chamber now turns to the question of whether the legal elements of the crimes charged in the Indictment are satisfied in relation to each of the crime sites where it has found the relevant facts to be proved.

1180. The Prosecution has charged all of the separate incidents discussed above as crimes against humanity, punishable under Article 5 of the Statute, and the killings also as violations of the laws or customs of war, punishable under Article 3. For both categories of crime, the Prosecution must prove the existence of an armed conflict at the relevant time, and a nexus, or an “objective link” between that armed conflict and the charged crimes. The Chamber has concluded above that there was indeed an armed conflict in the territory of Kosovo, beginning in mid-1998 and continuing through to the end of the NATO air campaign in June 1999. The Chamber is satisfied that these all of the criminal acts described above in each of the 13 municipalities were objectively linked, both geographically and temporally, with the armed conflict. The Chamber is similarly satisfied that there was a nexus between these “crimes” and this armed conflict.

1. Peć/Peja

1181. On 27 March 1999, VJ and MUP forces, working with other irregular forces, began targeting Kosovo Albanian civilians across the town of Peć/Peja. Parts of the town were shelled by the VJ, vehicles were confiscated, money stolen, houses were burned and large numbers of Kosovo