



**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
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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

JUDGEMENT

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General abbreviations

| | |
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| 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>Vojska Jugoslavije</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.¹ 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

¹ 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.² The parties themselves agreed that an unstable security situation existed in Kosovo/Kosova that was particularly unfavourable to

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

witnesses.³ 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.

³ 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.⁴ An accused must be acquitted if there is any reasonable explanation of the evidence other than the guilt of the accused.⁵

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;⁶ 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.⁷

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.⁸ 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

⁴ *Brđanin* Trial Judgement, para. 22.

⁵ *Čelebići* Appeal Judgement, para. 458.

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

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

⁸ Rule 92 ter (B).

witness in court.⁹ 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.¹⁰ The Trial Chamber admitted statements of two deceased witnesses pursuant to this rule.¹¹ 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.¹² In its assessment, the Trial Chamber considered whether the statements were corroborated by other evidence and whether the statements were internally consistent.¹³

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.¹⁴ 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.¹⁵

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.¹⁶

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

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

¹⁰ Rule 92 quater (B).

¹¹ 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.

¹² 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.

¹³ *Ibid.*, paras 11-20.

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

¹⁵ 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.¹⁷ 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.¹⁸

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.¹⁹ 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.²⁰ 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.

¹⁶ Rule 89 (B) of the Rules.

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

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

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

²⁰ 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.²¹ 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.²²

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.²³ In general, the Trial Chamber clarified that it attached little, if any, weight to unexplained opinions and untested hearsay and that an accumulation of

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

²² 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.²⁴ 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.²⁵ 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.²⁶ 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.²⁷ The motivation of these informers was money, politics, or sometimes they were blackmailed by the RDB.²⁸ 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.²⁹ 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.³⁰ 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.³¹

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

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

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

²⁵ 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.

²⁶ Nebojša Avramović, T. 6626-6627.

²⁷ Zoran Stijović, T. 8884, 8891, 8893-8894.

²⁸ Zoran Stijović, T. 8884-8886.

²⁹ T. 9093-9094.

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

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

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

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.³⁴ 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.³⁵ 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

³² See *Kupreškić* Appeal Judgement, para. 303.

³³ See *Čelebići* Appeal Judgement, para. 458.

³⁴ 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.

³⁵ 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.³⁶ The witness was not recalled and his testimony was excluded from the evidence.³⁷

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.³⁸

24. Four subpoenas issued by the Trial Chamber were not complied with.³⁹ 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.⁴⁰ 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

³⁶ T. 9820-9822.

³⁷ 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.

³⁸ 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.

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

⁴⁰ 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.⁴¹ 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.⁴² 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.⁴³

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.⁴⁴ 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.⁴⁵ 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.⁴⁶ 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).

⁴¹ 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.

⁴² 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.

⁴³ 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.

⁴⁴ Decision on Motion for Videolink (Witness 30), 14 September 2007.

⁴⁵ T. 10621-10647, 10975.

⁴⁶ T. 4766-4767.

admitted pursuant to Rule 92 bis.⁴⁷ 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.⁴⁸

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.⁴⁹ 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.⁵⁰ Consequently, the Trial Chamber issued an Order in Lieu of Indictment for contempt.⁵¹ 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.⁵² On 1 November 2007, the Trial Chamber decided to hear Shefqet Kabashi by means of video-conference link.⁵³ 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.⁵⁴ 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

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

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

⁴⁹ T. 1810-1820.

⁵⁰ The full procedural history is set out in Annex A.

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

⁵² 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.

⁵³ 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.⁵⁵ 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.⁵⁶ 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.

⁵⁴ Decision Granting Leave to Amend the Indictment, 18 February 2008.

⁵⁵ See *Kupreškić et al.* Appeal Judgement, para. 34.

⁵⁶ *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.⁵⁷

31. The Prosecution has issued guidelines for the conduct of photo board identifications.⁵⁸ 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.⁵⁹ In some cases the witness was not told that the photo board may or may not include the Accused.⁶⁰ The physical responses of the witness were sometimes not noted down by the investigators.⁶¹ 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.

⁵⁷ 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).

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

⁵⁹ Pekka Haverinen, T. 6327-6328, 6333-6334, 6351.

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

⁶¹ 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”).⁶² 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.⁶³ 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.⁶⁴

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.⁶⁵ 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.⁶⁶ The crimes prohibited by Common Article 3 undoubtedly breach rules protecting important values and involve grave consequences for the victims. They also entail

⁶² 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.

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

⁶⁴ *Tadić* Jurisdiction Decision, paras 94, 143.

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

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

individual criminal responsibility.⁶⁷ 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.⁶⁸ 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.⁶⁹

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;⁷⁰ 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.⁷¹

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.⁷²

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

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

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

⁶⁹ *Kunarac et al.* Appeal Judgement, paras 187-195.

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

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

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

⁷³ *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.⁷⁴ The Trial Chamber consequently interpreted the term “protracted armed violence” to refer to the “intensity of the conflict”.⁷⁵ 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 1992.⁷⁶ 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.⁷⁷ Many inhabitants fled.⁷⁸ On 24 May 1992, Bosnian-Serb forces attacked Kozarac town and surrounding villages.⁷⁹ The attack began with heavy shelling which lasted until 26 May 1992, followed by the advance of tanks and infantry.⁸⁰ By 28 May 1992, many dwellings had been destroyed.⁸¹ 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.⁸² The Bosnian-Serb infantry forced the surviving civilian inhabitants to leave the town and surrounding villages.⁸³ On 14 June 1992, armed Bosnian Serbs attacked two other villages with similar consequences.⁸⁴ Kozarac was looted and further destroyed between June and August 1992.⁸⁵ The Trial Chamber found that the fighting between the parties continued throughout Bosnia-Herzegovina until the conclusion of

⁷⁴ *Tadić* Jurisdiction Decision, para. 70.

⁷⁵ *Tadić* Trial Judgement, para. 562.

⁷⁶ *Tadić* Trial Judgement, paras 560, 563; *Tadić* Second Amended Indictment, 14 December 1995, para.

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⁷⁷ *Tadić* Trial Judgement, para. 140.

⁷⁸ *Tadić* Trial Judgement, para. 141.

⁷⁹ *Tadić* Trial Judgement, paras 143, 565.

⁸⁰ *Tadić* Trial Judgement, paras 143, 565.

⁸¹ *Tadić* Trial Judgement, paras 143, 565.

⁸² *Tadić* Trial Judgement, paras 145, 565.

⁸³ *Tadić* Trial Judgement, paras 143, 146, 565.

⁸⁴ *Tadić* Trial Judgement, para. 565.

⁸⁵ *Tadić* Trial Judgement, paras 143, 146.

the Dayton peace agreement.⁸⁶ 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.⁸⁷ The Trial Chamber concluded that the intensity requirement was satisfied.⁸⁸

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 1992.⁸⁹ 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 1995.⁹⁰ 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.⁹¹ 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.⁹² The conflict caused many people to flee their homes.⁹³ 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.⁹⁴ Hence, the conflict was sufficiently intense to satisfy the *Tadić* test.⁹⁵

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.⁹⁶ Relying on the *Tadić* “protracted armed violence” criterion, the Trial Chamber

⁸⁶ *Tadić* Trial Judgement, para. 566.

⁸⁷ *Tadić* Trial Judgement, para. 567.

⁸⁸ *Tadić* Trial Judgement, para. 568.

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

⁹⁰ *Čelebići* Trial Judgement, para. 186.

⁹¹ *Čelebići* Trial Judgement, paras 134, 138-139, 189.

⁹² *Čelebići* Trial Judgement, para. 134.

⁹³ *Čelebići* Trial Judgement, paras 129-130, 133, 139.

⁹⁴ *Čelebići* Trial Judgement, para. 190.

⁹⁵ *Čelebići* Trial Judgement, para. 192.

⁹⁶ *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.⁹⁷ 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.⁹⁸ The KLA was equipped with rifles, guns and mortars, and by March 1997 received many weapons from Albania.⁹⁹ 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.¹⁰⁰ 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.¹⁰¹ There were clashes in many municipalities across Kosovo/Kosova.¹⁰² 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*.¹⁰³

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 1993.¹⁰⁴ 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 1992.¹⁰⁵ During a week of fighting in Novi Travnik, civilian buildings were set on fire and demolished.¹⁰⁶ 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.¹⁰⁷ The fighting spread throughout the municipality, leading to the destruction of buildings in one village and the evacuation of its population.¹⁰⁸ The fighting in Busovača municipality lasted at least

⁹⁷ *Slobodan Milošević* Rule 98 *bis* Decision, para. 17.

⁹⁸ *Slobodan Milošević* Rule 98 *bis* Decision, para. 28.

⁹⁹ *Slobodan Milošević* Rule 98 *bis* Decision, para. 31.

¹⁰⁰ *Slobodan Milošević* Rule 98 *bis* Decision, para. 28.

¹⁰¹ *Slobodan Milošević* Rule 98 *bis* Decision, para. 30.

¹⁰² *Slobodan Milošević* Rule 98 *bis* Decision, para. 29.

¹⁰³ *Slobodan Milošević* Rule 98 *bis* Decision, paras 17, 27, 32, 40.

¹⁰⁴ *Kordić and Čerkez* Appeal Judgement, para. 334.

¹⁰⁵ *Kordić and Čerkez* Appeal Judgement, para. 338.

¹⁰⁶ *Kordić and Čerkez* Appeal Judgement, paras 337-338.

¹⁰⁷ *Kordić and Čerkez* Appeal Judgement, para. 339.

¹⁰⁸ *Kordić and Čerkez* Appeal Judgement, para. 340.

three days.¹⁰⁹ 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 1993.¹¹⁰

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 1993.¹¹¹ 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 1993,¹¹² sometimes involving heavy shelling of towns and civilian casualties,¹¹³ and effectively cutting off lines of communication or transportation.¹¹⁴ It also noted blockades or sieges of towns lasting many months,¹¹⁵ the deployment of tens of thousands of troops,¹¹⁶ as well as the shifting of front lines.¹¹⁷ 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.¹¹⁸

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 1998.¹¹⁹ Applying the “protracted armed violence” requirement of the *Tadić* test, the Trial Chamber proceeded to examine the intensity of the conflict.¹²⁰ 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.¹²¹ The Trial Chamber concluded that, by the end of May 1998 and at least until 26 July 1998, armed clashes

¹⁰⁹ *Kordić and Čerkez* Appeal Judgement, paras 339-340.

¹¹⁰ *Kordić and Čerkez* Appeal Judgement, paras 336, 341.

¹¹¹ *Halilović* Trial Judgement, paras 6, 8, 24, 160, 173.

¹¹² *Halilović* Trial Judgement, paras 161, 163-166, 169.

¹¹³ *Halilović* Trial Judgement, paras 164-165, 168.

¹¹⁴ *Halilović* Trial Judgement, paras 164-165.

¹¹⁵ *Halilović* Trial Judgement, paras 166-168.

¹¹⁶ *Halilović* Trial Judgement, para. 168.

¹¹⁷ *Halilović* Trial Judgement, paras 161-162, 164-165, 169, 172.

¹¹⁸ *Halilović* Trial Judgement, para. 173.

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

¹²⁰ *Limaj et al.* Trial Judgement, paras 84, 93.

occurred at intervals averaging three to seven days over a widespread and expanding geographic area.¹²² 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.¹²³ 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.¹²⁴

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.¹²⁵ 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 1993.¹²⁶ 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 1993.¹²⁷ 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.¹²⁸

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 1995.¹²⁹ 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.¹³⁰ In August 1991, the hostilities intensified with the JNA, the Serb TO and a unit within the

¹²¹ *Limaj et al.* Trial Judgement, paras 135-167.

¹²² *Limaj et al.* Trial Judgement, para. 168.

¹²³ *Limaj et al.* Trial Judgement, paras 169-170.

¹²⁴ *Limaj et al.* Trial Judgement, paras 134, 171-173.

¹²⁵ *Hadžihasanović and Kubura* Trial Judgement, paras 7, 14, 25, Annex I.

¹²⁶ *Hadžihasanović and Kubura* Trial Judgement, paras 20-21.

¹²⁷ *Hadžihasanović and Kubura* Trial Judgement, para. 22.

¹²⁸ *Hadžihasanović and Kubura* Trial Judgement, paras 20, 25.

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

¹³⁰ *Martić* Trial Judgement, para. 344.

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

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 1991.¹³⁵ The Trial Chamber found that combat operations in the Vukovar area had gained in intensity during August and September 1991.¹³⁶ 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.¹³⁷ After the general surrender of Croat forces on 18 November 1991, isolated and less intense combat continued on 19 and 20 November 1991.¹³⁸ The events attracted the attention of international organizations including the UN Security Council.¹³⁹ The Trial Chamber was persuaded that the conflict was sufficiently intense to satisfy the *Tadić* test.¹⁴⁰

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

¹³¹ *Martić* Trial Judgement, paras 135, 344.

¹³² *Martić* Trial Judgement, para. 344.

¹³³ *Martić* Trial Judgement, para. 345.

¹³⁴ *Martić* Trial Judgement, para. 347.

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

¹³⁶ *Mrkšić et al.* Trial Judgement, para. 419.

¹³⁷ *Mrkšić et al.* Trial Judgement, para. 419.

¹³⁸ *Mrkšić et al.* Trial Judgement, para. 419.

¹³⁹ *Mrkšić et al.* Trial Judgement, paras 420-421.

¹⁴⁰ *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.¹⁴¹ 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 1992.¹⁴² 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.¹⁴³ They occupied a significant part of Bosnia-Herzegovina.¹⁴⁴ Having considered also the factors relevant to intensity, the Trial Chamber concluded that an armed conflict existed.¹⁴⁵

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.¹⁴⁶ 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.¹⁴⁷ 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.¹⁴⁸ Similarly, the self-proclaimed Bosnian-Croat state established as its army the Croatian Defence Council, which operated from territory under its control.¹⁴⁹ The Croatian Defence Council received arms, training and some personnel from the army of Croatia.¹⁵⁰ 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

¹⁴¹ *Tadić* Trial Judgement, paras 562-563.

¹⁴² *Tadić* Trial Judgement, para. 563.

¹⁴³ *Tadić* Trial Judgement, para. 564.

¹⁴⁴ *Tadić* Trial Judgement, paras 564, 566.

¹⁴⁵ *Tadić* Trial Judgement, para. 568.

¹⁴⁶ *Čelebići* Trial Judgement, paras 182-187.

¹⁴⁷ *Čelebići* Trial Judgement, paras 110, 112, 187.

¹⁴⁸ *Čelebići* Trial Judgement, paras 117, 187.

¹⁴⁹ *Čelebići* Trial Judgement, paras 118, 187.

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

53. The *Slobodan Milošević* Trial Chamber examined whether the KLA, from on or about 1 January 1999, qualified as an “organized armed group”.¹⁵⁵ 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.¹⁵⁶ On that basis, the Trial Chamber concluded that the “organization” criterion of the *Tadić* test was satisfied for the purposes of Rule 98 *bis*.¹⁵⁷

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.¹⁵⁸ They engaged in military tactics in order to achieve military objectives.¹⁵⁹ They also controlled various parts of the territory.¹⁶⁰ The Bosnian-Serb army and the Croatian Defence Council negotiated a cease-fire agreement.¹⁶¹ 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.¹⁶² 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.¹⁶³

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

¹⁵⁰ *Čelebići* Trial Judgement, para. 118.

¹⁵¹ *Čelebići* Trial Judgement, paras 109, 136, 186-187.

¹⁵² *Čelebići* Trial Judgement, paras 125-126, 131, 188.

¹⁵³ *Čelebići* Trial Judgement, paras 135, 137, 140, 191.

¹⁵⁴ *Čelebići* Trial Judgement, paras 191-192.

¹⁵⁵ *Slobodan Milošević* Rule 98 *bis* Decision, paras 14, 22 f.

¹⁵⁶ *Slobodan Milošević* Rule 98 *bis* Decision, paras 23-24.

¹⁵⁷ *Slobodan Milošević* Rule 98 *bis* Decision, paras 17, 25, 40.

¹⁵⁸ *Halilović* Trial Judgement, paras 162, 165-166, 168-172.

¹⁵⁹ *Halilović* Trial Judgement, paras 161, 163, 166, 168-169, 172.

¹⁶⁰ *Halilović* Trial Judgement, paras 162-164, 169.

¹⁶¹ *Halilović* Trial Judgement, para. 164.

¹⁶² *Halilović* Trial Judgement, paras 170-172.

¹⁶³ *Halilović* Trial Judgement, para. 173.

of the *Tadić* test and then examined whether the KLA qualified as an organized armed group.¹⁶⁴ 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.¹⁶⁵

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.¹⁶⁶ 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.¹⁶⁷ The Trial Chamber noted that the General Staff did not meet regularly or have any fixed location,¹⁶⁸ and that the KLA had mostly light weapons and inadequate communications equipment.¹⁶⁹ The Trial Chamber downplayed the significance of uniforms as they had "little bearing on the functioning of the KLA".¹⁷⁰ 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".¹⁷¹ The Trial Chamber also found evidence of the existence of an established hierarchy within the KLA.¹⁷² It found that the KLA had the ability to coordinate military planning and activities and to determine a unified military strategy,

¹⁶⁴ *Limaj et al.* Trial Judgement, paras 83, 93.

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

¹⁶⁶ *Limaj et al.* Trial Judgement, para. 172.

¹⁶⁷ *Limaj et al.* Trial Judgement, paras 98, 110-117.

¹⁶⁸ *Limaj et al.* Trial Judgement, paras 104, 132.

¹⁶⁹ *Limaj et al.* Trial Judgement, paras 121-122, 124.

¹⁷⁰ *Limaj et al.* Trial Judgement, para. 123.

¹⁷¹ *Limaj et al.* Trial Judgement, para. 129.

as well as the ability to conduct military operations of a larger scale.¹⁷³ 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”.¹⁷⁴

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.¹⁷⁵ 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.¹⁷⁶ 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.¹⁷⁷ Based also on considerations relevant to intensity, the Trial Chamber was satisfied that the conditions for the existence of an armed conflict were fulfilled.¹⁷⁸

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.¹⁷⁹ 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.¹⁸⁰ 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.¹⁸¹ The Croatian authorities also organized the Croatian Army.¹⁸² The Trial Chamber furthermore took into account the adoption of agreements between the parties.¹⁸³ The Trial Chamber concluded that the “organization” criterion was fulfilled.¹⁸⁴

¹⁷² *Limaj et al.* Trial Judgement, para. 129.

¹⁷³ *Limaj et al.* Trial Judgement, para. 129.

¹⁷⁴ *Limaj et al.* Trial Judgement, paras 134, 173.

¹⁷⁵ *Hadžihasanović and Kubura* Trial Judgement, paras 14, 20.

¹⁷⁶ *Hadžihasanović and Kubura* Trial Judgement, paras 20, 23.

¹⁷⁷ *Hadžihasanović and Kubura* Trial Judgement, para. 23.

¹⁷⁸ *Hadžihasanović and Kubura* Trial Judgement, paras 20, 25.

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

¹⁸⁰ *Martić* Trial Judgement, paras 135, 344.

¹⁸¹ *Martić* Trial Judgement, para. 344.

¹⁸² *Martić* Trial Judgement, para. 344.

¹⁸³ *Martić* Trial Judgement, para. 345.

¹⁸⁴ *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.¹⁸⁵ The Serb forces consisted of the JNA, Serb TOs, and Serb volunteer or paramilitary units.¹⁸⁶ They all acted under a temporary military structure formed by the command of the 1st Military District of the JNA.¹⁸⁷ The Trial Chamber found that the Serbian forces constituted government authorities within the meaning of the *Tadić* test.¹⁸⁸ The Croatian forces consisted of the Croatian MUP, National Guard Corps, and local volunteer defence groups.¹⁸⁹ The Croatian MUP had regular as well as reserve police forces, numbering 20,000 across Croatia.¹⁹⁰ The National Guard Corps was formed on 28 May 1991 and was part of the MUP.¹⁹¹ At first, its members were in large part volunteers and members of the reserve forces of the MUP.¹⁹² They were armed, though inadequately, with MUP weapons.¹⁹³ Before November 1991, the National Guard Corps in Croatia consisted of four brigades, with 8,000-9,000 men.¹⁹⁴ In Vukovar, in the autumn of 1991, the Croatian MUP and National Guard Corps, along with local volunteer defence groups, numbered around 1,500-1,800.¹⁹⁵ They were under a unified command, which had a designated headquarters in Vukovar.¹⁹⁶ The Trial Chamber concluded that the Croatian forces constituted organized armed groups within the meaning of the *Tadić* test.¹⁹⁷

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

¹⁸⁵ *Mrkšić et al.* Trial Judgement, paras 39-40, 407-408.

¹⁸⁶ *Mrkšić et al.* Trial Judgement, para. 409.

¹⁸⁷ *Mrkšić et al.* Trial Judgement, para. 409.

¹⁸⁸ *Mrkšić et al.* Trial Judgement, para. 409.

¹⁸⁹ *Mrkšić et al.* Trial Judgement, para. 410.

¹⁹⁰ *Mrkšić et al.* Trial Judgement, para. 411.

¹⁹¹ *Mrkšić et al.* Trial Judgement, para. 413.

¹⁹² *Mrkšić et al.* Trial Judgement, paras 413-414.

¹⁹³ *Mrkšić et al.* Trial Judgement, paras 413-414.

¹⁹⁴ *Mrkšić et al.* Trial Judgement, para. 414.

¹⁹⁵ *Mrkšić et al.* Trial Judgement, paras 410, 412, 414, 415.

¹⁹⁶ *Mrkšić et al.* Trial Judgement, paras 410, 417.

¹⁹⁷ *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.¹⁹⁸ 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.¹⁹⁹

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.²⁰⁰ 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.²⁰¹ The perpetrator must know or should have known the status of the victims as persons taking no active part in the hostilities.²⁰²

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

¹⁹⁸ *Kunarac et al.* Appeal Judgement, para. 57; *Stakić* Appeal Judgement, para. 342.

¹⁹⁹ *Kunarac et al.* Appeal Judgement, para. 58.

²⁰⁰ Common Article 3 (1); *Čelebići* Appeal Judgement, para. 420; *Krajišnik* Trial Judgement, para. 847.

²⁰¹ Common Article 3 (1).

²⁰² *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 Glodane/Gllogjan, in Dečani/Deçan municipality. Cufë Krasniqi testified that in February 1998 the KLA had headquarters in Jablanica/Jabllanicë and Glodane/Gllogjan.²⁰³ Jablanica/Jabllanicë, which the witness understood to be under the command of Lahi Brahimaj, was the oldest KLA headquarters in Western Kosovo/Kosova.²⁰⁴ After the attack on the Haradinaj family compound in Glodane/Gllogjan in March 1998, this village became the base for the most important KLA headquarters after Jablanica/Jabllanicë.²⁰⁵ KLA members went to Glodane/Gllogjan to learn how to protect their villages and obtain weapons.²⁰⁶ Zoran Stijović and Witness 69 corroborated the KLA’s presence, by early 1998, in Glodane/Gllogjan and Jablanica/Jabllanicë, as well as Lahi Brahimaj’s role as a leader in Jablanica/Jabllanicë.²⁰⁷ 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.²⁰⁸ The witness testified that KLA commanders would meet in Lahi

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

²⁰⁴ 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).

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

²⁰⁶ Cufë Krasniqi, T. 5708.

²⁰⁷ 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.

²⁰⁸ Pjeter Shala, T. 9938–9939, 9943–9947.

Brahimaj's house, in the centre of Jablanica/Jabllanicë.²⁰⁹ He further testified that there were barracks at the entrance to the village.²¹⁰ 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.²¹¹

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 Glođane/Gllogjan, such as Dubrava/Dubravë, Babaloć/Baballoq, Gramočelj/Gramaqel, and Šaptelj/Shaptej, all in Dečani/Dečan municipality, had started to set up KLA headquarters around the end of March and the beginning of April 1998.²¹² Around the same time, he saw the KLA headquarters in Ljumbarda/Lumbardh in Dečani/Dečan municipality.²¹³ The commander of Gramočelj/Gramaqel at the time was Ali Avdija, a.k.a. Baraba, and the commander of Ljumbarda/Lumbardh was Deli Lekaj.²¹⁴ According to Rrustem Tetaj, villagers organized themselves on their own initiative, which resulted in an expansion of the KLA in the Dukagjin area.²¹⁵ The organization consisted mainly of ordinary people appointing night guards and setting up checkpoints at village entrances.²¹⁶ 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,²¹⁷ Ahmet Ukaj,²¹⁸ Zymer Hasanaj,²¹⁹ Witness 29,²²⁰ and Shemsedin Cekaj.²²¹

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

²⁰⁹ Pjeter Shala, T. 9946-9948.

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

²¹¹ Pjeter Shala, T. 9947, 9954.

²¹² P265 (Rrustem Tetaj, witness statement, 17 April 2007), para. 20.

²¹³ P265 (Rrustem Tetaj, witness statement, 17 April 2007), para. 20.

²¹⁴ P265 (Rrustem Tetaj, witness statement, 17 April 2007), para. 20.

²¹⁵ Rrustem Tetaj, T. 3625-3626, 3628, 3707, 3709, 3800-3801.

²¹⁶ Rrustem Tetaj, T. 3626, 3707.

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

²¹⁸ P1226 (Ahmet Ukaj, witness statement, 11 November 2007), para. 1.

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

²²⁰ Witness 29, T. 3483-3484, 3586.

²²¹ 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.²²² Haradinaj would ask the villagers to raise money for the purchase of weapons.²²³ Around mid-April 1998, Rrustem Tetaj went to Glodane/Gllogjan to join the KLA and to discuss the organization and preparation of the village of Donja Luka/Lluka ë Ultë, in Deçani/Deçan municipality.²²⁴ 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 Glodane/Gllogjan, and go from there to Albania to collect weapons.²²⁵ 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.²²⁶ Haradinaj was armed and in KLA uniform.²²⁷ Hasanaj stated that “the people” accepted Haradinaj’s authority to make this appointment, considering him superior to everyone else in the region.²²⁸ 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.²²⁹ Although in April 1998 Haradinaj was not officially the commander, the KLA soldiers regarded him as the *de facto* commander of the area.²³⁰

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 1997,²³¹ 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.²³² He testified that the KLA

²²² Zoran Stijović, T. 9073-9074.

²²³ Zoran Stijović, T. 9074-9076.

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

²²⁵ Rrustem Tetaj, T. 3621, 3840-3841.

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

²²⁷ P923 (Zymer Hasanaj, witness statement, 1 October 2007), para. 5.

²²⁸ P923 (Zymer Hasanaj, witness statement, 1 October 2007), para. 5.

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

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

²³¹ 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.

²³² 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.²³³ 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.²³⁴ 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.²³⁵

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.²³⁶ 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.²³⁷ 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.²³⁸ The KLA also circulated documents containing these conventions, originating from the International Red Cross.²³⁹ 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.²⁴⁰

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.²⁴¹ 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

²³³ Jakup Krasniqi, T. 5007-5008, 5047-5048.

²³⁴ 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.

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

²³⁶ Jakup Krasniqi, T. 5089, 5153.

²³⁷ Jakup Krasniqi, T. 4970-4971.

²³⁸ 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.

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

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

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

police and other state officials.²⁴² 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 1997.²⁴³

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.²⁴⁴ 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 Glođane/Gllogjan, four KLA soldiers stopped him, asked for his identity papers, and searched him and his car.²⁴⁵ 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/Irznici, Prilep/Prelep, and on the outskirts of Đakovica/Gjakovë.²⁴⁶ They were armed with rifles, revolvers, some light machine-guns, and some grenades.²⁴⁷ These soldiers would sometimes try to prevent Crosland's passage.²⁴⁸

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/Irznici to meet Ramush Haradinaj for the first time.²⁴⁹ 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.²⁵⁰ There were checkpoints guarded by KLA soldiers, some of whom were uniformed, in several villages along the way.²⁵¹ Shemsedin Cekaj did not need any papers to pass through these checkpoints as he was known to the men guarding them.²⁵² At that time, one did not need a permit from local KLA staff to travel through KLA checkpoints.²⁵³

²⁴² P380 (Nebojša Avramović, witness statement, 4 June 2007), para. 10.

²⁴³ 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.

²⁴⁴ P1138 (Branko Gajić, witness statement, 2 October 2007), para. 17.

²⁴⁵ Dragoslav Stojanović, T. 1854-1857, 1880, 1941-1942, 1983.

²⁴⁶ John Crosland, T. 2949, 2951-2952.

²⁴⁷ John Crosland, T. 2951-2952.

²⁴⁸ John Crosland, T. 2951.

²⁴⁹ Shemsedin Cekaj, T. 4390, 4460-4461.

²⁵⁰ Shemsedin Cekaj, T. 4390-4391.

²⁵¹ Shemsedin Cekaj, T. 4391.

²⁵² Shemsedin Cekaj, T. 4392.

²⁵³ Shemsedin Cekaj, T. 4392.

Shemsedin Cekaj testified that, after 22 April 1998, the KLA set up check-points on the western side of Rznić/Irznj, towards Prilep/Prelep.²⁵⁴ Shaban Balaj testified that there was a KLA checkpoint in Rasić/Rasiq in Peć/Pejë municipality, at the end of April 1998.²⁵⁵ 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.²⁵⁶ The existence of KLA trenches in Dečani/Dečan municipality by 22-24 April was corroborated by Miloica Vlahović²⁵⁷ and Staniša Radošević.²⁵⁸ In sections 6.4 and 6.7, below, the Trial Chamber examines further evidence of KLA checkpoints in Dečani/Dečan municipality, around Dašinovac/Dashinoc, Glodane/Gllogjan, Požar/Pozhare, and Rznić/Irznj, 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.²⁵⁹ 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.²⁶⁰ However, due to their military superiority, the Serbian forces were still able to enter the area, and did so repeatedly.²⁶¹ 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,²⁶² Shemsedin Cekaj,²⁶³ Zymer Hasanaj,²⁶⁴ Žarko Bajčetić,²⁶⁵ and Witness 28.²⁶⁶ 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/Dečan municipality, on 21-22 April 1998.

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

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

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

²⁵⁷ Miloica Vlahović, T. 1583-1584.

²⁵⁸ See section 6.15, below.

²⁵⁹ 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).

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

²⁶¹ Cufë Krasniqi, T. 5751, 5815, 5820.

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

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

²⁶⁴ 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”.

²⁶⁵ 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).

²⁶⁶ 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/Irznici and Junik were closed in April 1998, as the roads leading to these stations were blocked and policemen were constantly attacked.²⁶⁷ Overnight between 21 and 22 April 1998, the police station in Rznić/Irznici was evacuated.²⁶⁸ Zoran Stijović testified that when the police withdrew from the police station in Rznić/Irznici, which was the last Serbian outpost in the vicinity of Glođane/Gllogjan, control of the territory off the main road was in effect ceded to the KLA.²⁶⁹

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 1998.²⁷⁰ KLA attacks on these checkpoints increased during the months up to June 1998.²⁷¹ Nebojša Avramović testified that a section of the Đakovica/Gjakovë-Priština/Prishtinë road, between Rakovina/Rakovine in Đakovica/Gjakovë municipality and Dolac/Dolcë in Klina/Klinë municipality was completely blocked by the KLA between April and September 1998.²⁷² 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 1998.²⁷³ On 22 April 1998, Colonel Vladimir Lazarević ordered that movement of military vehicles on the Đakovica/Gjakovë-Dečani/Dečan-Peć/Pejë road required prior authorisation and maximum security measures.²⁷⁴ 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

²⁶⁷ P380 (Nebojša Avramović, witness statement, 4 June 2007), para. 18.

²⁶⁸ 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.

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

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

²⁷¹ P1017 (Dragan Živanović, witness statement, 9 August 2007), para. 31.

²⁷² 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).

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

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

Serbian military forces.²⁷⁵ 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.²⁷⁶ The witness noticed an increase in checkpoints and a more tangible police presence along the road.²⁷⁷

76. *Weapons and other military equipment.* The KLA was, as explained by Jakup Krasniqi, financially supported by two funds.²⁷⁸ 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 1999.²⁷⁹ The Homeland Calling Fund, set up in 1995, was controlled by the KLA General Staff.²⁸⁰ It was used to finance the transport of weapons and supplies from Albania into Kosovo/Kosova.²⁸¹ Contributions came from the Albanian diaspora and were encouraged by KLA communiqués.²⁸² Witness 17 corroborated this evidence.²⁸³ 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.²⁸⁴

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.²⁸⁵ 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.²⁸⁶ Dragan Živanović corroborated this evidence.²⁸⁷ Bislim Zyrapi testified that he was in Albania between the second half of March and 28 May 1998.²⁸⁸ He was frequently visited by members of

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

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

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

²⁷⁸ P328 (Jakup Krasniqi, witness statement, 24 May 2007), para. 5.

²⁷⁹ P328 (Jakup Krasniqi, witness statement, 24 May 2007), para. 5.

²⁸⁰ 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.

²⁸¹ P328 (Jakup Krasniqi, witness statement, 24 May 2007), para. 5.

²⁸² 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).

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

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

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

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

²⁸⁷ Dragan Živanović, T. 9294.

²⁸⁸ 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.²⁸⁹ 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.²⁹⁰ Weapons acquired in this way were transported by the KLA into Kosovo/Kosova.²⁹¹

78. In the beginning of 1998, the number of illegal border crossings increased around the border between Kosovo/Kosova, Montenegro, and Albania.²⁹² 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.²⁹³ 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.²⁹⁴ According to Cufë Krasniqi, around March 1998 people would bring weapons from Albania, Serbia, and Montenegro.²⁹⁵ 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.²⁹⁶ 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.²⁹⁷ Dragan Živanović testified that, by April 1998, groups of up to 200 persons smuggled arms across the border into Kosovo/Kosova for the KLA.²⁹⁸ Guides, who knew the state border security system well, led columns of pedestrians or mules across the border.²⁹⁹

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 Tropojë in Albania with three friends to get weapons.³⁰⁰ The witness stated that he was not a member of the KLA at that point, but a volunteer.³⁰¹ The distribution and issuing

²⁸⁹ Bislim Zyrapi, T. 3188-3191, 3197, 3259, 3263.

²⁹⁰ Bislim Zyrapi, T. 3197, 3267-3271, 3427-3428.

²⁹¹ Bislim Zyrapi, T. 3198, 3415-3416.

²⁹² Dragan Živanović, T. 9293.

²⁹³ P1138 (Branko Gajić, witness statement, 2 October 2007), para. 17.

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

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

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

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

²⁹⁸ Dragan Živanović, T. 9293.

²⁹⁹ Dragan Živanović, T. 9294, 9296-9297.

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

³⁰¹ Avdullah Avdija, T. 10579-10580.

of weapons in Albania was supervised by people whom Avdija did not know.³⁰² He returned several nights later, with around 420 others, transporting Kalashnikovs and other weapons loaded onto horses.³⁰³ Some of them were wearing uniforms.³⁰⁴ 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.³⁰⁵ Ylber Haskaj went to Albania together with a great number of other villagers in Rznić/Irznici to purchase weapons in mid-April 1998.³⁰⁶ They travelled on foot and he brought back a weapon, ammunition, and a uniform for himself.³⁰⁷ At the end of April 1998, Shaban Balaj travelled with a group of some 500 people from various villages to Tropojë to obtain weapons and supplies.³⁰⁸ 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.³⁰⁹ The witness was aware of numerous large convoys travelling from Kosovo/Kosova to Albania in this period.³¹⁰

80. The weapons were transported through established routes. According to Zoran Stijović, these passed through Jablanica/Jabllanicë and Glođane/Gllogjan.³¹¹ Branko Gajić confirmed that by March 1998 there were illegal channels along which large quantities of weapons were being imported from Albania.³¹² 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.³¹³ 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

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

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

³⁰⁴ Avdullah Avdija, T. 10573, 10580.

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

³⁰⁶ P1213 (Ylber Haskaj, witness statement, 5 November 2007), para. 6.

³⁰⁷ P1213 (Ylber Haskaj, witness statement, 5 November 2007), para. 6.

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

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

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

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

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

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

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

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.³¹⁷ The weaponry included semi-automatic and automatic rifles, machine guns, hand-held launchers, mortars, anti-personnel mines, recoilless guns, and ammunition.³¹⁸ 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.³¹⁹ Further and largely consistent evidence on KLA smuggling of weapons from Albania was received from Žarko Bajčetić³²⁰ and Witness 69.³²¹

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.³²² According to Dragan Živanović, starting around April 1998, the VJ reinforced the border posts in response to the increased number of border crossings.³²³ Branko Gajić testified that, in an attempt to prevent the

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

³¹⁵ 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.

³¹⁶ Dragan Živanović, T. 9297.

³¹⁷ Dragan Živanović, T. 9295.

³¹⁸ Dragan Živanović, T. 9295-9296.

³¹⁹ 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).

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

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

³²² 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).

³²³ 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.³²⁴

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.³²⁵ Bislim Zyrapi, a JNA-trained officer,³²⁶ testified that, from late 1997 onwards, KLA representatives attended Albanian clubs around Europe to raise funds and recruit personnel for the KLA.³²⁷ At one such event, in early 1998, Zyrapi was invited by two KLA members, who knew about his military background, to join the KLA.³²⁸ Bislim Zyrapi testified that he moved to Albania in the second half of March 1998.³²⁹ 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.³³⁰ Branko Gajić testified that there was an international network supporting the KLA, which was primarily based in Germany, Sweden, Switzerland, and Albania.³³¹ 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.³³²

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).

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

³²⁵ P265 (Rustem 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.

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

³²⁷ Bislim Zyrapi, T. 3181-3183, 3201.

³²⁸ Bislim Zyrapi, T. 3181, 3185, 3188, 3201.

³²⁹ Bislim Zyrapi, T. 3186.

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

³³¹ P1138 (Branko Gajić, witness statement, 2 October 2007), para. 16.

³³² 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.³³³ 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.³³⁴ 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.³³⁵ In addition to this core group of members, the KLA was a grassroots organization with supporters in the villages where it was active.³³⁶ According to Jakup Krasniqi, before March 1998 there were fewer than 1,000 KLA soldiers.³³⁷ 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.³³⁸

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.³³⁹ The number of volunteers was so large that the KLA General Staff could not arm and discipline them all.³⁴⁰ 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 1998.³⁴¹ Witness 28 testified that by the end of April 1998, the KLA were mobilizing the villagers.³⁴² The evidence examined above in this section of the judgement establishes that Avdullah Avdija, Ylber Haskaj, Ismet Kadrijaj, Pjeter Shala, Rustem Tetaj and Bislim Zyrapi joined the KLA in March or April 1998. Other witnesses who joined the

³³³ Branko Gajić, T. 9684-9685, 9746-9749, 9807-9808.

³³⁴ 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.

³³⁵ Zoran Stijović, T. 9065-9068.

³³⁶ Zoran Stijović, T. 9066.

³³⁷ P328 (Jakup Krasniqi, witness statement, 24 May 2007), para. 8.

³³⁸ 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.

³³⁹ 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.

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

³⁴¹ 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).

³⁴² P1211 (Witness 28, witness statement, 28 October 2007), para. 72.

KLA during the same period were Zymer Hasanaj,³⁴³ Shaban Balaj,³⁴⁴ and Ahmet Ukaj.³⁴⁵ The evidence examined in section 6.4, below, indicates the presence of large numbers of KLA soldiers in Dečani/Dečan 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 1998.³⁴⁶ Around this time, the majority of the young men who possessed weapons had not had any training.³⁴⁷ At first he trained 21 soldiers, but the number grew considerably over time.³⁴⁸ Cufë Krasniqi taught them how to use weapons, and how to treat prisoners of war, persons who surrendered, and civilians.³⁴⁹ Ylber Haskaj testified that around mid-April 1998 he received some basic training in Rznić/Irzniq and then took part in guarding the village.³⁵⁰ 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/Dečan municipality.³⁵¹ 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.³⁵² He also secretly took part in the training of approximately 300 KLA recruits in military tactics and the use of weapons.³⁵³ Recruits would receive an average of two weeks' training.³⁵⁴ Expenses were covered by the logistics department of the KLA's General Staff from funds raised abroad.³⁵⁵

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 1997.³⁵⁶ Another ambush was carried

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

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

³⁴⁵ P1226 (Ahmet Ukaj, witness statement, 11 November 2007), para. 1.

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

³⁴⁷ P351 (Cufë Krasniqi, witness statement, 14 June 2007), para. 28.

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

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

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

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

³⁵² Bislim Zyrapi, T. 3188-3191, 3197, 3259, 3263.

³⁵³ Bislim Zyrapi, T. 3191-3193, 3411, 3430.

³⁵⁴ Bislim Zyrapi, T. 3194.

³⁵⁵ Bislim Zyrapi, T. 3193, 3265.

³⁵⁶ 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.³⁵⁷ 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.³⁵⁸ They would attempt to spread the police forces thinly and divert their attention away from where they would launch an attack.³⁵⁹ 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.³⁶⁰ 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.³⁶¹ He also reported that the KLA was in the early stages of a standard insurgency movement, mainly using hit and run tactics.³⁶² According to Jakup Krasniqi, around this time the KLA was a guerrilla army, operating clandestinely and employing hit and run tactics.³⁶³

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.³⁶⁴ Until 11 June 1998, KLA communiqués were issued by KLA units on behalf of the KLA General Staff.³⁶⁵ KLA communiqués 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.³⁶⁶ The Trial Chamber has

³⁵⁷ 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.

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

³⁵⁹ Zoran Stijović, T. 9058-9059.

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

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

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

³⁶³ 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.

³⁶⁴ 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.

³⁶⁵ 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.

³⁶⁶ 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 communiqués dated between June 1995 and August 1998.³⁶⁷

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 communiqués 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 *Tadić* 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 Stijović calculated that the number of KLA attacks increased from nine in 1995 to 1,486 in 1998 (excluding December 1998).³⁶⁸ By "attacks", Zoran Stijović understood incidents in which firearms, hand-grenades, and other explosive devices were used against civilians or members of the MUP or the

³⁶⁷ 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.

³⁶⁸ P931 (Zoran Stijović, witness statement, 27 September 2007), paras 20, 62; Zoran Stijović, T. 8933-8940, 8943-8947, 9058.

VJ.³⁶⁹ Since late 1994, the KLA issued communiqués assuming responsibility for such attacks.³⁷⁰ Branko Gajić testified that the KLA started to attack the VJ along the border with Albania in 1996.³⁷¹ Gajić defined an “attack” as involving an organized group of at least three people, with a particular objective.³⁷² 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.³⁷³ 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.³⁷⁴

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.³⁷⁵ On this occasion, 26 people were killed in Likošane/Likoshan.³⁷⁶ 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.³⁷⁷ 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.³⁷⁸ According to Crosland, the Serbian forces used extremely heavy force during this event, which was primarily a MUP operation.³⁷⁹ The Jashari family compound was severely damaged, and there were 54 casualties on the Kosovar Albanian side.³⁸⁰ Crosland saw their bodies two or three days after the clash and observed that there were people of fighting age, but also elderly

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

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

³⁷¹ P1138 (Branko Gajić, witness statement, 2 October 2007), para. 11.

³⁷² Branko Gajić, T. 9683.

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

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

³⁷⁵ 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.

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

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

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

³⁷⁹ John Crosland, T. 2932, 2934-2935, 3100.

³⁸⁰ John Crosland, T. 2932-2933.

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

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.³⁸⁶ 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.³⁸⁷ He further reported that there were no signs of VJ involvement, other than the provision of transport vehicles.³⁸⁸ He also reported that large numbers of women and children had fled the area.³⁸⁹ On 9 March 1998, Donnelly reported continuing police operations in the area of Lauša/Llaushe.³⁹⁰ 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.³⁹¹ 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.³⁹² 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

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

³⁸² Rrustem Tetaj, T. 3701.

³⁸³ 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).

³⁸⁴ P885 (Witness 17, witness statement, 14 August 2007), para. 7.

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

³⁸⁶ 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.

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

³⁸⁸ P73 (Situation report, 8 March 1998), para. 5.

³⁸⁹ P73 (Situation report, 8 March 1998), para. 7.

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

³⁹¹ P74 (Situation report, 13 March 1998), para. 4.

³⁹² P76 (Situation report, 18 March 1998), para. 3.

was still ongoing.³⁹³ 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.³⁹⁴ 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/Dečan and Đakovica/Gjakovë.³⁹⁵

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 Glođane/Gllogjan to investigate the death of a police officer, Miodrag Otović, chief of the Rznić/Irznici MUP, in an exchange of gunfire.³⁹⁶ When the witness arrived in the village, the fighting between the MUP and KLA supporters was still ongoing.³⁹⁷ 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.³⁹⁸ Within the compound of Haradinaj's house they found hand-grenades, tank mines, and a light machine-gun.³⁹⁹ 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.⁴⁰⁰ From there, Zlatković could see the fighting and hear the sound of gunfire and hand-grenade explosions coming from all directions.⁴⁰¹ According to the witness, hand-grenades and semi-automatic and automatic rifles were being used by both sides.⁴⁰² He estimated the KLA side to be about 40 men strong.⁴⁰³ The MUP officers were reinforced in the course of the day; first, police officers from Dečani/Dečan went to Glođane/Gllogjan to help the police patrol of which Otović had been a member; then the Đakovica/Gjakovë police arrived;

³⁹³ P76 (Situation report, 18 March 1998), para. 3.

³⁹⁴ P77 (Situation report, 23 March 1998), paras 3, 8.

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

³⁹⁶ Radovan Zlatković, T. 6865, 6867.

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

³⁹⁸ Radovan Zlatković, T. 6868, 6875.

³⁹⁹ P854 (Radovan Zlatković, witness statement, 25 June 2007), para. 24.

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

⁴⁰¹ Radovan Zlatković, T. 6869-6870, 6879.

⁴⁰² Radovan Zlatković, T. 6867-6868, 6877.

⁴⁰³ 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.⁴⁰⁴ The exchange of fire continued until about 8 p.m., when the MUP forces withdrew from Glođane/Gllogjan.⁴⁰⁵ 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.⁴⁰⁶ The Trial Chamber also received largely consistent evidence about this confrontation from Ramo Jollaj,⁴⁰⁷ Rustem Tetaj,⁴⁰⁸ Zoran Stijović,⁴⁰⁹ Branko Gajić,⁴¹⁰ Dragoslav Stojanović,⁴¹¹ and Mijat Stojanović.⁴¹² The latter two witnesses also testified that after this day they left their home in Dubrava/Dubravë for security reasons.⁴¹³ On 24 March 1998, John Crosland reported exchanges of fire in several villages between Dečani/Dečan and Đakovica/Gjakovë, and in Jošanica/Jashanicë in the Drenica/Drenicë area.⁴¹⁴ 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.⁴¹⁵

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.⁴¹⁶ On 9 April 1998, Donnelly reported minor incidents in the Drenica/Drenicë and Dečani/Dečan areas, including an attack on a police checkpoint by unknown persons.⁴¹⁷ On 13 April 1998, a police station in a Priština/Prishtinë suburb was attacked and damaged by unknown persons and one

⁴⁰⁴ Radovan Zlatković, T. 6866.

⁴⁰⁵ Radovan Zlatković, T. 6865-6866.

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

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

⁴⁰⁸ P265 (Rustem Tetaj, witness statement, 17 April 2007), paras 8-10, 13; Rustem Tetaj, T. 3702-3704, 3797.

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

⁴¹⁰ 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.

⁴¹¹ Dragoslav Stojanović, T. 1858-1860, 1968-1973, 1977.

⁴¹² Mijat Stojanović, T. 2005-2010, 2103-2104.

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

⁴¹⁴ 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.

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

⁴¹⁶ P79 (Situation report, 1 April 1998), para. 6.

⁴¹⁷ P81 (Situation report, 9 April 1998), para. 6.

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

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/Irznik where he sometimes travelled, the almost daily shelling of several villages towards the south.⁴²⁰ Rrustem Tetaj testified that Glođane/Gllogjan was shelled consistently between April and September 1998.⁴²¹ 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 1998.⁴²² Witness 28 testified that by 22 April 1998, she had heard from Albanian refugees of extensive shelling by the Serbian police in Dečani/Dečan municipality.⁴²³ ECMM reported that Serbian forces fired on villages in Dečani/Dečan municipality on 23 April 1998.⁴²⁴

97. The evidence shows that civilians were disappearing in, or escaping from, combat zones in Dečani/Dečan 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/Dečan around that time.⁴²⁵ Cufë Krasniqi confirmed that Serbian families left Dečani/Dečan municipality in April and May 1998.⁴²⁶

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

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

⁴¹⁹ P83 (Situation report, 16 April 1998), para. 2.

⁴²⁰ Shemsedin Cekaj, T. 4387-4390, 4471-4474.

⁴²¹ 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).

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

⁴²³ Witness 28, T. 10264-10265.

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

⁴²⁵ Zvonko Marković, T. 2327-2328, 2341-2343.

⁴²⁶ P351 (Cufë Krasniqi, witness statement, 14 June 2007), para. 74.

anti-aircraft gun and a 155 millimetre Howitzer.⁴²⁷ In the early afternoon, there was another attack on the 52nd Military Police Battalion from Suka e Vogelj.⁴²⁸ 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.⁴²⁹ Colonel Delić ordered the deployment of standby forces in response to KLA activities.⁴³⁰ 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.⁴³¹ According to him, the clashes, which had commenced in the Drenica/Drenicë area, had now moved to the Dečani/Deçan area.⁴³² 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.⁴³³ He also reported that the Serbian refugee centre near Babaloć/Baballoq was defended by up to 100 MUP men,⁴³⁴ and that life in bigger towns like Peć/Pejë and Đakovica/Gjakovë proceeded normally.⁴³⁵ On the same day, VJ from the Košare/Koshare border post clashed with the KLA at the FRY/Albania border, killing 16 of them.⁴³⁶ During the night, the 52nd Military Police Battalion came under prolonged fire from automatic rifles and

⁴²⁷ 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.

⁴²⁸ 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.

⁴²⁹ 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).

⁴³⁰ 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.

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

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

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

⁴³⁴ P85 (Situation report, 23 April 1998), para. 2.

⁴³⁵ P85 (Situation report, 23 April 1998), para. 3.

⁴³⁶ 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.⁴³⁷ 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.⁴³⁸ Around noon, a police station in Klinčina/Kliqinë, Peć/Pejë municipality was attacked.⁴³⁹ 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.⁴⁴⁰ On 27 April 1998, there were three separate clashes between the KLA and the VJ at the FRY/Albania border.⁴⁴¹ 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.⁴⁴² 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.⁴⁴³

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/Dečan 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

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

⁴³⁸ 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.

⁴³⁹ 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.

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

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

⁴⁴² 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 1998.⁴⁴⁴ 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.

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

⁴⁴⁴ 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.⁴⁴⁵ 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.⁴⁴⁶ It is a jurisdictional requirement,⁴⁴⁷ which translates into the need for proof that there was an armed conflict at the relevant time and place.⁴⁴⁸ 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.⁴⁴⁹

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

⁴⁴⁵ 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.

⁴⁴⁶ *Tadić* Appeal Judgement, para. 249.

⁴⁴⁷ *Tadić* Appeal Judgement, para. 249; *Kunarac et al.* Appeal Judgement, para. 83.

⁴⁴⁸ *Tadić* Appeal Judgement, para. 249, 251; *Kunarac et al.* Appeal Judgement, para. 83.

⁴⁴⁹ *Kunarac et al.* Appeal Judgement, para. 85.

⁴⁵⁰ *Tadić* Appeal Judgement, para. 251.

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

105. *Widespread or systematic.* “Widespread” refers to the large-scale nature of the attack and the number of targeted persons.⁴⁵³ “Systematic” refers to the “organized nature of the acts of violence”.⁴⁵⁴ 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.⁴⁵⁵

106. *Directed against a civilian population.* “Directed against” indicates that it is the civilian population which is the primary object of the attack.⁴⁵⁶ The attack does not have to be directed against the civilian population of the entire area relevant to the indictment.⁴⁵⁷ 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.⁴⁵⁸

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”.⁴⁵⁹ Common Article 3 reflects customary international law for the minimum level of protection of persons taking no active part in hostilities.⁴⁶⁰ 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.⁴⁶¹ A civilian population may therefore include not only civilians narrowly defined, but also persons who are not taking active part in the hostilities.

⁴⁵¹ *Tadić* Appeal Judgement, para. 251; *Kunarac et al.* Appeal Judgement, para. 86.

⁴⁵² *Krajišnik* Trial Judgement, para. 706.

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

⁴⁵⁴ *Kunarac et al.* Appeal Judgement, para. 94.

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

⁴⁵⁶ *Kunarac et al.* Appeal Judgement, para. 91.

⁴⁵⁷ *Kunarac et al.* Appeal Judgement, para. 90.

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

⁴⁵⁹ Additional Protocol I, Art. 50 (2).

⁴⁶⁰ *Tadić* Jurisdiction Decision, para. 102.

⁴⁶¹ *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.⁴⁶²

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.⁴⁶³ The perpetrator does not need to have detailed knowledge of the attack or share the purpose of it.⁴⁶⁴

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/Dečan, Peć/Pejë, Đakovica/Gjakovë, Istok/Istog, and Klina/Klinë municipalities of Kosovo”.⁴⁶⁵ 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”.⁴⁶⁶ 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).⁴⁶⁷ Of this number, approximately 30,000 people were Serbs (7% of the total population).⁴⁶⁸

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”.⁴⁶⁹ According to the Prosecution, the KLA also harassed, beat, and killed many Serbian and

⁴⁶² *Kunarac et al.* Appeal Judgement, para. 100.

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

⁴⁶⁴ *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.

⁴⁶⁵ Indictment, para. 15.

⁴⁶⁶ Indictment, para. 15.

⁴⁶⁷ Indictment, para. 34.

⁴⁶⁸ Indictment, para. 34.

⁴⁶⁹ Indictment, para. 37.

Roma civilians.⁴⁷⁰ 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.⁴⁷¹ These victims are not the ones referred to under the individual counts in the Indictment.⁴⁷² The alleged attack also consisted of detaining and ill-treating persons at a KLA headquarters in Jablanica/Jabllanicë.⁴⁷³

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.⁴⁷⁴ Therefore, these counts cannot properly be taken into account in this section when determining whether there was an attack against a civilian population.

⁴⁷⁰ Indictment, para. 38.

⁴⁷¹ Indictment, para. 40.

⁴⁷² Indictment, para. 40.

⁴⁷³ Indictment, para. 43.

⁴⁷⁴ 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,⁴⁷⁵ 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.⁴⁷⁶ 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.⁴⁷⁷ 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.⁴⁷⁸ 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.⁴⁷⁹ 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.⁴⁸⁰ 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.⁴⁸¹ 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

⁴⁷⁵ P380 (Nebojša Avramović, witness statement, 4 June 2007), para. 4.

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

⁴⁷⁷ P380 (Nebojša Avramović, witness statement, 4 June 2007), para. 11.

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

⁴⁷⁹ P380 (Nebojša Avramović, witness statement, 4 June 2007), para. 14.

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

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

Babaloc/Babalooq.⁴⁸² At the end of April 1998, the Serbian refugees left the refugee settlement and the VJ moved in, establishing a defensive front line position.⁴⁸³

117. With regard to the attacks on Serbian homes, Marijana Anđelković testified that at the end of March 1998 she spoke to Jela Ćulafić and his wife Nastadin in Ratiš/Ratishë, in Dečani/Deçan municipality.⁴⁸⁴ 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.⁴⁸⁵ The Trial Chamber has also heard evidence about the attack on the Ćulafić house from other witnesses.⁴⁸⁶ 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.⁴⁸⁷ 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.⁴⁸⁸ The witness himself saw the bullet holes in the walls of the house as well as the bullet casings.⁴⁸⁹ 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 1998.⁴⁹⁰

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

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

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

⁴⁸⁴ Marijana Anđelković, T. 476, 479, 482, 484-486; P3 (Anđelković's notebook, volume 1), p. 32.

⁴⁸⁵ Marijana Anđelković, T. 484; P3 (Anđelković's notebook, volume 1), p. 32.

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

⁴⁸⁷ Witness 60, T. 2223.

⁴⁸⁸ Miloica Vlahović, T. 1552-1553.

⁴⁸⁹ Miloica Vlahović, T. 1553.

⁴⁹⁰ 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.⁴⁹¹ Serbian neighbours tried to convince the witness that it was safer to go elsewhere than to stay.⁴⁹² 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.⁴⁹³ This incident led the witness to fear for his safety and that of his family.⁴⁹⁴ 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.⁴⁹⁵ The family found accommodation in a holiday resort near Dečani/Deçan along with other Serbs who had left their homes.⁴⁹⁶ The witness testified that they were from Papračane/Prapacan, Donji Ratiš/Ratishë ë Ultë, Gornji Ratiš/Ratishë ë Eperm, Dašinovac/Dasinoc, and Ljumbarda/Lumbardh in Dečani/Deçan municipality.⁴⁹⁷ When the witness returned to his property in September or October 1998, he found it empty and destroyed.⁴⁹⁸ He also visited the houses of Radun Dabetić and Novak Stijović, which were also destroyed and almost empty.⁴⁹⁹ He also saw some burned-down Albanian houses.⁵⁰⁰

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

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

⁴⁹² Witness 60, T. 2223-2224.

⁴⁹³ Witness 60, T. 2225-2226.

⁴⁹⁴ Witness 60, T. 2228.

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

⁴⁹⁶ Witness 60, T. 2237-2238, 2277-2278.

⁴⁹⁷ Witness 60, T. 2238.

⁴⁹⁸ Witness 60, T. 2238-2241.

⁴⁹⁹ Witness 60, T. 2242.

⁵⁰⁰ Witness 60, T. 2268.

⁵⁰¹ 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.⁵⁰² According to the witness, 123 Serbian families had been living in the “Dečani/Deçan area” in early 1998.⁵⁰³ 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,⁵⁰⁴ 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.⁵⁰⁵ The witness clarified that they were not told by anyone to leave.⁵⁰⁶ Other Serbian families from the village also moved out during those days, leaving some of the elderly behind.⁵⁰⁷ 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.⁵⁰⁸ 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.⁵⁰⁹ 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.⁵¹⁰ 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.⁵¹¹ Witness 28 testified that Kosovar Albanian families also fled their homes during this period, due to the risk of attacks from the Serbian

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

⁵⁰³ P1211 (Witness 28, witness statement, 28 October 2007), para. 45.

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

⁵⁰⁵ Momčilo Antić, T. 2409-2415, 2417.

⁵⁰⁶ Momčilo Antić, T. 2435.

⁵⁰⁷ Momčilo Antić, T. 2412-2417.

⁵⁰⁸ Witness 61, T. 3999, 4006.

⁵⁰⁹ Dragoslav Stojanović, T. 1860.

⁵¹⁰ Mijat Stojanović, T. 2011.

⁵¹¹ 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.⁵¹² Other witnesses also testified about Kosovar Albanians leaving their homes as result of, or because of the risk of, Serbian military attacks.⁵¹³

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

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

⁵¹³ 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.⁵¹⁴

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;⁵¹⁵ 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

⁵¹⁴ *Kvočka et al.* Appeal Judgement, para. 261.

⁵¹⁵ *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.⁵¹⁶

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.⁵¹⁷

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.⁵¹⁸

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.⁵¹⁹

⁵¹⁶ *Krnojelac* Trial Judgement, para. 132.

⁵¹⁷ *Kunarac et al.* Appeal Judgement, paras 142, 144.

⁵¹⁸ *Kunarac et al.* Appeal Judgement, para. 155.

⁵¹⁹ *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.⁵²⁰

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.⁵²¹ 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.⁵²²

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.⁵²³ It is alleged, moreover, that each Accused is also individually responsible for the acts of persons who were not members of the

⁵²⁰ *Kunarac et al.* Appeal Judgement, paras 161-163.

⁵²¹ Indictment, paras 17, 25.

⁵²² Indictment, para. 25.

⁵²³ 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.⁵²⁴

135. In the context of the Tribunal's jurisprudence, the JCE doctrine received its first detailed treatment in the *Tadić* Appeal Judgement.⁵²⁵ 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.⁵²⁶ 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.⁵²⁷

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".⁵²⁸

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

⁵²⁴ Indictment, para. 29.

⁵²⁵ *Tadić* Appeal Judgement, paras 172-185.

⁵²⁶ *Tadić* Appeal Judgement, para. 190.

⁵²⁷ *Tadić* Appeal Judgement, para. 196.

⁵²⁸ *Tadić* Appeal Judgement, paras 202-203. For the notion of "system", see *Krnjelac* Appeal Judgement, para. 89 and *Vasiljević* Appeal Judgement, para. 105.

implementation of that design.⁵²⁹ There are two additional requirements for this form, one objective, the other subjective.⁵³⁰ 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.⁵³¹

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.⁵³² The persons participating in the criminal enterprise need not be organized in a military, political, or administrative structure.⁵³³

(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.⁵³⁴

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.⁵³⁵

⁵²⁹ *Tadić* Appeal Judgement, para. 204.

⁵³⁰ *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.

⁵³¹ *Blaškić* Appeal Judgement, para. 33.

⁵³² *Kvočka et al.* Trial Judgement, para. 307.

⁵³³ *Tadić* Appeal Judgement, para. 227.

⁵³⁴ *Tadić* Appeal Judgement, paras 227-228.

⁵³⁵ *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.⁵³⁶ 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.⁵³⁷

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.”⁵³⁸

(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.⁵³⁹ A contribution of an accused person to the JCE need not have been, as a matter of law, either substantial⁵⁴⁰ or necessary to the achievement of the JCE’s objective.⁵⁴¹ However, “it should at least be a significant contribution to the crimes for which the accused is to be found responsible.”⁵⁴²

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

⁵³⁶ *Tadić* Appeal Judgement, para. 227.

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

⁵³⁸ *Brđanin* Appeal Judgement, para. 413.

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

⁵⁴⁰ *Kvočka et al.* Appeal Judgement, para. 97.

⁵⁴¹ *Kvočka et al.* Appeal Judgement, para. 98.

⁵⁴² *Brđanin* Appeal Judgement, para. 430.

common objective, that forges a group out of a mere plurality.⁵⁴³ 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.⁵⁴⁴

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.⁵⁴⁵ 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.⁵⁴⁶ Furthermore, his or her actions must have contributed substantially to the commission of the crime.⁵⁴⁷ Liability may also attach to omissions, where there is a duty to act.⁵⁴⁸

⁵⁴³ *Krajišnik* Trial Judgement, para. 884.

⁵⁴⁴ *Brđanin* Appeal Judgement, paras 410, 430.

⁵⁴⁵ *Tadić* Appeal Judgement, para. 188.

⁵⁴⁶ 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.

⁵⁴⁷ 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.⁵⁴⁹ 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.⁵⁵⁰

143. *Instigating*. Liability may be incurred by instigating the principal perpetrator to commit a crime.⁵⁵¹ 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.⁵⁵²

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.⁵⁵³ 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.⁵⁵⁴ 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.⁵⁵⁵

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.⁵⁵⁶ 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.⁵⁵⁷ The aiding and abetting may occur before, during, or after the commission of the principal crime.⁵⁵⁸ 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; *Čelebići* 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.

⁵⁴⁸ *Blaškić* Appeal Judgement, para. 663; *Galić* Appeal Judgement, para. 175; *Brđanin* Appeal Judgement, para. 274.

⁵⁴⁹ *Kordić and Čerkez* Appeal Judgement, para. 26.

⁵⁵⁰ *Kordić and Čerkez* Appeal Judgement, paras 29, 31.

⁵⁵¹ *Kordić and Čerkez* Appeal Judgement, para. 27.

⁵⁵² *Kordić and Čerkez* Appeal Judgement, paras 29, 32.

⁵⁵³ *Kordić and Čerkez* Appeal Judgement, para. 28; *Galić* Appeal Judgement, para. 176.

⁵⁵⁴ *Kordić and Čerkez* Appeal Judgement, para. 28; *Galić* Appeal Judgement, para. 176.

⁵⁵⁵ *Blaškić* Appeal Judgement, para. 42; *Kordić and Čerkez* Appeal Judgement, paras 29-30.

⁵⁵⁶ *Tadić* Appeal Judgement, para. 229; *Čelebići* 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.

⁵⁵⁷ *Brđanin* Appeal Judgement, paras 273, 277.

⁵⁵⁸ *Blaškić* Appeal Judgement, para. 48; *Simić et al.* Appeal Judgement, para. 85; *Blagojević and Jokić* Appeal Judgement, para. 127.

supply practical assistance.⁵⁵⁹ The aider and abettor must have knowledge that his or her acts assist in the commission of the crime of the principal perpetrator.⁵⁶⁰ 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.⁵⁶¹ 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.⁵⁶²

⁵⁵⁹ *Blagojević and Jokić* Trial Judgement, para. 731.

⁵⁶⁰ *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.

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

⁵⁶² *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/Dečan municipality.⁵⁶³ The Radonjić/Radoniq canal and lake water system consisted of a water intake point along the course of the Bistrica/Bistrice river, at Gornji Luka/Lluka e Epërme, in Dečani/Dečan 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.⁵⁶⁴ 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”.⁵⁶⁵ 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.

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

⁵⁶⁴ 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.

⁵⁶⁵ 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).⁵⁶⁶ There were Serbian forces stationed on Suka Babaloć/Baballoq, Suka Biteš/Bitesh, and Suka Crmljane/Cermjan for at least part of this period.⁵⁶⁷ There were also Serbian forces stationed at the southern end of Lake Radonjić/Radoniq.⁵⁶⁸ Serbian forces were able to enter the area on a temporary basis only in order to conduct military operations.⁵⁶⁹ Witness 69, a Serbian police officer stationed in Đakovica/Gjakovë MUP during the indictment period,⁵⁷⁰ 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.⁵⁷¹ 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/Dečan municipality, Jablanica/Jabllanicë and Dujak/Dujakë, both in Đakovica/Gjakovë municipality.⁵⁷²

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.⁵⁷³ These men were taken to the Đakovica/Gjakovë police station where they were interrogated.⁵⁷⁴ Several witnesses testified that Kalimashi and

⁵⁶⁶ 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.

⁵⁶⁷ Witness 21, T. 2716, 2789-2790, 2792, 2794, 2804-2807, 2814-2815.

⁵⁶⁸ 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.

⁵⁶⁹ Achilleas Pappas, T. 4284-4286, 4288-4290; P309 (Daily Summary Report to HQ ECMM, 13 August 1998).

⁵⁷⁰ P1231 (Witness 69, witness statement, 20 June 2007), paras 1-2; Witness 69, T. 9832-9833, 9846, 9848, 9892.

⁵⁷¹ P1231 (Witness 69, witness statement, 20 June 2007), paras 30-31; Witness 69, T. 9846, 9876-9879, 9904.

⁵⁷² 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).

⁵⁷³ 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).

⁵⁷⁴ 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.⁵⁷⁵ 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.⁵⁷⁶ There, Kalimashi pointed out where the bodies could be found.⁵⁷⁷

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.⁵⁷⁸ 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.⁵⁷⁹ 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”.⁵⁸⁰ The person asked for these people “to be disciplined and well-behaved, and to stop committing these crimes”.⁵⁸¹ Witness 17 did not remember whether anyone at the meeting reacted to the allegation.⁵⁸² The witness remembered that Idriz Balaj came to the meeting but thought that he remained outside as security.⁵⁸³ The information that there were human remains at the Radonjić/Radoniq canal also reached the Serbian intelligence service.⁵⁸⁴ 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.

⁵⁷⁵ 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.

⁵⁷⁶ 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.

⁵⁷⁷ P854 (Radovan Zlatković, witness statement, 25 June 2007), paras 74, 80; Radovan Zlatković, T. 6974.

⁵⁷⁸ P885 (Witness 17, witness statement, 14 August 2007), para. 100; Witness 17, T. 7592-7593.

⁵⁷⁹ 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).

⁵⁸⁰ P885 (Witness 17, witness statement, 14 August 2007), para. 101; Witness 17, T. 7593-7597.

⁵⁸¹ P885 (Witness 17, witness statement, 14 August 2007), para. 101; Witness 17, T. 7597.

⁵⁸² Witness 17, T. 7750.

⁵⁸³ 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 1998.⁵⁸⁵ He went to the Radonjić/Radoniq canal on the same day and initiated an investigation that was conducted over the following days.⁵⁸⁶ His investigation team consisted of himself, Deputy Public Prosecutor Zoran Babić and a number of MUP members including Nebojša Avramović and Radovan Zlatković.⁵⁸⁷ 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.⁵⁸⁸ 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.⁵⁸⁹ The team included Professor Dušan Dunjić, who led the forensic team, and Professor Branimir Aleksandrić.⁵⁹⁰ 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.⁵⁹¹

152. The forensic team exhumed 17 bodies at the west bank of the canal.⁵⁹² The investigation and forensic teams found one overturned car lying in the ravine

⁵⁸⁴ D153 (Official Note, 20 August 1998).

⁵⁸⁵ 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.

⁵⁸⁶ P1193 (Radomir Gojković, witness statement, 23 October 2007), paras 24, 26, 32, 36-37, 43, 58, 60, 62, 66, 68.

⁵⁸⁷ P1193 (Radomir Gojković, witness statement, 23 October 2007), para. 35.

⁵⁸⁸ P1193 (Radomir Gojković, witness statement, 23 October 2007), para. 33; P409 (Request sent by Radomir Gojković, 9 September 1998).

⁵⁸⁹ 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).

⁵⁹⁰ 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.

⁵⁹¹ 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.

⁵⁹² P1260 (Branimir Aleksandrić, witness statement, 26 June 2007), para. 271; P1116 (Aerial Photographs marked by Branimir Aleksandrić).

downstream of the end of the canal.⁵⁹³ 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).⁵⁹⁴ Many of the persons taking part in the investigation and exhumation of bodies observed bullet holes in the wall of the canal.⁵⁹⁵ 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.⁵⁹⁶ A number of additional bodies were also found at the Ekonomija farm close by.⁵⁹⁷ 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.⁵⁹⁸ 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/Irznik, that is the Radonjić/Radoniq canal, and “Re” for Ekonomija Farm).⁵⁹⁹

⁵⁹³ 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.

⁵⁹⁴ 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.

⁵⁹⁵ 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".

⁵⁹⁶ D131 (Report by Slobodan Panić, 16 September 1998).

⁵⁹⁷ 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.

⁵⁹⁸ 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.

⁵⁹⁹ 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.⁶⁰⁰ The autopsy process started on 12 September 1998 and finished on 19 September 1998.⁶⁰¹ 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.⁶⁰² 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.⁶⁰³ 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.⁶⁰⁴ If the information matched, the body was deemed identified.⁶⁰⁵ 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.⁶⁰⁶ Identified bodies were placed in coffins, sealed, and handed over to family members.⁶⁰⁷ 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.⁶⁰⁸

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

⁶⁰⁰ 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.

⁶⁰¹ P380 (Nebojša Avramović, witness statement, 4 June 2007), paras 136-137; P420 (Autopsy Report of 12 September 1998).

⁶⁰² 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.

⁶⁰³ P1193 (Radomir Gojković, witness statement, 23 October 2007), para. 73.

⁶⁰⁴ P1193 (Radomir Gojković, witness statement, 23 October 2007), para. 73.

⁶⁰⁵ P1193 (Radomir Gojković, witness statement, 23 October 2007), para. 73.

⁶⁰⁶ 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.

⁶⁰⁷ 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.

⁶⁰⁸ 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.⁶⁰⁹ 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.⁶¹⁰ 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.⁶¹¹ In respect of some of the other bodies presented for DNA identification, no match could be established with the identification by traditional means.⁶¹²

155. On the basis of the testimony given by Milutin Višnjić, a ballistics expert, and a report he prepared on 2 December 1998,⁶¹³ 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 1998.⁶¹⁴ 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 1998.⁶¹⁵ 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.⁶¹⁶

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

⁶⁰⁹ P368 (Barney Kelly, witness statement, 21 June 2007), para. 8; Barney Kelly, T. 6086.

⁶¹⁰ P368 (Barney Kelly, witness statement, 21 June 2007), paras 7-10, 34, 36.

⁶¹¹ Barney Kelly, T. 6087-6090.

⁶¹² Subsequent DNA identifications of the victims found in the Radonjić/Radoniq canal area will be discussed in the relevant sections below.

⁶¹³ See the testimony of Milutin Višnjić, T. 8317-8357, and P916 (Ballistics report by Milutin Višnjić).

⁶¹⁴ Prosecution Final Brief, para. 676.

⁶¹⁵ P916 (Ballistics report by Milutin Višnjić). Višnjić's report refers to Gramočelj/Gramaqel 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 Glodane/Gllogjan and Gramočelj/Gramaqel in Dečani/Dečan municipality. See also P446 (MUP Documentation referring to the incident of 24 March 1998 in Glodane/Gllogjan); P448 (Official note by Nebojša Avramović, 4 December 1998) which indicate where the cartridges were found.

⁶¹⁶ P916 (Ballistics report by Milutin Višnjić); See also P446 (MUP Documentation referring to the incident of 24 March 1998 in Glodane/Gllogjan) and P448 (Official note by Nebojša Avramović, 4 December 1998).

unavailable to Defence experts.⁶¹⁷ It was furthermore impossible to verify the accuracy of Višnjić's findings because no photographic records of his examination were made.⁶¹⁸ Additionally, Višnjić did not record in his report the details of the patterns he observed that led him to conclude that the cartridges matched.⁶¹⁹ 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.⁶²⁰ 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.⁶²¹ 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.

⁶¹⁷ Milutin Višnjić, T. 8331-8332.

⁶¹⁸ Milutin Višnjić, T. 8351.

⁶¹⁹ Milutin Višnjić, T. 8346-8347, 8349.

⁶²⁰ P916 (Ballistics report by Milutin Višnjić).

⁶²¹ 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,⁶²² 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.⁶²³ The witness recognized two of these men as

⁶²² Witness 38, T. 704, 750.

⁶²³ Witness 38, T. 705-707.

being Albanian inhabitants of Junik.⁶²⁴ The following day, Qemalj Shalja, who was armed and wearing a green camouflage uniform with KLA insignia, gave a speech in Junik.⁶²⁵ Witness 38 saw Roma families leaving Junik after this speech.⁶²⁶ According to the witness, they were leaving out of fear.⁶²⁷ At that time, no members of other ethnic groups left the village.⁶²⁸ The witness remained in Junik, but was afraid to return to the family apartment so he spent the night with neighbours.⁶²⁹ The witness testified that on that night or early the next morning, fierce fighting broke out between the police and the KLA.⁶³⁰ The witness's apartment and the neighbour's house were targeted.⁶³¹ Witness 38 and her family left their neighbour's house and went back to the family apartment.⁶³² Shortly thereafter, four armed men, two dressed in camouflage uniforms and wearing black balaclavas and two dressed in civilian clothes, came to the apartment.⁶³³ 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.⁶³⁴ The convoy left for Gacifer, a neighbourhood near Junik.⁶³⁵ Some of the men dressed in civilian clothes who accompanied the convoy were carrying weapons.⁶³⁶ According to the witness, KLA members prevented the witness and the witness's family from leaving the convoy.⁶³⁷ The witness testified that men in camouflage uniforms and KLA insignia and men in civilian clothes carrying weapons were KLA members.⁶³⁸

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.⁶³⁹ Other Romas were ordered to leave the convoy as well.⁶⁴⁰ 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

⁶²⁴ Witness 38, T. 706.

⁶²⁵ Witness 38, T. 709, 711.

⁶²⁶ Witness 38, T. 714.

⁶²⁷ Witness 38, T. 715.

⁶²⁸ Witness 38, T. 715.

⁶²⁹ Witness 38, T. 715, 718.

⁶³⁰ Witness 38, T. 718.

⁶³¹ Witness 38, T. 718, 802.

⁶³² Witness 38, T. 719.

⁶³³ Witness 38, T. 719-720.

⁶³⁴ Witness 38, T. 720-722, 725, 802-803.

⁶³⁵ Witness 38, T. 725, 758.

⁶³⁶ Witness 38, T. 725, 834.

⁶³⁷ Witness 38, T. 725.

⁶³⁸ Witness 38, T. 833-834.

⁶³⁹ Witness 38, T. 726-727.

⁶⁴⁰ Witness 38, T. 727.

from the house.⁶⁴¹ 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.⁶⁴² The witness's father was allowed to put his clothes back on after he had been searched, but the witness remained naked.⁶⁴³ Luluni tied the witness's hands and the witness's father's hands with barbed wire.⁶⁴⁴ Then a black Suzuki vehicle arrived at the mill.⁶⁴⁵ 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.⁶⁴⁶ 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.⁶⁴⁷ There were bushes between the witness and the men.⁶⁴⁸ 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.⁶⁴⁹ The broadcasts referred to Ramush Haradinaj as a commander.⁶⁵⁰ Witness 38 testified that upon the arrival of the vehicle, the maltreatment of the witness and the witness's father stopped.⁶⁵¹ 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".⁶⁵² Other than that the witness could not hear anything the men were saying.⁶⁵³ The vehicle remained at the mill for 10 to 15 minutes.⁶⁵⁴ During this time, the witness and the witness's father were not mistreated.⁶⁵⁵ The witness conceded the possibility that the person whom she later identified as Ramush Haradinaj did not notice her.⁶⁵⁶ When the vehicle left, the mistreatment recommenced.⁶⁵⁷ After approximately two hours, Witness 38 and her family rejoined the convoy which was heading in the direction of the Albanian

⁶⁴¹ Witness 38, T. 729, 819.

⁶⁴² Witness 38, T. 731, 792.

⁶⁴³ Witness 38, T. 731-732, 739, 792-795.

⁶⁴⁴ Witness 38, T. 731-733.

⁶⁴⁵ Witness 38, T. 729, 731, 785, 789, 830-831.

⁶⁴⁶ Witness 38, T. 733-734.

⁶⁴⁷ Witness 38, T. 734, 755-758, 822.

⁶⁴⁸ Witness 38, T. 756-757.

⁶⁴⁹ Witness 38, T. 734, 736-737, 752, 760.

⁶⁵⁰ Witness 38, T. 823.

⁶⁵¹ Witness 38, T. 736, 740, 754.

⁶⁵² Witness 38, T. 733, 749, 755, 787, 821, 823.

⁶⁵³ Witness 38, T. 754-755, 820-821.

⁶⁵⁴ Witness 38, T. 756.

⁶⁵⁵ Witness 38, T. 740, 756.

⁶⁵⁶ Witness 38, T. 757.

⁶⁵⁷ Witness 38, T. 740, 748, 754, 825.

border.⁶⁵⁸ According to the witness, she was still naked and her hands and those of her father were still tied.⁶⁵⁹ At some point, an escorting KLA member, dressed in civilian clothes, separated the witness and the witness's family from the convoy.⁶⁶⁰ The KLA member kept them in the woods overnight.⁶⁶¹ Unidentified men tried to rape the witness's sister, but the KLA member prevented them from doing so.⁶⁶² According to the witness, she was still naked and tied at this time, but was allowed to dress on the second night.⁶⁶³ However, in her statement to the MUP, the witness had said that she was allowed to dress after half an hour.⁶⁶⁴ 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.⁶⁶⁵ 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.⁶⁶⁶ 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.⁶⁶⁷

166. Witness 58, a Roma from the village of Ponoševac/Ponoshec, in Đakovica/Gjakovë municipality,⁶⁶⁸ 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.⁶⁶⁹ 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.⁶⁷⁰ 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.⁶⁷¹ Witness 58 took her children and they left for a place called Tofaj where they were stopped at a mill.⁶⁷² There they were encircled by armed soldiers in green KLA uniforms, including Aslan Luluni whom the witness knew

⁶⁵⁸ Witness 38, T. 740-741, 793.

⁶⁵⁹ Witness 38, T. 740-741.

⁶⁶⁰ Witness 38, T. 741-742.

⁶⁶¹ Witness 38, T. 742.

⁶⁶² Witness 38, T. 742.

⁶⁶³ Witness 38, T. 742-743.

⁶⁶⁴ D1 (Witness 38 Statement to MUP), page 2.

⁶⁶⁵ Witness 38, T. 743.

⁶⁶⁶ Witness 38, T. 746-747.

⁶⁶⁷ Witness 38, T. 747.

⁶⁶⁸ Witness 58, T. 869.

⁶⁶⁹ Witness 58, T. 870-871, 939.

⁶⁷⁰ Witness 58, T. 871-872.

⁶⁷¹ Witness 58, T. 872, 876-877, 931.

⁶⁷² Witness 58, T. 881-882, 931-932.

from before.⁶⁷³ 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.⁶⁷⁴ Witness 58 testified that Luluni then started to mistreat her sister-in-law and her father-in-law.⁶⁷⁵ 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.⁶⁷⁶ He was prevented from doing so by Witness 58's implorations.⁶⁷⁷ Witness 58 did not notice whether Witness 38 or other relatives were naked.⁶⁷⁸ Witness 58 and her family then managed to get away from the mill and headed towards the Jasić/Jasiq Mountain.⁶⁷⁹ The following day, Witness 58 and her family arrived in Djoci/Gjocaj.⁶⁸⁰ Both at the Jasić/Jasiq Mountain and in Djoci/Gjocaj there were a lot of KLA soldiers.⁶⁸¹ Several soldiers ordered Witness 58 and her family to line up and then pointed their guns at them.⁶⁸² The soldiers were about to shoot when someone intervened and prevented this.⁶⁸³ Witness 58 and the witness's family then fled, with the soldiers shooting after them.⁶⁸⁴ They arrived in Batusha/Batusa, in Đakovica/Gjakovë municipality, where they reached Serbian forces who took them to the town of Đakovica/Gjakovë.⁶⁸⁵

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.⁶⁸⁶ 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.⁶⁸⁷

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

⁶⁷³ Witness 58, T. 882-883, 898-899.

⁶⁷⁴ Witness 58, T. 884, 899.

⁶⁷⁵ Witness 58, T. 883, 906.

⁶⁷⁶ Witness 58, T. 883-884, 901, 907.

⁶⁷⁷ Witness 58, T. 903-904.

⁶⁷⁸ Witness 58, T. 933-936.

⁶⁷⁹ Witness 58, T. 908, 933.

⁶⁸⁰ Witness 58, T. 909.

⁶⁸¹ Witness 58, T. 908-909, 912.

⁶⁸² Witness 58, T. 912, 917-921.

⁶⁸³ Witness 58, T. 909, 911, 916-921, 936-938.

⁶⁸⁴ Witness 58, T. 920, 938.

⁶⁸⁵ Witness 58, T. 923, 939.

⁶⁸⁶ P1017 (Dragan Živanović, witness statement, 9 August 2007), paras 50-51.

⁶⁸⁷ 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,⁶⁸⁸ testified that his house was about 150 metres from the family house of Ramush Haradinaj and that he knew Ramush Haradinaj from childhood.⁶⁸⁹ Dragoslav Stojanović had not seen Ramush Haradinaj for about ten years prior to April 1998.⁶⁹⁰ 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.⁶⁹¹ 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.⁶⁹² At a certain point shots were fired at them from the Haradinaj house and armed men began to approach the house from all sides.⁶⁹³ The men shouted in Albanian at the men inside to leave the house and surrender.⁶⁹⁴ Grenades were thrown on the roof and a shot came through the window.⁶⁹⁵ 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.⁶⁹⁶ The mistreatment of the witness resulted in the rupturing of his pancreas in two places and a

⁶⁸⁸ Dragoslav Stojanović, T. 1844-1845, 1940.

⁶⁸⁹ Dragoslav Stojanović, T. 1846-1847, 1853, 1915.

⁶⁹⁰ Dragoslav Stojanović, T. 1915.

⁶⁹¹ Dragoslav Stojanović, T. 1846, 1863-1864.

⁶⁹² Dragoslav Stojanović, T. 1858-1861, 1865.

⁶⁹³ Dragoslav Stojanović, T. 1864.

⁶⁹⁴ Dragoslav Stojanović, T. 1865, 1868.

⁶⁹⁵ Dragoslav Stojanović, T. 1865.

⁶⁹⁶ Dragoslav Stojanović, T. 1865-1867.

number of other injuries.⁶⁹⁷ After a while Nasim Haradinaj arrived and told the men to stop beating the witness and to take the three men to the headquarters.⁶⁹⁸ While being brought there, armed local people along the way were beating them and firing shots past their heads.⁶⁹⁹ The three men were taken to the house of Smajl Haradinaj.⁷⁰⁰ 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.⁷⁰¹ 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.⁷⁰² 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”.⁷⁰³ 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.⁷⁰⁴ The witness regained consciousness after Mijat Stojanović and Veselin Stijović revived him although he did lose consciousness several times again after that.⁷⁰⁵ Soon Veselin Stijović, and later Mijat Stojanović, were taken into the room and the witness heard them shouting while they were being ill-treated.⁷⁰⁶

173. While Dragoslav Stojanović lay in the corridor, a person the witness identified as Ramush Haradinaj came by with five or six soldiers.⁷⁰⁷ 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.⁷⁰⁸ He was wearing camouflage bottoms and a jumper, and was carrying an automatic rifle in his right hand.⁷⁰⁹ He shoved the witness with his leg and said, “hello neighbour, do you recognize me”.⁷¹⁰ 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.⁷¹¹ The witness had already

⁶⁹⁷ Dragoslav Stojanović, T. 1873.

⁶⁹⁸ Dragoslav Stojanović, T. 1866, 1904.

⁶⁹⁹ Dragoslav Stojanović, T. 1866, 1869.

⁷⁰⁰ Dragoslav Stojanović, T. 1868.

⁷⁰¹ Dragoslav Stojanović, T. 1871-1872, 1884, 1918.

⁷⁰² Dragoslav Stojanović, T. 1873-1875; P9 (KLA insignia).

⁷⁰³ Dragoslav Stojanović, T. 1872-1873, 1881-1882.

⁷⁰⁴ Dragoslav Stojanović, T. 1872, 1882-1883.

⁷⁰⁵ Dragoslav Stojanović, T. 1885-1886, 1916, 1918.

⁷⁰⁶ Dragoslav Stojanović, T. 1890, 1918-1919, 1928.

⁷⁰⁷ Dragoslav Stojanović, T. 1886.

⁷⁰⁸ Dragoslav Stojanović, T. 1886-1887, 1920-1921, 1935.

⁷⁰⁹ Dragoslav Stojanović, T. 1886.

⁷¹⁰ Dragoslav Stojanović, T. 1886, 1920.

⁷¹¹ 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.⁷¹² The man the witness identified as Ramush Haradinaj stayed in the corridor for at least five to six minutes.⁷¹³ Dragoslav Stojanović stated that at least three other people also kicked him in the corridor and asked him if he recognized them.⁷¹⁴ 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.⁷¹⁵ 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.⁷¹⁶ The witness kept on going in and out of consciousness and at one point began vomiting blood.⁷¹⁷ The witness and Veselin Stijović were eventually let out into the yard and washed the blood off their faces at the water pump.⁷¹⁸ When they came back in the house, Hilmi Haradinaj offered the witness something to drink.⁷¹⁹ 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.⁷²⁰ 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.⁷²¹ Here the three men were told by Nasim Haradinaj to walk straight ahead and if they looked back they would be shot.⁷²² 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.⁷²³ 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.⁷²⁴

⁷¹² Dragoslav Stojanović, T. 1889-1890.

⁷¹³ Dragoslav Stojanović, T. 1922.

⁷¹⁴ Dragoslav Stojanović, T. 1921.

⁷¹⁵ Dragoslav Stojanović, T. 1885-1886, 1931-1933.

⁷¹⁶ Dragoslav Stojanović, T. 1891-1892.

⁷¹⁷ Dragoslav Stojanović, T. 1891-1892.

⁷¹⁸ Dragoslav Stojanović, T. 1893-1894, 1935.

⁷¹⁹ Dragoslav Stojanović, T. 1894, 1935.

⁷²⁰ Dragoslav Stojanović, T. 1894-1895.

⁷²¹ Dragoslav Stojanović, T. 1895-1896.

⁷²² Dragoslav Stojanović, T. 1896.

⁷²³ Dragoslav Stojanović, T. 1896.

⁷²⁴ 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,⁷²⁵ 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.⁷²⁶ The witness further testified that he left Dubrava/Dubravë in 1982 to live in Belgrade, returning permanently in 1995.⁷²⁷ 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 1998.⁷²⁸ 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.⁷²⁹ 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.⁷³⁰ The shooting lasted for approximately 40 minutes.⁷³¹ The shots smashed the window panes of the house, and the car that was parked out front was damaged on all sides.⁷³² The three men were unarmed.⁷³³ The men that approached the home wore a mixture of camouflage uniforms and civilian clothing with KLA insignia and were armed with small arms.⁷³⁴ The first person through the door was Ramush Haradinaj's brother, Daut Haradinaj, followed by Xhavit Nimonaj.⁷³⁵ The armed men ordered the three men to lie face down and then started beating, kicking and hitting them with rifle butts.⁷³⁶ The men also verbally abused the three men, referencing their Serb ethnicity as well as cursing their Serbian mothers.⁷³⁷ Nasim Haradinaj arrived after approximately twenty minutes and told the men to stop the beating.⁷³⁸

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.⁷³⁹ While they

⁷²⁵ Mijat Stojanović, T. 1985.

⁷²⁶ Mijat Stojanović, T. 2046.

⁷²⁷ Mijat Stojanović, T. 2047.

⁷²⁸ Mijat Stojanović, T. 2050.

⁷²⁹ Mijat Stojanović, T. 2019-2020.

⁷³⁰ Mijat Stojanović, T. 2021, 2051.

⁷³¹ Mijat Stojanović, T. 2021.

⁷³² Mijat Stojanović, T. 2021.

⁷³³ Mijat Stojanović, T. 2022.

⁷³⁴ Mijat Stojanović, T. 2022-2023; Exhibit P9 (KLA insignia).

⁷³⁵ Mijat Stojanović, T. 2023.

⁷³⁶ Mijat Stojanović, T. 2023-2025.

⁷³⁷ Mijat Stojanović, T. 2024.

⁷³⁸ Mijat Stojanović, T. 2024-2025, 2076, 2088.

⁷³⁹ 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.⁷⁴⁰ Mijat Stojanović stated that they were told not to look right or left but just to keep their heads down.⁷⁴¹ 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.⁷⁴² The witness was at the time approximately 70 metres from the person he believed was Ramush Haradinaj.⁷⁴³ 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.⁷⁴⁴ The witness could hear Dragoslav Stojanović scream while being beaten.⁷⁴⁵ A short while later, Dragoslav Stojanović was thrown back out into the corridor.⁷⁴⁶ He was clutching his stomach, had blood on his face, lay curled-up on the concrete floor, and was unable to speak.⁷⁴⁷ At that point, Veselin Stijović was taken into the room and the witness could hear him moan and scream.⁷⁴⁸ The men then brought the witness into the room, where he could see Veselin Stijović standing, naked from the waist up, facing a corner.⁷⁴⁹ 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.⁷⁵⁰ Zeqir Nimonaj, who was wearing a camouflage uniform, ordered the witness to strip down to his waist and he complied.⁷⁵¹ All of the men in the room wore KLA insignia.⁷⁵² The witness and Veselin Stijović were interrogated and beaten by all the men present.⁷⁵³ The men accused the witness of being a spy.⁷⁵⁴ The beating lasted a long time, after which the two men were thrown back out into the hallway.⁷⁵⁵ The witness did not have any blood on him while Veselin Stijović was in a lot of pain and had blood around his ears.⁷⁵⁶ There Dragoslav Stojanović was lying in a pool of blood.⁷⁵⁷ He had a head

⁷⁴⁰ Mijat Stojanović, T. 2025, 2091.

⁷⁴¹ Mijat Stojanović, T. 2026, 2062-2063.

⁷⁴² Mijat Stojanović, T. 2026, 2052-2058, 2062-2067, 2070-2071; D27 (Photograph of Haradinaj house, with marking); D28 (Photograph of Haradinaj house, with marking).

⁷⁴³ Joint Motion on Additional Agreed Facts, 30 November 2007, para. 2.

⁷⁴⁴ Mijat Stojanović, T. 2028.

⁷⁴⁵ Mijat Stojanović, T. 2029.

⁷⁴⁶ Mijat Stojanović, T. 2029-2030.

⁷⁴⁷ Mijat Stojanović, T. 2030, 2094.

⁷⁴⁸ Mijat Stojanović, T. 2029.

⁷⁴⁹ Mijat Stojanović, T. 2030.

⁷⁵⁰ Mijat Stojanović, T. 2030-2031, 2087-2088.

⁷⁵¹ Mijat Stojanović, T. 2030-2031.

⁷⁵² Mijat Stojanović, T. 2031.

⁷⁵³ Mijat Stojanović, T. 2031-2032, 2088.

⁷⁵⁴ Mijat Stojanović, T. 2039-2040, 2091.

⁷⁵⁵ Mijat Stojanović, T. 2032.

⁷⁵⁶ Mijat Stojanović, T. 2032.

injury, a nose injury and had vomited blood.⁷⁵⁸ His condition had worsened since the witness had entered the room.⁷⁵⁹ He was going in and out of consciousness.⁷⁶⁰ A person referred to as the “Russian” was also present, and he hit Dragoslav Stojanović even though he was unconscious.⁷⁶¹ At some point, Nasim Haradinaj approached the three men in the corridor and told them that they would be released.⁷⁶² He also asked the witness why they did not “join them”.⁷⁶³ The witness thought that Nasim Haradinaj was one of the men in charge because the other soldiers saluted him.⁷⁶⁴ Nasim Haradinaj and a third person took the witness out of the house in order to fetch his car.⁷⁶⁵ 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.⁷⁶⁶ Mijat Stojanović testified that he was only present in the courtyard for a short period.⁷⁶⁷ 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.⁷⁶⁸ 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.⁷⁶⁹ A tractor was used to carry Dragoslav Stojanović.⁷⁷⁰ 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.⁷⁷¹ Nasim Haradinaj then cut curtains and used them to blindfold the three men.⁷⁷² After that, a car pulled up and the three men were taken to Baboloć/Baballoq.⁷⁷³ 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.⁷⁷⁴ The Serbs in Baboloć/Baballoq came and took the three men to a health centre in Dečani/Deçan,

⁷⁵⁷ Mijat Stojanović, T. 2032.

⁷⁵⁸ Mijat Stojanović, T. 2032-2033, 2096.

⁷⁵⁹ Mijat Stojanović, T. 2095-2096.

⁷⁶⁰ Mijat Stojanović, T. 2033-2034, 2092-2096.

⁷⁶¹ Mijat Stojanović, T. 2033.

⁷⁶² Mijat Stojanović, T. 2034, 2096.

⁷⁶³ Mijat Stojanović, T. 2034.

⁷⁶⁴ Mijat Stojanović, T. 2071-2072.

⁷⁶⁵ Mijat Stojanović, T. 2034-2035.

⁷⁶⁶ Mijat Stojanović, T. 2034-2036, 2067-2069, 2098.

⁷⁶⁷ Mijat Stojanović, T. 2069.

⁷⁶⁸ Mijat Stojanović, T. 2036-2037.

⁷⁶⁹ Mijat Stojanović, T. 2037.

⁷⁷⁰ Mijat Stojanović, T. 2037-2038.

⁷⁷¹ Mijat Stojanović, T. 2038, 2041.

⁷⁷² Mijat Stojanović, T. 2041.

⁷⁷³ Mijat Stojanović, T. 2041.

⁷⁷⁴ Mijat Stojanović, T. 2041, 2043.

where they were transferred immediately to Peć/Pejë.⁷⁷⁵ Mijat Stojanović received medical attention in a hospital in Peć/Pejë.⁷⁷⁶ He refused to be admitted, but had to return there every day with Veselin Stijović to receive treatment.⁷⁷⁷ 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.⁷⁷⁸ While he gave some names of those present and participating in the beating, he made no mention of Ramush Haradinaj.⁷⁷⁹ 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.⁷⁸⁰

176. Veselin Stijović, a Serb from the village of Dašinovac/Dasinoc, in Dečani/Deçan municipality,⁷⁸¹ 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.⁷⁸² The cousins had left their home the day before for safety.⁷⁸³ While the three men were in the house, they were shot at with automatic weapons and hand-held launchers from the direction of Glođane/Gllogjan “and all directions”.⁷⁸⁴ The shooting continued for about 45 minutes.⁷⁸⁵ The men did not respond to the fire since they did not have any weapons.⁷⁸⁶ After the shooting had ceased, the three men heard shouts in Albanian outside, asking for them to come out.⁷⁸⁷ 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.⁷⁸⁸ The witness described the KLA insignia as a black two-headed eagle against a red background and with the words “Kosovo Liberation Army”.⁷⁸⁹ When Dragoslav Stojanović opened the door the men rushed into the house.⁷⁹⁰ Dragoslav Stojanović was beaten and all three men were

⁷⁷⁵ Mijat Stojanović, T. 2042-2043.

⁷⁷⁶ Mijat Stojanović, T. 2043.

⁷⁷⁷ Mijat Stojanović, T. 2043.

⁷⁷⁸ D25 (*Ilustrovana Politika* article, 25 April 1998).

⁷⁷⁹ D25 (*Ilustrovana Politika* article, 25 April 1998); Mijat Stojanović, T. 2070.

⁷⁸⁰ D29 (Incident Report, Humanitarian Law Center, 25 April 1998); Mijat Stojanović, T. 2085-2086; Marijana Anđelković, T. 657-661.

⁷⁸¹ Veselin Stijović, T. 2119.

⁷⁸² Veselin Stijović, T. 2124-2126, 2177.

⁷⁸³ Veselin Stijović, T. 2125, 2172.

⁷⁸⁴ Veselin Stijović, T. 2125-2127.

⁷⁸⁵ Veselin Stijović, T. 2125-2127.

⁷⁸⁶ Veselin Stijović, T. 2127.

⁷⁸⁷ Veselin Stijović, T. 2126-2128.

⁷⁸⁸ Veselin Stijović, T. 2128.

⁷⁸⁹ Veselin Stijović, T. 2128.

⁷⁹⁰ Veselin Stijović, T. 2126-2127.

ordered to lie down.⁷⁹¹ More men entered the house and the three men were beaten, kicked, and hit by rifle butts as they were lying down.⁷⁹² 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.⁷⁹³ After a while the men that had entered the house took the witness and Dragoslav and Mijat Stojanović to Glođane/Gllogjan.⁷⁹⁴ The witness testified that there were many soldiers and civilians, all armed, along the road beating the three men.⁷⁹⁵ Some of the soldiers were wearing KLA insignia.⁷⁹⁶ The soldiers were swearing at the three men, saying that Kosovo/Kosova belonged to the Albanians, while continuing to beat them.⁷⁹⁷ The three men were in pain, bleeding, and Dragoslav Stojanović was barely able to walk.⁷⁹⁸ Once in Glođane/Gllogjan, the three men were taken inside a house which the witness believed was a headquarters because of the many soldiers there.⁷⁹⁹ The witness and Mijat Stojanović were left in a corridor while Dragoslav Stojanović was brought into a small room.⁸⁰⁰ 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.⁸⁰¹ Mijat Stojanović was then brought into the room and the witness could hear him being beaten.⁸⁰² After about an hour he was thrown out and the witness was brought in. In the room there were two or three soldiers.⁸⁰³ 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.⁸⁰⁴ The witness did not recognize anybody, but Dragoslav and Mijat Stojanović later told him who some of them were.⁸⁰⁵ Among the soldiers were two men known to Dragoslav and Mijat Stojanović, namely Daut Haradinaj and a man called “Zeqir”.⁸⁰⁶ The witness was severely beaten for about an hour, with a bat or baton, fists, and rifle

⁷⁹¹ Veselin Stijović, T. 2126-2129.

⁷⁹² Veselin Stijović, T. 2126-2129.

⁷⁹³ Veselin Stijović, T. 2132, 2162-2164.

⁷⁹⁴ Veselin Stijović, T. 2129, 2132.

⁷⁹⁵ Veselin Stijović, T. 2129-2130, 2132-2134, 2174-2175.

⁷⁹⁶ Veselin Stijović, T. 2133-2134.

⁷⁹⁷ Veselin Stijović, T. 2130-2131, 2133, 2182.

⁷⁹⁸ Veselin Stijović, T. 2134, 2167.

⁷⁹⁹ Veselin Stijović, T. 2132, 2135.

⁸⁰⁰ Veselin Stijović, T. 2133-2134.

⁸⁰¹ Veselin Stijović, T. 2135-2136, 2139.

⁸⁰² Veselin Stijović, T. 2135, 2137.

⁸⁰³ Veselin Stijović, T. 2135.

⁸⁰⁴ Veselin Stijović, T. 2137.

⁸⁰⁵ Veselin Stijović, T. 2132.

⁸⁰⁶ Veselin Stijović, T. 2132, 2137-2138, 2165-2166.

butts.⁸⁰⁷ After that Mijat Stojanović was brought back in and both of them were beaten again and then thrown out of the room.⁸⁰⁸ The witness saw that some soldiers were beating Dragoslav Stojanović, who was lying in the corridor.⁸⁰⁹ While in the corridor, the witness met a person he knew, Deli Lekaj, who was armed and wearing civilian clothes.⁸¹⁰ 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.⁸¹¹ 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.⁸¹² Dragoslav Stojanović had to pump the water for the witness despite his condition, and vice versa.⁸¹³ The three men were then ordered to return to Dubrava/Dubravë by foot, escorted by soldiers.⁸¹⁴ 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.⁸¹⁵ 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.⁸¹⁶ One of the men in the car was Nasim.⁸¹⁷ The three men were untied and told to walk straight ahead without looking back.⁸¹⁸ The three men eventually managed to reach the hospital in Dečani/Deçan.⁸¹⁹ 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.⁸²⁰ Mijat Stojanović and Veselin Stijović were told to stay at the hospital in Peć/Pejë for treatment, which they refused.⁸²¹ 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.⁸²²

⁸⁰⁷ Veselin Stijović, T. 2137-2139.

⁸⁰⁸ Veselin Stijović, T. 2137, 2139.

⁸⁰⁹ Veselin Stijović, T. 2139.

⁸¹⁰ Veselin Stijović, T. 2138, 2140.

⁸¹¹ Veselin Stijović, T. 2138, 2140, 2180.

⁸¹² Veselin Stijović, T. 2141-2142.

⁸¹³ Veselin Stijović, T. 2141-2142.

⁸¹⁴ Veselin Stijović, T. 2141, 2143.

⁸¹⁵ Veselin Stijović, T. 2141, 2143-2144.

⁸¹⁶ Veselin Stijović, T. 2143, 2145-2146.

⁸¹⁷ Veselin Stijović, T. 2145.

⁸¹⁸ Veselin Stijović, T. 2143, 2146.

⁸¹⁹ Veselin Stijović, T. 2144, 2146-2148.

⁸²⁰ Veselin Stijović, T. 2148.

⁸²¹ Veselin Stijović, T. 2148.

⁸²² 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 Glođane/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 Glođane/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,⁸²³ testified that on 21 April 1998, he worked the night shift.⁸²⁴ In Dečani/Dečan, he met Rosanda Radošević⁸²⁵ and her son Staniša Radošević, from Dašinovac/Dashinoc, in Dečani/Dečan municipality, and together they travelled homewards.⁸²⁶ Novak Stijović drove his red Yugo, while Rosanda Radošević and Staniša Radošević drove their grey Lada.⁸²⁷ When they reached Požar/Pozhare, they were stopped at a checkpoint by KLA soldiers pointing their guns at them.⁸²⁸ Some of the soldiers were in uniform with KLA insignia, others were in civilian clothing.⁸²⁹ Novak Stijović remembered seeing among them Kujtim Berisha, an Albanian from

⁸²³ Novak Stijović, T. 7142-7143, 7162.

⁸²⁴ Novak Stijović, T. 7145-7146.

⁸²⁵ Based on the evidence, the Trial Chamber understands Rosa and Rosanda Radošević to refer to the same person.

⁸²⁶ Novak Stijović, T. 7145-7146.

⁸²⁷ Novak Stijović, T. 7146.

⁸²⁸ Novak Stijović, T. 7147, 7160.

⁸²⁹ Novak Stijović, T. 7149, 7168.

Požar/Pozhare and a certain “Jusuf”, whose last name he had forgotten.⁸³⁰ 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.⁸³¹ 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/Dečan municipality.⁸³² KLA soldiers guarded and drove them in their cars towards Glođane/Gllogjan.⁸³³

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.⁸³⁴ No one seemed to be in charge.⁸³⁵ 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.⁸³⁶ Novak Stijović was beaten on his back, but felt no immediate injuries.⁸³⁷ Novak Stijović had no blood on him, but Staniša Radošević did.⁸³⁸ Novak Stijović believed that Staniša Radošević bled from a wound on the back of his head inflicted by a hit from a rifle-butt.⁸³⁹ Rosanda Radošević was present, but not beaten.⁸⁴⁰ 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/Dečan and the commander of the police station in Rznić/Irznj. ⁸⁴¹ 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.⁸⁴² Individuals whom Novak Stijović did not identify told them that they should not return home but rather go to Serbia.⁸⁴³ Novak Stijović did not lose consciousness but he believed that

⁸³⁰ Novak Stijović, T. 7149, 7169.

⁸³¹ Novak Stijović, T. 7150.

⁸³² Novak Stijović, T. 7172-7173, 7188.

⁸³³ Novak Stijović, T. 7149-7150, 7172, 7188.

⁸³⁴ Novak Stijović, T. 7151, 7171-7172.

⁸³⁵ Novak Stijović, T. 7172-7173, 7187-7188.

⁸³⁶ Novak Stijović, T. 7151, 7189.

⁸³⁷ Novak Stijović, T. 7161-7162.

⁸³⁸ Novak Stijović, T. 7153.

⁸³⁹ Novak Stijović, T. 7153.

⁸⁴⁰ Novak Stijović, T. 7153, 7185, 7188.

⁸⁴¹ Novak Stijović, T. 7151-7152, 7157.

⁸⁴² Novak Stijović, T. 7173-7274, 7188, 7191-7192.

⁸⁴³ Novak Stijović, T. 7152-7153.

Staniša Radošević briefly did.⁸⁴⁴ 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.⁸⁴⁵ 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.⁸⁴⁶ 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.⁸⁴⁷

183. Unidentified persons brought Novak Stijović and Rosanda Radošević from the direction of Rznić/Irznjic to a private two-storey house at the entrance of Glodane/Gllogjan, which was the nearest house to where Novak Stijović's car had stopped.⁸⁴⁸ 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.⁸⁴⁹ There was one soldier in the room.⁸⁵⁰ A man came and told Novak Stijović and Rosanda Radošević that they could leave, which they did.⁸⁵¹ They asked the soldiers where they could go and someone answered that they could go anywhere they pleased, except home.⁸⁵² Novak Stijović could not start his car.⁸⁵³ 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.⁸⁵⁴ 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.⁸⁵⁵ Approximately three to five months later, Novak Stijović began to have spinal problems, which were occasional at first and not so strong.⁸⁵⁶ Marijana

⁸⁴⁴ Novak Stijović, T. 7153.

⁸⁴⁵ Novak Stijović, T. 7153-7154.

⁸⁴⁶ Novak Stijović, T. 7153-7154.

⁸⁴⁷ Novak Stijović, T. 7156, 7158.

⁸⁴⁸ Novak Stijović, T. 7154, 7161, 7172, 7192-7193.

⁸⁴⁹ Novak Stijović, T. 7154, 7193.

⁸⁵⁰ Novak Stijović, T. 7191.

⁸⁵¹ Novak Stijović, T. 7154-7155.

⁸⁵² Novak Stijović, T. 7155.

⁸⁵³ Novak Stijović, T. 7156.

⁸⁵⁴ Novak Stijović, T. 7155-7157.

⁸⁵⁵ Novak Stijović, T. 7160-7161, 7184-7187.

⁸⁵⁶ Novak Stijović, T. 7161, 7182-7183.

Andelković spoke to Novak Stijović on 25 April 1998 in Dečani/Deçan and generally confirmed his account of the events of 22 April 1998.⁸⁵⁷

184. Staniša Radošević, a Serb,⁸⁵⁸ 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.⁸⁵⁹ When they reached the intersection of the road between the villages of Požar/Pozhare and Donja Luka/Lluka ë Ultë, in Dečani/Deçan municipality, five armed men approached the cars.⁸⁶⁰ Three of the men wore civilian clothes, two wore uniforms.⁸⁶¹ All of the men had KLA insignia, a double-headed black eagle with the letters UÇK, on their sleeves.⁸⁶² The men, speaking in Albanian and Serbian, told the witness to get out of his car.⁸⁶³ 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”.⁸⁶⁴ Approximately 50 armed men then came out of a concrete trench next to the road.⁸⁶⁵ The witness knew most of the men from before as villagers from Donja Luka/Lluka ë Ultë, Požar/Pozhare, and Ljumbarda/Lumbardh.⁸⁶⁶ The men were armed and some of them wore uniforms while others wore civilian clothes with the KLA insignia on their sleeves or caps.⁸⁶⁷

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/Irznîq, in Dečani/Deçan municipality.⁸⁶⁸ A man with an automatic rifle sat behind the witness.⁸⁶⁹ The witness’s mother and Novak Stijović were in the car as well.⁸⁷⁰ The witness observed trenches and approximately 100 men, chanting “KLA”, along the roadside.⁸⁷¹ The witness also observed large-calibre weapons and two men in black uniforms near a fortification

⁸⁵⁷ Marijana Andelković, T. 463-464, 466, 514, 516-521; P4 (Andelković’s notebook, volume 2), pp. 13-14; P5 (Incident Report, Humanitarian Law Center, 27 April 1998).

⁸⁵⁸ Staniša Radošević, T. 956; D5 (Staniša Radošević, witness statement, 23 August 2005), p. 1.

⁸⁵⁹ Staniša Radošević, T. 957, 960-961, 1011, 1020, 1022; P5 (Incident reports by the Humanitarian Law Center, 5 May 1998), p. 15.

⁸⁶⁰ Staniša Radošević, T. 961-962, 965; P11 (Map of the Lake Radonjić/Radonîq area, with markings).

⁸⁶¹ Staniša Radošević, T. 962.

⁸⁶² Staniša Radošević, T. 961-962; P9 (KLA insignia).

⁸⁶³ Staniša Radošević, T. 963.

⁸⁶⁴ Staniša Radošević, T. 963.

⁸⁶⁵ Staniša Radošević, T. 961, 966, 1036.

⁸⁶⁶ Staniša Radošević, T. 966.

⁸⁶⁷ Staniša Radošević, T. 962, 966-967, 1036; P9 (KLA insignia).

⁸⁶⁸ Staniša Radošević, T. 967, 1036-1037.

⁸⁶⁹ Staniša Radošević, T. 967.

⁸⁷⁰ Staniša Radošević, T. 967.

⁸⁷¹ Staniša Radošević, T. 967-968, 1040.

between Rznić/Irznjic and Glođane/Gllogjan.⁸⁷² 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.⁸⁷³ More men in uniform and some in civilian clothes arrived, at which point three to five men started to beat Novak Stijović.⁸⁷⁴ The men hit Novak Stijović on the head, chest, and ribs and continued to kick him after he fell to the ground.⁸⁷⁵ When the witness intervened and tried to protect Stijović, the men started to beat and kick him as well.⁸⁷⁶ The men beat them with fists and with rifle and pistol butts.⁸⁷⁷ During the beating, the men cursed their Serbian mothers and said that this was their land.⁸⁷⁸ The men did not beat the witness's mother.⁸⁷⁹ 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.⁸⁸⁰ 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.⁸⁸¹ 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.⁸⁸² The man gave the witness an insignia of the KLA to be used for protection from KLA soldiers on the way.⁸⁸³ 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).⁸⁸⁴ After retrieving one of the guns, the witness left for Dečani/Dečan under the pretext of getting another gun.⁸⁸⁵ The witness went to the police station in Dečani/Dečan 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/Dečan municipality, and that they had been brought to Dečani/Dečan.⁸⁸⁶

⁸⁷² Staniša Radošević, T. 969-970; P12 (Map of the Lake Radonjić/Radonjic area, with markings).

⁸⁷³ Staniša Radošević, T. 970-971, 1041-1042.

⁸⁷⁴ Staniša Radošević, T. 971-972.

⁸⁷⁵ Staniša Radošević, T. 971-973.

⁸⁷⁶ Staniša Radošević, T. 972-974, 1050.

⁸⁷⁷ Staniša Radošević, T. 972, 974.

⁸⁷⁸ Staniša Radošević, T. 973.

⁸⁷⁹ Staniša Radošević, T. 982.

⁸⁸⁰ Staniša Radošević, T. 974.

⁸⁸¹ Staniša Radošević, T. 981-983.

⁸⁸² Staniša Radošević, T. 983.

⁸⁸³ Staniša Radošević, T. 984, 987.

⁸⁸⁴ Staniša Radošević, T. 984.

⁸⁸⁵ Staniša Radošević, T. 985-987, 1043, 1060, 1062, 1070-1071, 1073-1074.

⁸⁸⁶ Staniša Radošević, T. 988.

186. Miloica Vlahović, a Serb,⁸⁸⁷ 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.⁸⁸⁸ 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 Glođane/Gllogjan where he and Staniša Radošević were beaten.⁸⁸⁹ The witness did not know whether they were all detained together.⁸⁹⁰ Konstantin Stijović told the witness that he had been released after Hilmi Haradinaj, the father of the Accused Ramush Haradinaj, intervened on his behalf.⁸⁹¹

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 Glođane/Gllogjan. At the entrance of Glođane/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.

⁸⁸⁷ Miloica Vlahović, T. 1542-1543.

⁸⁸⁸ Miloica Vlahović, T. 1577-1580, 1639-1640.

⁸⁸⁹ Miloica Vlahović, T. 1581-1582, 1639-1640.

⁸⁹⁰ 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.⁸⁹² In September 1998 a man named Muhamet from the village Kodralija/Kodrali, in Dečani/Dečan municipality, told him that in late July 1998 Darinka and Vukosava Vujosević were killed and that their crops were set on fire.⁸⁹³ The witness does not know whether Muhamet saw the killings.⁸⁹⁴

⁸⁹¹ Miloica Vlahović, T. 1581, 1640.

⁸⁹² Miloica Vlahović, T. 1554-1555.

⁸⁹³ Miloica Vlahović, T. 1572-1573.

⁸⁹⁴ Miloica Vlahović, T. 1573.

193. Vera Kovačević, the daughter of Darinka Kovač and niece of Vukosava Marković,⁸⁹⁵ learned of her mother's disappearance and was later informed that she went missing on 21 April 1998.⁸⁹⁶ On 19 September 1998, Vera Kovačević participated in the process of identification of Darinka Kovač (remains labelled "R-17") and Vukosava Marković (remains labelled "R-10") conducted in the Paštrik Hotel in Đakovica/Gjakovë.⁸⁹⁷ 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.⁸⁹⁸ According to the witness, Darinka Kovač 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.⁸⁹⁹ Vera Kovačević identified a blue dress with a white floral pattern and a white vest she had knitted herself as belonging to Darinka Kovač.⁹⁰⁰ 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.⁹⁰¹ On the basis of this information, the technicians were able to make a positive identification.⁹⁰² Later that day the remains of Darinka Kovač and Vukosava Marković were buried in the Piskote Cemetery in Đakovica/Gjakovë.⁹⁰³ Despite two separate attempts in 2005, their remains have not been found.⁹⁰⁴

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 Kovač. Branimir Aleksandrić⁹⁰⁵ testified that body R-10 was recovered on 12 September 1998 at the Radonjić/Radoniq canal.⁹⁰⁶ Right next to the outer side of the concrete canal wall, careful removal of the gravel revealed body R-10, which had a

⁸⁹⁵ P1246 (Vera Kovačević, witness statement, 8 November 2007), para. 1

⁸⁹⁶ P1246 (Vera Kovačević, witness statement, 8 November 2007), para. 3.

⁸⁹⁷ 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".

⁸⁹⁸ P1246 (Vera Kovačević, witness statement, 8 November 2007), paras 5, 9, 10.

⁸⁹⁹ P1246 (Vera Kovačević, witness statement, 8 November 2007), paras 1, 9-10.

⁹⁰⁰ P1246 (Vera Kovačević, witness statement, 8 November 2007), paras 1, 5-6, 14.

⁹⁰¹ P1246 (Vera Kovačević, witness statement, 8 November 2007), paras 1, 5, 7, 14.

⁹⁰² P1246 (Vera Kovačević, witness statement, 8 November 2007), para. 11.

⁹⁰³ P1246 (Vera Kovačević, witness statement, 8 November 2007), para. 13.

⁹⁰⁴ P1246 (Vera Kovačević, witness statement, 8 November 2007), para. 15.

⁹⁰⁵ 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).

⁹⁰⁶ 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.⁹⁰⁷ Aleksandrić further testified that body R-17 was recovered on 12 September 1998 at the Radonjić/Radoniq canal.⁹⁰⁸ Careful digging revealed body R-17 deep in the earth.⁹⁰⁹ A full set of dentures for the upper jaw were found with the head of body R-17.⁹¹⁰ After reviewing the autopsy report, Aleksandrić recalled that the spine of the body was very curved.⁹¹¹ According to the autopsy report, during the identification of body R-17 at Hotel Paštrik the daughter of Darinka Kovać 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.⁹¹²

195. Dušan Dunjić⁹¹³ testified that body R-10 was wearing a greenish knit skirt, a black linen skirt and a blue long-sleeved tunic.⁹¹⁴ Body R-10 was a female between 50 and 60 years old and between 156 and 165 centimetres tall.⁹¹⁵ 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.⁹¹⁶ 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.⁹¹⁷ 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.⁹¹⁸ Vera Kovačević spotted the clothes found with the body among all the clothes laid out for identification.⁹¹⁹ Body R-10 was

⁹⁰⁷ 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".

⁹⁰⁸ P1260 (Branimir Aleksandrić, witness statement, 26 June 2007), paras 4, 6, 128-129, 203-204.

⁹⁰⁹ 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".

⁹¹⁰ P1260 (Branimir Aleksandrić, witness statement, 26 June 2007), paras 144, 146; P452 (Video of body recovery at canal), 1:29'36" - 1:29'46".

⁹¹¹ P1260 (Branimir Aleksandrić, witness statement, 26 June 2007), para. 150; P706 (Autopsy report R-17), pp. 2, 5.

⁹¹² P706 (Autopsy report R-17), pp. 6-7.

⁹¹³ P618 (Dušan Dunjić, witness statement, 8 June 2007), paras 2-3, 23, 40, 151; P620 (CV of Dušan Dunjić), p. 2.

⁹¹⁴ P672 (Autopsy report R-10), p. 2.

⁹¹⁵ P618 (Dušan Dunjić, witness statement, 8 June 2007), paras 298-299; P672 (Autopsy report R-10), p. 7.

⁹¹⁶ P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 300; P672 (Autopsy report R-10), p. 2, 7.

⁹¹⁷ 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".

⁹¹⁸ Dušan Dunjić, T. 7207.

⁹¹⁹ 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.⁹²⁰ Body R-17 was wearing a blue dress with purple and white patterns over a hand-knitted vest.⁹²¹ Body R-17 was a female between 55 and 65 years old and between 156 and 161 centimetres tall.⁹²² 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.⁹²³ On 19 September 1998, Vera Kovačević identified the body as Darinka Kovač (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.⁹²⁴ Vera Kovačević told the team that Vukosava Marković and her sister Darinka Kovač went missing on 21 April 1998.⁹²⁵ Bodies R-10 and R-17 were handed over to the relatives and a death certificate was issued.⁹²⁶ The witness did not take a DNA sample from R-17, because of the specific nature of the traditional identification.⁹²⁷

196. As referred to above, the Trial Chamber has heard hearsay evidence from Vera Kovačević that Vukosava Marković and Darinka Kovač 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 Kovač 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 Kovač 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

⁹²⁰ P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 308; P635 (Death certificates), pp. 5-6; P672 (Autopsy report R-10), p. 8.

⁹²¹ P706 (Autopsy report R-17), p. 3.

⁹²² P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 399; P706 (Autopsy report R-17), p. 5.

⁹²³ P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 401; P706 (Autopsy report R-17), pp. 2, 6.

⁹²⁴ 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.

⁹²⁵ P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 305; P672 (Autopsy Report R-10), p. 7.

⁹²⁶ 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 ë 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.

⁹²⁷ 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,⁹²⁸ testified that on 21 April 1998, he and his brother Novak Vlahović left their parents' home for work in Dečani/Deçan.⁹²⁹ According to the witness, this was the last time they saw their parents.⁹³⁰ 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".⁹³¹ Goran Vlahović's other brothers Miloica and Rade had also tried to get back to the village, but without success.⁹³² 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.⁹³³ 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.⁹³⁴ Rade Vlahović told Goran Vlahović that Nuo Alakaj had found that the parents were no longer there.⁹³⁵ Goran Vlahović did not know when Alakaj went there.⁹³⁶

200. Miloica Vlahović, a Serb from Peć/Pejë,⁹³⁷ 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.⁹³⁸ On that day Miloš Radunović, his wife Milica, and Slobodan Radošević visited the witness's

⁹²⁸ Goran Vlahović, T. 1730-1731, 1734-1735.

⁹²⁹ Goran Vlahović, T. 1731, 1735, 1736.

⁹³⁰ Goran Vlahović, T. 1737, 1748.

⁹³¹ Goran Vlahović, T. 1737-1741.

⁹³² Goran Vlahović, T. 1742.

⁹³³ Goran Vlahović, T. 1741-1742.

⁹³⁴ Goran Vlahović, T. 1742-1743.

⁹³⁵ Goran Vlahović, T. 1743, 1762.

⁹³⁶ Goran Vlahović, T. 1744.

⁹³⁷ Miloica Vlahović, T. 1542-1543.

⁹³⁸ Miloica Vlahović, 1544, 1554, 1568, 1574, 1614; P28 (Photograph of Milovan Vlahović), P29 (Photograph of Milka Vlahović).

parents' house.⁹³⁹ 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.⁹⁴⁰ 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.⁹⁴¹ When the witness, on that day, wanted to go and get his parents, he was told by a police officer in Dečani/Dečan that it was not safe.⁹⁴² The witness asked Tafilj Kuqi, a neighbour from Gornji Ratiš/Ratishë ë Eperm, to check up on his parents.⁹⁴³ On or about 24 April 1998, Tafilj Kuqi went to Gornji Ratiš/Ratishë ë Eperm.⁹⁴⁴ Kuqi later told the witness that he was stopped in Prilep/Prelep and Prekoluka/Prekollukë, in Dečani/Dečan municipality, by armed KLA members in uniform who wanted to take him to Glodane/Gllogjan to join the KLA.⁹⁴⁵ Kuqi only got to Prekoluka/Prekollukë and did not see the witness's parents.⁹⁴⁶ Later the witness asked Mehmet Goga from Dečani/Dečan, who owned property close to the witness' parents' home, to check up on his parents.⁹⁴⁷ The witness met Goga again in Dečani/Dečan three or four days later and heard that Goga had seen his parents.⁹⁴⁸ They were guarded by armed men and could not leave their house.⁹⁴⁹ Later, Faza Haradinaj, a former neighbour from Gornji Ratiš/Ratishë ë Eperm, also saw the witness's parents in their house.⁹⁵⁰ She confirmed to the witness that they were not allowed to leave the house.⁹⁵¹ 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 1998.⁹⁵² 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/Irznik, he saw that the witness's parents and Milica Radunović were taken by armed and uniformed men in the direction of Rznić/Irznik.⁹⁵³ Madjun also told the witness that a man named Bajram or

⁹³⁹ Miloica Vlahović, T. 1573.

⁹⁴⁰ Miloica Vlahović, T. 1554-1555.

⁹⁴¹ Miloica Vlahović, T. 1575.

⁹⁴² Miloica Vlahović, T. 1578.

⁹⁴³ Miloica Vlahović, T. 1583, 1643.

⁹⁴⁴ Miloica Vlahović, T. 1583-1584, 1587, 1643.

⁹⁴⁵ Miloica Vlahović, T. 1584, 1643-1644.

⁹⁴⁶ Miloica Vlahović, T. 1644.

⁹⁴⁷ Miloica Vlahović, T. 1585, 1644.

⁹⁴⁸ Miloica Vlahović, T. 1582-1583, 1644-1645.

⁹⁴⁹ Miloica Vlahović, T. 1584-1585, 1646-1648.

⁹⁵⁰ Miloica Vlahović, T. 1585-1586, 1649-1654. See also Goran Vlahović, T. 1744, 1746, 1748.

⁹⁵¹ Miloica Vlahović, T. 1585-1586, 1649-1654. See also Goran Vlahović, T. 1744.

⁹⁵² Miloica Vlahović, T. 1588, 1681-1685.

⁹⁵³ 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.⁹⁵⁴

201. Witness 60 testified that he knew Milka Vlahović (also known as Marković) and Mika Radunović.⁹⁵⁵ 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.⁹⁵⁶ The witness understood Sadikaj to be a member of the KLA.⁹⁵⁷

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.⁹⁵⁸ 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.⁹⁵⁹

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.⁹⁶⁰

204. Witness 28, a researcher for a humanitarian organization,⁹⁶¹ 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.⁹⁶² 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.⁹⁶³ Nada Vlahović stated that some of the armed men were wearing uniforms.⁹⁶⁴ She further stated that as a result of these attacks, Serbs left the village and moved to Dečani/Deçan,

⁹⁵⁴ Miloica Vlahović, T. 1593, 1598, 1699-1700.

⁹⁵⁵ Witness 60, T. 2249, 2251.

⁹⁵⁶ Witness 60, T. 2249-2250.

⁹⁵⁷ Witness 60, T. 2248-2249, 2288.

⁹⁵⁸ Marijana Anđelković, T. 598; P6 (Spotlight Report No. 27, 5 August 1998), part. 2.1.

⁹⁵⁹ Marijana Anđelković, T. 598; P6 (Spotlight Report No. 27, 5 August 1998), part. 2.1.

⁹⁶⁰ P1181 (Report of the Đakovica/Gjakovë MUP Crime Police Department), pp. 10-11.

⁹⁶¹ P1211 (Witness 28, witness statement, 28 October 2007), paras 2, 9, 11, 14; Witness 28, T. 10172.

⁹⁶² P1211 (Witness 28, witness statement, 28 October 2007), para. 49, Witness 28, T. 10229, 10232-10236.

⁹⁶³ P1211 (Witness 28, witness statement, 28 October 2007), para. 49, Witness 28, T. 10229, 10232-10236.

⁹⁶⁴ Witness 28, T. 10235.

and that she left the village on 21 April 1998 with her brothers.⁹⁶⁵ 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.⁹⁶⁶ Nada Vlahović also said that the Albanian women and children left the village.⁹⁶⁷

205. The Trial Chamber has also received forensic medical evidence with regard to Milka Vlahović (remains labelled “R-35”). Branimir Aleksandrić⁹⁶⁸ 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.⁹⁶⁹ ICMP DNA analysis concluded that the remains labelled R-35 are those of Milka Vlahović.⁹⁷⁰ An autopsy conducted on the remains on 8 December 2003 found no traumatic perimortem injuries.⁹⁷¹ The cause of death was unascertained.⁹⁷²

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.

⁹⁶⁵ P1211 (Witness 28, witness statement, 28 October 2007), paras 49-51; Witness 28, T. 10226-10229, 10235.

⁹⁶⁶ P1211 (Witness 28, witness statement, 28 October 2007), paras 49-51; Witness 28, T. 10229-10231.

⁹⁶⁷ P1211 (Witness 28, witness statement, 28 October 2007), para. 50; Witness 28, T. 10196.

⁹⁶⁸ 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).

⁹⁶⁹ 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).

⁹⁷⁰ Agreed Facts, 26 November 2007, No. 110.

⁹⁷¹ Agreed Facts, 26 November 2007, Nos 111-112.

⁹⁷² 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/Dečan municipality,⁹⁷³ 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.⁹⁷⁴ The witness informed his father that the KLA had set up checkpoints everywhere and that one could not move freely.⁹⁷⁵ His father told him that he would try to go to Dečani/Dečan through the woods after nightfall, whereupon the witness left his father in the house (see section 6.4, above).⁹⁷⁶ This was the last time that the witness saw his father alive.⁹⁷⁷ 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.⁹⁷⁸ 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 Glođane/Gllogjan.⁹⁷⁹ The friend could see that they had been beaten up.⁹⁸⁰ When the friend tried to stop the soldiers he was beaten.⁹⁸¹ 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".⁹⁸² Three or four months later the friend went there to put

⁹⁷³ Staniša Radošević, T. 956; D5 (Staniša Radošević, witness statement, 23 August 2005), p. 1.

⁹⁷⁴ Staniša Radošević, T. 984, 1011, 1020, 1022; P5 (Incident reports by the Humanitarian Law Center, 5 May 1998), p. 15.

⁹⁷⁵ Staniša Radošević, T. 985.

⁹⁷⁶ Staniša Radošević, T. 985.

⁹⁷⁷ Staniša Radošević, T. 988.

⁹⁷⁸ Staniša Radošević, T. 988-989.

⁹⁷⁹ Staniša Radošević, T. 996-997, 1001-1003, 1005-1006, 1082.

⁹⁸⁰ Staniša Radošević, T. 1005.

⁹⁸¹ Staniša Radošević, T. 1006.

⁹⁸² Staniša Radošević, T. 1006.

earth over the bodies.⁹⁸³ On 9 September 1998, Zoran Nikić and Vule Mirčić, 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”.⁹⁸⁴

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.⁹⁸⁵ 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.⁹⁸⁶ 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.⁹⁸⁷ 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.⁹⁸⁸ 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.⁹⁸⁹ The witness understood Sadikaj to be a member of the KLA.⁹⁹⁰

210. Quash Sadikaj, a Kosovar Albanian from the village of Dašinovac/Dasinoc in Dečani/Deçan municipality,⁹⁹¹ testified that all the Serbs in the village were armed in 1998.⁹⁹² He also testified that Miloš Radunović and Slobodan Radošević, two Serbs from the village, were members of the reserve police and possessed several weapons.⁹⁹³ Slobodan Radošević kept his in the bunkers that he had built at the front and back of his

⁹⁸³ Staniša Radošević, T. 998, 1006.

⁹⁸⁴ Staniša Radošević, T. 989-990.

⁹⁸⁵ Witness 60, T. 2244-2245, 2247, 2251; P38 (Map on which the witness marked the Serb houses in Dašinovac/Dasinoq).

⁹⁸⁶ Witness 60, T. 2232-2233, 2246-2247, 2277; P38 (Map on which the witness marked the Serb houses in Dašinovac/Dasinoq).

⁹⁸⁷ Witness 60, T. 2247.

⁹⁸⁸ Witness 60, T. 2247-2248, 2267-2268, 2275-2277; P38 (Map on which the witness marked the Serb houses in Dašinovac/Dasinoq).

⁹⁸⁹ Witness 60, T. 2246-2247.

⁹⁹⁰ Witness 60, T. 2248-2249, 2288.

⁹⁹¹ Quash Sadikaj, T. 2876.

⁹⁹² Quash Sadikaj, T. 2878-2879.

⁹⁹³ Quash Sadikaj, T. 2877-2878, 2907-2908.

house.⁹⁹⁴ 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.⁹⁹⁵ 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.⁹⁹⁶ The men were talking to Miloš Radunović in Albanian and Serbian.⁹⁹⁷ 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.⁹⁹⁸ 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.⁹⁹⁹ The witness described what he heard as an exchange of fire.¹⁰⁰⁰ The witness also heard artillery fire throughout the following night from the direction of Dečani/Deçan.¹⁰⁰¹ 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.¹⁰⁰² A few weeks later, the witness heard on television that the bodies were those of Slobodan Radošević and Miloš Radunović.¹⁰⁰³

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.¹⁰⁰⁴

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 1998.¹⁰⁰⁵ 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

⁹⁹⁴ Quash Sadikaj, T. 2908.

⁹⁹⁵ Quash Sadikaj, T. 2879-2881, 2909.

⁹⁹⁶ Quash Sadikaj, T. 2890, 2911.

⁹⁹⁷ Quash Sadikaj, T. 2890.

⁹⁹⁸ Quash Sadikaj, T. 2890-2891, 2911.

⁹⁹⁹ Quash Sadikaj, T. 2891-2892.

¹⁰⁰⁰ Quash Sadikaj, T. 2909-2912.

¹⁰⁰¹ Quash Sadikaj, T. 2904, 2912-2913.

¹⁰⁰² Quash Sadikaj, T. 2893-2895, 2897, 2904.

¹⁰⁰³ Quash Sadikaj, T. 2893, 2899-2901.

¹⁰⁰⁴ Miloica Vlahović, T. 1577-1578.

¹⁰⁰⁵ 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.¹⁰⁰⁶ Deli Lekaj was injured when they were shot at upon entering the house, and Slobodan was killed when the KLA soldiers shot back.¹⁰⁰⁷ 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.¹⁰⁰⁸ Slobodan and Miloš then went to Slobodan's house where Slobodan shot Deli Lekaj.¹⁰⁰⁹ As a result, the group apprehended Slobodan and Miloš and brought them to Glođane/Gllogjan.¹⁰¹⁰ When Toger heard that Slobodan had shot Lekaj in the leg he pulled out his pistol and shot Slobodan in the leg.¹⁰¹¹ Haradinaj then ordered the two men to be taken to Prilep/Prelep, in Dečani/Dečan municipality, where they could join the Serbian forces.¹⁰¹² 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.¹⁰¹³ Tetaj did not remember who he had heard the second version from and had no further information that could confirm it.¹⁰¹⁴

213. Ismet Kadrijaj testified that in April 1998 he accompanied Deli Lekaj to the village of Dašinovac/Dashinoc, in Dečani/Dečan municipality.¹⁰¹⁵ The witness was wearing civilian clothes and Deli Lekaj was wearing a KLA camouflage uniform; both men were armed with Kalashnikovs.¹⁰¹⁶ 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.¹⁰¹⁷ At this moment the witness heard gun-fire.¹⁰¹⁸ The witness saw that Deli Lekaj had been shot in the rear upper leg.¹⁰¹⁹ The witness did not see who had shot Deli Lekaj, nor

¹⁰⁰⁶ P265 (Rrustem Tetaj, witness statement, 17 April 2007), para. 31; Rrustem Tetaj, T. 3697-3698, 3767-3769.

¹⁰⁰⁷ P265 (Rrustem Tetaj, witness statement, 17 April 2007), para. 32; Rrustem Tetaj, T. 3697-3698, 3767, 3769.

¹⁰⁰⁸ Rrustem Tetaj, T. 3697-3699.

¹⁰⁰⁹ Rrustem Tetaj, T. 3697-3699, 3769.

¹⁰¹⁰ Rrustem Tetaj, T. 3697-3699.

¹⁰¹¹ Rrustem Tetaj, T. 3698-3699.

¹⁰¹² Rrustem Tetaj, T. 3698-3699.

¹⁰¹³ Rrustem Tetaj, T. 3698-3699.

¹⁰¹⁴ Rrustem Tetaj, T. 3699, 3767.

¹⁰¹⁵ P1233 (Ismet Kadrijaj, witness statement, 28 October 2004), paras 16, 18, Appendix to witness statement, 19 April 2007, para. 8.

¹⁰¹⁶ P1233 (Ismet Kadrijaj, witness statement, 28 October 2004), para. 17.

¹⁰¹⁷ P1233 (Ismet Kadrijaj, witness statement, 28 October 2004), para. 18, 19.

¹⁰¹⁸ P1233 (Ismet Kadrijaj, witness statement, 28 October 2004), para. 19.

¹⁰¹⁹ P1233 (Ismet Kadrijaj, witness statement, 28 October 2004), paras 19, 21.

from what direction the shot had come.¹⁰²⁰ The witness left immediately, driving Deli Lekaj to Požar/Pozhare, in Dečani/Deçan municipality, where Deli Lekaj received medical attention.¹⁰²¹

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.¹⁰²² Following this discovery, what the witness believed to be uniformed forensic technicians arrived at the site and conducted an on-site investigation.¹⁰²³ The witness had heard that Miloš Radunović and Slobodan Radošević were killed by the “terrorists”.¹⁰²⁴

215. According to information gathered by a human rights monitor for the HLC, Marijana Anđelković, 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.¹⁰²⁵ Slobodan Radošević, Milica and Miloš Radunović, and the Marković family remained.¹⁰²⁶ 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 Glodane/Gllogjan, in Dečani/Deçan municipality, where Staniša Radošević was physically abused by KLA members.¹⁰²⁷ They were released, but they were not allowed to continue to Dašinovac/Dashinoc.¹⁰²⁸

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.¹⁰²⁹

¹⁰²⁰ P1233 (Ismet Kadrijaj, witness statement, 28 October 2004), paras 19, 24.

¹⁰²¹ P1233 (Ismet Kadrijaj, witness statement, 28 October 2004), paras 20-22, 24.

¹⁰²² 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).

¹⁰²³ Zvonko Marković, T. 2331.

¹⁰²⁴ Zvonko Marković, T. 2329.

¹⁰²⁵ Marijana Anđelković, T. 598-599; P6 (Spotlight Report No. 27, 5 August 1998), part. 2.2.

¹⁰²⁶ Marijana Anđelković, 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.

¹⁰²⁷ Marijana Anđelković, T. 598-599; P6 (Spotlight Report No. 27, 5 August 1998), part. 2.2.

¹⁰²⁸ Marijana Anđelković, T. 599; P6 (Spotlight Report No. 27, 5 August 1998), part. 2.2.

¹⁰²⁹ 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 Dunjić¹⁰³⁰ 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.¹⁰³¹ Judge Gojković informed the witness that the MUP had found the remains somewhere in or near the village of Dašinovac/Dashinoc, in Dečani/Dečan municipality.¹⁰³² The investigators removed the remains from Dašinovac/Dashinoc, because the area was too dangerous for the forensic team to work.¹⁰³³ The team initially labelled the remains and some of the items from the bag D-1.¹⁰³⁴ The remains consisted of bone fragments belonging to at least three individuals, so the team labelled them D-1a, D-1b and D-1c.¹⁰³⁵ Later, the team relabelled them D-1, D-2 and D-3.¹⁰³⁶ ICMP DNA analysis concluded that the remains labelled D-1 are those of Miloš Radunović.¹⁰³⁷ 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.¹⁰³⁸ The cause of death was unascertained.¹⁰³⁹ ICMP DNA analysis also concluded that the remains labelled D-2 are those of Slobodan Radošević.¹⁰⁴⁰ An autopsy conducted on the remains on 8 December 2003 found a completely skeletonized part of the left parietal bone with a gunshot injury.¹⁰⁴¹ The autopsy concluded that the cause of death was a gunshot injury to the head.¹⁰⁴² Later ICMP–DNA analysis concluded that certain other human remains were also likely to belong to Slobodan Radošević.¹⁰⁴³ An autopsy conducted on those remains found a defect in the leg

¹⁰³⁰ P618 (Dušan Dunjić, witness statement, 8 June 2007), paras 2-3, 23, 40, 151; P620 (CV of Dušan Dunjić), p. 2.

¹⁰³¹ 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.

¹⁰³² 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.

¹⁰³³ P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 70.

¹⁰³⁴ P618 (Dušan Dunjić, witness statement, 8 June 2007), paras 64, 66, 685-686.

¹⁰³⁵ P618 (Dušan Dunjić, witness statement, 8 June 2007), paras 68, 686, 688; P817 (Autopsy report Dašinovac/Dashinoc remains), pp. 3-4.

¹⁰³⁶ P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 69.

¹⁰³⁷ Agreed Facts, 26 November 2007, No. 113.

¹⁰³⁸ Agreed Facts, 26 November 2007, Nos 115-116.

¹⁰³⁹ Agreed Facts, 26 November 2007, No. 116.

¹⁰⁴⁰ Agreed Facts, 26 November 2007, No. 117.

¹⁰⁴¹ Agreed Facts, 26 November 2007, Nos 118-119.

¹⁰⁴² Agreed Facts, 26 November 2007, No. 120.

¹⁰⁴³ Agreed Facts, 26 November 2007, No. 121.

consistent with a gunshot wound.¹⁰⁴⁴ Though not immediately fatal, if left untreated the victim could have died from blood loss and other complications.¹⁰⁴⁵

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 Glođane/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. Rustem 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 Rustem 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

¹⁰⁴⁴ Agreed Facts, 26 November 2007, No. 123.

¹⁰⁴⁵ 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/Dečan 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.¹⁰⁴⁶ 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.¹⁰⁴⁷ Certain men wearing "black KLA clothes", some of whom Witness 19 identified by name, began to come to his house.¹⁰⁴⁸ 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.¹⁰⁴⁹ The men asked Witness 19's family about his ties with Slobodan Praščević.¹⁰⁵⁰ They also asked for weapons but the family did not possess any.¹⁰⁵¹ After the first two or three visits, the men began to search the house, mostly at night, which frightened Witness 19.¹⁰⁵² They wore masks, introduced themselves as a special unit of the night, and said that they were looking for weapons.¹⁰⁵³

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.¹⁰⁵⁴ Witness 19's mother told him that they included a man who wore his mask "on his head", and

¹⁰⁴⁶ Witness 19, T. 1137, 1139-1145; P22 (Criminal report by the police station in Đakovica/Gjakovë, 4 March 1998).

¹⁰⁴⁷ Witness 19, T. 1146-1149, 1166, 1291; P9 (KLA insignia); P22 (Criminal report by the police station in Đakovica/Gjakovë, 4 March 1998).

¹⁰⁴⁸ Witness 19, T. 1149-1150, 1291.

¹⁰⁴⁹ Witness 19, T. 1151.

¹⁰⁵⁰ Witness 19, T. 1151.

¹⁰⁵¹ Witness 19, T. 1151-1152.

¹⁰⁵² Witness 19, T. 1152-1154.

¹⁰⁵³ Witness 19, T. 1154.

¹⁰⁵⁴ Witness 19, T. 1137, 1156-1157, 1163.

presented himself as “Toger”.¹⁰⁵⁵ 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.¹⁰⁵⁶ About a week later, Witness 19 saw the man named “Toger” for the first time.¹⁰⁵⁷ The witness’s mother told Witness 19 that the real name of “Toger” was “Idriz Balaj”.¹⁰⁵⁸ “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.¹⁰⁵⁹ They brought sister “S” home for a visit that lasted approximately 20-30 minutes.¹⁰⁶⁰ Sister “S” wore the same black uniform and KLA insignia as the men who brought her.¹⁰⁶¹ During the full time of the visit, Witness 19 saw “Toger”, who was not wearing a mask, and heard him speak and introduce himself.¹⁰⁶² During the entire visit, sister “S” was accompanied by “Toger”, which prevented the family from speaking freely with sister “S”.¹⁰⁶³ 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.¹⁰⁶⁴ Sister “S” left accompanied by the same men and in the same vehicle in which she had arrived.¹⁰⁶⁵ 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.¹⁰⁶⁶ 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.¹⁰⁶⁷ Sister “S” said that the man named “Toger” had instructed her to return to the base by a certain time.¹⁰⁶⁸ Sister “S” was not armed but wore a black uniform with KLA insignia, and a pair of thumb cuffs hanging from her belt.¹⁰⁶⁹ She said that she was a member of the KLA and that she took orders from “Toger”.¹⁰⁷⁰ Witness 19 was not aware that sister “S” or any other family members had ever wanted to join the KLA.¹⁰⁷¹ After the visit, Witness 4 walked with

¹⁰⁵⁵ Witness 19, T. 1157, 1159-1160.

¹⁰⁵⁶ Witness 19, T. 1156-1157, 1163.

¹⁰⁵⁷ Witness 19, T. 1159, 1163.

¹⁰⁵⁸ Witness 19, T. 1159-1160.

¹⁰⁵⁹ Witness 19, T. 1158-1159, 1164, 1313.

¹⁰⁶⁰ Witness 19, T. 1158-1159, 1163-1164, 1313, 1324.

¹⁰⁶¹ Witness 19, T. 1166.

¹⁰⁶² Witness 19, T. 1164-1165.

¹⁰⁶³ Witness 19, T. 1165.

¹⁰⁶⁴ Witness 19, T. 1166-1167, 1169-1171.

¹⁰⁶⁵ Witness 19, T. 1167.

¹⁰⁶⁶ Witness 19, T. 1167-1168, 1172, 1312, 1315-1320.

¹⁰⁶⁷ Witness 19, T. 1169, 1315.

¹⁰⁶⁸ Witness 19, T. 1176-1178.

¹⁰⁶⁹ Witness 19, T. 1172.

¹⁰⁷⁰ Witness 19, T. 1173.

¹⁰⁷¹ Witness 19, T. 1174.

sister “S” on her way back to the base in the village of Rznić/Irznik.¹⁰⁷² 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”.¹⁰⁷³ These family members answered that sister “S” was being escorted back to the base by Witness 4.¹⁰⁷⁴ The soldiers then quickly drove away.¹⁰⁷⁵ According to Witness 19, no one in the family ever saw sister “S” again.¹⁰⁷⁶

225. After the second visit of sister “S”, approximately one month passed without further visits by soldiers to the family home of Witness 19.¹⁰⁷⁷ Then the visits resumed gradually, reaching a frequency of approximately one to four times per week.¹⁰⁷⁸ The visits were carried out by masked and armed individuals, almost always wearing black uniforms with KLA insignia.¹⁰⁷⁹ Among them, Witness 19 occasionally recognized the man named “Toger” when he rolled his mask up over his face.¹⁰⁸⁰ 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.¹⁰⁸¹ Witness 19 was behind his mother, who answered the door.¹⁰⁸² The men told her that they had been ordered to take her with them because she had to give a statement and sign something.¹⁰⁸³ The witness’s mother left with the men after which Witness 19 and his family never saw her again.¹⁰⁸⁴ 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.¹⁰⁸⁵ They told the sleeping family members to get up and then put them against a wall.¹⁰⁸⁶ Among these men, and by the light of a flashlight, Witness 19 saw and recognized the face of “Toger” when he

¹⁰⁷² Witness 19, T. 1175-1177, 1315, 1320.

¹⁰⁷³ Witness 19, T. 1178-1179, 1315, 1317, 1320-1323.

¹⁰⁷⁴ Witness 19, T. 1178-1179, 1317.

¹⁰⁷⁵ Witness 19, T. 1178-1179, 1317.

¹⁰⁷⁶ Witness 19, T. 1180.

¹⁰⁷⁷ Witness 19, T. 1182, 1184-1185.

¹⁰⁷⁸ Witness 19, T. 1182, 1185.

¹⁰⁷⁹ Witness 19, T. 1182, 1186-1187.

¹⁰⁸⁰ Witness 19, T. 1182-1183, 1186-1188.

¹⁰⁸¹ Witness 19, T. 1189-1192.

¹⁰⁸² Witness 19, T. 1191.

¹⁰⁸³ Witness 19, T. 1191.

¹⁰⁸⁴ Witness 19, T. 1189, 1192.

¹⁰⁸⁵ Witness 19, T. 1201-1202, 1208.

¹⁰⁸⁶ Witness 19, T. 1202.

raised his mask.¹⁰⁸⁷ In particular, Witness 19 noticed a scar on his upper lip.¹⁰⁸⁸ The scar was a bit longer than one centimetre and between half a centimetre and one centimetre in width.¹⁰⁸⁹ The visit lasted approximately 15-20 minutes.¹⁰⁹⁰ 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.¹⁰⁹¹ 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.¹⁰⁹² Witness 19 saw a wound behind one of her ears and holes in, and blood on, her jacket.¹⁰⁹³ 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.¹⁰⁹⁴

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.¹⁰⁹⁵ However, Witness 19 testified that this had happened, at the beginning of an interview conducted in July 2004 in an office in Priština/Prishtinë.¹⁰⁹⁶ One investigator and one interpreter were present.¹⁰⁹⁷ The photo board contained approximately ten small photographs, from the shoulders and above, lined up on one piece of paper.¹⁰⁹⁸ Witness 19 recognized in a photograph one person whom he identified as "Toger" and pointed this out to the investigator.¹⁰⁹⁹ 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.¹¹⁰⁰

227. Witness 4 testified that sometime in the beginning of 1998 he and his mother were in a private car together with Slobodan Prašćević, a Serbian police officer and a friend of the family.¹¹⁰¹ Approximately one hundred metres from the home of Witness

¹⁰⁸⁷ Witness 19, T. 1213-1214, 1328.

¹⁰⁸⁸ Witness 19, T. 1214, 1328.

¹⁰⁸⁹ Witness 19, T. 1328-1330.

¹⁰⁹⁰ Witness 19, T. 1328.

¹⁰⁹¹ Witness 19, T. 1137, 1215.

¹⁰⁹² Witness 19, T. 1217.

¹⁰⁹³ Witness 19, T. 1217-1218, 1332-1335.

¹⁰⁹⁴ Witness 19, T. 1219, 1348-1349.

¹⁰⁹⁵ Witness 19, T. 1226, 1230-1231, 1236, 1238-1239.

¹⁰⁹⁶ Witness 19, T. 1229-1230, 1235.

¹⁰⁹⁷ Witness 19, T. 1245-1246.

¹⁰⁹⁸ Witness 19, T. 1234-1236.

¹⁰⁹⁹ Witness 19, T. 1229-1230, 1234-1236.

¹¹⁰⁰ Witness 19, T. 1236-1237.

¹¹⁰¹ Witness 4, T. 1409-1410, 1415.

4, two men in masks and black clothes opened fire at the vehicle.¹¹⁰² The men were approximately seven to ten metres from the car.¹¹⁰³ The car went off the road and when it stopped the witness managed to escape.¹¹⁰⁴ 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.¹¹⁰⁵ According to a contemporary police report this incident took place on 2 March 1998.¹¹⁰⁶ 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 4.¹¹⁰⁷ The men, who were speaking Albanian, wore either civilian or military clothes and wore masks or had painted faces.¹¹⁰⁸ 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.¹¹⁰⁹ One or two weeks later, at approximately 10:00 p.m., some men came to the house.¹¹¹⁰ One man standing guard outside the room where the witness had been sleeping wore army clothes and a mask and was armed.¹¹¹¹ The witness heard one of the men repeat the name “Toger” over and over again.¹¹¹² His mother told him the next day that one of the men had presented himself as Toger.¹¹¹³ 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.¹¹¹⁴ The witness did not personally identify Toger.¹¹¹⁵ Four days later, sister “S” came back to the house, in the company of Toger.¹¹¹⁶ Both Toger and the sister were wearing black military clothes and the sister had KLA insignia on her arm.¹¹¹⁷ 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/Irznik where, according to the sister, the KLA was staying.¹¹¹⁸ After this first visit to the family, which lasted 30 to 40 minutes, the witness saw that the sister left

¹¹⁰² Witness 4, T. 1411-1412, 1415-1416, 1418, 1420.

¹¹⁰³ Witness 4, T. 1416.

¹¹⁰⁴ Witness 4, T. 1417-1419; P24 (Photographs of a crashed car).

¹¹⁰⁵ Witness 4, T. 1419-1421.

¹¹⁰⁶ P22 (Criminal report by the police station in Đakovica/Gjakovë, 4 March 1998).

¹¹⁰⁷ Witness 4, T. 1422.

¹¹⁰⁸ Witness 4, T. 1422-1424.

¹¹⁰⁹ Witness 4, T. 1424-1426.

¹¹¹⁰ Witness 4, T. 1427-1428.

¹¹¹¹ Witness 4, T. 1429-1430, 1501.

¹¹¹² Witness 4, T. 1429-1430, 1501.

¹¹¹³ Witness 4, T. 1431.

¹¹¹⁴ Witness 4, T. 1430-1432.

¹¹¹⁵ Witness 4, T. 1503.

¹¹¹⁶ Witness 4, T. 1432-1433, 1504.

¹¹¹⁷ Witness 4, T. 1433-1436; P9 (KLA insignia).

¹¹¹⁸ Witness 4, T. 1435, 1437-1439.

with Toger in his Niva car.¹¹¹⁹ Approximately one or two weeks later, Toger brought sister “S” back to the family home and then he drove away again.¹¹²⁰ The sister told the family that there was a prison, run by the KLA in the village of Rznić/Irznj, where she had seen prisoners.¹¹²¹ 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.¹¹²² When sister “S” left, Witness 4 accompanied her for around 25 minutes, part of the way towards Rznić/Irznj and approximately 10-15 minutes after he returned home, Toger and one other person arrived in a car.¹¹²³ Toger asked the witness why his sister was late and the witness responded that the sister had already left.¹¹²⁴ It was around 4:00 p.m. and the witness could clearly see Toger’s face as they spoke.¹¹²⁵ The witness never saw sister “S” again after this second visit.¹¹²⁶

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.¹¹²⁷ About a week later, Toger and three or four other persons came to the witness’s house.¹¹²⁸ Toger was dressed in black clothes with KLA insignia and was not wearing a mask.¹¹²⁹ Toger asked the witness’s mother about the whereabouts of the witness’s brother who at the time was in prison.¹¹³⁰ The men then took the mother away and the witness has not seen her since.¹¹³¹ One night (the witness did not specify the date), Toger and some other soldiers, including Xhevat Islami, came to the witness’s home and broke down the door.¹¹³² Toger was wearing black clothes and Xhevat Islami was wearing camouflage military clothes of a kind that, according to the witness, the KLA wore.¹¹³³ Both were armed and Islami was wearing a mask.¹¹³⁴

¹¹¹⁹ Witness 4, T. 1439-1440, 1504.

¹¹²⁰ Witness 4, T. 1440-1441, 1505.

¹¹²¹ Witness 4, T. 1441.

¹¹²² Witness 4, T. 1442.

¹¹²³ Witness 4, T. 1442-1443, 1506-1507.

¹¹²⁴ Witness 4, T. 1443-1440, 1507.

¹¹²⁵ Witness 4, T. 1443-1444.

¹¹²⁶ Witness 4, T. 1444.

¹¹²⁷ Witness 4, T. 1445, 1452-1453, 1498, 1508, 1516.

¹¹²⁸ Witness 4, T. 1453.

¹¹²⁹ Witness 4, T. 1453-1454.

¹¹³⁰ Witness 4, T. 1454.

¹¹³¹ Witness 4, T. 1455.

¹¹³² Witness 4, T. 1463-1464.

¹¹³³ 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.¹¹³⁵ According to the witness, Toger appeared to be in charge.¹¹³⁶ 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.¹¹³⁷ The witness never saw sister "M" alive again.¹¹³⁸ 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.¹¹³⁹ 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.¹¹⁴⁰ 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.¹¹⁴¹ The jacket was bullet ridden and full of knife cuts.¹¹⁴² The witness observed knife cuts on the arm and on the throat of sister "M" and a bullet hole in her earlobe.¹¹⁴³ There was blood around the injuries.¹¹⁴⁴ The witness and the man from Bardonić/Bardhaniq carried the sister's body to a cart and brought her home for burial.¹¹⁴⁵ Soon thereafter, the witness and the remaining members of his family left their home out of fear.¹¹⁴⁶

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.¹¹⁴⁷ During an interview with the Office of the Prosecutor in Priština/Prishtinë in 2004, Witness 4 was shown a photo board.¹¹⁴⁸ Witness 4 recognized the Accused Idriz Balaj, drew a circle around his picture and signed his name beneath it.¹¹⁴⁹ Witness 19 and Witness 4 gave their statements and were shown

¹¹³⁴ Witness 4, T. 1465-1466.

¹¹³⁵ Witness 4, T. 1466, 1531.

¹¹³⁶ Witness 4, T. 1533-1534.

¹¹³⁷ Witness 4, T. 1467.

¹¹³⁸ Witness 4, T. 1468.

¹¹³⁹ Witness 4, T. 1468-1469.

¹¹⁴⁰ Witness 4, T. 1469-1470, 1472-1473; P25 (Photograph of the location where the body of Witness 4's sister was found).

¹¹⁴¹ Witness 4, T. 1473-1475.

¹¹⁴² Witness 4, T. 1474.

¹¹⁴³ Witness 4, T. 1473.

¹¹⁴⁴ Witness 4, T. 1475-1476.

¹¹⁴⁵ Witness 4, T. 1475-1476.

¹¹⁴⁶ Witness 4, T. 1479.

¹¹⁴⁷ Witness 4, T. 1518-1520.

¹¹⁴⁸ Witness 4, T. 1479.

¹¹⁴⁹ Witness 4, T. 1481-1482, 1487; P27 (Photograph identification board shown to Witness 4 during his interview).

the photo boards separately.¹¹⁵⁰ 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.¹¹⁵¹

230. José Antonio Lorenzo Quiroz, a former investigator for the ICTY,¹¹⁵² testified that he showed a photo board to Witness 4 during an interview in October 2004.¹¹⁵³ 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.¹¹⁵⁴ He also interviewed Witness 19 in October 2004 although on a different date than Witness 4.¹¹⁵⁵ The two were always separated during their interviews and when they were shown the photo boards.¹¹⁵⁶ 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.¹¹⁵⁷ He explained that this was an oversight on his part.¹¹⁵⁸ He did not remember whether Witness 19 identified anybody or not.¹¹⁵⁹ Witness 19 informed Lorenzo Quiroz that he had seen Idriz Balaj in the news which reported that he had been found guilty of crimes.¹¹⁶⁰

231. Maklen Misha, a language clerk at the Tribunal, served as an interpreter during interviews of Witnesses 4 and 19 conducted by Tribunal investigators.¹¹⁶¹ He stated that they had sometimes come to the interviews together.¹¹⁶² He also testified that an investigator of the Tribunal had shown photo boards to each witness separately.¹¹⁶³ However, Misha repeatedly noted that he was not sure of his memory in this regard.¹¹⁶⁴ He stated that he did not recall the reaction of either one of the witnesses to the photo boards.¹¹⁶⁵ 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 19.¹¹⁶⁶ He stated that he did not

¹¹⁵⁰ Witness 4, T. 1481, 1488-1490.

¹¹⁵¹ Witness 4, T. 1491.

¹¹⁵² José Antonio Lorenzo Quiroz, T. 5862.

¹¹⁵³ José Antonio Lorenzo Quiroz, T. 5873-5874, 5919-5920.

¹¹⁵⁴ José Antonio Lorenzo Quiroz, T. 5927.

¹¹⁵⁵ José Antonio Lorenzo Quiroz, T. 5875, 5917-5920.

¹¹⁵⁶ José Antonio Lorenzo Quiroz, T. 5882-5883.

¹¹⁵⁷ José Antonio Lorenzo Quiroz, T. 5877-5879, 5912, 5915-5917, 5920.

¹¹⁵⁸ José Antonio Lorenzo Quiroz, T. 5878.

¹¹⁵⁹ José Antonio Lorenzo Quiroz, T. 5879, 5920.

¹¹⁶⁰ José Antonio Lorenzo Quiroz, T. 5928-5929.

¹¹⁶¹ Maklen Misha, T. 1250-1251.

¹¹⁶² Maklen Misha, T. 1251.

¹¹⁶³ Maklen Misha, T. 1252.

¹¹⁶⁴ Maklen Misha, T. 1253-1254, 1256.

¹¹⁶⁵ Maklen Misha, T. 1256-1257.

¹¹⁶⁶ 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.¹¹⁶⁷ Misha testified that usually when an investigator shows a photo board to a witness, it is documented in the witness statement.¹¹⁶⁸

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.¹¹⁶⁹ The body was in a foetal position with a pool of blood underneath her head.¹¹⁷⁰ 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.¹¹⁷¹ 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.¹¹⁷² They all returned to the body and the relative identified it and transported it away.¹¹⁷³

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/Irznjqi police department.¹¹⁷⁴ 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.¹¹⁷⁵ Witness 4 and his mother, who was seriously injured and hospitalized following the incident, were also in the vehicle.¹¹⁷⁶ 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.¹¹⁷⁷ According to Stijović, this incident

¹¹⁶⁷ Maklen Misha, T. 1255.

¹¹⁶⁸ Maklen Misha, T. 1255.

¹¹⁶⁹ P339 (Witness 63, witness statement, 26 April 2006), paras 4, 5.

¹¹⁷⁰ P339 (Witness 63, witness statement, 26 April 2006), para. 5.

¹¹⁷¹ P339 (Witness 63, witness statement, 26 April 2006), paras 6, 7.

¹¹⁷² P339 (Witness 63, witness statement, 26 April 2006), para. 7.

¹¹⁷³ P339 (Witness 63, witness statement, 26 April 2006), para. 8.

¹¹⁷⁴ P967 (RDB official note, 3 March 1998).

¹¹⁷⁵ P967 (RDB official note, 3 March 1998).

¹¹⁷⁶ P967 (RDB official note, 3 March 1998).

¹¹⁷⁷ Zoran Stijović, T. 9062-9064.

was not connected with the KLA although the KLA later tried to portray it as its own doing¹¹⁷⁸

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 Aleksandrić¹¹⁷⁹ testified that bodies R-11 and R-12 were recovered on 12 September 1998.¹¹⁸⁰ The bodies were found with their heads next to each other.¹¹⁸¹ 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.¹¹⁸² It could not be determined to which body the barbed wire belonged or whether it had been wrapped around a body part.¹¹⁸³ However, since the wire was found closer to body R-12, it was packed in the body bag of R-12.¹¹⁸⁴ 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.¹¹⁸⁵ Dušan Dunjić¹¹⁸⁶ testified that a 313 centimetre long piece of barbed wire was found next to the body, with one end fashioned into a noose.¹¹⁸⁷ Dark hairs similar in quality, colour and length to those found alongside the skull of the body were found on the barbed wire.¹¹⁸⁸ This similarity was established by macroscopic examination.¹¹⁸⁹ 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.¹¹⁹⁰ ICMP DNA analysis identified the

¹¹⁷⁸ Zoran Stijović, T. 9062-9064.

¹¹⁷⁹ 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).

¹¹⁸⁰ P1260 (Branimir Aleksandrić, witness statement, 26 June 2007), paras 128-129, 203-204.

¹¹⁸¹ P1260 (Branimir Aleksandrić, witness statement, 26 June 2007), para. 72; Branimir Aleksandrić, T. 6759-6761; P414 (Various photographs), p. 4.

¹¹⁸² 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.

¹¹⁸³ P1260 (Branimir Aleksandrić, witness statement, 26 June 2007), para. 81; Branimir Aleksandrić, T. 6761-6762.

¹¹⁸⁴ Branimir Aleksandrić, T. 6761, 6764-6765, 6787-6788; P686 (Autopsy photographs R-12), p. 2, middle photograph.

¹¹⁸⁵ P1260 (Branimir Aleksandrić, witness statement, 26 June 2007), paras 72, 82; P686 (Autopsy photographs R-12), p. 5.

¹¹⁸⁶ P618 (Dušan Dunjić, witness statement, 8 June 2007), paras 2-3, 23, 40, 151; P620 (CV of Dušan Dunjić), p. 2.

¹¹⁸⁷ 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.

¹¹⁸⁸ Dušan Dunjić, T. 6833-6835, 7274-7275; P630 (Record of exhumations, 16 September 1998), p. 2; P684 (Autopsy report R-12), p. 3.

¹¹⁸⁹ Dušan Dunjić, T. 6835, 7274-7275, 7353-7355.

¹¹⁹⁰ Dušan Dunjić, T. 6833-6834.

remains labelled R-12 as those of sister “S” of witness 4.¹¹⁹¹ 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.¹¹⁹² The cause of death was determined as gunshot injuries to the chest and/or gunshot injuries to the lower abdomen.¹¹⁹³ Dušan Dunjić¹¹⁹⁴ testified that body R-12 was wearing dark blue jeans and a T-shirt.¹¹⁹⁵ 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.¹¹⁹⁶ The fractures were consistent with having been caused by violent physical blows with a blunt object.¹¹⁹⁷ According to Dunjić, there was no indication that these fractures were caused by bullets.¹¹⁹⁸

235. ICMP DNA analysis identified the remains labelled R-11 as those of the mother of Witness 4.¹¹⁹⁹ An autopsy conducted on the remains on 8 December 2003 which had sustained multiple fractures consistent with multiple gunshot injuries to the pelvis area.¹²⁰⁰ In addition, the autopsy revealed fractures to the left shoulder blade, arms and the left forearm, also consistent with multiple gunshot wounds.¹²⁰¹ The cause of death was determined to be a gunshot wound to the pelvis.¹²⁰² Dušan Dunjić testified that body R-11 was wearing a dark blue dress.¹²⁰³ 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.¹²⁰⁴ The autopsy revealed multiple fractures in both arms and the lower left leg.¹²⁰⁵

¹¹⁹¹ Agreed Facts, 26 November 2007, No. 66.

¹¹⁹² Agreed Facts, 26 November 2007, Nos 67-68.

¹¹⁹³ Agreed Facts, 26 November 2007, No. 69.

¹¹⁹⁴ P618 (Dušan Dunjić, witness statement, 8 June 2007), paras 2-3, 23, 40, 151; P620 (CV of Dušan Dunjić), p. 2.

¹¹⁹⁵ P684 (Autopsy report R-12), p. 2.

¹¹⁹⁶ P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 339; P684 (Autopsy report R-12), p. 6.

¹¹⁹⁷ P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 338.

¹¹⁹⁸ P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 338.

¹¹⁹⁹ Agreed Facts, 26 November 2007, No. 63.

¹²⁰⁰ Agreed Facts, 26 November 2007, No. 64.

¹²⁰¹ Agreed Facts, 26 November 2007, No. 64.

¹²⁰² Agreed Facts, 26 November 2007, No. 65.

¹²⁰³ P680 (Autopsy report R-11), p. 2.

¹²⁰⁴ P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 328; P680 (Autopsy report R-11), p. 6.

¹²⁰⁵ 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 4.¹²⁰⁶ 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.¹²⁰⁷ Fractures to the right arm and the spine, consistent with gunshot wounds, were also found.¹²⁰⁸ The report concluded that death was caused by multiple gunshot wounds.¹²⁰⁹

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

¹²⁰⁶ Agreed Facts, 26 November 2007, No. 124.

¹²⁰⁷ Agreed Facts, 26 November 2007, Nos 125-126.

¹²⁰⁸ Agreed Facts, 26 November 2007, No. 126.

¹²⁰⁹ 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.¹²¹⁰ 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.¹²¹¹ 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

¹²¹⁰ 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 1998.¹²¹² Radovan Zlatković stated that he did not know how Vendim Hoxha gained this information.¹²¹³

245. The Trial Chamber has also received forensic medical evidence with regard to Hajrullah Gashi and Isuf Hoxha. Branimir Aleksandrić¹²¹⁴ testified that the remains labelled “R-22” and “R-23” were recovered on 12 September 1998.¹²¹⁵ 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.¹²¹⁶ Dušan Dunjić¹²¹⁷ testified that body R-22 was a male between 40 and 55 years old and between 166 and 175 centimetres tall.¹²¹⁸ The autopsy further revealed fractures on the skull and forearm bones.¹²¹⁹ It is possible, though very unlikely, that these fractures were caused by a fall into the canal.¹²²⁰ The autopsy revealed wounds that were probably caused by blows from a blunt object.¹²²¹ 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.¹²²² 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.¹²²³ Body R-23 was a male between 50 and 60 years old and between 163 and 170 centimetres tall.¹²²⁴ The autopsy revealed fractures on the ribs, the left hip bone and bones of the lower limbs.¹²²⁵ Bones of the head, neck, trunk and upper limbs were

¹²¹¹ P1181 (Report of the Đakovica/Gjakovë MUP Crime Police Department), p. 60.

¹²¹² Radovan Zlatković, T. 6882, 6898.

¹²¹³ Radovan Zlatković, T. 6898.

¹²¹⁴ 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).

¹²¹⁵ P1260 (Branimir Aleksandrić, witness statement, 26 June 2007), paras 128-129, 203-204.

¹²¹⁶ 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.

¹²¹⁷ P618 (Dušan Dunjić, witness statement, 8 June 2007), paras 2-3, 23, 40, 151; P620 (CV of Dušan Dunjić), p. 2.

¹²¹⁸ P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 473; P730 (Autopsy report R-22), p. 4.

¹²¹⁹ P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 475; P730 (Autopsy report R-22), pp. 1-2, 4.

¹²²⁰ P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 476.

¹²²¹ P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 477.

¹²²² P618 (Dušan Dunjić, witness statement, 8 June 2007), paras 125, 478-483; P730 (Autopsy report R-22), pp. 2, 5.

¹²²³ P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 125; P730 (Autopsy report R-22), p. 5.

¹²²⁴ P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 490; P734 (Autopsy report R-23), p. 4.

¹²²⁵ P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 492; P734 (Autopsy report R-23), pp. 2, 4.

missing.¹²²⁶ Vendim Hoxha identified the body as Isuf Hoxha, based on clothes, personal effects, including a black digital watch, and physical characteristics.¹²²⁷ 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.¹²²⁸ Vendim Hoxha told the forensic team that Isuf Hoxha had disappeared three months ago.¹²²⁹ Both sets of remains were handed to the relatives and certificates of death were issued.¹²³⁰

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

¹²²⁶ P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 492; P734 (Autopsy report R-23), p. 4.

¹²²⁷ P618 (Dušan Dunjić, witness statement, 8 June 2007), paras 494-498; P734 (Autopsy report R-23), pp. 2, 4-5; Dušan Dunjić, T. 7210.

¹²²⁸ P734 (Autopsy report R-23), pp. 2, 4; P737 (Identification questionnaire R-23), p. 10.

¹²²⁹ P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 494.

identification of other sets of remains which was later contradicted by DNA analysis,¹²³¹ 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 1998.¹²³² According to a report by the Kosovo Diplomatic Monitoring Mission, the couple went missing on the 26 August 1998.¹²³³ The witness was told by Tush Frrokaj's mother that the couple had

¹²³⁰ 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.

¹²³¹ See section 6.1, above.

¹²³² 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).

¹²³³ 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.¹²³⁴ According to Witness 21, the main road from Đakovica/Gjakovë to Peć/Pejë, through Dečani/Dečan, was under Serbian control and it was therefore considered safer to travel to Nepolje/Nepolë through the area controlled by the KLA.¹²³⁵

250. Late in the night of the same day, Witness 21 was informed by Tush Frrokaj's mother that the couple had not returned.¹²³⁶ The next day the family reported their disappearance to the local police in Đakovica/Gjakovë.¹²³⁷ Witness 21 heard from Tush Frrokaj's brother-in-law that Ilira and Tush Frrokaj had never arrived in Nepolje/Nepolë.¹²³⁸ 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.¹²³⁹ 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.¹²⁴⁰ Witness 21 did not know Idriz Balaj, whom he referred to as "Toger", before Ilira and Tush Frrokaj's disappearance.¹²⁴¹ 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.¹²⁴² 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.¹²⁴³

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/Gramaqel.¹²⁴⁴ Five soldiers wearing KLA uniforms were on duty.¹²⁴⁵

¹²³⁴ P42 (Witness 21, witness statement, 12 April 2007), paras 9-11; Witness 21, T. 2849.

¹²³⁵ P42 (Witness 21, witness statement, 12 April 2007), paras 12-13; Witness 21, T. 2785-2786.

¹²³⁶ P42 (Witness 21, witness statement, 12 April 2007), para. 14.

¹²³⁷ P42 (Witness 21, witness statement, 12 April 2007), para. 17; Witness 21, T. 2740-2741, 2850.

¹²³⁸ P42 (Witness 21, witness statement, 12 April 2007), para. 16.

¹²³⁹ 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).

¹²⁴⁰ 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.

¹²⁴¹ P42 (Witness 21, witness statement, 12 April 2007), para. 32; Witness 21, T. 2720-2722.

¹²⁴² P42 (Witness 21, witness statement, 12 April 2007), para. 32; Witness 21, T. 2719-2720, 2853.

¹²⁴³ 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).

¹²⁴⁴ 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.¹²⁴⁶ Two of them told the witness that they had been on duty when Ilira and Tush Frrokaj passed their checkpoint.¹²⁴⁷ They informed the witness that when Tush Frrokaj was stopped, two of the three women in the car got out at the checkpoint.¹²⁴⁸ 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.¹²⁴⁹ 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 Nepolje/Nepolë, which they allowed him to do.¹²⁵⁰

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.¹²⁵¹ Witness 21 learned from the guards at the checkpoint outside Glođane/Gllogjan on the road leading to Rznic/Irznjic that the car had never passed their checkpoint.¹²⁵² Witness 21 did not check whether there was a KLA checkpoint on the road leading to Šaptelj/Shaptej.¹²⁵³

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/Radonjic canal.¹²⁵⁴ Witness 21 and the KLA soldier first went to the KLA headquarters in Glođane/Gllogjan without an appointment.¹²⁵⁵ The witness went inside the compound alone.¹²⁵⁶ Witness 21 asked a KLA soldier for a meeting with Ramush Haradinaj.¹²⁵⁷

¹²⁴⁵ P42 (Witness 21, witness statement, 12 April 2007), paras 35-37; P42 (Witness 21, witness statement, 12 April 2007), Annex H (KLA insignia).

¹²⁴⁶ P42 (Witness 21, witness statement, 12 April 2007), paras 36, 42; Witness 21, T. 2786-2787.

¹²⁴⁷ P42 (Witness 21, witness statement, 12 April 2007), para. 39; Witness 21, T. 2787.

¹²⁴⁸ P42 (Witness 21, witness statement, 12 April 2007), para. 40; Witness 21, T. 2787.

¹²⁴⁹ P42 (Witness 21, witness statement, 12 April 2007), para. 40; Witness 21, T. 2724, 2763-2766, 2773-2775, 2787-2789.

¹²⁵⁰ P42 (Witness 21, witness statement, 12 April 2007), para. 40.

¹²⁵¹ 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 Glođane/Gllogjan village).

¹²⁵² P42 (Witness 21, witness statement, 12 April 2007), para. 47; Witness 21, T. 2761.

¹²⁵³ Witness 21, T. 2777-2780; D35 (Aerial photograph of Glođane/Gllogjan village).

¹²⁵⁴ P42 (Witness 21, witness statement, 12 April 2007), para. 49; Witness 21, T. 2742-2744, 2790.

¹²⁵⁵ P42 (Witness 21, witness statement, 12 April 2007), para. 51; Witness 21, T. 2742-2743.

¹²⁵⁶ P42 (Witness 21, witness statement, 12 April 2007), para. 52.

¹²⁵⁷ 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.¹²⁵⁸ 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.¹²⁵⁹ 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.¹²⁶⁰ Witness 21 used this document to travel within KLA territory.¹²⁶¹ 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.¹²⁶² 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.¹²⁶³

254. On or about the sixth day after the disappearance, Witness 21 returned with the same soldier to the KLA headquarters in Glođane/Gllogjan in order to meet with Shkëlzen Haradinaj for a second time.¹²⁶⁴ 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.¹²⁶⁵ Shkëlzen Haradinaj sent for Idriz Balaj, but Idriz Balaj let them know that he was busy.¹²⁶⁶ After the meeting, they decided to return to the Radonjić/Radoniq canal, together with another KLA soldier who the witness had met before.¹²⁶⁷ 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.¹²⁶⁸ At the canal, these three KLA soldiers remained on a hill to keep guard.¹²⁶⁹ Together with the other two soldiers, Witness 21 went down to the two bodies in the canal he had previously seen.¹²⁷⁰ The witness continued with one of the soldiers and saw more than 30 bodies in the area, but

¹²⁵⁸ P42 (Witness 21, witness statement, 12 April 2007), para. 53; Witness 21, T. 2780-2781.

¹²⁵⁹ P42 (Witness 21, witness statement, 12 April 2007), para. 53; Witness 21, T. 2783-2784.

¹²⁶⁰ P42 (Witness 21, witness statement, 12 April 2007), para. 53; Witness 21, T. 2642, 2747, 2783-2784.

¹²⁶¹ Witness 21, T. 2641.

¹²⁶² P42 (Witness 21, witness statement, 12 April 2007), paras 54, 57; Witness 21, T. 2616, 2625, 2627, 2745-2646, 2818.

¹²⁶³ Witness 21, T. 2629, 2637, 2744, 2718-2719, 2855.

¹²⁶⁴ Witness 21, T. 2641-2642, 2747.

¹²⁶⁵ Witness 21, T. 2643, 2747, 2720-2722, 2747, 2784-2785, 2853-2854.

¹²⁶⁶ Witness 21, T. 2643, 2784-2785.

¹²⁶⁷ Witness 21, T. 2641, 2644, 2802-2803.

¹²⁶⁸ Witness 21, T. 2641, 2644-2648, 2802-2803.

¹²⁶⁹ Witness 21, T. 2647-2648, 2653, 2803-2804.

¹²⁷⁰ Witness 21, T. 2648, 2651, 2804.

did not find Ilira or Tush Frrokaj among the dead.¹²⁷¹ 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.¹²⁷²

255. The Trial Chamber has also heard forensic medical evidence with regard to Ilira Frrokaj (remains labelled “R-18”). Branimir Aleksandrić¹²⁷³ testified that body R-18 was recovered on 12 September 1998.¹²⁷⁴ 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.¹²⁷⁵ All these remains as well as the vehicle were labelled R-18 and the remains were collected in a single body bag.¹²⁷⁶ ICMP DNA analysis concluded that the body labelled R-18 is that of Ilira Frrokaj.¹²⁷⁷ 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.¹²⁷⁸ The base of the skull was shattered.¹²⁷⁹ The rear of the skull showed evidence of charring.¹²⁸⁰ Further injuries to the vertebra

¹²⁷¹ Witness 21, T. 2648-2651, 2658-2660, 2668-2669, 2672-2678, 2696, 2699, 2701-2715, 2717; P45 (Aerial 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).

¹²⁷² Witness 21, T. 2750-2751.

¹²⁷³ 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).

¹²⁷⁴ P1260 (Branimir Aleksandrić, witness statement, 26 June 2007), paras 128-129, 203-204.

¹²⁷⁵ 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".

¹²⁷⁶ 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".

¹²⁷⁷ Agreed Facts, 26 November 2007, No. 86.

¹²⁷⁸ Agreed Facts, 26 November 2007, Nos 87-88.

¹²⁷⁹ Agreed Facts, 26 November 2007, No. 88.

¹²⁸⁰ Agreed Facts, 26 November 2007, No. 88.

were consistent with gunshot wounds.¹²⁸¹ The cause of death was determined as multiple gunshot wounds to the head and chest.¹²⁸² Dušan Dunjić¹²⁸³ testified that the car and body marked R-18 were partly submerged in water due to heavy rain.¹²⁸⁴ The body was wearing an orange blouse, blackish and charred along the edges.¹²⁸⁵ 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.¹²⁸⁶ 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.¹²⁸⁷ 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.¹²⁸⁸ There were bullet holes in the car and the rear part of the car had been torched.¹²⁸⁹ The body showed signs of burning and it was charred along its entire backside.¹²⁹⁰

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 Glođane/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

¹²⁸¹ Agreed Facts, 26 November 2007, No. 88.

¹²⁸² Agreed Facts, 26 November 2007, No. 89.

¹²⁸³ P618 (Dušan Dunjić, witness statement, 8 June 2007), paras 2-3, 23, 40, 151; P620 (CV of Dušan Dunjić), p. 2.

¹²⁸⁴ P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 412.

¹²⁸⁵ P711 (Autopsy report R-18), p. 3.

¹²⁸⁶ P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 418; Dušan Dunjić, T. 7250-7252; P711 (Autopsy report R-18), pp. 3-5.

¹²⁸⁷ Dušan Dunjić, T. 7250-7251; P711 (Autopsy report R-18), p. 1.

¹²⁸⁸ Dušan Dunjić, T. 7250-7251.

¹²⁸⁹ P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 419; P630 (Record of exhumations, 16 September 1998), p. 4.

¹²⁹⁰ 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 1998.¹²⁹¹ In late June or early July 1998, after hearing that the Serbian

¹²⁹¹ 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.¹²⁹² The decision of the witness's family to leave had come out of fear of the KLA.¹²⁹³ That same day three unknown men visited Zenun Gashi and asked for his gun and his police uniform.¹²⁹⁴ Two of the men were dressed in black uniforms and one was in camouflage uniform.¹²⁹⁵ Zenun Gashi gave the men his pistol and the police uniform.¹²⁹⁶ 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.¹²⁹⁷ 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.¹²⁹⁸ Two of the three men were the same as those who had searched the house three days earlier.¹²⁹⁹ The witness learned from Zenun Gashi that one of the men was Vesel Dizdari and stated that the other was called Commander Cergashi.¹³⁰⁰ Two men were dressed in black clothes and one wore a camouflage uniform.¹³⁰¹ 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.¹³⁰² They were not from the witness's village.¹³⁰³ 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.¹³⁰⁴

260. Vesel Dizdari, an Albanian from Kosurić/Kosuriq in Peć/Pejë municipality,¹³⁰⁵ 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

¹²⁹² Witness 52, T. 9625-9634

¹²⁹³ Witness 52, T. 9629-9634.

¹²⁹⁴ Witness 52, T. 9636-9638.

¹²⁹⁵ Witness 52, T. 9637.

¹²⁹⁶ Witness 52, T. 9636-9638.

¹²⁹⁷ Witness 52, T. 9639-9641.

¹²⁹⁸ Witness 52, T. 9635, 9640-9643.

¹²⁹⁹ Witness 52, T. 9641.

¹³⁰⁰ Witness 52, T. 9634-9636, 9646-9647.

¹³⁰¹ Witness 52, T. 9642.

¹³⁰² Witness 52, T. 9644-9645.

¹³⁰³ Witness 52, T. 9645.

¹³⁰⁴ Witness 52, T. 9643-9644.

¹³⁰⁵ P366 (Vesel Dizdari, witness statement, 15 April 2007), p.1; Vesel Dizdari, T5954-5955.

Barane/Baran in Peć/Pejë municipality.¹³⁰⁶ Vesel Dizdari followed these instructions and handed Zenun Gashi over to Metë Krasniqi.¹³⁰⁷ The witness was then ordered by Krasniqi to search Zenun Gashi's house for weapons but found only military boots.¹³⁰⁸

261. Sadri Selca, a FARK intelligence officer stationed in Barane/Baran, in Peć/Pejë municipality,¹³⁰⁹ 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.¹³¹⁰ The last time the witness saw Zenun Gashi was in Barane/Baran, in a car with Albanian men wearing camouflage uniforms.¹³¹¹ Zenun Gashi was in a poor state and had been beaten.¹³¹² Zenun Gashi asked the witness for water and the witness gave him some water.¹³¹³ The witness told the soldiers to release Zenun Gashi.¹³¹⁴ The soldiers replied "here is your colleague" and that the witness would suffer the same fate, and they left with Zenun Gashi.¹³¹⁵ 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.¹³¹⁶

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.¹³¹⁷ The witness asked Din Krasniqi, Metë Krasniqi's commander, who told him that Faton Mehmeti, the chief of KLA military police in Glodane/Gllogjan (who, according to the witness's direct observations, reported directly to Ramush Haradinaj), had ordered that Zenun be brought to Glodane/Gllogjan.¹³¹⁸ After the witness and Din Krasniqi intervened, Zenun, as far as the witness heard, was released.¹³¹⁹ Later, Witness 17 received information that Zenun

¹³⁰⁶ P366 (Vesel Dizdari, witness statement, 15 April 2007), paras 18-19.

¹³⁰⁷ P366 (Vesel Dizdari, witness statement, 15 April 2007), para. 19.

¹³⁰⁸ P366 (Vesel Dizdari, witness statement, 15 April 2007), para. 21.

¹³⁰⁹ Sadri Selca, T. 10858-10860, 10864.

¹³¹⁰ Sadri Selca, T. 10872. See also Avni Krasniqi, T. 10754.

¹³¹¹ Sadri Selca, T. 10873-10875, 10884.

¹³¹² Sadri Selca, T. 10874.

¹³¹³ Sadri Selca, T. 10873-10874, 10884.

¹³¹⁴ Sadri Selca, T. 10875.

¹³¹⁵ Sadri Selca, T. 10875.

¹³¹⁶ Sadri Selca, T. 10884.

¹³¹⁷ P885 (Witness 17, witness statement, 14 August 2007), para. 71; Witness 17, T. 7705.

¹³¹⁸ P885 (Witness 17, witness statement, 14 August 2007), para. 71; Witness 17, T. 7707.

¹³¹⁹ 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.¹³²⁰

263. Luan Tetaj testified that sometime in June or July 1998, his aunt, Ajmone Berisha, from Glodane/Gllogjan in Peć/Pejë municipality, came to his house.¹³²¹ 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, Xhevat and Salih Berisha, had disappeared.¹³²² 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.¹³²³ 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.¹³²⁴ Luan Tetaj did not search for Xhevat Berisha or his brother and father again.¹³²⁵ The witness never saw the three men again.¹³²⁶

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 Aleksandrić¹³²⁷ 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.¹³²⁸ Body R-4 was found on the surface close to the concrete wall.¹³²⁹ ICMP DNA analysis identified the body labelled R-4 as that of Zenun Gashi.¹³³⁰ 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.¹³³¹ 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

¹³²⁰ P885 (Witness 17, witness statement, 14 August 2007), para. 72; Witness 17, T. 7707.

¹³²¹ P1236 (Luan Tetaj, witness statement, 6 June 2007), paras 5, 12-13.

¹³²² P1236 (Luan Tetaj, witness statement, 6 June 2007), paras 12-14.

¹³²³ P1236 (Luan Tetaj, witness statement, 6 June 2007), para. 13.

¹³²⁴ P1236 (Luan Tetaj, witness statement, 6 June 2007), para. 14.

¹³²⁵ P1236 (Luan Tetaj, witness statement, 6 June 2007), paras 14, 16.

¹³²⁶ P1236 (Luan Tetaj, witness statement, 6 June 2007), paras 15-16, 20.

¹³²⁷ 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).

¹³²⁸ 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.

¹³²⁹ 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.

¹³³⁰ Agreed Facts, 26 November 2007, No. 36.

¹³³¹ Agreed Facts, 26 November 2007, Nos 37-38.

gunshot injuries.¹³³² It was concluded that the cause of death was a shrapnel wound to the head.¹³³³ Dušan Dunjić¹³³⁴ stated that a piece of yellow sticky tape was found around the neck of body R-4.¹³³⁵ From the state of the sticky tape, the forensic team concluded that the victim had been bound at the mouth with this tape.¹³³⁶ The autopsy revealed a bullet entry wound on the lower left side and exit wound on the top right side of the skull.¹³³⁷ Both arms were fractured in the same place on the lower arms.¹³³⁸

265. ICMP DNA analysis identified the remains labelled R-3 as those of Misin Berisha.¹³³⁹ 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.¹³⁴⁰ The report concluded that the cause of death was multiple gunshot wounds to the head, chest, abdomen and limbs.¹³⁴¹ Dušan Dunjić¹³⁴² stated that a piece of yellow sticky tape was found next to body R-3, similar to the tape found next to R-4.¹³⁴³ From the state of the sticky tape, the forensic team concluded that the victim was bound at the mouth with this tape.¹³⁴⁴ The autopsy revealed multiple fractures to the skull and lower jaw.¹³⁴⁵ 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.¹³⁴⁶

266. The OMPF concluded that the body labelled R-7 was that of Sali Berisha.¹³⁴⁷ 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

¹³³² Agreed Facts, 26 November 2007, No. 38.

¹³³³ Agreed Facts, 26 November 2007, No. 39.

¹³³⁴ P618 (Dušan Dunjić, witness statement, 8 June 2007), paras 2-3, 23, 40, 151; P620 (CV of Dušan Dunjić), p. 2.

¹³³⁵ P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 228; Dušan Dunjić, T. 6837; P646 (Autopsy report R-4), p. 2.

¹³³⁶ Dušan Dunjić, T. 6837.

¹³³⁷ 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.

¹³³⁸ P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 233-234; P646 (Autopsy report R-4), pp. 3, 6; Dušan Dunjić, T. 6839.

¹³³⁹ Agreed Facts, 26 November 2007, No. 32.

¹³⁴⁰ Agreed Facts, 26 November 2007, Nos 33-35.

¹³⁴¹ Agreed Facts, 26 November 2007, No. 35.

¹³⁴² P618 (Dušan Dunjić, witness statement, 8 June 2007), paras 2-3, 23, 40, 151; P620 (CV of Dušan Dunjić), p. 2.

¹³⁴³ P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 212; Dušan Dunjić, T. 6837; P811 (Photograph of sticky-tape), p. 2.

¹³⁴⁴ Dušan Dunjić, T. 6837.

¹³⁴⁵ P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 220; P812 (Autopsy report R-3), pp. 2, 5.

¹³⁴⁶ P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 220.

¹³⁴⁷ Agreed Facts, 26 November 2007, No. 44.

wounds.¹³⁴⁸ The fractures in the pelvis area were consistent with gunshot wounds.¹³⁴⁹ The autopsy concluded that the cause of death was most probably multiple gunshot wounds to the trunk and extremities.¹³⁵⁰ Dušan Dunjić¹³⁵¹ 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.¹³⁵²

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 Glodane/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.

¹³⁴⁸ Agreed Facts, 26 November 2007, Nos 45-46.

¹³⁴⁹ Agreed Facts, 26 November 2007, No. 46.

¹³⁵⁰ Agreed Facts, 26 November 2007, No. 47.

¹³⁵¹ P618 (Dušan Dunjić, witness statement, 8 June 2007), paras 2-3, 23, 40, 151; P620 (CV of Dušan Dunjić), p. 2.

¹³⁵² 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 Glodane/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 Glodane/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 1998.¹³⁵³ In 1998 the witness did not see any KLA presence in the town.¹³⁵⁴ He stated that the KLA were in the surrounding villages and mountains.¹³⁵⁵ On 26 April 1998 when it was already dark, the witness and Afrim Sylejmani drove to Đakovica/Gjakovë in Afrim's Opel Corsa.¹³⁵⁶ 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.¹³⁵⁷ 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.¹³⁵⁸ This was the last time the witness saw Afrim.¹³⁵⁹ About one week later the witness's sister told the witness that Afrim's wife and children

¹³⁵³ P1247 (Agim Sylejmani, witness statement, 13 August 2006), para. 5.

¹³⁵⁴ P1247 (Agim Sylejmani, witness statement, 13 August 2006), para. 5.

¹³⁵⁵ P1247 (Agim Sylejmani, witness statement, 13 August 2006), para. 5.

¹³⁵⁶ P1247 (Agim Sylejmani, witness statement, 13 August 2006), paras 3-4, 9, 10.

¹³⁵⁷ P1247 (Agim Sylejmani, witness statement, 13 August 2006), paras 11-12.

¹³⁵⁸ P1247 (Agim Sylejmani, witness statement, 13 August 2006), para. 12.

had moved into her house, because Afrim had left them.¹³⁶⁰ The sister did not tell the witness where he had gone.¹³⁶¹ The witness understood from the fact that Afrim's car was missing that he had left by car.¹³⁶² 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.¹³⁶³ Afrim's wife later told the witness that Afrim was in the KLA.¹³⁶⁴

273. The Trial Chamber has also received forensic medical evidence with regard to Afrim Sylejmani (remains labelled "R-28"). Branimir Aleksandrić¹³⁶⁵ 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.¹³⁶⁶ ICMP DNA analysis concluded that the body labelled R-28 is that of Afrim Sylejmani.¹³⁶⁷ 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.¹³⁶⁸ It was concluded from the autopsy that the cause of death was a gunshot injury to the head.¹³⁶⁹ Dušan Dunjić¹³⁷⁰ testified that the autopsy conducted in September 1998 revealed multiple fractures of the front part of the skull, probably inflicted with a blunt instrument.¹³⁷¹ Without treatment, this injury could have caused death.¹³⁷²

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

¹³⁵⁹ P1247 (Agim Sylejmani, witness statement, 13 August 2006), paras 9, 12.

¹³⁶⁰ P1247 (Agim Sylejmani, witness statement, 13 August 2006), para. 13.

¹³⁶¹ P1247 (Agim Sylejmani, witness statement, 13 August 2006), para. 13.

¹³⁶² P1247 (Agim Sylejmani, witness statement, 13 August 2006), para. 13.

¹³⁶³ P1247 (Agim Sylejmani, witness statement, 13 August 2006), paras 7, 12, 14.

¹³⁶⁴ P1247 (Agim Sylejmani, witness statement, 13 August 2006), para. 16.

¹³⁶⁵ 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).

¹³⁶⁶ 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).

¹³⁶⁷ Agreed Facts, 26 November 2007, No. 102.

¹³⁶⁸ Agreed Facts, 26 November 2007, No. 104.

¹³⁶⁹ Agreed Facts, 26 November 2007, No. 105.

¹³⁷⁰ P618 (Dušan Dunjić, witness statement, 8 June 2007), paras 2-3, 23, 40, 151; P620 (CV of Dušan Dunjić), p. 2.

¹³⁷¹ P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 542; P751 (Autopsy report R-28), pp. 2, 4.

¹³⁷² 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 Sylemani, 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 1998,¹³⁷³ testified that Rade Popadić was a PJP platoon commander and Nikola Jovanović was a MUP corporal.¹³⁷⁴ 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.¹³⁷⁵ 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.¹³⁷⁶ They picked up the supplies in Đakovica/Gjakova and then reported this by radio to their headquarters in Junik, in Dečani/Deçan municipality.¹³⁷⁷ The two men's orders were first to deliver some supplies to Babaloć/Baballoq, in Dečani/Deçan

¹³⁷³ Rade Repić, T. 8487, 8536-8537.

¹³⁷⁴ Rade Repić, T. 8504, 8509, 8517, 8575.

¹³⁷⁵ Rade Repić, T. 8510-8512; P919 (Criminal Reports on the attack against Rade Popadić and Miladin Novaković), p. 6.

¹³⁷⁶ Rade Repić, T. 8512-8513, 8565, 8574; P919 (Criminal Reports on the attack against Rade Popadić and Miladin Novaković), p. 6.

¹³⁷⁷ Rade Repić, T. 8513-8514.

municipality, and then continue back to Junik.¹³⁷⁸ 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.¹³⁷⁹ 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.¹³⁸⁰ Half an hour later the men had not returned to Junik.¹³⁸¹ This led Rade Repić to send out two vehicles from Junik to Babaloć/Baballoq in order to search for the men.¹³⁸² 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.¹³⁸³ A helicopter was then dispatched to search the broader areas of Junik and Babaloć/Baballoq and the roads from Dečani/Dečan 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.¹³⁸⁴ A MUP forensic report dated 28 September 1998, stated that the van was found beside the local road in Gornji Streoc/Strellci ë Eperm, in Dečani/Dečan municipality.¹³⁸⁵ The two men were never seen again.¹³⁸⁶ Rade Repić went to inspect the vehicle which had bullet holes in it.¹³⁸⁷ 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.¹³⁸⁸ 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.¹³⁸⁹ This occurred at the Rastavica/Rastavicë intersection, around 500-600 metres from the Babaloć/Baballoq PJP base in Dečani/Dečan municipality.¹³⁹⁰ As a result of these two incidents, on 25 May 2007, a “sweep” operation aimed at locating the two missing policemen and their

¹³⁷⁸ Rade Repić, T. 8513-8514; P919 (Criminal Reports on the attack against Rade Popadić and Miladin Novaković), p. 6.

¹³⁷⁹ Rade Repić, T. 8514, 8516.

¹³⁸⁰ Rade Repić, T. 8514-8515.

¹³⁸¹ Rade Repić, T. 8516-8517.

¹³⁸² Rade Repić, T. 8516-8517.

¹³⁸³ Rade Repić, T. 8517.

¹³⁸⁴ Rade Repić, T. 8518.

¹³⁸⁵ P919 (Criminal Reports on the attack against Rade Popadić and Miladin Novaković - photographs of the bullet ridden vehicle), p. 21.

¹³⁸⁶ Rade Repić, T. 8520-8521.

¹³⁸⁷ 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).

¹³⁸⁸ P919 (Criminal Reports on the attack against Rade Popadić and Miladin Novaković - photographs of the bullet ridden vehicle), p. 19, photographs 3, 4, 5.

¹³⁸⁹ 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.¹³⁹¹

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.¹³⁹² According to the four suspects interviewed, they were taken to the Glodjane/Gllogjan KLA headquarters where they were interrogated and tortured.¹³⁹³ After this they were taken to the Radonjić/Radoniq canal where they were executed.¹³⁹⁴

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.¹³⁹⁵

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.¹³⁹⁶ Radovan Zlatković gained this information from interviewing Albanians.¹³⁹⁷ He further stated that this incident was also officially recorded during an interview with an Albanian, Nedzat Dervisaj.¹³⁹⁸ 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.¹³⁹⁹ The report further alleged that they left the police department in Babaloć/Baballoq at 10:30 a.m. in a

¹³⁹⁰ Rade Repić, T. 8518-8519.

¹³⁹¹ Rade Repić, T. 8518, 8527, 8557-8558, 8560-8561.

¹³⁹² Rade Repić, T.8531-8533; P921 (Statements relating to the disappearance of Rade Popadić and Miladin Novaković).

¹³⁹³ Rade Repić, T.8531-8533; P921 (Statements relating to the disappearance of Rade Popadić and Miladin Novaković).

¹³⁹⁴ Rade Repić, T.8531-8533; P921 (Statements relating to the disappearance of Rade Popadić and Miladin Novaković).

¹³⁹⁵ P858 (Crime report into the disappearance of Rade Podadić and Nikola Jovanović, 26 May 1998).

¹³⁹⁶ 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).

¹³⁹⁷ Radovan Zlatković, T. 6885-6888; P858 (Crime report into the disappearance of Rade Podadić and Nikola Jovanović, 26 May 1998).

¹³⁹⁸ P854 (Radovan Zlatković, witness statement, 25 June 2007), para. 13.

¹³⁹⁹ 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.¹⁴⁰⁰

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 Glođane/Gllogjan, in Dečani/Dečan municipality.¹⁴⁰¹ According to this report, two captured police officers were sentenced and executed by firing squad.¹⁴⁰² Zoran Stijović testified that a 6 August MUP report which referred to two policemen captured in Dečani/Dečan and being held in Jablanica/Jabllanicë were Rade Popadić and Nikola Jovanović.¹⁴⁰³

282. Witness 69, a Serbian police officer stationed during the indictment period in Đakovica/Gjakovë MUP,¹⁴⁰⁴ testified that two of his colleagues, Rade Popadić and Nikola Jovanović, were kidnapped on the road between Đakovica/Gjakovë and Dečani/Dečan by unknown persons.¹⁴⁰⁵

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.¹⁴⁰⁶

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.¹⁴⁰⁷ On 23 May 1998, Witness 74 spoke with Rade Popadić for the last time and he stated that he was in Junik.¹⁴⁰⁸ 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.¹⁴⁰⁹ Witness 74 was further informed that the MUP had been unable to find any trace of

¹⁴⁰⁰ P858 (Crime report into the disappearance of Rade Podadić and Nikola Jovanović, 26 May 1998).

¹⁴⁰¹ P981 (Crime report, 4 June 1998), page 4.

¹⁴⁰² P981 (Crime report, 4 June 1998), page 4.

¹⁴⁰³ P931 (Statement of Zoran Stijović, 27 September 2007), para. 55; P1003 (Crime report, 6 August 1998), page 1.

¹⁴⁰⁴ P1231 (Witness 69, witness statement, 20 June 2007), paras 1-2; Witness 69, T. 9832-9833, 9846, 9848, 9892.

¹⁴⁰⁵ P1231 (Witness 69, witness statement, 20 June 2007), para. 29; Witness 69, T. 9846.

¹⁴⁰⁶ P6 (Spotlight Report No. 27, 5 August 1998), page 31.

¹⁴⁰⁷ P1243 (Witness 74, witness statement, 14 November 2007), para. 2.

¹⁴⁰⁸ P1243 (Witness 74, witness statement, 14 November 2007), para. 4.

¹⁴⁰⁹ P1243 (Witness 74, witness statement, 14 November 2007), para. 5.

either the van or the two men.¹⁴¹⁰ 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/Strellci in Dečani/Deçan municipality.¹⁴¹¹

285. The Trial Chamber has also received forensic medical evidence with regard to Rade Popadić (remains labelled “R-31”). Branimir Aleksandrić¹⁴¹² testified that body R-31 was recovered on 15 September 1998.¹⁴¹³ R-31 was found about 800 metres downstream from the falls, in the water and stuck under a rock.¹⁴¹⁴ ICMP DNA analysis identified the body labelled R-31 as that of Rade Popadić.¹⁴¹⁵ 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.¹⁴¹⁶ There was also a gunshot injury to the shoulder region.¹⁴¹⁷ 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.¹⁴¹⁸ The cause of death was determined to be a gunshot injury to the chest.¹⁴¹⁹ Dušan Dunjić¹⁴²⁰ 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.¹⁴²¹ The fractures on the ribs were serial and probably inflicted with a blunt instrument.¹⁴²²

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

¹⁴¹⁰ P1243 (Witness 74, witness statement, 14 November 2007), para. 5.

¹⁴¹¹ P1243 (Witness 74, witness statement, 14 November 2007), para. 11.

¹⁴¹² 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).

¹⁴¹³ P1260 (Branimir Aleksandrić, witness statement, 26 June 2007), paras 206-207, 240, 242; P762 (Autopsy photographs R31), pp. 2-3.

¹⁴¹⁴ 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.

¹⁴¹⁵ Agreed Facts, 26 November 2007, No. 106.

¹⁴¹⁶ Agreed Facts, 26 November 2007, No. 108.

¹⁴¹⁷ Agreed Facts, 26 November 2007, No. 108.

¹⁴¹⁸ Agreed Facts, 26 November 2007, No. 108.

¹⁴¹⁹ Agreed Facts, 26 November 2007, No. 109.

¹⁴²⁰ P618 (Dušan Dunjić, witness statement, 8 June 2007), paras 2-3, 23, 40, 151; P620 (CV of Dušan Dunjić), p. 2.

¹⁴²¹ P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 568; P760 (Autopsy report R-31), pp. 2, 4.

¹⁴²² 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 ë 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 Glođane/Gllogjan, while the other report, dated 6 August 1998, stated that two policemen were being held in Jablanica/Jabllanicë. 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.¹⁴²³ 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

¹⁴²³ 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/Lločan, in Dečani/Dečan municipality, and was working full-time as a policeman for the Dečani/Dečan MUP in early 1998.¹⁴²⁴ 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/Lločan to Peć/Pejë, leaving the witness's father, Ilija, behind.¹⁴²⁵ The witness clarified that they were not told by anyone to leave.¹⁴²⁶ Other Serbian families from the village also moved out during those days, leaving some of the elderly behind.¹⁴²⁷ Antić would visit his father periodically to deliver supplies.¹⁴²⁸ He was informed by his brother about his father's disappearance in late July 1998.¹⁴²⁹ 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 1998.¹⁴³⁰ 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/Lločan, Đordje and Milosava Antić.¹⁴³¹ None of these people had witnessed the incident.¹⁴³² 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.¹⁴³³ 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/Lločan and the surrounding areas early in the morning of 29 May.¹⁴³⁴ The witness denied that such an attack took place, however, at the time the witness was in hospital in Belgrade.¹⁴³⁵

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

¹⁴²⁴ Momčilo Antić, T. 2402-2404, 2432.

¹⁴²⁵ Momčilo Antić, T. 2409-2415, 2417.

¹⁴²⁶ Momčilo Antić, T. 2435.

¹⁴²⁷ Momčilo Antić, T. 2412-2417.

¹⁴²⁸ Momčilo Antić, T. 2411.

¹⁴²⁹ Momčilo Antić, T. 2424-2425, 2440-2441.

¹⁴³⁰ Momčilo Antić, T. 2424-2425, 2428, 2443-2444.

¹⁴³¹ Momčilo Antić, T. 2425-2428, 2440-2443.

¹⁴³² Momčilo Antić, T. 2428.

¹⁴³³ Momčilo Antić, T. 2428-2429.

¹⁴³⁴ Momčilo Antić, T. 2473-2475; D34 (Decision on Engagement, mentioning Ločane/Lločan among other targets, signed by General Nebojša Pavković, 28 May 1998).

¹⁴³⁵ Momčilo Antić, T. 2475.

Ločane/Lločan after a visit.¹⁴³⁶ Milosava also told the witness that there was a lot of shooting in the village that night.¹⁴³⁷ The following day, Milosava went to Ilija's house but found it empty, locked, and with the lights and television on.¹⁴³⁸

290. The Trial Chamber has also received forensic medical evidence with regard to Ilija Antić (remains labelled "R-20"). Branimir Aleksandrić¹⁴³⁹ 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.¹⁴⁴⁰ R-20 was partly covered by mud and partly by large pieces of clay rock.¹⁴⁴¹ ICMP DNA analysis concluded that the body labelled R-20 is that of Ilija Antić.¹⁴⁴² From an autopsy conducted on 20 October 2005 it was concluded that the victim had died from multiple gunshot wounds.¹⁴⁴³ Dušan Dunjić¹⁴⁴⁴ 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.¹⁴⁴⁵ These fractures could not have been caused by a fall or the body floating down the river.¹⁴⁴⁶

291. Based on the evidence, the Trial Chamber concludes that Ilija Antić was last seen in Ločane/Lločan 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

¹⁴³⁶ P337 (Jovanka Antić, witness statement, 17 July 2004), p. 1, paras 2, 4.

¹⁴³⁷ P337 (Jovanka Antić, witness statement, 17 July 2004), para. 5.

¹⁴³⁸ P337 (Jovanka Antić, witness statement, 17 July 2004), para. 4.

¹⁴³⁹ 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).

¹⁴⁴⁰ 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".

¹⁴⁴¹ 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.

¹⁴⁴² Agreed Facts, 26 November 2007, No. 90.

¹⁴⁴³ Agreed Facts, 26 November 2007, No. 93.

¹⁴⁴⁴ P618 (Dušan Dunjić, witness statement, 8 June 2007), paras 2-3, 23, 40, 151; P620 (CV of Dušan Dunjić), p. 2.

¹⁴⁴⁵ P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 449; P722 (Autopsy report R-20), p. 5.

¹⁴⁴⁶ 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/Lločan at the time and that his son was a policeman in Dečani/Dečan suggests, according to the Prosecution, a motive for him becoming a target for the KLA.¹⁴⁴⁷ 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 Dejane/Danjane in Orahovac/Rahovec municipality, testified that he joined the KLA in May 1998.¹⁴⁴⁸ In June or July 1998, the witness’s uncle, Idriz Hoti, came to visit the witness in Dejane/Danjane.¹⁴⁴⁹ Idriz Hoti was about 63 years old in the spring of 1998.¹⁴⁵⁰ Idriz Hoti was married to a Bosnian Muslim and supported

¹⁴⁴⁷ Prosecution’s Final Trial Brief, paras 492, 496.

¹⁴⁴⁸ P1232 (Hajdar Hoti, witness statement, 24 October 2007), paras 1-2.

¹⁴⁴⁹ P1232 (Hajdar Hoti, witness statement, 24 October 2007), paras 3, 6.

¹⁴⁵⁰ P1232 (Hajdar Hoti, witness statement, 24 October 2007), para. 3.

both the LDK and the KLA in 1998.¹⁴⁵¹ Idriz Hoti said that he had just been beaten and robbed by Serbian military police at a checkpoint.¹⁴⁵² 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.¹⁴⁵³ The witness also heard Idriz Hoti tell the witness's father that he wanted to join the KLA.¹⁴⁵⁴ Idriz Hoti spent the night at the witness's house and the next day, around noon, left on his bike.¹⁴⁵⁵ Idriz Hoti told the witness that he was going to "Ramush Haradinaj's zone" to join the KLA.¹⁴⁵⁶ Idriz Hoti then left, in the direction of Jablanica/Jabllanicë.¹⁴⁵⁷ 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.¹⁴⁵⁸ On the day Idriz Hoti left, the witness saw fighting between Serbian forces and KLA soldiers somewhere between Suka Crmljane/Cermjan and Suka ë Bektesh.¹⁴⁵⁹ 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.¹⁴⁶⁰

295. The Trial Chamber has also received forensic medical evidence with regard to Idriz Hoti (remains labelled "R-13"). Branimir Aleksandrić¹⁴⁶¹ 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.¹⁴⁶² 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.¹⁴⁶³ ICMP DNA analysis identified the remains labelled R-13 as those of Idriz

¹⁴⁵¹ P1232 (Hajdar Hoti, witness statement, 24 October 2007), paras 3, 5.

¹⁴⁵² P1232 (Hajdar Hoti, witness statement, 24 October 2007), paras 7-8.

¹⁴⁵³ P1232 (Hajdar Hoti, witness statement, 24 October 2007), para. 8.

¹⁴⁵⁴ P1232 (Hajdar Hoti, witness statement, 24 October 2007), para. 9.

¹⁴⁵⁵ P1232 (Hajdar Hoti, witness statement, 24 October 2007), paras 9-10.

¹⁴⁵⁶ P1232 (Hajdar Hoti, witness statement, 24 October 2007), para. 11.

¹⁴⁵⁷ P1232 (Hajdar Hoti, witness statement, 24 October 2007), para. 11.

¹⁴⁵⁸ P1232 (Hajdar Hoti, witness statement, 24 October 2007), para. 12.

¹⁴⁵⁹ P1232 (Hajdar Hoti, witness statement, 24 October 2004), para. 12.

¹⁴⁶⁰ P1232 (Hajdar Hoti, witness statement, 24 October 2007), para. 14.

¹⁴⁶¹ 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).

¹⁴⁶² 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".

¹⁴⁶³ 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.¹⁴⁶⁴ 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.¹⁴⁶⁵ Dušan Dunjić¹⁴⁶⁶ 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.¹⁴⁶⁷

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.¹⁴⁶⁸ 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.

¹⁴⁶⁴ Agreed Facts, 26 November 2007, No. 70.

¹⁴⁶⁵ Agreed Facts, 26 November 2007, No. 73.

¹⁴⁶⁶ P618 (Dušan Dunjić, witness statement, 8 June 2007), paras 2-3, 23, 40, 151; P620 (CV of Dušan Dunjić), p. 2.

¹⁴⁶⁷ 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.

¹⁴⁶⁸ 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 Glodane/Gllogjan, in Dečani/Deçan municipality, had come to Paljabarda/Palabardhe in Đakovica/Gjakovë municipality.¹⁴⁶⁹ 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.¹⁴⁷⁰ Binak replied that he could not do so.¹⁴⁷¹ At around 1 or 2 p.m. on the same day, the witness, Binak, and Kujtim Imeraj travelled from Paljabarda/Palabardhe to Lower Novo Selo/Novo Sello, in Đakovica/Gjakovë municipality.¹⁴⁷² The reason they left Paljabarda/Palabardhe was that Serbian forces were approaching from the direction of Đakovica/Gjakovë.¹⁴⁷³ As they were leaving, the witness saw soldiers on four or five tanks moving towards Paljabarda/Palabardhe.¹⁴⁷⁴ 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 Glodane/Gllogjan.¹⁴⁷⁵ One person in this group was wearing black clothes and a black hood over his face, while the rest were dressed in civilian clothes.¹⁴⁷⁶ They were armed with automatic rifles and spoke Albanian.¹⁴⁷⁷ At the time of their arrival, Witness 65

¹⁴⁶⁹ Witness 65, T. 8239-8240, 8242-8243, 8245.

¹⁴⁷⁰ Witness 65, T. 8240, 8243-8245.

¹⁴⁷¹ Witness 65, T. 8244.

¹⁴⁷² Witness 65, T. 8242-8243, 8246-8247, 8302-8303.

¹⁴⁷³ Witness 65, T. 8305.

¹⁴⁷⁴ Witness 65, T. 8305-8307.

¹⁴⁷⁵ Witness 65, T. 8247, 8249, 8251, 8296.

¹⁴⁷⁶ Witness 65, T. 8251-8252, 8296-8297.

¹⁴⁷⁷ Witness 65, T. 8297.

and Binak were in a yard, while Kujtim had gone out to the street to buy cigarettes.¹⁴⁷⁸ People in the group asked the witness where a man called Bashkim was.¹⁴⁷⁹ The witness replied that he did not know, upon which the soldiers beat him.¹⁴⁸⁰ They surrounded him and shouted, “Why are you here? You are siding with the Serbs. You are Maxhupis, gypsies”.¹⁴⁸¹ They took Kujtim from the street.¹⁴⁸² The witness saw them hitting Kujtim with a rifle butt and putting him into a car.¹⁴⁸³ The witness told them not to take Kujtim but the witness was beaten until he became unconscious.¹⁴⁸⁴ According to the witness, the group then drove off with Kujtim in the direction they had come from.¹⁴⁸⁵ 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”.¹⁴⁸⁶ The witness has not heard from Kujtim since that day.¹⁴⁸⁷

300. The Trial Chamber has also received forensic medical evidence with regard to Kujtim Imeraj (remains labelled “R-26” and “R-27A”). Branimir Aleksandrić¹⁴⁸⁸ 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-26.¹⁴⁸⁹ 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-27.¹⁴⁹⁰ ICMP DNA analysis identified the remains labelled R-26 and R-27A (part of the R-27 remains) as those of Kujtim Imeraj.¹⁴⁹¹ An autopsy conducted on the

¹⁴⁷⁸ Witness 65, T. 8249-8251, 8300.

¹⁴⁷⁹ Witness 65, T. 8249, 8251-8252, 8298.

¹⁴⁸⁰ Witness 65, T. 8249, 8298.

¹⁴⁸¹ Witness 65, T. 8299.

¹⁴⁸² Witness 65, T. 8248-8251.

¹⁴⁸³ Witness 65, T. 8299-8300.

¹⁴⁸⁴ Witness 65, T. 8248, 8251, 8298.

¹⁴⁸⁵ Witness 65, T. 8248, 8299-8300, 8303-8305.

¹⁴⁸⁶ Witness 65, T. 8300-8301.

¹⁴⁸⁷ Witness 65, T. 8301.

¹⁴⁸⁸ 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).

¹⁴⁸⁹ 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.

¹⁴⁹⁰ 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.

¹⁴⁹¹ Agreed Facts, 26 November 2007, No. 98.

remains on 20 October 2005 did not reveal clear ante-mortem injuries.¹⁴⁹² As such, the cause of death was unascertained.¹⁴⁹³ Dušan Dunjić¹⁴⁹⁴ testified that the autopsy conducted in September 1998 revealed a fracture on the bones of the skull.¹⁴⁹⁵

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

¹⁴⁹² Agreed Facts, 26 November 2007, Nos 99-100.

¹⁴⁹³ Agreed Facts, 26 November 2007, No. 101.

¹⁴⁹⁴ P618 (Dušan Dunjić, witness statement, 8 June 2007), paras 2-3, 23, 40, 151; P620 (CV of Dušan Dunjić), p. 2.

¹⁴⁹⁵ 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, Rustem Tetaj, and Cufë Krasniqi, as well as forensic medical evidence.

304. Witness 62 testified that on 9 or 10 July 1998, Rustem 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.¹⁴⁹⁶ 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.¹⁴⁹⁷ The witness testified about four incidents related to this family feud, the first one being the killing of Muharrem Gjoci on 27 August 1981.¹⁴⁹⁸ The second incident occurred in 1990.¹⁴⁹⁹ In 1992 or 1993, Muhamet Krasniqi, the son of Istref and Nurije Krasniqi, injured Avdi Krasniqi with an axe.¹⁵⁰⁰ 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.¹⁵⁰¹ 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.¹⁵⁰² The witness was told by Muhamet Krasniqi that he had seen Brahim Krasniqi nearby, behind some bushes, at the time of the

¹⁴⁹⁶ P345 (Witness 62, witness statement, 12 June 2007), paras 4, 19-22; Witness 62, T. 5528, 5534-5535, 5604-5605, 5610-5611, 5617.

¹⁴⁹⁷ P345 (Witness 62, witness statement, 12 June 2007), paras 7-14; Witness 62, T. 5555, 5559-5560, 5562-5563, 5591-5598.

¹⁴⁹⁸ P345 (Witness 62, witness statement, 12 June 2007), paras 7-11; Witness 62, T. 5591-5593.

¹⁴⁹⁹ Witness 62, T. 5592, 5596.

¹⁵⁰⁰ P345 (Witness 62, witness statement, 12 June 2007), para. 11; Witness 62, T. 5595-5596.

¹⁵⁰¹ P345 (Witness 62, witness statement, 12 June 2007), para. 12; Witness 62, T. 5596.

¹⁵⁰² P345 (Witness 62, witness statement, 12 June 2007), para. 14; Witness 62, T. 5597-5598, 5635.

shooting.¹⁵⁰³ Muhamet Krasniqi died on 27 July 1998.¹⁵⁰⁴ 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.¹⁵⁰⁵

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.¹⁵⁰⁶ They stated that they had been ordered to take Istref and Nurije Krasniqi to the headquarters in Glodane/Gllogjan, in Dečani/Deçan municipality, and that they would return them the next morning.¹⁵⁰⁷ The witness recognized their black uniforms as being those of Toger's unit.¹⁵⁰⁸ Istref and Nurije Krasniqi were taken away in a black four-wheel-drive vehicle that night and the witness never saw them again.¹⁵⁰⁹

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.¹⁵¹⁰ Rrustem Tetaj told the witness that he did not know anything about the abduction, but Witness 62 did not believe him.¹⁵¹¹ 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.¹⁵¹² 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 Glodane/Gllogjan, as well as from commanders elsewhere.¹⁵¹³ 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.¹⁵¹⁴ According to the first version, the couple had been interrogated at the headquarters in Glodane/Gllogjan and afterwards released in Rznić/Irznik, in Dečani/Deçan municipality.¹⁵¹⁵ The second version was that they had

¹⁵⁰³ P345 (Witness 62, witness statement, 12 June 2007), para. 14; Witness 62, T. 5597, 5614.

¹⁵⁰⁴ P345 (Witness 62, witness statement, 12 June 2007), para. 18; Witness 62, T. 5597.

¹⁵⁰⁵ Witness 62, T. 5563-5565, 5567-5569, 5573-5574, 5576-5577, 5621-5622, 5634-5635, 5637-5638.

¹⁵⁰⁶ Witness 62, T. 5531-5533, 5535-5537, 5540, 5622-5624.

¹⁵⁰⁷ Witness 62, T. 5533-5534, 5536-5537, 5540, 5545.

¹⁵⁰⁸ P345 (Witness 62, witness statement, 12 June 2007), para. 19; Witness 62, T. 5563.

¹⁵⁰⁹ Witness 62, T. 5538.

¹⁵¹⁰ Witness 62, T. 5540-5542, 5587, 5625-5626.

¹⁵¹¹ Witness 62, T. 5545, 5617, 5626-5627.

¹⁵¹² Witness 62, T. 5547-5548, 5631.

¹⁵¹³ Witness 62, T. 5548, 5554, 5631, 5633.

¹⁵¹⁴ Witness 62, T. 5549.

¹⁵¹⁵ Witness 62, T. 5549.

been taken to the headquarters in Glođane/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.¹⁵¹⁶ The witness believed the second version to be true.¹⁵¹⁷

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.¹⁵¹⁸ Sometime in the summer of 1998, Tetaj went to the village to try to persuade the families to put their differences aside.¹⁵¹⁹ He stated that he had learned from a book written by Tahir Zemaj that he was accused of the abduction of Istref Krasniqi.¹⁵²⁰

308. Sadri Selca, a FARK intelligence officer,¹⁵²¹ 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.¹⁵²² Naser Kuqi had heard this from villagers from Turjak/Turjakë in Peć/Pejë municipality.¹⁵²³ 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.¹⁵²⁴

309. Cufë Krasniqi, a KLA commander,¹⁵²⁵ testified that sometime before September 1998, Tahir Zemaj asked him if he knew what had happened to Nurije and Istref Krasniqi.¹⁵²⁶ Zemaj told Cufë Krasniqi that the commander of the KLA military police, Fadil Nimoni, was appointed to deal with the case.¹⁵²⁷ Cufë Krasniqi told Zemaj to ask the military police officers who were patrolling the villages.¹⁵²⁸

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").

¹⁵¹⁶ Witness 62, T. 5549, 5555, 5590, 5630-5631, 5633.

¹⁵¹⁷ Witness 62, T. 5552, 5590.

¹⁵¹⁸ Rrustem Tetaj, T. 3784-3785.

¹⁵¹⁹ Rrustem Tetaj, T. 3783-3784.

¹⁵²⁰ Rrustem Tetaj, T. 3785.

¹⁵²¹ Sadri Selca, T. 10858-10860, 10864.

¹⁵²² Sadri Selca, T. 10867-10869, 10883; P1229 (Official note compiled by Sadri Selca, 25 August 1998).

¹⁵²³ Sadri Selca, T. 10883.

¹⁵²⁴ Sadri Selca, T. 10870-10872, 10884-10885; P896 (Official notes of Sadri Selca, undated), p. 8.

¹⁵²⁵ P351 (Cufë Krasniqi, witness statement, 14 June 2007), p. 1, para. 1.

¹⁵²⁶ P351 (Cufë Krasniqi, witness statement, 14 June 2007), para. 88; Cufë Krasniqi, T. 5726-5727.

¹⁵²⁷ P351 (Cufë Krasniqi, witness statement, 14 June 2007), para. 88.

Branimir Aleksandrić¹⁵²⁹ testified that Bodies R-14 and R-15 were recovered on 12 September 1998.¹⁵³⁰ At the end of the concrete wall of the canal, there was a pile of gravel on the outer side of the wall.¹⁵³¹ Removal of the gravel revealed bodies R-14 and R-15.¹⁵³² 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.¹⁵³³ ICMP DNA analysis identified the body labelled R-14 as that of Nurije Krasniqi.¹⁵³⁴ 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.¹⁵³⁵ There were other fractures which suggested gunshot wounds to the left shoulder and arm.¹⁵³⁶ The autopsy determined that death was caused by a gunshot wound to the head.¹⁵³⁷ ICMP DNA analysis also identified the body labelled R-15 as that of Istref Krasniqi.¹⁵³⁸ 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.¹⁵³⁹ It was concluded that the cause of death was multiple gunshot wounds to the chest.¹⁵⁴⁰ Dušan Dunjić¹⁵⁴¹ 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.¹⁵⁴² According to the witness, these fractures were more likely to have been caused by a blow.¹⁵⁴³

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 Nurije and Istref

¹⁵²⁸ P351 (Cufë Krasniqi, witness statement, 14 June 2007), para. 88.

¹⁵²⁹ 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).

¹⁵³⁰ P1260 (Branimir Aleksandrić, witness statement, 26 June 2007), paras 128, 203-204.

¹⁵³¹ P1260 (Branimir Aleksandrić, witness statement, 26 June 2007), para. 134; Branimir Aleksandrić, T. 9553.

¹⁵³² 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.

¹⁵³³ P1260 (Branimir Aleksandrić, witness statement, 26 June 2007), para. 136.

¹⁵³⁴ Agreed Facts, 26 November 2007, No. 74.

¹⁵³⁵ Agreed Facts, 26 November 2007, Nos 75-76.

¹⁵³⁶ Agreed Facts, 26 November 2007, No. 76.

¹⁵³⁷ Agreed Facts, 26 November 2007, No. 77.

¹⁵³⁸ Agreed Facts, 26 November 2007, No. 78.

¹⁵³⁹ Agreed Facts, 26 November 2007, Nos 79-80.

¹⁵⁴⁰ Agreed Facts, 26 November 2007, No. 81.

¹⁵⁴¹ P618 (Dušan Dunjić, witness statement, 8 June 2007), paras 2-3, 23, 40, 151; P620 (CV of Dušan Dunjić), p. 2.

¹⁵⁴² P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 374; P697 (Autopsy report R-15), p. 6.

¹⁵⁴³ 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 Glođane/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 Glođane/Gllogjan and then released in Rznić/Irzniq. According to the second story, the couple was interrogated at the headquarters in Glođane/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 Glođane/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 Glođane/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.¹⁵⁴⁴ 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.¹⁵⁴⁵ 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.¹⁵⁴⁶ 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

¹⁵⁴⁴ P1016 (Witness 68, witness statement, 9 October 2007), paras 4, 6; Witness 68, T. 9273.

¹⁵⁴⁵ P1016 (Witness 68, witness statement, 9 October 2007), paras 6-7.

¹⁵⁴⁶ P1016 (Witness 68, witness statement, 9 October 2007), para. 8.

Đakovica/Gjakovë municipality.¹⁵⁴⁷ 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.¹⁵⁴⁸ 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.¹⁵⁴⁹ 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.¹⁵⁵⁰

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.¹⁵⁵¹ An autopsy conducted on 5 December 2003 described totally skeletonized, disarticulated and largely incomplete human remains.¹⁵⁵² The cause of death could not be ascertained.¹⁵⁵³ Dušan Dunjić¹⁵⁵⁴ testified that remains R-8/1 were incomplete, with many bones missing.¹⁵⁵⁵ The remains had mistakenly been placed in the same body bag as body R-8.¹⁵⁵⁶ The part of the skull that was found showed a trace of a bullet exit wound.¹⁵⁵⁷

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

¹⁵⁴⁷ P1016 (Witness 68, witness statement, 9 October 2007), paras 10-11.

¹⁵⁴⁸ P1016 (Witness 68, witness statement, 9 October 2007), paras 12, 14-16; Witness 68, T. 9265-9268, 9273-9274.

¹⁵⁴⁹ Witness 68, T. 9267-9268.

¹⁵⁵⁰ Witness 68, T. 9266-9267, 9269, 9271-9272.

¹⁵⁵¹ Agreed Facts, 26 November 2007, No. 52.

¹⁵⁵² Agreed Facts, 26 November 2007, Nos 53-54.

¹⁵⁵³ Agreed Facts, 26 November 2007, No. 55.

¹⁵⁵⁴ P618 (Dušan Dunjić, witness statement, 8 June 2007), paras 2-3, 23, 40, 151; P620 (CV of Dušan Dunjić), p. 2.

¹⁵⁵⁵ P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 278; P665 (Photographs of R-8 and R-8/1).

¹⁵⁵⁶ 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.

¹⁵⁵⁷ 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,¹⁵⁵⁸ 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.¹⁵⁵⁹ 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.¹⁵⁶⁰ 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.¹⁵⁶¹

321. The Trial Chamber has also received forensic medical evidence with regard to Velizar Stošić (remains labelled "R-8"). Branimir Aleksandrić¹⁵⁶² 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.¹⁵⁶³ 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.¹⁵⁶⁴ ICMP DNA analysis identified the body labelled R-8 as Velizar Stošić.¹⁵⁶⁵ 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.¹⁵⁶⁶ The left shoulder blade and the right thighbone also revealed defects and fractures which were consistent with gunshot injuries.¹⁵⁶⁷ From the autopsy it was concluded that the cause of death was multiple gunshot wounds inflicted to the victim's head and legs.¹⁵⁶⁸ Dušan Dunjić¹⁵⁶⁹ testified that an autopsy conducted in September 1998

¹⁵⁵⁸ Miomir Stošić, T. 5493-5494.

¹⁵⁵⁹ Miomir Stošić, T. 5495-5498, 5655-5658; P341 (Photograph of Velizar Stošić).

¹⁵⁶⁰ Miomir Stošić, T. 5498-5499.

¹⁵⁶¹ Miomir Stošić, T. 5500-5501.

¹⁵⁶² 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).

¹⁵⁶³ 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.

¹⁵⁶⁴ 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".

¹⁵⁶⁵ Agreed Facts, 26 November 2007, No. 48.

¹⁵⁶⁶ Agreed Facts, 26 November 2007, Nos 49-50.

¹⁵⁶⁷ Agreed Facts, 26 November 2007, No. 50.

¹⁵⁶⁸ Agreed Facts, 26 November 2007, No. 51.

¹⁵⁶⁹ 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.¹⁵⁷⁰

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 Lođa/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 Lođa/Loxhë. The Trial Chamber has heard evidence that the village of Lođa/Loxhë was under KLA control at the time.¹⁵⁷¹ 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.

¹⁵⁷⁰ 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.

¹⁵⁷¹ 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 Lođa/Loxhë in: Minutes of meeting on 5 July 1998).

325. Hasime Racaj, from Peć/Pejë,¹⁵⁷² 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.¹⁵⁷³ According to the witness, her husband, Malush Meha, suffered from a mental illness.¹⁵⁷⁴ After three days the witness reported the disappearance to the “Humanitarian Organization” in Peć/Pejë.¹⁵⁷⁵

326. The Trial Chamber has also received forensic medical evidence with regard to Malush Shefki Meha (remains labelled “R-16”). Branimir Aleksandrić¹⁵⁷⁶ testified that body R-16 was recovered on 12 September 1998 at the Radonjić/Radoniq canal.¹⁵⁷⁷ The body was found at the outer side of the concrete canal, at a depth of about 30 centimetres.¹⁵⁷⁸ ICMP DNA analysis concluded that the body labelled R-16 is that of Malush Meha.¹⁵⁷⁹ 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.¹⁵⁸⁰ Three bullets were also recovered from the remains.¹⁵⁸¹ It was concluded that the cause of death was a gunshot to the trunk.¹⁵⁸² Dušan Dunjić¹⁵⁸³ 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.¹⁵⁸⁴

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

¹⁵⁷² P1235 (Hasime Racaj, witness statement, 16 April 2007), p. 1.

¹⁵⁷³ P1235 (Hasime Racaj, witness statement, 16 April 2007), para. 9.

¹⁵⁷⁴ P1235 (Hasime Racaj, witness statement, 16 April 2007), paras 7, 17.

¹⁵⁷⁵ P1235 (Hasime Racaj, witness statement, 16 April 2007), para. 11.

¹⁵⁷⁶ 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).

¹⁵⁷⁷ P1260 (Branimir Aleksandrić, witness statement, 26 June 2007), paras 4, 6, 128, 141.

¹⁵⁷⁸ 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”.

¹⁵⁷⁹ Agreed Facts, 26 November 2007, No. 82.

¹⁵⁸⁰ Agreed Facts, 26 November 2007, Nos 83-84.

¹⁵⁸¹ Agreed Facts, 26 November 2007, No. 84.

¹⁵⁸² Agreed Facts, 26 November 2007, No. 85.

¹⁵⁸³ P618 (Dušan Dunjić, witness statement, 8 June 2007), paras 2-3, 23, 40, 151; P620 (CV of Dušan Dunjić), p. 2.

¹⁵⁸⁴ 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 Aleksandrić¹⁵⁸⁵ 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.¹⁵⁸⁶ The OMPF concluded that the remains labelled R-5 are those of Xhevat Berisha.¹⁵⁸⁷ An autopsy conducted on the remains on 8 December 2003 revealed that the victim had sustained a gunshot wound to the head.¹⁵⁸⁸ There were additional gunshot injuries to the right arm, chest, and spine.¹⁵⁸⁹ It was concluded that death had

¹⁵⁸⁵ 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).

¹⁵⁸⁶ 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.

¹⁵⁸⁷ Agreed Facts, 26 November 2007, No. 40.

¹⁵⁸⁸ 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).

¹⁵⁸⁹ 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.¹⁵⁹⁰

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 Glođane/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.¹⁵⁹¹ For the reasons explained below, the Trial Chamber cannot rely on almost any of its content.

¹⁵⁹⁰ Agreed Facts, 26 November 2007, Nos 42-43.

¹⁵⁹¹ 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 Aleksandrić¹⁵⁹² 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.¹⁵⁹³ ICMP DNA analysis identified the body labelled R-2 as that of Kemajl Gashi.¹⁵⁹⁴ 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.¹⁵⁹⁵ 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.¹⁵⁹⁶ The autopsy concluded that the cause of death was gunshot wounds to the pelvis.¹⁵⁹⁷ Dušan Dunjić¹⁵⁹⁸ testified that body R-2 was wearing blue jeans and a red-and-green striped T-shirt.¹⁵⁹⁹ 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.¹⁶⁰⁰ 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.¹⁶⁰¹ These non-pelvic fractures were most probably caused ante-mortem and, if left untreated, would probably lead to the person bleeding to death.¹⁶⁰²

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

¹⁵⁹² 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).

¹⁵⁹³ 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.

¹⁵⁹⁴ Agreed Facts, 26 November 2007, No. 28.

¹⁵⁹⁵ Agreed Facts, 26 November 2007, Nos 29-30.

¹⁵⁹⁶ Agreed Facts, 26 November 2007, No. 30.

¹⁵⁹⁷ Agreed Facts, 26 November 2007, No. 31.

¹⁵⁹⁸ P618 (Dušan Dunjić, witness statement, 8 June 2007), paras 2-3, 23, 40, 151; P620 (CV of Dušan Dunjić), p. 2.

¹⁵⁹⁹ P807 (Autopsy report R-2), p. 3; P809 (Photographs of R-2), pp. 5-6.

¹⁶⁰⁰ 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.

¹⁶⁰¹ P618 (Dušan Dunjić, witness statement, 8 June 2007), paras 208-209.

¹⁶⁰² 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/Strelci i Ultë in Dečani/Dečan municipality, was a KLA soldier from the end of March 1998 until he resigned in August 1998.¹⁶⁰³ Shaban Balaj lived with his sister, Sanije Balaj, in Donji Streoc/Strelci i Ultë in 1998.¹⁶⁰⁴ Shaban Balaj testified that Sanije Balaj was not a member of the KLA.¹⁶⁰⁵ However, Sanije Balaj had on one occasion worn Shaban Balaj's KLA uniform and carried his gun, when shopping for food-stuffs in Mališevo/Malishevë, for people in her village.¹⁶⁰⁶ The witness testified that on 12 August 1998, at 8:30 am, Sanije Balaj left Donji Streoc/Strelci i Ultë, by car, with the witness's relatives.¹⁶⁰⁷ Sanije Balaj was wearing civilian clothes.¹⁶⁰⁸ She intended to go

¹⁶⁰³ P922 (Shaban Balaj, witness statement, 2 June 2007), paras 4, 17; Shaban Balaj, T. 8649, 8703.

¹⁶⁰⁴ Shaban Balaj, T. 8649, 8680.

¹⁶⁰⁵ Shaban Balaj, T. 8652, 8702, 8704.

¹⁶⁰⁶ P922 (Shaban Balaj, witness statement, 2 June 2007), para. 15; Shaban Balaj, T. 8652, 8702-8704.

¹⁶⁰⁷ 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.¹⁶⁰⁹ 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.¹⁶¹⁰ Following her departure, Shaban Balaj never saw Sanije Balaj alive again.¹⁶¹¹ On 12 August 1998, between 2:00 and 4:00 p.m., the witness's relatives returned.¹⁶¹² 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.¹⁶¹³ 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.¹⁶¹⁴ Later the witness found out that his name was Idriz Gashi, a.k.a. "Galani".¹⁶¹⁵ 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.¹⁶¹⁶ The witness refers to Metë, Avni, Iber, and Cufë Krasniqi and "Galani" as "self-styled KLA [...] under the command of nobody".¹⁶¹⁷ Shaban Balaj and his relatives then went to look for the men who had stopped Sanije Balaj.¹⁶¹⁸ Near Vranovac/Vranoc in Peć/Pejë municipality the witness encountered Metë Krasniqi.¹⁶¹⁹ Metë Krasniqi told the witness that he had stopped Sanije Balaj and that she was taken to Glodane/Gllogjan in Dečani/Dečan municipality.¹⁶²⁰ The witness did not believe Metë Krasniqi.¹⁶²¹ The witness then went to Zlopek/Qellopek in Peć/Pejë municipality, where he spoke to Vesel Dizdari.¹⁶²² Vesel Dizdari told the witness that Metë Krasniqi had stopped Sanije Balaj.¹⁶²³ 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.¹⁶²⁴ The witness later

¹⁶⁰⁸ Shaban Balaj, T. 8652-8653.

¹⁶⁰⁹ Shaban Balaj, T. 8650, 8682.

¹⁶¹⁰ Shaban Balaj, T. 8655.

¹⁶¹¹ Shaban Balaj, T. 8653.

¹⁶¹² Shaban Balaj, T. 8653, 8686.

¹⁶¹³ Shaban Balaj, T. 8651, 8653-8654, 8656, 8660, 8686.

¹⁶¹⁴ Shaban Balaj, T. 8653-8654, 8660, 8686.

¹⁶¹⁵ Shaban Balaj, T. 8654, 8657-8658, 8697-8698.

¹⁶¹⁶ Shaban Balaj, T. 8653, 8686-8687.

¹⁶¹⁷ Shaban Balaj, T. 8651, 8653, 8688, 8693.

¹⁶¹⁸ Shaban Balaj, T. 8654-8655.

¹⁶¹⁹ Shaban Balaj, T. 8655-8656.

¹⁶²⁰ Shaban Balaj, T. 8656-8657, 8701. See also P1238 (Witness 72, witness statement, 13 June 2007), para. 15.

¹⁶²¹ Shaban Balaj, T. 8657.

¹⁶²² Shaban Balaj, T. 8657-8659.

¹⁶²³ Shaban Balaj, T. 8659-8660.

¹⁶²⁴ 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.¹⁶²⁵ On 13 or 14 August 1998, Shaban Balaj met Cufë Krasniqi.¹⁶²⁶ Cufë Krasniqi told the witness that Avni and Iber Krasniqi had brought Sanije Balaj in for interrogation as a Serbian collaborator.¹⁶²⁷ 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.¹⁶²⁸ Cufë Krasniqi added that after he had released her, Iber and Avni Krasniqi had taken Sanije Balaj away in a friendly manner.¹⁶²⁹

338. On 13 August 1998, Shaban Balaj met the FARK commander Tahir Zemaj in Papraçane/Prapacan in Deçani/Deçan municipality, and told him of Sanije Balaj’s disappearance.¹⁶³⁰ Tahir Zemaj said he would take measures, and, according to Shaban Balaj, subsequently questioned the men who had stopped Sanije Balaj.¹⁶³¹ When Shaban Balaj later returned to Barane/Baran, Tahir Zemaj introduced him to Fadil Nimani and Hysen Gashi.¹⁶³² 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.¹⁶³³ On the fourth or fifth day, Fadil Nimani told Shaban Balaj that Sanije Balaj was dead.¹⁶³⁴

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.¹⁶³⁵ The witness believed that Ramush Haradinaj was not involved in the disappearance and death of Sanije Balaj.¹⁶³⁶ On one of the following days, Shaban Balaj went to the house of Metë Krasniqi to resolve the issue of Sanije Balaj’s disappearance.¹⁶³⁷ In accordance with the Kanun of the area, Shaban Balaj was accompanied by 20 people, including village elders.¹⁶³⁸ 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

¹⁶²⁵ Shaban Balaj, T. 8658-8659.

¹⁶²⁶ Shaban Balaj, T. 8664, 8666-8667.

¹⁶²⁷ Shaban Balaj, T. 8668.

¹⁶²⁸ Shaban Balaj, T. 8668-8669, 8689.

¹⁶²⁹ Shaban Balaj, T. 8696.

¹⁶³⁰ Shaban Balaj, T. 8663-8664. See P885 (Witness 17, witness statement, 14 August 2007), para. 10.

¹⁶³¹ Shaban Balaj, T. 8663-8664.

¹⁶³² Shaban Balaj, T. 8664-8665.

¹⁶³³ Shaban Balaj, T. 8665-8666.

¹⁶³⁴ Shaban Balaj, T. 8666.

¹⁶³⁵ Shaban Balaj, T. 8670.

¹⁶³⁶ Shaban Balaj, T. 8670-8671, 8705.

¹⁶³⁷ Shaban Balaj, T. 8671-8672, 8689-8690.

¹⁶³⁸ 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.¹⁶³⁹ 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.¹⁶⁴⁰ Metë Krasniqi said that Avni Krasniqi and a person called “Colonel Galani” were responsible for Sanije Balaj’s death.¹⁶⁴¹ 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.¹⁶⁴² Avni and Iber Krasniqi had been forced to remove the body by one Galani.¹⁶⁴³ Metë Krasniqi added that Togeri had transported the body in his jeep.¹⁶⁴⁴ Zymer Hasanaj had told them to remove the body.¹⁶⁴⁵ 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.¹⁶⁴⁶ Shaban Balaj went to Lugu i Isufit to search for Sanije Balaj’s body.¹⁶⁴⁷ In a ravine, near a well, the witness found a place where the soil had been freshly dug and he “found her ... blood there”.¹⁶⁴⁸ 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.¹⁶⁴⁹ The witness believed Sanije Balaj was killed for the money she had with her on the day of her disappearance.¹⁶⁵⁰

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/Dečan municipality, to Rosulje/Rosuje in Peć/Pejë municipality.¹⁶⁵¹ The car passed through the village of Barane/Baran, Peć/Pejë municipality, where there were between one and three hundred soldiers.¹⁶⁵² Amongst the soldiers were Metë Krasniqi, Avni Krasniqi, and Vesel Dizdari.¹⁶⁵³ At a checkpoint, Metë Krasniqi, accompanied by two or three soldiers,

¹⁶³⁹ Shaban Balaj, T. 8672, 8690-8691.

¹⁶⁴⁰ Shaban Balaj, T. 8672-8673, 8691-8693.

¹⁶⁴¹ Shaban Balaj, T. 8673, 8692-8693.

¹⁶⁴² Shaban Balaj, T. 8673-8674, 8677, 8688, 8693.

¹⁶⁴³ Shaban Balaj, T. 8673-8675, 8693.

¹⁶⁴⁴ Shaban Balaj, T. 8674.

¹⁶⁴⁵ Shaban Balaj, T. 8673.

¹⁶⁴⁶ Shaban Balaj, T. 8674-8675.

¹⁶⁴⁷ Shaban Balaj, T. 8677-8678.

¹⁶⁴⁸ Shaban Balaj, T. 8678.

¹⁶⁴⁹ Shaban Balaj, T. 8678.

¹⁶⁵⁰ Shaban Balaj, T. 8650, 8679, 8682, 8689.

¹⁶⁵¹ P1238 (Witness 72, witness statement, 13 June 2007), para. 6.

¹⁶⁵² P1238 (Witness 72, witness statement, 13 June 2007), para. 8.

¹⁶⁵³ P1238 (Witness 72, witness statement, 13 June 2007), para. 8.

signalled the car to stop.¹⁶⁵⁴ Avni Krasniqi produced a notebook with Sanije Balaj's name in it, as a person to be interrogated.¹⁶⁵⁵ Sanije Balaj was taken to the school building, which served as the KLA barracks.¹⁶⁵⁶ A relative of the witness was later told that Sanije Balaj had been sent to Gani Gjukaj, in Streoc/Strellci, in Dečani/Dečan municipality.¹⁶⁵⁷ However, KLA soldiers in that village said that they had not seen her.¹⁶⁵⁸

341. Cufë Krasniqi, a KLA commander from Vranovac/Vranoc in Peć/Pejë municipality,¹⁶⁵⁹ 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.¹⁶⁶⁰ 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.¹⁶⁶¹ 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.¹⁶⁶² The commander of the military police unit, Hasan Gashi,¹⁶⁶³ was not present on that day.¹⁶⁶⁴ 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/Dečan municipality to Peć/Pejë, but the route she took aroused their suspicion.¹⁶⁶⁵ 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.¹⁶⁶⁶ Ramabaja told Cufë Krasniqi to interrogate the woman.¹⁶⁶⁷ 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

¹⁶⁵⁴ P1238 (Witness 72, witness statement, 13 June 2007), para. 9.

¹⁶⁵⁵ P1238 (Witness 72, witness statement, 13 June 2007), para. 9.

¹⁶⁵⁶ P1238 (Witness 72, witness statement, 13 June 2007), paras 9-10.

¹⁶⁵⁷ P1238 (Witness 72, witness statement, 13 June 2007), paras 12-13.

¹⁶⁵⁸ P1238 (Witness 72, witness statement, 13 June 2007), para. 13.

¹⁶⁵⁹ P351 (Cufë Krasniqi, witness statement, 14 June 2007), p. 1, paras 1-2.

¹⁶⁶⁰ Cufë Krasniqi, T. 5771, 5777, 5818.

¹⁶⁶¹ Cufë Krasniqi, T. 5771, 5782, 5818, 5832.

¹⁶⁶² P351 (Cufë Krasniqi, witness statement, 14 June 2007), para. 24; Cufë Krasniqi, T. 5771-5773, 5775, 5777.

¹⁶⁶³ Based on the evidence, the Trial Chamber understands Hasan and Hysen Gashi to refer to the same person.

¹⁶⁶⁴ P351 (Cufë Krasniqi, witness statement, 14 June 2007), paras 24, 72; Cufë Krasniqi, T. 5714-5715, 5777.

¹⁶⁶⁵ Cufë Krasniqi, T. 5771-5772.

¹⁶⁶⁶ Cufë Krasniqi, T. 5772, 5778.

¹⁶⁶⁷ Cufë Krasniqi, T. 5771-5773, 5832.

nickname was “Galanj”.¹⁶⁶⁸ Only after 2002 did the witness learn that “Galanj’s” real name was Idriz Gashi.¹⁶⁶⁹ 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.¹⁶⁷⁰ 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.¹⁶⁷¹ Avni and Iber Krasniqi intervened saying that Sanije Balaj was lying and Cufë Krasniqi ordered them to leave the room, which they did.¹⁶⁷² 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.¹⁶⁷³ After about five minutes of interrogation, Cufë Krasniqi decided to release her.¹⁶⁷⁴ The witness told her that she would need permission by the KLA staff of her village, Streoc/Strelc, to go to Peć/Pejë.¹⁶⁷⁵ She agreed to be given a lift home by Avni and Iber Krasniqi in a red Volkswagen Golf.¹⁶⁷⁶ Cufë Krasniqi last saw her leaving in the car with Avni and Iber Krasniqi.¹⁶⁷⁷ He reported the events to Nazif Ramabaja.¹⁶⁷⁸ 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.¹⁶⁷⁹ He told Cufë Krasniqi that his sister had not come home on the day of the interrogation.¹⁶⁸⁰ Later, Nazif Ramabaja told Cufë Krasniqi that there was an investigation carried out in Prapačane/Prapacan in Dečani/Dečan municipality and that the witness should go there to give a statement about Sanije Balaj.¹⁶⁸¹ In Prapačane/Prapacan, Cufë Krasniqi described to Fadil Nimoni, the local military police commander who led the investigation, what had happened.¹⁶⁸² The witness stated that both Avni and Iber Krasniqi, as well as Metë Krasniqi, Avni’s brother were present in Prapačane/Prapacan

¹⁶⁶⁸ Cufë Krasniqi, T. 5773-5774, 5779, 5824, 5832.

¹⁶⁶⁹ Cufë Krasniqi, T. 5779, 5788.

¹⁶⁷⁰ Cufë Krasniqi, T. 5774, 5824-5825, 5833, 5856-5857.

¹⁶⁷¹ Cufë Krasniqi, T. 5774-5775.

¹⁶⁷² Cufë Krasniqi, T. 5775-5776.

¹⁶⁷³ Cufë Krasniqi, T. 5778.

¹⁶⁷⁴ Cufë Krasniqi, T. 5777-5778, 5833.

¹⁶⁷⁵ Cufë Krasniqi, T. 5776-5777.

¹⁶⁷⁶ Cufë Krasniqi, T. 5779-5780, 5823.

¹⁶⁷⁷ Cufë Krasniqi, T. 5780, 5823-5824.

¹⁶⁷⁸ Cufë Krasniqi, T. 5833-5834.

¹⁶⁷⁹ Cufë Krasniqi, T. 5780-5782, 5789.

¹⁶⁸⁰ Cufë Krasniqi, T. 5790.

¹⁶⁸¹ Cufë Krasniqi, T. 5783-5785, 5825-5826.

¹⁶⁸² Cufë Krasniqi, T. 5784, 5786, 5834.

on that day, but not Idriz Gashi.¹⁶⁸³ According to Cufë Krasniqi, Tahir Zemaj knew about the investigation.¹⁶⁸⁴

342. Avni Krasniqi from Vranovac/Vranoc in Peć/Pejë municipality,¹⁶⁸⁵ 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.¹⁶⁸⁶ Gashi was under the command of Nazif Ramabaja.¹⁶⁸⁷ 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.¹⁶⁸⁸ Avni Krasniqi saw through the window that Cufë Krasniqi interrogated Sanije Balaj inside the school building.¹⁶⁸⁹ 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.¹⁶⁹⁰ 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.¹⁶⁹¹ Galani was wearing a black uniform and cap with a KLA patch and he was armed.¹⁶⁹² 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.¹⁶⁹³ The witness acknowledged that many people called themselves commanders at this time.¹⁶⁹⁴ 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.¹⁶⁹⁵ 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.¹⁶⁹⁶ He also read out the names to the

¹⁶⁸³ Cufë Krasniqi, T. 5787-5788.

¹⁶⁸⁴ Cufë Krasniqi, T. 5786.

¹⁶⁸⁵ Avni Krasniqi, T. 10709, 10712.

¹⁶⁸⁶ Avni Krasniqi, T. 10720-10722, 10780.

¹⁶⁸⁷ Avni Krasniqi, T. 10722, 10781.

¹⁶⁸⁸ Avni Krasniqi, T. 10721, 10723-10725, 10806-10807.

¹⁶⁸⁹ Avni Krasniqi, T. 10724, 10726, 10729, 10808.

¹⁶⁹⁰ Avni Krasniqi, T. 10729-10730, 10816.

¹⁶⁹¹ Avni Krasniqi, T. 10726-10727, 10729-10730, 10808-10809, 10816.

¹⁶⁹² Avni Krasniqi, T. 10728, 10736.

¹⁶⁹³ Avni Krasniqi, T. 10728, 10732, 10784, 10787.

¹⁶⁹⁴ Avni Krasniqi, T. 10787.

¹⁶⁹⁵ P172 (KLA Transfer Order signed by Ramush Haradinaj, 7 July 1998).

¹⁶⁹⁶ Avni Krasniqi, T. 10727, 10731, 10816.

witness and the other soldiers.¹⁶⁹⁷ The witness knew some of the names as policemen in Peć/Pejë.¹⁶⁹⁸

343. Galani then ordered the witness to take him and Sanije Balaj to the headquarters in Glođane/Gllogjan in Dečani/Deçan municipality.¹⁶⁹⁹ 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.¹⁷⁰⁰ 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.¹⁷⁰¹ Galani and Sanije Balaj got out and walked away.¹⁷⁰² Sanije Balaj had a handbag or “accessories” that she left in the car.¹⁷⁰³ Avni Krasniqi stayed in the car.¹⁷⁰⁴ After about 40 seconds he heard pistol shots.¹⁷⁰⁵ 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.¹⁷⁰⁶ The witness also remembered that Galani at some point yelled at some children tending livestock nearby, to go away.¹⁷⁰⁷ Avni Krasniqi then took Galani back to Barane/Baran in Peć/Pejë municipality, left the car and took his own car and went home.¹⁷⁰⁸ 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.¹⁷⁰⁹ The witness also heard that Galani told others that he had killed Sanije Balaj upon the order of Sali Veseli.¹⁷¹⁰

344. That same evening Iber Krasniqi and Galani came and picked up Avni Krasniqi to go and bury Sanije Balaj.¹⁷¹¹ 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.¹⁷¹² Galani was armed and pointed his gun at the arriving

¹⁶⁹⁷ Avni Krasniqi, T. 10730.

¹⁶⁹⁸ Avni Krasniqi, T. 10727.

¹⁶⁹⁹ Avni Krasniqi, T. 10731-10732, 10809.

¹⁷⁰⁰ Avni Krasniqi, T. 10732-10733.

¹⁷⁰¹ Avni Krasniqi, T. 10734-10735, 10817.

¹⁷⁰² Avni Krasniqi, T. 10735, 10806, 10817.

¹⁷⁰³ Avni Krasniqi, T. 10737.

¹⁷⁰⁴ Avni Krasniqi, T. 10735, 10806.

¹⁷⁰⁵ Avni Krasniqi, T. 10735, 10817.

¹⁷⁰⁶ Avni Krasniqi, T. 10735-10736, 10818.

¹⁷⁰⁷ Avni Krasniqi, T. 10736-10737, 10818.

¹⁷⁰⁸ Avni Krasniqi, T. 10736, 10738.

¹⁷⁰⁹ Avni Krasniqi, T. 10738-10741, 10818.

¹⁷¹⁰ Avni Krasniqi, T. 10741.

¹⁷¹¹ Avni Krasniqi, T. 10742-10743, 10826.

¹⁷¹² Avni Krasniqi, T. 10742.

men and told them to stop.¹⁷¹³ In the meantime Avni Krasniqi was burying Sanije Balaj and Galani ordered Ahmet Ukaj to help with this.¹⁷¹⁴ Avni Krasniqi and Ahmet Ukaj buried Sanije Balaj in a shallow hole which was not deeper than 30 to 40 centimetres.¹⁷¹⁵ 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.¹⁷¹⁶ Galani ordered them to do so and told them that they would be putting the body in a safer place.¹⁷¹⁷ Galani stayed behind in Barane/Baran while the others went.¹⁷¹⁸ The witness testified that he had seen Toger many times before.¹⁷¹⁹ The witness took Iber Krasniqi with him for help and out of security concerns.¹⁷²⁰ 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.¹⁷²¹ Avni Krasniqi and Iber Krasniqi were then driven to Bistrica/Bistricë where they were dropped off and the witness did not know where Toger and the others went afterwards.¹⁷²²

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.¹⁷²³ According to the witness, at that time Galani had fled the area.¹⁷²⁴ 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.¹⁷²⁵

346. Zymer Hasanaj, a KLA soldier in Mali Vranovac/Vranoc I Vogël in Peć/Pejë,¹⁷²⁶ 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.¹⁷²⁷ 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

¹⁷¹³ Avni Krasniqi, T. 10742-10743.

¹⁷¹⁴ Avni Krasniqi, T. 10743.

¹⁷¹⁵ Avni Krasniqi, T. 10744.

¹⁷¹⁶ Avni Krasniqi, T. 10744-10745, 10750, 10842, 10847.

¹⁷¹⁷ Avni Krasniqi, T. 10747, 10749-10750.

¹⁷¹⁸ Avni Krasniqi, T. 10746-10748, 10842.

¹⁷¹⁹ Avni Krasniqi, T. 10841, 10847-10848.

¹⁷²⁰ Avni Krasniqi, T. 10745-10746, 10752-10754.

¹⁷²¹ Avni Krasniqi, T. 10746-10747, 10844.

¹⁷²² Avni Krasniqi, T. 10747-10748.

¹⁷²³ Avni Krasniqi, T. 10781.

¹⁷²⁴ Avni Krasniqi, T. 10781.

¹⁷²⁵ Avni Krasniqi, T. 10781-10783.

¹⁷²⁶ P923 (Zymer Hasanaj, witness statement, 1 October 2007), paras 1-2; Zymer Hasanaj, T. 8720.

¹⁷²⁷ P923 (Zymer Hasanaj, witness statement, 1 October 2007), para. 16; Zymer Hasanaj, T. 8738.

forcing a woman out of a vehicle.¹⁷²⁸ One of the men called out to the boys to leave.¹⁷²⁹ They obeyed, whereupon Durim heard three gunshots.¹⁷³⁰ 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.¹⁷³¹ They went there with other people from the village, including Ahmet Ukaj.¹⁷³² At Lugu i Isufit, they were ordered to stop by a man who, according to Hasanaj, was probably an armed KLA fighter.¹⁷³³ 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.¹⁷³⁴ Ukaj told Hasanaj that he had seen two people at Lugu i Isufit, namely Idriz Gashi and Avni Krasniqi.¹⁷³⁵ 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.¹⁷³⁶ That same night, Hasanaj went with Ukaj to inform the KLA commander of Mali Vranovac/Vranoc i Vogël, Din Krasniqi, about the incident.¹⁷³⁷ Hasanaj asked Din Krasniqi to report the incident to Nazif Ramabaja, the commander in Barane/Baran, in Peć/Pejë municipality.¹⁷³⁸ Din Krasniqi said that he would follow up the matter and that the person responsible would be punished.¹⁷³⁹

347. Ahmet Ukaj, a KLA soldier from Mali Vranovac/Vranoci i Vogël in Peć/Pejë municipality,¹⁷⁴⁰ 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.¹⁷⁴¹ Sanije Balaj was with a group of people whom the witness did not recognize.¹⁷⁴² About fifteen minutes later, the witness

¹⁷²⁸ 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.

¹⁷²⁹ P923 (Zymer Hasanaj, witness statement, 1 October 2007), para. 16.

¹⁷³⁰ 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.

¹⁷³¹ P923 (Zymer Hasanaj, witness statement, 1 October 2007), paras 16-17; P925 (Photographs of area of Lugu i Isufit).

¹⁷³² P923 (Zymer Hasanaj, witness statement, 1 October 2007), para. 17.

¹⁷³³ P923 (Zymer Hasanaj, witness statement, 1 October 2007), para. 18.

¹⁷³⁴ Zymer Hasanaj, T. 8731.

¹⁷³⁵ P923 (Zymer Hasanaj, witness statement, 1 October 2007), para. 18.

¹⁷³⁶ P923 (Zymer Hasanaj, witness statement, 1 October 2007), para. 20.

¹⁷³⁷ P923 (Zymer Hasanaj, witness statement, 1 October 2007), paras 20-21.

¹⁷³⁸ P923 (Zymer Hasanaj, witness statement, 1 October 2007), para. 21.

¹⁷³⁹ P923 (Zymer Hasanaj, witness statement, 1 October 2007), para. 21.

¹⁷⁴⁰ P1226 (Ahmet Ukaj, witness statement, 11 November 2007), para. 1; Ahmet Ukaj, T. 10656.

¹⁷⁴¹ P1226 (Ahmet Ukaj, witness statement, 11 November 2007), paras 8-10; Ahmet Ukaj, T. 10660, 10668.

¹⁷⁴² 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.¹⁷⁴³ That same evening, when Ahmet Ukaj came back to his home village of Vranovac/Vranoc he met Zymer Hasanaj.¹⁷⁴⁴ The latter told him that someone had been killed at Lugu i Isufit.¹⁷⁴⁵ The witness, Zymer Hasanaj, Hysen Ukaj, and others then went to Lugu i Isufit in order to find out what had happened.¹⁷⁴⁶ 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.¹⁷⁴⁷ 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.¹⁷⁴⁸ Galani told the group that he had killed her because he had found her with a notebook.¹⁷⁴⁹ Galani read out some Serbian names from the notebook and said that the notebook also contained the phone numbers of Serbians.¹⁷⁵⁰ The witness recognized the names as those of Serbian police officers who he had heard were working in Deçani/Deçan municipality.¹⁷⁵¹ 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.¹⁷⁵² Galani ordered the witness to help Avni Krasniqi bury the woman.¹⁷⁵³ When the witness saw the body he recognized it as the same woman who had been brought to Barane/Baran that morning.¹⁷⁵⁴ She had been shot in the chest.¹⁷⁵⁵ 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.¹⁷⁵⁶ 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.¹⁷⁵⁷ 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.¹⁷⁵⁸

¹⁷⁴³ P1226 (Ahmet Ukaj, witness statement, 11 November 2007), para. 10.

¹⁷⁴⁴ P1226 (Ahmet Ukaj, witness statement, 11 November 2007), para. 12.

¹⁷⁴⁵ P1226 (Ahmet Ukaj, witness statement, 11 November 2007), para. 12.

¹⁷⁴⁶ P1226 (Ahmet Ukaj, witness statement, 11 November 2007), para. 13.

¹⁷⁴⁷ P1226 (Ahmet Ukaj, witness statement, 11 November 2007), paras 11, 15, 17.

¹⁷⁴⁸ P1226 (Ahmet Ukaj, witness statement, 11 November 2007), para. 15.

¹⁷⁴⁹ P1226 (Ahmet Ukaj, witness statement, 11 November 2007), para. 15.

¹⁷⁵⁰ P1226 (Ahmet Ukaj, witness statement, 11 November 2007), para. 15.

¹⁷⁵¹ P1226 (Ahmet Ukaj, witness statement, 11 November 2007), para. 15; Ahmet Ukaj, T. 10663.

¹⁷⁵² P1226 (Ahmet Ukaj, witness statement, 11 November 2007), para. 16.

¹⁷⁵³ P1226 (Ahmet Ukaj, witness statement, 11 November 2007), para. 18.

¹⁷⁵⁴ P1226 (Ahmet Ukaj, witness statement, 11 November 2007), para. 19.

¹⁷⁵⁵ P1226 (Ahmet Ukaj, witness statement, 11 November 2007), para. 19.

¹⁷⁵⁶ P1226 (Ahmet Ukaj, witness statement, 11 November 2007), para. 20.

¹⁷⁵⁷ P1226 (Ahmet Ukaj, witness statement, 11 November 2007), para. 21.

¹⁷⁵⁸ 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.¹⁷⁵⁹ 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.¹⁷⁶⁰ The witness also testified that Metë Krasniqi was not part of the structure of the third brigade.¹⁷⁶¹ He did however function as a de facto military policeman in Barane/Baran and had an office there.¹⁷⁶² According to Witness 17, Metë Krasniqi stopped Sanije Balaj.¹⁷⁶³ Some of Sanije Balaj's relatives reported her disappearance to Tahir Zemaj in August 1998.¹⁷⁶⁴ Tahir Zemaj instructed two KLA military policemen, Hysen Gashi and Fadil Nimani to investigate the disappearance.¹⁷⁶⁵ At the same time, Sadri Selca, who was responsible for brigade security in the third brigade was also instructed to investigate the disappearance.¹⁷⁶⁶ 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.¹⁷⁶⁷ After "Cufa" had released her, she was taken by a person called Galan to an unknown place and killed.¹⁷⁶⁸ According to the Note, "in all probability Togerri then took her to Lake Radoniq".¹⁷⁶⁹ The Note also states that Sanije Balaj was killed because she admitted to working for the Serbian police.¹⁷⁷⁰ 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.¹⁷⁷¹ 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.¹⁷⁷²

¹⁷⁵⁹ Witness 17, T. 7666-7667, 7695, 7698-7699.

¹⁷⁶⁰ Witness 17, T. 7669-7671, 7736.

¹⁷⁶¹ Witness 17, T. 7668-7669, 7671, 7703-7704, 7723, 7725.

¹⁷⁶² Witness 17, T. 7671, 7704, 7726, 7729, 7733, 7738, 7803.

¹⁷⁶³ Witness 17, T. 7733.

¹⁷⁶⁴ P885 (Witness 17, witness statement, 14 August 2007), para. 75.

¹⁷⁶⁵ P885 (Witness 17, witness statement, 14 August 2007), para. 76; Witness 17, T. 7805-7806.

¹⁷⁶⁶ P885 (Witness 17, witness statement, 14 August 2007), para. 76; Witness 17, T. 7654, 7673, 7792, 7805.

¹⁷⁶⁷ P897 (Official Note, signed by Sadri Selca, 26 August 1998).

¹⁷⁶⁸ P897 (Official Note, signed by Sadri Selca, 26 August 1998).

¹⁷⁶⁹ P897 (Official Note, signed by Sadri Selca, 26 August 1998).

¹⁷⁷⁰ P897 (Official Note, signed by Sadri Selca, 26 August 1998).

¹⁷⁷¹ P885 (Witness 17, witness statement, 14 August 2007), para. 79; Witness 17, T. 7805.

¹⁷⁷² P885 (Witness 17, witness statement, 14 August 2007), para. 80.

349. Rrustem Tetaj, a former JNA officer,¹⁷⁷³ 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 1998.¹⁷⁷⁴ 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.¹⁷⁷⁵ 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.¹⁷⁷⁶ According to the witness, Ramush Haradinaj, Tahir Zemaj, and Gani Gjukaj all insisted that the circumstances of Sanije Balaj's death should be investigated.¹⁷⁷⁷

350. Sadri Selca, a FARK intelligence officer stationed in Barane/Baran, in Peć/Pejë municipality,¹⁷⁷⁸ testified that Shaban Balaj had come to the barracks in Barane/Baran and told the witness that his sister, Sanije Balaj, was missing.¹⁷⁷⁹ Shaban Balaj told the witness that Sanije had had about DEM 2,000 with her on the day she disappeared.¹⁷⁸⁰ The witness then investigated the disappearance of Sanije Balaj.¹⁷⁸¹ 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.¹⁷⁸² 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.¹⁷⁸³ 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.¹⁷⁸⁴ 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.¹⁷⁸⁵

¹⁷⁷³ P265 (Rrustem Tetaj, witness statement, 17 April 2007), para. 1; Rrustem Tetaj, T. 3604-3605.

¹⁷⁷⁴ P265 (Rrustem Tetaj, witness statement, 17 April 2007), para. 26.

¹⁷⁷⁵ P265 (Rrustem Tetaj, witness statement, 17 April 2007), paras 26-27; Rrustem Tetaj, T. 3776.

¹⁷⁷⁶ P265 (Rrustem Tetaj, witness statement, 17 April 2007), paras 26-27.

¹⁷⁷⁷ Rrustem Tetaj, T. 3775-3778.

¹⁷⁷⁸ Sadri Selca, T. 10858-10860, 10864.

¹⁷⁷⁹ Sadri Selca, T. 10865-10866, 10880-10882, 10887.

¹⁷⁸⁰ Sadri Selca, T. 10886-10887.

¹⁷⁸¹ Sadri Selca, T. 10865.

¹⁷⁸² Sadri Selca, T. 10867; P898 (Statement of Hysen and Ahmet Ukaj, 28 August 1998).

¹⁷⁸³ Sadri Selca, T. 10867; P898 (Statement of Hysen and Ahmet Ukaj, 28 August 1998).

¹⁷⁸⁴ Sadri Selca, T. 10867; P898 (Statement of Hysen and Ahmet Ukaj, 28 August 1998).

¹⁷⁸⁵ 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 Aleksandrić¹⁷⁸⁶ 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.¹⁷⁸⁷ More precisely, body R-1 was found next to the wall, near the bushes.¹⁷⁸⁸ 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.¹⁷⁸⁹ 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.¹⁷⁹⁰ ICMP DNA analysis identified the body labelled R-1 as that of Sanije Balaj.¹⁷⁹¹ 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.¹⁷⁹² 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.¹⁷⁹³ Dušan Dunjić¹⁷⁹⁴ surmised that the individual was not killed on the spot, but that the body was moved there post-mortem.¹⁷⁹⁵ The body was wearing a long dress with dark-blue and white vertical stripes and white buttons.¹⁷⁹⁶ An autopsy conducted on the remains in September 1998 revealed a bullet hole in the head from a hand-held fire-arm.¹⁷⁹⁷ The entry wound was at the left base of the skull; the exit wound on the back of the skull, slightly below the

¹⁷⁸⁶ 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).

¹⁷⁸⁷ 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.

¹⁷⁸⁸ 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”.

¹⁷⁸⁹ 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).

¹⁷⁹⁰ P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 188.

¹⁷⁹¹ Agreed Facts, 26 November 2007, No. 24.

¹⁷⁹² Agreed Facts, 26 November 2007, No. 26.

¹⁷⁹³ Agreed Facts, 26 November 2007, No. 27.

¹⁷⁹⁴ P618 (Dušan Dunjić, witness statement, 8 June 2007), paras 2-3, 23, 40, 151; P620 (CV of Dušan Dunjić), p. 2.

¹⁷⁹⁵ P618 (Dušan Dunjić, witness statement, 8 June 2007), paras 188, 710; Dušan Dunjić, T. 7306-7307.

¹⁷⁹⁶ 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.

¹⁷⁹⁷ P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 194.

middle.¹⁷⁹⁸ 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.¹⁷⁹⁹

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 Glodane/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 Glodane/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.

¹⁷⁹⁸ P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 194; P802 (Autopsy report R-1), pp. 1-2, 6; P805 (Photographs of R-1).

¹⁷⁹⁹ 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 Sanije 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 Sanije Balaj to the Radonjić/Radoniq canal.

358. The Trial Chamber has heard evidence from a number of witnesses about a KLA investigation into Sanije 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 Sanije Balaj to offer their condolences.

359. The Trial Chamber has heard evidence that Sanije Balaj was suspected of collaboration with the Serbs. However, the Trial Chamber cannot conclude that this was the reason for the murder of Sanije Balaj, as the evidence provides for reasonable alternatives. All three Accused are charged with the murder of Sanije 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,¹⁸⁰⁰ 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.¹⁸⁰¹ 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.¹⁸⁰² According to the witness, Deli Delija was not a member of the KLA.¹⁸⁰³ 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.¹⁸⁰⁴ When Sejd Noci realized that it was Besim Alija Rama calling, he told Deli Delija that the KLA were looking for him.¹⁸⁰⁵ After a brief discussion with Deli Delija, Besim Alija Rama left.¹⁸⁰⁶ The following day, the witness saw Deli Delija and Besim Alija Rama talking in Junik, in Deçani/Deçan municipality.¹⁸⁰⁷ The witness spent that night in the house in Košare/Koshare where both Deli Delija and Sejd Noci were staying.¹⁸⁰⁸ 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.¹⁸⁰⁹ The witness said that because he was a member of the

¹⁸⁰⁰ P1223 (Avdullah Avdija, witness statement, 11 November 2007), p. 2, paras 1, 11, 15; Avdullah Avdija, T. 10568-10569.

¹⁸⁰¹ P1223 (Avdullah Avdija, witness statement, 11 November 2007), para. 8; Avdullah Avdija, T. 10580-10581.

¹⁸⁰² P1223 (Avdullah Avdija, witness statement, 11 November 2007), para. 8.

¹⁸⁰³ P1223 (Avdullah Avdija, witness statement, 11 November 2007), para. 8.

¹⁸⁰⁴ P1223 (Avdullah Avdija, witness statement, 11 November 2007), para. 9.

¹⁸⁰⁵ P1223 (Avdullah Avdija, witness statement, 11 November 2007), para. 9.

¹⁸⁰⁶ P1223 (Avdullah Avdija, witness statement, 11 November 2007), para. 9.

¹⁸⁰⁷ P1223 (Avdullah Avdija, witness statement, 11 November 2007), para. 10.

¹⁸⁰⁸ P1223 (Avdullah Avdija, witness statement, 11 November 2007), para. 10.

¹⁸⁰⁹ P1223 (Avdullah Avdija, witness statement, 11 November 2007), para. 11.

KLA, he could not help Sejd Noci.¹⁸¹⁰ Sejd Noci finally resolved to travel to Junik to surrender to the KLA and discover why they were looking for him.¹⁸¹¹ 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.¹⁸¹² As the witness was wearing a KLA uniform, he could pass the position and continue on into the town.¹⁸¹³ Deli Delija and Sejd Noci stayed behind at the position and this was the last time that the witness saw the two men.¹⁸¹⁴ The witness later heard from people in Tropoje in Albania that Sejd Noci was taken by the KLA.¹⁸¹⁵

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 1998.¹⁸¹⁶ On 18 and 19 September 1998, Witness 64 videotaped the identification process that took place in Hotel Paštrik.¹⁸¹⁷ 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.¹⁸¹⁸ According to Witness 64, who had reviewed the videotape, Witness 71 said that he was later released but Sejd Noci was killed.¹⁸¹⁹ 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.¹⁸²⁰ Witness 71 testified that he had been taken to the KLA headquarters in Glodane/Glodjane by KLA soldiers, that he was asked about a young man and then released.¹⁸²¹

¹⁸¹⁰ P1223 (Avdullah Avdija, witness statement, 11 November 2007), para. 11.

¹⁸¹¹ P1223 (Avdullah Avdija, witness statement, 11 November 2007), paras 11-12.

¹⁸¹² P1223 (Avdullah Avdija, witness statement, 11 November 2007), para. 13; Avdullah Avdija, T. 10575-10577.

¹⁸¹³ P1223 (Avdullah Avdija, witness statement, 11 November 2007), para. 13.

¹⁸¹⁴ P1223 (Avdullah Avdija, witness statement, 11 November 2007), para. 13; Avdullah Avdija, T. 10578, 10580-10581; P1224 (Map marked by Avdullah Avdija).

¹⁸¹⁵ P1223 (Avdullah Avdija, witness statement, 11 November 2007), para. 14.

¹⁸¹⁶ P907 (Witness 64, witness statement, 23, 24, and 27 August 2007), paras 6, 9-13.

¹⁸¹⁷ P907 (Witness 64, witness statement, 23, 24, and 27 August 2007), para. 106-109.

¹⁸¹⁸ P907 (Witness 64, witness statement, 23, 24, and 27 August 2007), para. 108.

¹⁸¹⁹ P907 (Witness 64, witness statement, 23, 24, and 27 August 2007), para. 108.

¹⁸²⁰ 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).

¹⁸²¹ 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 Aleksandrić¹⁸²² 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.¹⁸²³ 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-27.¹⁸²⁴ ICMP DNA results concluded that the remains labelled R-21, R-24 and R-27B are those of Sejd Noci.¹⁸²⁵ Autopsies conducted on the remains in December 2003 concluded that fractures to the left shoulder blade and the left arm suggested gunshot wounds.¹⁸²⁶ The cause of death was not determined.¹⁸²⁷ Dušan Dunjić¹⁸²⁸ 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.¹⁸²⁹

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 Glođane/Glodjane

¹⁸²² 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).

¹⁸²³ 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.

¹⁸²⁴ 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.

¹⁸²⁵ Agreed Facts, 26 November 2007, No. 95.

¹⁸²⁶ Agreed Facts, 26 November 2007, No. 97.

¹⁸²⁷ Agreed Facts, 26 November 2007, No. 97.

¹⁸²⁸ P618 (Dušan Dunjić, witness statement, 8 June 2007), paras 2-3, 23, 40, 151; P620 (CV of Dušan Dunjić), p. 2.

¹⁸²⁹ 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.¹⁸³⁰ ICMP DNA analysis identified the remains labelled R-10/1 as those of a member of the Misin Berisha family.¹⁸³¹ 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.¹⁸³² The autopsy found multiple fractures to the right arm, but did not determine a cause of death.¹⁸³³ Dušan Dunjić¹⁸³⁴ 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-10.¹⁸³⁵ An autopsy conducted on

¹⁸³⁰ 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).

¹⁸³¹ Agreed Facts, 26 November 2007, No. 60.

¹⁸³² Agreed Facts, 26 November 2007, Nos 61-62.

¹⁸³³ Agreed Facts, 26 November 2007, No. 62.

¹⁸³⁴ P618 (Dušan Dunjić, witness statement, 8 June 2007), paras 2-3, 23, 40, 151; P620 (CV of Dušan Dunjić), p. 2.

¹⁸³⁵ 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.¹⁸³⁶

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.¹⁸³⁷ The cause of death was determined to be a gunshot to the chest and blunt force trauma to the head.¹⁸³⁸ On 8 December 2003, an autopsy on the remains labelled R-30 found only parts of the legs with no evident injuries.¹⁸³⁹ The cause of death was not ascertained.¹⁸⁴⁰

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.¹⁸⁴¹ The autopsy established multiple fractures to the skull consistent with a gunshot entry wound.¹⁸⁴² Fractures to the left shoulder blade and hip, consistent with gunshot wounds, were also observed.¹⁸⁴³ The cause of death was determined to be gunshot wounds to the chest, head and pelvis.¹⁸⁴⁴ Dušan Dunjić¹⁸⁴⁵ 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.¹⁸⁴⁶ It also revealed fractures of the skull, torso and extremities, probably inflicted by blunt force.¹⁸⁴⁷ 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 30.¹⁸⁴⁸ There were fractures on the frontal parts of the skull.¹⁸⁴⁹ The cause of death was not determined.¹⁸⁵⁰

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

¹⁸³⁶ P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 313; P677 (Autopsy report R-10/1), p. 2.

¹⁸³⁷ Agreed Facts, 26 November 2007, No. 128.

¹⁸³⁸ Agreed Facts, 26 November 2007, No. 129.

¹⁸³⁹ Agreed Facts, 26 November 2007, No. 131.

¹⁸⁴⁰ Agreed Facts, 26 November 2007, No. 131.

¹⁸⁴¹ Agreed Facts, 26 November 2007, No. 133.

¹⁸⁴² Agreed Facts, 26 November 2007, No. 133.

¹⁸⁴³ Agreed Facts, 26 November 2007, No. 133.

¹⁸⁴⁴ Agreed Facts, 26 November 2007, No. 134.

¹⁸⁴⁵ P618 (Dušan Dunjić, witness statement, 8 June 2007), paras 2-3, 23, 40, 151; P620 (CV of Dušan Dunjić), p. 2.

¹⁸⁴⁶ P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 580; P764 (Autopsy report R-32), p. 4.

¹⁸⁴⁷ 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.

¹⁸⁴⁸ Agreed Facts, 26 November 2007, No. 136.

¹⁸⁴⁹ 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

¹⁸⁵⁰ 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 1998.¹⁸⁵¹ 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.¹⁸⁵² Witness 3 asked them where they were going, and they answered that they were going to Grabanica/Grabanicë.¹⁸⁵³ According to Witness 3, they never left the village.¹⁸⁵⁴

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.¹⁸⁵⁵ These three persons were leaving Dolac/Dollc in Klina/Klinë municipality on Burim Bejta's horse-cart.¹⁸⁵⁶ They were transporting corn to the mill in Grabanica/Grabanicë in Klina/Klinë municipality to have it ground there.¹⁸⁵⁷ The witness did not remember the exact date himself, but learned this from his sister.¹⁸⁵⁸ 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.¹⁸⁵⁹ 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.¹⁸⁶⁰ As to the enquiry of the relatives, the Albanians said that they had never seen those for whom the relatives were looking.¹⁸⁶¹

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.¹⁸⁶² 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.¹⁸⁶³ The

¹⁸⁵¹ Witness 3, T. 7898, 7905, 7912-7914, 7916, 7985.

¹⁸⁵² Witness 3, T. 7915, 8029-8030.

¹⁸⁵³ Witness 3, T. 7916, 8030-8031.

¹⁸⁵⁴ Witness 3, T. 7915-7916.

¹⁸⁵⁵ Witness 66, T. 8413-8415, 8417-8419, 8422-8423, 8431.

¹⁸⁵⁶ Witness 66, T. 8422-8423, 8431.

¹⁸⁵⁷ Witness 66, T. 8419, 8422-8423, 8431.

¹⁸⁵⁸ Witness 66, T. 8423.

¹⁸⁵⁹ Witness 66, T. 8424, 8427.

¹⁸⁶⁰ Witness 66, T. 8424-8425, 8427-8428.

¹⁸⁶¹ Witness 66, T. 8424-8425.

¹⁸⁶² Witness 66, T. 8426, 8428.

¹⁸⁶³ Witness 66, T. 8426-8429.

witness learned about these events from his relatives when they returned.¹⁸⁶⁴ 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.¹⁸⁶⁵ The witness and his mother recognized the horse, and the witness also recognized a white sack of corn.¹⁸⁶⁶ 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.¹⁸⁶⁷

375. Witness 31 was well acquainted with Burim Bejta, Ivan Zarić, and Agron Berisha.¹⁸⁶⁸ The witness testified that she last saw these three young men around 10:00 one morning.¹⁸⁶⁹ The witness could not remember the month or year in which this occurred, but thought it was in 1998 or 1999.¹⁸⁷⁰ The three were riding together in a horse-drawn cart.¹⁸⁷¹ They were taking a sack of corn to a mill in Grabanica/Grabanicë, in Klina/Klinë municipality.¹⁸⁷² 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.¹⁸⁷³ In Grabanica/Grabanicë the witness encountered a large number of armed men ("perhaps 100") wearing KLA uniforms.¹⁸⁷⁴ At the mill, a man who answered the bell told Bejta's mother that he had not seen Burim Bejta that day.¹⁸⁷⁵

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/Dolc 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,

¹⁸⁶⁴ Witness 66, T. 8428-8429.

¹⁸⁶⁵ Witness 66, T. 8429-8430. See also Witness 31, T. 9520-9521.

¹⁸⁶⁶ Witness 66, T. 8429-8430.

¹⁸⁶⁷ Witness 66, T. 8429-8431.

¹⁸⁶⁸ Witness 31, T. 9513-9514.

¹⁸⁶⁹ Witness 31, T. 9515-9517.

¹⁸⁷⁰ Witness 31, T. 9515.

¹⁸⁷¹ Witness 31, T. 9516-9517, 9521.

¹⁸⁷² Witness 31, T. 9516.

¹⁸⁷³ Witness 31, T. 9517.

¹⁸⁷⁴ 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/Dolc 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 1998.¹⁸⁷⁶ 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.¹⁸⁷⁷ Together they went to Dolovo/Dollove, in Klina/Klinë municipality, to feed their livestock.¹⁸⁷⁸ Halfway to their destination, they were stopped by two men who

¹⁸⁷⁵ Witness 31, T. 9520.

¹⁸⁷⁶ 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.

¹⁸⁷⁷ Witness 54, T. 8271, 8273-8275, 8277-8278.

¹⁸⁷⁸ Witness 54, T. 8275, 8277.

threatened to shoot them.¹⁸⁷⁹ The men were wearing dark green camouflage uniforms and carrying light machine-guns.¹⁸⁸⁰ They spoke Albanian.¹⁸⁸¹ The men searched them and took away their bicycles and all items from their pockets.¹⁸⁸² The men then blindfolded and tied the hands of Ukë Rexhepaj and Nesret Alijaj.¹⁸⁸³ They forced both of them into a car and said they would bring them back.¹⁸⁸⁴ They waved and shouted to a man named Ismet, who was in the woods, to come and get Witness 54.¹⁸⁸⁵ Ismet and Witness 54 walked for five minutes before arriving at a house.¹⁸⁸⁶ Then, without seeking any directions from the witness, Ismet took him back to Iber Januzaj's house.¹⁸⁸⁷ The witness never saw Ukë Rexhepaj and Nesret Alijaj again.¹⁸⁸⁸

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.

¹⁸⁷⁹ Witness 54, T. 8275, 8277.

¹⁸⁸⁰ Witness 54, T. 8276.

¹⁸⁸¹ Witness 54, T. 8276.

¹⁸⁸² Witness 54, T. 8275.

¹⁸⁸³ Witness 54, T. 8276.

¹⁸⁸⁴ Witness 54, T. 8275-8276.

¹⁸⁸⁵ Witness 54, T. 8275, 8277-8278.

¹⁸⁸⁶ Witness 54, T. 8275, 8280.

¹⁸⁸⁷ Witness 54, T. 8275, 8280-8281.

¹⁸⁸⁸ 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,¹⁸⁸⁹ testified that around noon on 13 June 1998 he and his family were driving north on the road between Đakovica/Gjakovë and Klina/Klinë.¹⁸⁹⁰ At the entrance to Dolovo/Dollove, in Klina/Klinë municipality, they were stopped by the VJ who told them not to continue.¹⁸⁹¹ 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.¹⁸⁹² They were all armed; some of them wore civilian clothes and others camouflage uniforms, though none of them had insignia.¹⁸⁹³ 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.¹⁸⁹⁴ They seized Witness 6's pistol and documents, including his gun licence.¹⁸⁹⁵ Witness 6 and his family waited in their car away from the road for about two hours.¹⁸⁹⁶ Then the witness heard a car coming from the main road, as well as some shooting.¹⁸⁹⁷ The soldiers brought a light blue Opel Kadett with Đakovica/Gjakovë licence plates close to where Witness 6 was parked.¹⁸⁹⁸ One of the soldiers asked Witness 6 whether he recognized the car, and he answered that he did not.¹⁸⁹⁹ 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.¹⁹⁰⁰ Witness 6 was in the Opel Kadett where he found a photo album, in which he recognized "Nenad", a

¹⁸⁸⁹ Witness 6, T. 5166-5167, 5238-5239, 5263-5264, 5305, 5399.

¹⁸⁹⁰ Witness 6, T. 5168-5171, 5293, 5386; P331 (Map on which the witness marked his journey).

¹⁸⁹¹ Witness 6, T. 5171, 5173, 5179, 5188-5190, 5352; P331 (Map on which the witness marked his journey).

¹⁸⁹² Witness 6, T. 5171, 5173-5174, 5190-5191, 5193, 5293-5294; P331 (Map on which the witness marked his journey).

¹⁸⁹³ Witness 6, T. 5193-5194.

¹⁸⁹⁴ Witness 6, T. 5194, 5352-5355, 5399.

¹⁸⁹⁵ Witness 6, T. 5194, 5352-5353.

¹⁸⁹⁶ Witness 6, T. 5194-5195.

¹⁸⁹⁷ Witness 6, T. 5195.

¹⁸⁹⁸ Witness 6, T. 5195-5196.

¹⁸⁹⁹ Witness 6, T. 5195.

Serbian or Montenegrin policeman who worked in Đakovica/Gjakovë.¹⁹⁰¹ At one point, the soldiers told the witness's wife and children to get out, which they did.¹⁹⁰² The cars arrived in Jablanica/Jabllanicë in Đakovica/Gjakovë municipality.¹⁹⁰³

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.¹⁹⁰⁴ 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.¹⁹⁰⁵ One of the participants in this beating was Nazmi Brahimaj.¹⁹⁰⁶ Witness 6 testified that they asked him questions but that nobody explained why he was beaten.¹⁹⁰⁷ Witness 6 did not remember seeing Lahi Brahimaj that evening.¹⁹⁰⁸ 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.¹⁹⁰⁹ 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.¹⁹¹⁰ Witness 6 remained in a room of that house for the rest of his stay in Jablanica/Jabllanicë.¹⁹¹¹ The room had a window which was boarded up with wooden planks that let through very little light.¹⁹¹² There was no light-bulb in the room.¹⁹¹³ For the first four weeks, he was locked up in that room and saw soldiers only when they came to beat him.¹⁹¹⁴ Lahi and Nazmi Brahimaj would come, usually staying for about five to ten minutes, and beat Witness 6 with their fists and baseball bats.¹⁹¹⁵ Also, Nazmi and Lahi Brahimaj were sometimes present while other soldiers beat Witness 6.¹⁹¹⁶ On occasion, Lahi, Nazmi, and Hamza Brahimaj came to the room where he was

¹⁹⁰⁰ Witness 6, T. 5196, 5203-5204, 5316.

¹⁹⁰¹ Witness 6, T. 5196-5197, 5354.

¹⁹⁰² Witness 6, T. 5200.

¹⁹⁰³ Witness 6, T. 5197-5201, 5203; P331 (Map on which the witness marked his journey).

¹⁹⁰⁴ 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).

¹⁹⁰⁵ Witness 6, T. 5207-5211, 5214-5215, 5324, 5350-5351.

¹⁹⁰⁶ Witness 6, T. 5209.

¹⁹⁰⁷ Witness 6, T. 5210, 5400.

¹⁹⁰⁸ Witness 6, T. 5372.

¹⁹⁰⁹ 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).

¹⁹¹⁰ Witness 6, T. 5204-5205, 5216, 5316, 5324; P332 (Photo of Jablanica/Jabllanicë compound).

¹⁹¹¹ Witness 6, T. 5205, 5213, 5216, 5316-5317, 5325, 5347.

¹⁹¹² Witness 6, T. 5216, 5325-5326.

¹⁹¹³ Witness 6, T. 5401

¹⁹¹⁴ Witness 6, T. 5217-5218, 5220.

¹⁹¹⁵ Witness 6, T. 5208-5209, 5219-5220, 5372-5373.

¹⁹¹⁶ Witness 6, T. 5220-5221, 5373.

kept but they did not beat him.¹⁹¹⁷ KLA soldiers including Lahi and Nazmi Brahimaj accused Witness 6 of associating with or spying for the Serbs.¹⁹¹⁸ Witness 6 was swollen from the beatings he received.¹⁹¹⁹ He was sick and often unconscious.¹⁹²⁰ Gani Brahimaj, who worked there as a cook, brought him a piece of bread, marmalade, and some water every day.¹⁹²¹

383. For the first four weeks of his detention, Witness 6 did not know the names of the people detaining him.¹⁹²² He learned the names of Lahi, Nazmi, and Hamza Brahimaj when they addressed each other in the yard.¹⁹²³ He saw Nazmi Brahimaj there almost every day.¹⁹²⁴ Gani Brahimaj told Nazmi Brahimaj's name to Witness 6.¹⁹²⁵ He heard others address Nazmi as "deputy commander".¹⁹²⁶ Witness 6 also saw Hamza almost every day at Jablanica/Jabllanicë.¹⁹²⁷ He heard others address him by that name.¹⁹²⁸ Much later, he learned that Hamza's surname was Brahimaj.¹⁹²⁹ Witness 6 also saw Lahi Brahimaj at Jablanica/Jabllanicë, and heard others address him as "Lahi" or "Maxhup".¹⁹³⁰ Gani Brahimaj told Witness 6 that Lahi Brahimaj's nickname was "Maxhup".¹⁹³¹ Witness 6 testified that during his time at Jablanica/Jabllanicë two days would not go by without him seeing Lahi Brahimaj.¹⁹³² Lahi Brahimaj wore either a camouflage or a black uniform.¹⁹³³ Witness 6 testified that Lahi Brahimaj was a member of the KLA.¹⁹³⁴ 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.¹⁹³⁵ He was no longer beaten.¹⁹³⁶ He ate food, including bread and beans.¹⁹³⁷ He washed dishes in an open meadow.¹⁹³⁸

¹⁹¹⁷ Witness 6, T. 5220.

¹⁹¹⁸ Witness 6, T. 5351-5352, 5398-5400.

¹⁹¹⁹ Witness 6, T. 5220.

¹⁹²⁰ Witness 6, T. 5326.

¹⁹²¹ Witness 6, T. 5218-5219, 5240, 5244, 5326-5329, 5341.

¹⁹²² Witness 6, T. 5208, 5218, 5232, 5295-5297, 5347.

¹⁹²³ Witness 6, T. 5208-5209, 5245.

¹⁹²⁴ Witness 6, T. 5219.

¹⁹²⁵ Witness 6, T. 5378.

¹⁹²⁶ Witness 6, T. 5245.

¹⁹²⁷ Witness 6, T. 5219.

¹⁹²⁸ Witness 6, T. 5246.

¹⁹²⁹ Witness 6, T. 5209.

¹⁹³⁰ Witness 6, T. 5245.

¹⁹³¹ Witness 6, T. 5218-5219.

¹⁹³² Witness 6, T. 5218, 5372.

¹⁹³³ Witness 6, T. 5245.

¹⁹³⁴ Witness 6, T. 5246.

¹⁹³⁵ Witness 6, T. 5217, 5231-5232, 5241-5243, 5332-5334, 5386, 5391.

¹⁹³⁶ Witness 6, T. 5243, 5259.

¹⁹³⁷ 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”.¹⁹³⁹ Witness 6 was visited by his wife, father, and one of his sons.¹⁹⁴⁰ Someone whom Witness 6 did not identify gave them a paper indicating that he would be released after one week.¹⁹⁴¹ Witness 6 saw as many as 100 to 200 soldiers at a time at Jablanica/Jabllanicë, on their way to get weapons from Albania.¹⁹⁴² Most of them did not wear a uniform or were only partially uniformed.¹⁹⁴³ Witness 6 also saw civilians other than detainees at Jablanica/Jabllanicë.¹⁹⁴⁴

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.¹⁹⁴⁵ The release decision stated that Witness 6’s release was conditional and “[if] he repeats his mistakes, [the witness] will be prosecuted”.¹⁹⁴⁶ Witness 6 was released the same day.¹⁹⁴⁷ Witness 6 asked for the return of his car, gun, driver’s licence, ID and wallet, but did not receive them.¹⁹⁴⁸ Witness 6 was never told why he was detained.¹⁹⁴⁹ After his release, his father told him that the people of their village had come to plead for his release.¹⁹⁵⁰ 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.¹⁹⁵¹ Witness 6 complained of lasting pains all over his body.¹⁹⁵² He also testified that he had become unable to perform physical work or lift weights above five kilograms.¹⁹⁵³ 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.¹⁹⁵⁴ On 30 July 1998, Witness 6 went to see a doctor in

¹⁹³⁸ Witness 6, T. 5244, 5333-5334, 5341, 5361, 5395.

¹⁹³⁹ Witness 6, T. 5243, 5349.

¹⁹⁴⁰ Witness 6, T. 5252.

¹⁹⁴¹ Witness 6, T. 5252.

¹⁹⁴² Witness 6, T. 5246, 5360-5361.

¹⁹⁴³ Witness 6, T. 5246.

¹⁹⁴⁴ Witness 6, T. 5246.

¹⁹⁴⁵ Witness 6, T. 5253-5256, 5379; P335 (Decisions signed by Nazmi Brahimaj).

¹⁹⁴⁶ Witness 6, T. 5255-5256; P335 (Decisions signed by Nazmi Brahimaj).

¹⁹⁴⁷ Witness 6, T. 5206, 5252-5255, 5297-5298.

¹⁹⁴⁸ Witness 6, T. 5254, 5256, 5304, 5342, 5361, 5378-5380, 5398, 5403.

¹⁹⁴⁹ Witness 6, T. 5252-5253.

¹⁹⁵⁰ Witness 6, T. 5252.

¹⁹⁵¹ Witness 6, T. 5210, 5243, 5259, 5265-5268, 5373-5375.

¹⁹⁵² Witness 6, T. 5268, 5373-5374, 5401.

¹⁹⁵³ Witness 6, T. 5243, 5268.

¹⁹⁵⁴ Witness 6, T. 5259, 5401.

Đakovica/Gjakovë, who X-rayed him and prescribed some medicine.¹⁹⁵⁵ The X-ray revealed a fractured left ulna.¹⁹⁵⁶ The doctor did not treat his left forearm.¹⁹⁵⁷ Witness 6 also went to see another doctor, who prescribed him painkillers.¹⁹⁵⁸ At the time of his testimony, Witness 6 still took medication for the injuries he received during his detention.¹⁹⁵⁹

385. Witness 6 met Nazmi Brahimaj again about a year after his incarceration and recognized him.¹⁹⁶⁰ Also, on 24 February 2004, Witness 6 recognized him on a photo spread.¹⁹⁶¹ During the same photo spread session, he recognized Lahi Brahimaj.¹⁹⁶²

386. Pekka Haverinen, a Finnish police officer who worked as an ICTY investigator from June 2002 to March 2005,¹⁹⁶³ testified that he showed seven photo boards to Witness 6 during an interview on 25 February 2004.¹⁹⁶⁴ Witness 6 recognized Ramush Haradinaj and Lahi Brahimaj on the photo boards.¹⁹⁶⁵ Witness 6 told Haverinen that he could recognize Haradinaj because he knew his face from newspapers and television.¹⁹⁶⁶ He did not know Ramush Haradinaj from the time of the war, or remember seeing him in the KLA prison in Jablanica/Jabllanicë.¹⁹⁶⁷ Witness 6 signed the photo boards, but there are no markings indicating the relevant numbers.¹⁹⁶⁸

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.¹⁹⁶⁹ While they were driving on the Peć/Pejë-Priština/Prishtinë road, they were stopped by Serbian police at the

¹⁹⁵⁵ Witness 6, T. 5259, 5261-5262, 5298-5299, 5312-5313; P336 (Medical report of examination of Witness 6).

¹⁹⁵⁶ P336 (Medical report of examination of Witness 6).

¹⁹⁵⁷ Witness 6, T. 5265-5268.

¹⁹⁵⁸ Witness 6, T. 5267-5268.

¹⁹⁵⁹ Witness 6, T. 5269, 5401.

¹⁹⁶⁰ Witness 6, T. 5269-5271.

¹⁹⁶¹ P375/P376 (Pekka Haverinen, witness statement, 26 June 2007), paras 10, 14, annex 4. See also Witness 6, T. 5371-5372.

¹⁹⁶² Witness 6, T. 5371-5372; P375/P376 (Pekka Haverinen, witness statement, 26 June 2007), paras 10, 15, annex 5.

¹⁹⁶³ P375/P376 (Pekka Haverinen, witness statement, 26 June 2007), para. 1; Pekka Haverinen, T. 6299-6300.

¹⁹⁶⁴ P375 (Pekka Haverinen, witness statement, 26 June 2007), paras 8, 10; Pekka Haverinen, T. 6339-6340.

¹⁹⁶⁵ P375 (Pekka Haverinen, witness statement, 26 June 2007), paras 11, 15, Annex 2, Annex 5.

¹⁹⁶⁶ P375 (Pekka Haverinen, witness statement, 26 June 2007), para. 12.

¹⁹⁶⁷ P375 (Pekka Haverinen, witness statement, 26 June 2007), para. 12.

¹⁹⁶⁸ P375 (Pekka Haverinen, witness statement, 26 June 2007), paras 12, 15; Pekka Haverinen, T. 6348-6350.

¹⁹⁶⁹ P1221 (Witness 23, witness statement, 18 January 2003), p. 2.

checkpoint on the bridge in Dolovo/Dollove, in Klina/Klinë municipality.¹⁹⁷⁰ The police told them that it was dangerous to travel to Nepolje/Nepolë, because of the KLA.¹⁹⁷¹ 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-Dakovica/Gjakovë road.¹⁹⁷² Some men were wearing camouflage uniforms.¹⁹⁷³ The men questioned the family for approximately two hours.¹⁹⁷⁴ 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.¹⁹⁷⁵ Witness 6 had to give the men his gun.¹⁹⁷⁶ After about two hours, the witness heard a car coming from the direction of Đakovica/Gjakovë, followed by the sound of shooting.¹⁹⁷⁷ The witness did not see what happened, nor could she remember any details about the car.¹⁹⁷⁸ The witness was ordered to board this other car together with Witness 6 and one other family member.¹⁹⁷⁹ The rest of the family boarded the family’s own car.¹⁹⁸⁰ Each car was driven by a KLA soldier.¹⁹⁸¹ They all drove to a location in Nepolje/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 6.¹⁹⁸² After the incident, the witness told her brother and a cousin that Witness 6 had been taken by the KLA.¹⁹⁸³ They started making inquiries, learning that Witness 6 was detained in the village of Jablanica/Jabllanicë.¹⁹⁸⁴ The witness remained in Nepolje/Nepolë for three or four days and saw someone driving her car in the village every day.¹⁹⁸⁵ 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.¹⁹⁸⁶ Witness 23 observed that Witness 6 had lost a lot of weight and looked like he was in bad shape.¹⁹⁸⁷ The witness saw

¹⁹⁷⁰ P1221 (Witness 23, witness statement, 18 January 2003), p. 2; Witness 23, T. 10539.

¹⁹⁷¹ P1221 (Witness 23, witness statement, 18 January 2003), p. 2.

¹⁹⁷² P1221 (Witness 23, witness statement, 18 January 2003), pp. 2-3; Witness 23, T. 10528.

¹⁹⁷³ P1221 (Witness 23, witness statement, 18 January 2003), p. 3; Witness 23, T. 10539-10540.

¹⁹⁷⁴ P1221 (Witness 23, witness statement, 18 January 2003), p. 3; Witness 23, T. 10528.

¹⁹⁷⁵ Witness 23, T. 10540.

¹⁹⁷⁶ Witness 23, T. 10540-10541.

¹⁹⁷⁷ P1221 (Witness 23, witness statement, 18 January 2003), p. 3; Witness 23, T. 10529-10531.

¹⁹⁷⁸ P1221 (Witness 23, witness statement, 18 January 2003), p. 3; Witness 23, T. 10529.

¹⁹⁷⁹ P1221 (Witness 23, witness statement, 18 January 2003), p. 3; Witness 23, T. 10529-10534.

¹⁹⁸⁰ P1221 (Witness 23, witness statement, 18 January 2003), p. 3; Witness 23, T. 10529-10534.

¹⁹⁸¹ P1221 (Witness 23, witness statement, 18 January 2003), p. 3; Witness 23, T. 10532-10537.

¹⁹⁸² P1221 (Witness 23, witness statement, 18 January 2003), p. 3; Witness 23, T. 10532-10533.

¹⁹⁸³ P1221 (Witness 23, witness statement, 18 January 2003), p. 3.

¹⁹⁸⁴ P1221 (Witness 23, witness statement, 18 January 2003), pp. 3-4.

¹⁹⁸⁵ Witness 23, T. 10535, 10547-10548.

¹⁹⁸⁶ P1221 (Witness 23, witness statement, 18 January 2003), p. 4.

¹⁹⁸⁷ 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.¹⁹⁸⁸ Witness 6 was wearing a jacket over a short-sleeved shirt and the witness could not see visible injuries on his body.¹⁹⁸⁹ Someone the witness believed to be a KLA commander told them that they could come and bring Witness 6 home in one week.¹⁹⁹⁰ A week later, on 25 July 1998, Witness 6's brother went to Jablanica/Jabllanicë and brought Witness 6 home.¹⁹⁹¹ Witness 23 then saw that Witness 6 had lots of bruises on his body but not on his face.¹⁹⁹² Witness 6 went to see a doctor and X-rays showed that his arm was broken.¹⁹⁹³ 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.¹⁹⁹⁴

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.¹⁹⁹⁵ A group of villagers, including Witness 16 and Witness 7, drove to Jablanica/Jabllanicë to demand his release.¹⁹⁹⁶ Between Žabelj/Zhabel, in Đakovica/Gjakovë municipality, and Jablanica/Jabllanicë they encountered a checkpoint manned by KLA soldiers.¹⁹⁹⁷ Witness 16 told the soldiers that they had come to ask about the fate of Witness 6.¹⁹⁹⁸ One of the soldiers told them that they could continue towards Jablanica/Jabllanicë but that they should not enter the village.¹⁹⁹⁹ The villagers stopped the car on the outskirts of Jablanica/Jabllanicë.²⁰⁰⁰ Two soldiers, one in a KLA uniform, the other in a black uniform, approached them and saluted them with a clenched fist.²⁰⁰¹ Witness 16 told them that the villagers had come to ask the commander about the fate of Witness 6.²⁰⁰² One of the soldiers confirmed that Witness 6 was being held there and said that the

¹⁹⁸⁸ P1221 (Witness 23, witness statement, 18 January 2003), p. 4; Witness 23 T. 10538; D118 (Photograph showing the Jablanica/Jabllanicë compound).

¹⁹⁸⁹ Witness 23, T. 10550, 10558-10559.

¹⁹⁹⁰ P1221 (Witness 23, witness statement, 18 January 2003), p. 4.

¹⁹⁹¹ P1221 (Witness 23, witness statement, 18 January 2003), pp. 2, 4.

¹⁹⁹² P1221 (Witness 23, witness statement, 18 January 2003), p. 4; Witness 23, T. 10538-10539, 10559.

¹⁹⁹³ P1221 (Witness 23, witness statement, 18 January 2003), p. 4; Witness 23, T. 10538-10539, 10551-10552.

¹⁹⁹⁴ P1221 (Witness 23, witness statement, 18 January 2003), p. 4.

¹⁹⁹⁵ P1237 (Witness 16, witness statement, 6 May 2004), paras 3-4.

¹⁹⁹⁶ P1237 (Witness 16, witness statement, 6 May 2004), paras 4-5, 14.

¹⁹⁹⁷ P1237 (Witness 16, witness statement, 6 May 2004), para. 5.

¹⁹⁹⁸ P1237 (Witness 16, witness statement, 6 May 2004), para. 6.

¹⁹⁹⁹ P1237 (Witness 16, witness statement, 6 May 2004), para. 6.

²⁰⁰⁰ P1237 (Witness 16, witness statement, 6 May 2004), para. 7.

²⁰⁰¹ P1237 (Witness 16, witness statement, 6 May 2004), para. 7.

²⁰⁰² P1237 (Witness 16, witness statement, 6 May 2004), para. 8.

commander would come to see them.²⁰⁰³ 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.²⁰⁰⁴ An armed man arrived in a jeep, cocked his machine-gun, saluted the villagers with a clenched fist, and identified himself as the commander.²⁰⁰⁵ He stated that Witness 6 had been arrested and sentenced, but would be released.²⁰⁰⁶ He refused to let anyone from the group visit Witness 6.²⁰⁰⁷ 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.²⁰⁰⁸ The commander then went to the KLA compound, and the villagers returned home.²⁰⁰⁹ Witness 16 could not describe the commander and would not be able to recognize him.²⁰¹⁰

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.²⁰¹¹ The friend had heard this from a relative of Witness 7, who had seen the KLA driving Witness 6 to Jablanica/Jabllanicë.²⁰¹² Witness 7 then drove to Jablanica/Jabllanicë with the village elders to demand Witness 6's release.²⁰¹³ 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.²⁰¹⁴ It was a big house within a fenced compound with many KLA soldiers present.²⁰¹⁵ 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".²⁰¹⁶ After some time two men in black uniforms with KLA

²⁰⁰³ P1237 (Witness 16, witness statement, 6 May 2004), para. 9.

²⁰⁰⁴ P1237 (Witness 16, witness statement, 6 May 2004), para. 10.

²⁰⁰⁵ P1237 (Witness 16, witness statement, 6 May 2004), paras 11-13.

²⁰⁰⁶ P1237 (Witness 16, witness statement, 6 May 2004), para. 13.

²⁰⁰⁷ P1237 (Witness 16, witness statement, 6 May 2004), paras 14, 18.

²⁰⁰⁸ P1237 (Witness 16, witness statement, 6 May 2004), paras 15-17.

²⁰⁰⁹ P1237 (Witness 16, witness statement, 6 May 2004), para. 18.

²⁰¹⁰ P1237 (Witness 16, witness statement, 6 May 2004), para. 19.

²⁰¹¹ P1248 (Witness 7, witness statement, 28 April 2004), para. 3.

²⁰¹² P1248 (Witness 7, witness statement, 28 April), para. 4.

²⁰¹³ P1248 (Witness 7, witness statement, 28 April), para. 5.

²⁰¹⁴ P1248 (Witness 7, witness statement, 28 April), para. 6.

²⁰¹⁵ P1248 (Witness 7, witness statement, 28 April), para. 6.

²⁰¹⁶ 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”.²⁰¹⁷ Witness 16 demanded to know the real name of “Maxhupi” without success.²⁰¹⁸ Witness 16 then explained that they had come to seek the release of Witness 6.²⁰¹⁹ “Maxhupi” replied that he had convicted Witness 6, without saying of what, and that he would have to serve his time with the KLA.²⁰²⁰ “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.²⁰²¹ “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.²⁰²² “Maxhupi” responded very angrily to this, saying that he considered Rugova a traitor and a supporter of the Serbian authorities.²⁰²³

390. Witness 7 visited Jablanica/Jabllanicë daily for the next two weeks but was never allowed into the compound.²⁰²⁴ 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.²⁰²⁵ The guard said that he would inform Commander “Maxhupi” that the witness was there and let him into the compound.²⁰²⁶ After a while the man who called himself “Maxhupi” drove into the compound in a military jeep.²⁰²⁷ 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.²⁰²⁸ “Maxhupi” told the witness that he would not let him see Witness 6, and then ordered Witness 7 out of the compound.²⁰²⁹ Although Witness 7 returned to Jablanica/Jabllanicë during the following days (but never entered the compound), he did not meet “Maxhupi” again.²⁰³⁰ 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.²⁰³¹ One day

²⁰¹⁷ P1248 (Witness 7, witness statement, 28 April), para. 8.

²⁰¹⁸ P1248 (Witness 7, witness statement, 28 April), paras 9-10.

²⁰¹⁹ P1248 (Witness 7, witness statement, 28 April), paras 10-12.

²⁰²⁰ P1248 (Witness 7, witness statement, 28 April), para. 13.

²⁰²¹ P1248 (Witness 7, witness statement, 28 April), paras 14, 16.

²⁰²² P1248 (Witness 7, witness statement, 28 April), para. 15.

²⁰²³ P1248 (Witness 7, witness statement, 28 April), para. 15.

²⁰²⁴ P1248 (Witness 7, witness statement, 28 April), para. 18.

²⁰²⁵ P1248 (Witness 7, witness statement, 28 April), para. 19.

²⁰²⁶ P1248 (Witness 7, witness statement, 28 April), para. 20.

²⁰²⁷ P1248 (Witness 7, witness statement, 28 April), para. 21.

²⁰²⁸ P1248 (Witness 7, witness statement, 28 April), paras 21-22.

²⁰²⁹ P1248 (Witness 7, witness statement, 28 April), paras 23-25.

²⁰³⁰ P1248 (Witness 7, witness statement, 28 April), paras 26-27.

²⁰³¹ 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.²⁰³² The commander told Witness 7 to leave as Witness 6 had already been convicted.²⁰³³ 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.²⁰³⁴ 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.²⁰³⁵ The soldier thus became a courier passing on messages between Witness 6 and Witness 7.²⁰³⁶ A week later a KLA soldier told Witness 7 that he would be allowed to visit Witness 6.²⁰³⁷ 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.²⁰³⁸ 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”.²⁰³⁹ 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.²⁰⁴⁰ A week after this meeting Witness 6 was released.²⁰⁴¹ 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.²⁰⁴²

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,

²⁰³² P1248 (Witness 7, witness statement, 28 April), paras 29-30.

²⁰³³ P1248 (Witness 7, witness statement, 28 April), paras 29-30.

²⁰³⁴ P1248 (Witness 7, witness statement, 28 April), para. 31.

²⁰³⁵ P1248 (Witness 7, witness statement, 28 April), paras 31-32.

²⁰³⁶ P1248 (Witness 7, witness statement, 28 April), para. 32.

²⁰³⁷ P1248 (Witness 7, witness statement, 28 April), para. 34.

²⁰³⁸ P1248 (Witness 7, witness statement, 28 April), paras 35-36.

²⁰³⁹ P1248 (Witness 7, witness statement, 28 April), para. 36.

²⁰⁴⁰ P1248 (Witness 7, witness statement, 28 April), paras 37-38.

²⁰⁴¹ 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

²⁰⁴² 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.²⁰⁴³ He was dressed in civilian clothes.²⁰⁴⁴ 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.²⁰⁴⁵ 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.²⁰⁴⁶ The unidentified Albanian said that Nenad Remištar was still alive and was being protected

²⁰⁴³ P1242 (Witness 73, witness statement, 13 November 2007), para. 4.

²⁰⁴⁴ P1242 (Witness 73, witness statement, 13 November 2007), para. 5.

²⁰⁴⁵ P1242 (Witness 73, witness statement, 13 November 2007), para. 8.

²⁰⁴⁶ P1242 (Witness 73, witness statement, 13 November 2007), paras 10-11.

by a KLA soldier, who knew him.²⁰⁴⁷ The unidentified Albanian man had received this information from the Catholic Albanian man.²⁰⁴⁸

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.²⁰⁴⁹ From the reports that he read at the time, Avramović concluded that Rade Popović (sic) and Nikola Jovanović were on duty.²⁰⁵⁰ Their superior officer reported them as missing.²⁰⁵¹ 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.²⁰⁵² 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.²⁰⁵³

400. Witness 6, a Catholic Albanian,²⁰⁵⁴ 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.²⁰⁵⁵ Witness 6 knew Nenad as a Serbian or Montenegrin policeman who worked in Đakovica/Gjakovë.²⁰⁵⁶ Witness 6 had heard from Zokan Kuqi that Nenad was from Biča/Binxhë village, in Klina/Klinë municipality.²⁰⁵⁷ 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.²⁰⁵⁸ The soldiers did not

²⁰⁴⁷ P1242 (Witness 73, witness statement, 13 November 2007), para. 11.

²⁰⁴⁸ P1242 (Witness 73, witness statement, 13 November 2007), para. 10.

²⁰⁴⁹ 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).

²⁰⁵⁰ Nebojša Avramović, T. 6604.

²⁰⁵¹ Nebojša Avramović, T. 6604.

²⁰⁵² Nebojša Avramović, T. 6605.

²⁰⁵³ P931 (Zoran Stijović, witness statement, 27 September 2007), paras 2, 55.

²⁰⁵⁴ Witness 6, T. 5166-5167, 5238-5239, 5263-5264, 5305, 5399.

²⁰⁵⁵ 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).

²⁰⁵⁶ Witness 6, T. 5196-5197, 5354.

²⁰⁵⁷ Witness 6, T. 5197, 5354.

²⁰⁵⁸ Witness 6, T. 5208-5211, 5324.

give any explanation why they were beating Nenad.²⁰⁵⁹ Witness 6 did not remember seeing Lahi Brahimaj that evening.²⁰⁶⁰ Witness 6 and Nenad were tied up and left in the room overnight.²⁰⁶¹ In the afternoon of the next day, 14 June 1998, two soldiers took Nenad away.²⁰⁶² Witness 6 never saw Nenad again.²⁰⁶³ He later heard from Pavle Zuvčić, 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 Klina/Klinë.²⁰⁶⁴

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.²⁰⁶⁵ 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/Dečan, had interrupted the power supply, and worked for Serbia.²⁰⁶⁶ 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.²⁰⁶⁷ They bled from their wounds, and spat blood.²⁰⁶⁸ There was also blood on the floor.²⁰⁶⁹ The four persons stayed in the room for three or four days.²⁰⁷⁰ During this time Witness 6 would see Nazmi and Hamza Brahimaj in the room.²⁰⁷¹ One evening around 10 p.m., individuals whom Witness 6 did not identify took away the four detainees.²⁰⁷² Witness 6 never saw them again.²⁰⁷³

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

²⁰⁵⁹ Witness 6, T. 5211.

²⁰⁶⁰ Witness 6, T. 5372.

²⁰⁶¹ 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).

²⁰⁶² Witness 6, T. 5211, 5213, 5216, 5316-5317, 5324.

²⁰⁶³ Witness 6, T. 5317-5318, 5324.

²⁰⁶⁴ Witness 6, T. 5279, 5313-5314, 5323-5324.

²⁰⁶⁵ Witness 6, T. 5217, 5226-5227, 5329, 5387.

²⁰⁶⁶ Witness 6, T. 5227, 5329-5330, 5397.

²⁰⁶⁷ Witness 6, T. 5228, 5330-5331.

²⁰⁶⁸ Witness 6, T. 5228.

²⁰⁶⁹ Witness 6, T. 5230.

²⁰⁷⁰ Witness 6, T. 5227, 5330, 5387.

²⁰⁷¹ Witness 6, T. 5228.

²⁰⁷² 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

²⁰⁷³ 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,²⁰⁷⁴ 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.²⁰⁷⁵ They were stopped by a group of armed Serbian civilians on the road between Trstenik/Trëstenik, in Peć/Pejë municipality, and Klina/Klinë.²⁰⁷⁶ The civilians called uniformed police, who immediately started to beat and kick them.²⁰⁷⁷ They were then taken to Klina/Klinë police station, where they were interrogated while the beating continued with fists, boots and a metal tool.²⁰⁷⁸ At around midnight, Mahir Demaj and Pal Krasniqi were allowed to leave the police station.²⁰⁷⁹ They went into hiding, however, the police soon found them and returned them to Klina/Klinë, where they were once again released.²⁰⁸⁰ 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.²⁰⁸¹ Upon arrival in Jablanica/Jabllanicë, Pal Krasniqi and Mahir Demaj were taken to an improvised hospital where Mahir Demaj was treated for his injuries.²⁰⁸² Mahir Demaj recalls at least ten persons being treated in the hospital, one of whom was a KLA member wounded by a bullet.²⁰⁸³ 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.²⁰⁸⁴ Pal Krasniqi remained in Jablanica/Jabllanicë.²⁰⁸⁵ The last time that Mahir Demaj saw Pal Krasniqi, he was wearing civilian clothing, including a pair of blue jeans.²⁰⁸⁶ Pal Krasniqi stated that he was going to remain with friends in Jablanica/Jabllanicë.²⁰⁸⁷

²⁰⁷⁴ P1240 (Mahir Demaj, witness statement, 26 April 2007), para. 3.

²⁰⁷⁵ P1240 (Mahir Demaj, witness statement, 26 April 2007), paras 3, 4, 5, Addendum, para. 2.

²⁰⁷⁶ P1240 (Mahir Demaj, witness statement, 26 April 2007), para. 5.

²⁰⁷⁷ P1240 (Mahir Demaj, witness statement, 26 April 2007), para. 5.

²⁰⁷⁸ P1240 (Mahir Demaj, witness statement, 26 April 2007), para. 5.

²⁰⁷⁹ P1240 (Mahir Demaj, witness statement, 26 April 2007), para. 6.

²⁰⁸⁰ P1240 (Mahir Demaj, witness statement, 26 April 2007), para. 6.

²⁰⁸¹ P1240 (Mahir Demaj, witness statement, 26 April 2007), paras 7, 8, 9.

²⁰⁸² P1240 (Mahir Demaj, witness statement, 26 April 2007), paras 10, 11.

²⁰⁸³ P1240 (Mahir Demaj, witness statement, 26 April 2007), para. 12.

²⁰⁸⁴ P1240 (Mahir Demaj, witness statement, 26 April 2007), para. 13.

²⁰⁸⁵ P1240 (Mahir Demaj, witness statement, 26 April 2007), para. 13.

²⁰⁸⁶ P1240 (Mahir Demaj, witness statement, 26 April 2007), para. 14.

²⁰⁸⁷ P1240 (Mahir Demaj, witness statement, 26 April 2007), para. 14.

415. Ded Krasniqi, an Albanian,²⁰⁸⁸ testified that on 10 July 1998 his son Pal Krasniqi together with a friend, Mahir Demaj, left for Jablanica/Jabllanicë to join the KLA.²⁰⁸⁹ 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.²⁰⁹⁰ On the way they were apprehended at the Velika Krusa/Krusha ë Madhe police checkpoint.²⁰⁹¹ They were beaten by Serbian police and taken to Klina/Klinë.²⁰⁹² On 11 July 1998, around 6 a.m., Pal Krasniqi called Ded Krasniqi from Klina/Klinë and told him what had happened.²⁰⁹³ The witness advised his son to go to Jablanica/Jabllanicë as planned.²⁰⁹⁴ 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.²⁰⁹⁵ According to Dede Deda, Pal Krasniqi said that he had a lot of money on him and wanted to meet.²⁰⁹⁶ Dede Deda said that they arranged a meeting on the same day in Đakovica/Gjakovë, but Pal Krasniqi did not show up.²⁰⁹⁷ At an unspecified date after the war, the witness met with Mahir Demaj in Peć/Pejë and asked him about his son.²⁰⁹⁸ Demaj was scared and told the witness not to look for his son, saying "that nobody will dare to tell anything about it".²⁰⁹⁹ 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.²¹⁰⁰ According to what Demaj told the witness, about five days after they left for Jablanica/Jabllanicë, Pal Krasniqi visited Demaj in the hospital.²¹⁰¹ He was accompanied by two soldiers.²¹⁰² That was the last time Demaj saw the witness's son.²¹⁰³

²⁰⁸⁸ Ded Krasniqi, T. 4767-4768.

²⁰⁸⁹ Ded Krasniqi, T. 4768-4770, 4774, 4805.

²⁰⁹⁰ Ded Krasniqi, T. 4787-4789.

²⁰⁹¹ Ded Krasniqi, T. 4770, 4807.

²⁰⁹² Ded Krasniqi, T. 4770, 4773-4774, 4807, 4833.

²⁰⁹³ Ded Krasniqi, T. 4770, 4807, 4829. See also P1240 (Mahir Demaj, witness statement, 26 April 2007), para. 8.

²⁰⁹⁴ Ded Krasniqi, T. 4771.

²⁰⁹⁵ Ded Krasniqi, T. 4818-4821, 4835-4837.

²⁰⁹⁶ Ded Krasniqi, T. 4820-4821, 4835.

²⁰⁹⁷ Ded Krasniqi, T. 4820-4821, 4835-4837.

²⁰⁹⁸ Ded Krasniqi, T. 4771-4772, 4809.

²⁰⁹⁹ Ded Krasniqi, T. 4772, 4809.

²¹⁰⁰ Ded Krasniqi, T. 4772-4773, 4810.

²¹⁰¹ Ded Krasniqi, T. 4773-4774, 4810.

²¹⁰² Ded Krasniqi, T. 4810.

²¹⁰³ 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.²¹⁰⁴ The witness's brother was told that Pal Krasniqi "went to Pejë", meaning that he disappeared and would never return.²¹⁰⁵ In 2000, the witness started looking for his son.²¹⁰⁶ 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.²¹⁰⁷ After this the witness went to Klina/Klinë to see Alush Agushi, a KLA commander.²¹⁰⁸ Agushi told the witness that his son had been with him until "the first offensive in September".²¹⁰⁹ 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.²¹¹⁰

417. In October or November 2000, Witness 6 visited Ded Krasniqi.²¹¹¹ He told Ded Krasniqi that he had been in prison in Jablanica/Jabllanicë together with Ded Krasniqi's son, who was mistreated.²¹¹² Ded's son was accused of being a spy for the Serbian police.²¹¹³

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.²¹¹⁴ Witness 6 brought food and water to the room where these men were kept.²¹¹⁵ Witness 6 learned from Pal Krasniqi that he was from Meca/Meqe, in Đakovica/Gjakovë municipality, and that he was Catholic.²¹¹⁶ He wore sports clothes – a track suit with a white stripe on the side.²¹¹⁷ Witness 6 saw soldiers beat Pal Krasniqi with a baseball bat.²¹¹⁸ Pal Krasniqi was in a poor condition as a result.²¹¹⁹ On the same day at around 1:00 p.m., Witness 6 saw Pal Krasniqi try to escape through a

²¹⁰⁴ Ded Krasniqi, T. 4817-4818, 4822.

²¹⁰⁵ Ded Krasniqi, T. 4817-4818, 4822-4825.

²¹⁰⁶ Ded Krasniqi, T. 4775-4776.

²¹⁰⁷ Ded Krasniqi, T. 4775-4778.

²¹⁰⁸ Ded Krasniqi, T. 4775, 4779, 4810.

²¹⁰⁹ Ded Krasniqi, T. 4783-4784, 4810-4812.

²¹¹⁰ Ded Krasniqi, T. 4780-4781.

²¹¹¹ Ded Krasniqi, T. 4790, 4793, 4795.

²¹¹² Ded Krasniqi, T. 4794.

²¹¹³ Ded Krasniqi, T. 4794.

²¹¹⁴ 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).

²¹¹⁵ Witness 6, T. 5204-5205, 5332-5333, 5335-5337; P332 (Photo of Jablanica/Jabllanicë compound).

²¹¹⁶ Witness 6, T. 5238, 5335, 5358.

²¹¹⁷ Witness 6, T. 5247.

²¹¹⁸ Witness 6, T. 5235, 5335.

²¹¹⁹ Witness 6, T. 5235, 5237.

window together with the man from Zahać/Zahaq and a man from Grabanica/Grabanicë, in Klina/Klinë municipality.²¹²⁰ Hamza Brahimaj and other soldiers caught Pal Krasniqi, beat him in front of Witness 6, and brought him back to his room.²¹²¹ Pal Krasniqi was swollen, bloody, spitting blood, and lying on the floor, unable to eat or drink.²¹²² 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.²¹²³ On 25 July 1998, Witness 6 left Jablanica/Jabllanicë.²¹²⁴ At that time, Pal Krasniqi was the only person detained there.²¹²⁵ Witness 6 never saw him again.²¹²⁶

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.²¹²⁷ There were two other persons detained in the room.²¹²⁸ 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.²¹²⁹ This man was badly injured, his body swollen, and he could not move.²¹³⁰ He relieved himself in the room.²¹³¹ At night, all three detainees had their hands tied.²¹³² Witness 3 once saw Nazmi Brahimaj and Miftar Brahimaj when they came to the room.²¹³³ He also saw Naser "Rusi" Brahimaj, whom he had known for a long time, enter the room repeatedly to beat the other two detainees.²¹³⁴ The witness decided to escape and told his two co-detainees that they should follow him if they wished.²¹³⁵ Around mid-day, Witness 3 escaped through the window.²¹³⁶ Witness 3 saw Skender Kuqi trying to follow him, but did not see whether the other

²¹²⁰ Witness 6, T. 5236-5238, 5338-5339, 5389-5390.

²¹²¹ Witness 6, T. 5237, 5239-5240, 5338, 5390.

²¹²² Witness 6, T. 5240-5241.

²¹²³ Witness 6, T. 5341, 5359-5360.

²¹²⁴ Witness 6, T. 5206, 5255, 5297-5298; P335 (Decisions signed by Nazmi Brahimaj).

²¹²⁵ Witness 6, T. 5239, 5251, 5359-5360.

²¹²⁶ Witness 6, T. 5241, 5250-5251.

²¹²⁷ 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)).

²¹²⁸ Witness 3, T. 7946.

²¹²⁹ Witness 3, T. 7947.

²¹³⁰ Witness 3, T. 7950, 8028.

²¹³¹ Witness 3, T. 7951, 8028.

²¹³² Witness 3, T. 7951, 8010.

²¹³³ Witness 3, T. 7949, 8017.

²¹³⁴ Witness 3, T. 7949-7950, 8018.

²¹³⁵ Witness 3, T. 7955, 7957.

²¹³⁶ 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.²¹³⁷ 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.²¹³⁸ Brahimaj asked this man whether it was Witness 3 to whom Skender Kuqi had promised DEM 10,000 to help him escape.²¹³⁹ The man answered in the negative, while crossing himself.²¹⁴⁰

420. Branimir Aleksandrić²¹⁴¹ 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.²¹⁴² The outer concrete wall showed bullet marking just above body R-9.²¹⁴³ ICMP DNA analysis identified the remains labelled R-9 as those of Pal Krasniqi.²¹⁴⁴ An autopsy conducted on the remains on 5 December 2003 found gunshot injuries to the head, trunk and upper limbs.²¹⁴⁵ These multiple gunshot injuries were determined to be the cause of death.²¹⁴⁶ 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.²¹⁴⁷ 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.²¹⁴⁸ The degree of decomposition was consistent with a time of death between April and August 1998.²¹⁴⁹ Dominique Lecomte²¹⁵⁰, concluded that R-9 had been dead for approximately 2-3 months.²¹⁵¹

²¹³⁷ Witness 3, T. 7957.

²¹³⁸ Witness 3, T. 7946, 7962, 8026-8028.

²¹³⁹ Witness 3, T. 7962.

²¹⁴⁰ Witness 3, T. 7947-7948, 7962.

²¹⁴¹ 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).

²¹⁴² 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.

²¹⁴³ P1260 (Branimir Aleksandrić, witness statement, 26 June 2007), para. 102; P418 (Various photographs), pp. 12, 15; P645 (Various photographs), p. 3.

²¹⁴⁴ Agreed Facts, 26 November 2007, No. 56.

²¹⁴⁵ Agreed Facts, 26 November 2007, Nos 57-58.

²¹⁴⁶ Agreed Facts, 26 November 2007, No. 59.

²¹⁴⁷ 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.

²¹⁴⁸ P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 291; P668 (Autopsy report R-9), pp. 2, 6.

²¹⁴⁹ P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 292.

²¹⁵⁰ P926 (CV of Dominique Lecomte); Dominique Lecomte, T. 8758.

²¹⁵¹ 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 1998.²¹⁵² Skender Kuqi owned a shop in nearby Zahać/Zahaq.²¹⁵³ In July 1998, the witness visited Skender Kuqi at his shop.²¹⁵⁴ Ten

²¹⁵² Qerim Kuqi, T. 9988-9990.

²¹⁵³ 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.²¹⁵⁵ The men were wearing military-style camouflage jackets without insignia.²¹⁵⁶ They wore red and black masks and were armed with automatic weapons.²¹⁵⁷ The men entered the shop, shouting in Serbian.²¹⁵⁸ The men pointed their guns at the witness and searched his pockets.²¹⁵⁹ The men took Skender Kuqi out of the shop to the garage, where Skender Kuqi's car, a Mercedes, was.²¹⁶⁰ Three minutes after they had come, the men left with Skender Kuqi, in Skender Kuqi's car and the car they had arrived in.²¹⁶¹ Skender Kuqi was driving his own car, accompanied by one of the men.²¹⁶² The witness saw the two cars travelling together, in the direction of Klina/Klinë, one after the other.²¹⁶³ The witness never saw Skender Kuqi again.²¹⁶⁴ The witness later told Adem Kuqi, Skender Kuqi's brother, what had happened.²¹⁶⁵ In 1998, Adem Kuqi was an unemployed police officer, dismissed by the Serbian police.²¹⁶⁶ 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.²¹⁶⁷

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.²¹⁶⁸ Witness 6 heard from Pal Krasniqi that the man was a Muslim Albanian from Zahać/Zahaq, in Peć/Pejë municipality.²¹⁶⁹ Witness 6 testified that he saw KLA soldiers beat the man.²¹⁷⁰ Witness 6 brought food and water to the room in which the man unknown to him was held.²¹⁷¹ The man was in a bad physical condition, lying on the floor, his body swollen, and his

²¹⁵⁴ Qerim Kuqi, T. 9991.

²¹⁵⁵ Qerim Kuqi, T. 9991, 9997.

²¹⁵⁶ Qerim Kuqi, T. 9997, 10003.

²¹⁵⁷ Qerim Kuqi, T. 9998-9999.

²¹⁵⁸ Qerim Kuqi, T. 9998-9999.

²¹⁵⁹ Qerim Kuqi, T. 9999-10000.

²¹⁶⁰ Qerim Kuqi, T. 9999-10001, 10005.

²¹⁶¹ Qerim Kuqi, T. 10000-10001.

²¹⁶² Qerim Kuqi, T. 10001.

²¹⁶³ Qerim Kuqi, T. 10002.

²¹⁶⁴ Qerim Kuqi, T. 9990, 10005.

²¹⁶⁵ Qerim Kuqi, T. 9990, 10004.

²¹⁶⁶ Qerim Kuqi, T. 9990.

²¹⁶⁷ Qerim Kuqi, T. 10004-10005.

²¹⁶⁸ Witness 6, T. 5206, 5231-5232, 5252-5255, 5293, 5297-5298, 5331-5332, 5337, 5386, 5388-5389, 5391.

²¹⁶⁹ Witness 6, T. 5231, 5331-5333, 5340-5341.

²¹⁷⁰ Witness 6, T. 5231-5232, 5335, 5337-5338.

²¹⁷¹ Witness 6, T. 5204-5205, 5332-5333, 5335-5337; P332 (Photo of Jablanica/Jabllanicë compound).

eyes closed.²¹⁷² 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.²¹⁷³ Hamza Brahimaj and other soldiers caught the man from Zahać/Zahaq and beat him in front of Witness 6.²¹⁷⁴ 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/Dečan municipality, and that he died there.²¹⁷⁵ Witness 6 testified that he did not know a person named Skender Kuqi.²¹⁷⁶

428. Witness 3²¹⁷⁷ 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.²¹⁷⁸ There were two other persons detained in the room.²¹⁷⁹ Witness 3 knew one of them as his former teacher Skender Kuqi.²¹⁸⁰ Kuqi had multiple injuries, the right side of his head was blackened, and he was moaning and crying in pain.²¹⁸¹ He spoke a little with Witness 3 but otherwise had trouble speaking.²¹⁸² Kuqi relieved himself in the room.²¹⁸³ At night, all three detainees had their hands tied.²¹⁸⁴ On the second night, a doctor came to check on Kuqi.²¹⁸⁵ Witness 3 once saw Nazmi Brahimaj and Miftar Brahimaj came to the room.²¹⁸⁶ 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.²¹⁸⁷ The witness decided to escape and told his two co-detainees that they should follow him if they wished.²¹⁸⁸ Around mid-day, Witness 3 escaped through the window, heard shots being fired, and managed to reach a

²¹⁷² Witness 6, T. 5235, 5332-5333, 5337.

²¹⁷³ Witness 6, T. 5236-5238, 5338-5339, 5389-5390.

²¹⁷⁴ Witness 6, T. 5237, 5239-5240, 5338, 5390, 5395.

²¹⁷⁵ Witness 6, T. 5218-5219, 5231, 5233, 5239-5240, 5332, 5341, 5388-5391.

²¹⁷⁶ Witness 6, T. 5368.

²¹⁷⁷ Witness 3, T. 7891-7892, 7894, 7912, 7981-7982, 7985.

²¹⁷⁸ 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)).

²¹⁷⁹ Witness 3, T. 7946.

²¹⁸⁰ Witness 3, T. 7946.

²¹⁸¹ Witness 3, T. 7946, 7950-7951, 8016-8017.

²¹⁸² Witness 3, T. 7956-7957.

²¹⁸³ Witness 3, T. 7951.

²¹⁸⁴ Witness 3, T. 7951, 8010.

²¹⁸⁵ Witness 3, T. 8016-8017.

²¹⁸⁶ Witness 3, T. 7949, 8017.

²¹⁸⁷ Witness 3, T. 7949-7950, 8018.

²¹⁸⁸ Witness 3, T. 7955, 7957.

forest.²¹⁸⁹ He saw Kuqi trying to follow.²¹⁹⁰ After this incident, he never saw Kuqi again.²¹⁹¹ At least ten days later, Witness 3 returned with Lahi Brahimaj to the KLA staff headquarters in Jablanica/Jabllanicë.²¹⁹² Brahimaj asked the unidentified man whether it was Witness 3 to whom Skender Kuqi had promised DEM 10,000, to help him escape.²¹⁹³ The man answered in the negative.²¹⁹⁴

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.²¹⁹⁵ Tetaj contacted Faton Mehemetaj who told him that he needed to get in contact with Ramush Haradinaj.²¹⁹⁶ 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.²¹⁹⁷ Haradinaj told Brahimaj that Skender Kuqi should be released immediately since this was “damaging our cause”.²¹⁹⁸ 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.²¹⁹⁹ 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/Irznik in Dečani/Deçan municipality.²²⁰⁰ 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.²²⁰¹ Tetaj then assisted in uncovering the grave, at night, in order to take the body back to the family.²²⁰² The body had been buried without a coffin.²²⁰³

²¹⁸⁹ Witness 3, T. 7957-7959, 8019-8020; P914 (Photograph on which Witness 3 marked his escape route and Lahi Brahimaj’s room).

²¹⁹⁰ Witness 3, T. 7957-7958; P914 (Photograph on which Witness 3 marked his escape route and Lahi Brahimaj’s room).

²¹⁹¹ Witness 3, T. 7962.

²¹⁹² Witness 3, T. 7962, 8015, 8026-8028.

²¹⁹³ Witness 3, T. 7962.

²¹⁹⁴ Witness 3, T. 7947-7948, 7962.

²¹⁹⁵ Rrustem Tetaj, T. 3680, 3852-3853.

²¹⁹⁶ Rrustem Tetaj, T. 3680.

²¹⁹⁷ Rrustem Tetaj, T. 3680-3681, 3686, 3778, 3852; P267 (Photo of Jablanica/Jabllanicë, marked by Rrustem Tetaj).

²¹⁹⁸ Rrustem Tetaj, T. 3681-3682, 3778, 3852.

²¹⁹⁹ Rrustem Tetaj, T. 3682.

²²⁰⁰ Rrustem Tetaj, T. 3682-3683, 3779-3780.

²²⁰¹ Rrustem Tetaj, T. 3683, 3686-3688, 3779-3782, 3853; P267 (Photo of Jablanica/Jabllanicë, marked by Rrustem Tetaj).

²²⁰² Rrustem Tetaj, T. 3684, 3853.

²²⁰³ Rrustem Tetaj, T. 3836-3837.

Tetaj saw that the body was bruised but had no open wounds.²²⁰⁴ 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.²²⁰⁵ Skender Kuqi's car was not returned as it had been damaged.²²⁰⁶

430. Sometime in June-August 1998, Haki Shehu, who worked as a doctor in a military hospital in Rznić/Irznj in Dečani/Dečan municipality, treated Skender Kuqi as a patient.²²⁰⁷ Persons in military uniform who did not talk to anyone had left him at the door of the hospital.²²⁰⁸ Haki Shehu noticed that Skender Kuqi was bruised and that his face was a bit swollen.²²⁰⁹ Skender Kuqi died from total blockage of the kidneys.²²¹⁰

431. Harjit Sandhu, an investigator for the Prosecution,²²¹¹ testified that on 9 March 2004 Genc Kuqi led him and an OMPF team to a grave located in Dubovik cemetery, Dečani/Dečan municipality, which Genc Kuqi indicated was the grave of his father Skender Kuqi.²²¹² Harjit Sandhu observed the OMPF team mark the grave "SSA 01", photograph it and its surroundings, and exhume the mortal remains.²²¹³ They placed the remains in a body bag labelled "SSA 01 01" and brought it with them when they left.²²¹⁴ 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.²²¹⁵ 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.²²¹⁶

²²⁰⁴ Rrustem Tetaj, T. 3782, 3845-3846.

²²⁰⁵ Rrustem Tetaj, T. 3854.

²²⁰⁶ Rrustem Tetaj, T. 3854.

²²⁰⁷ D59 (Sworn and signed statement by Haki Shehu to UNMIK police, dated 14 October 2002).

²²⁰⁸ D59 (Sworn and signed statement by Haki Shehu to UNMIK police, dated 14 October 2002).

²²⁰⁹ D59 (Sworn and signed statement by Haki Shehu to UNMIK police, dated 14 October 2002).

²²¹⁰ D59 (Sworn and signed statement by Haki Shehu to UNMIK police, dated 14 October 2002).

²²¹¹ P1220 (Harjit Sandhu, witness statement, 5 November 2007), paras 2-4; Harjit Sandhu, T. 10357.

²²¹² P1220 (Harjit Sandhu, witness statement, 5 November 2007), paras 5-9, 11-12; Harjit Sandhu, T. 10360-10361; 10364.

²²¹³ P1220 (Harjit Sandhu, witness statement, 5 November 2007), paras 11, 13, 17; Harjit Sandhu, T. 10362-10363, 10369; P1219 (OMPF Photography and Photo Log for SSA 01).

²²¹⁴ P1220 (Harjit Sandhu, witness statement, 5 November 2007), paras 13-14; Harjit Sandhu, T. 10363, 10369.

²²¹⁵ 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 (OMPF Photography and Photo Log for SSA 01).

²²¹⁶ Harjit Sandhu, T. 10371-10373; P1218 (Autopsy reports for the remains labelled SSA01-001B).

432. Cufë Krasniqi, a KLA commander,²²¹⁷ testified that on a certain day he spoke to Skender Kuqi's brother, Adem Kuqi.²²¹⁸ 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.²²¹⁹ 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.²²²⁰ 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.²²²¹

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/Irznik, 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,

²²¹⁷ P351 (Cufë Krasniqi, witness statement, 14 June 2007), p. 1, paras 1-2.

²²¹⁸ Cufë Krasniqi, T. 5722.

²²¹⁹ Cufë Krasniqi, T. 5722-5723.

²²²⁰ Cufë Krasniqi, T. 5723-5724.

²²²¹ 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/Irznik 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. Rustem 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.²²²² Somewhere between Bokšić/Bokshiq and Glođane/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.²²²³ Witness 3 had met Lahi Brahimaj many times before and knew him well.²²²⁴ Brahimaj and Agushi angrily accused the group of being traitors for leaving their positions.²²²⁵ Witness 3 continued to Glođane/Gllogjan, where villagers told him that they were under orders from Lahi Brahimaj not to give any help to those retreating from Grabanica/Grabanicë.²²²⁶ Witness 3 then went to Jablanica/Jabllanicë, in Đakovica/Gjakovë municipality.²²²⁷ 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

²²²² Witness 3, T. 7916, 7922, 7993.

²²²³ Witness 3, T. 7922-7924, 7991-7992.

²²²⁴ Witness 3, T. 7895, 7924, 7976-7977.

²²²⁵ Witness 3, T. 7923-7924, 7989, 7991.

²²²⁶ Witness 3, T. 7924-7925, 7928, 7989, 7992-7993.

²²²⁷ 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.²²²⁸

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.²²²⁹ Brahimaj told Witness 3 that he had to go with him, and drove away with the witness in a Mercedes car.²²³⁰ 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.²²³¹ Brahimaj took Witness 3 to a room in the KLA staff building in Jablanica/Jabllanicë, and then left.²²³² A few minutes later, several persons entered the room and beat Witness 3 with baseball bats until he lost consciousness.²²³³ Witness 3 was able to see only one of them, who wore a uniform.²²³⁴ Witness 3 remained detained in that room for the next two nights and three days.²²³⁵ There were two other persons detained in the room.²²³⁶ At night, all three detainees had their hands tied.²²³⁷

441. Witness 3 once saw Nazmi Brahimaj and Miftar Brahimaj when they came to the room where he was detained.²²³⁸ He also saw Naser “Rusi” Brahimaj, whom he had known for a long time, enter the room repeatedly to beat the other two detainees.²²³⁹ At one point, Lahi Brahimaj led Witness 3 to the room next door, which was Brahimaj’s room.²²⁴⁰ Apart from Brahimaj, there was another man and two women present in the room, all four of them in black uniform.²²⁴¹ The two men had “PU” (military police) insignia on their sleeves.²²⁴² Brahimaj interrogated Witness 3 and accused him of supporting the Serbian police and withholding an automatic weapon.²²⁴³ Brahimaj told the women to “practice” on Witness 3, and they beat him on his hands for 5 to 10

²²²⁸ Witness 3, T. 7929-7930, 7933-7937, 7993, 8006.

²²²⁹ Witness 3, T. 7937-7938, 7942-7943, 8008.

²²³⁰ Witness 3, T. 7943-7944.

²²³¹ Witness 3, T. 7944, 8029.

²²³² Witness 3, T. 7943, 7945; D118 (Photograph of a shack in Jablanica/Jabllanicë that allegedly was used as a prison (view with meadow)).

²²³³ Witness 3, T. 7943, 7945-7946, 7948, 8009.

²²³⁴ Witness 3, T. 7946.

²²³⁵ Witness 3, T. 7945, 7948, 8009-8010.

²²³⁶ Witness 3, T. 7946.

²²³⁷ Witness 3, T. 7951, 8010.

²²³⁸ Witness 3, T. 7949, 8017.

²²³⁹ Witness 3, T. 7949-7950, 8018.

²²⁴⁰ Witness 3, T. 7951, 7958; P914 (Photograph on which Witness 3 marked his escape route and Lahi Brahimaj’s room).

²²⁴¹ Witness 3, T. 7952.

²²⁴² Witness 3, T. 8020.

²²⁴³ Witness 3, T. 7952-7953.

minutes with a telescope.²²⁴⁴ Brahimaj handed his revolver to Witness 3 and told him to kill himself.²²⁴⁵ Witness 3 took the revolver and laughed, after which one of the women took it off him and returned it to Brahimaj.²²⁴⁶ The other man in the room accused Witness 3 of collaborating with the Serbs and threatened to cut his throat.²²⁴⁷ Someone brought Witness 3 back to his room.²²⁴⁸ The witness decided to escape and told his two co-detainees that they should follow him if they wished.²²⁴⁹ Around mid-day, Witness 3 escaped through the window, heard shots being fired, and managed to reach a forest.²²⁵⁰

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.²²⁵¹ He returned to Jablanica/Jabllanicë, where he stayed for approximately 10 to 12 days.²²⁵² 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.²²⁵³ He thought that the unreturned rifle might have been the reason for his earlier treatment.²²⁵⁴ He encountered Lahi Brahimaj, who led him at gunpoint to his house, where a woman joined them, and then to a Mercedes car.²²⁵⁵ Both Lahi Brahimaj and the woman slapped Witness 3 in the face a few times.²²⁵⁶ 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.²²⁵⁷ Brahimaj asked this man whether it was Witness 3 that Skender Kuqi had promised DEM 10,000 to help him escape.²²⁵⁸ The man answered in the negative.²²⁵⁹ 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.²²⁶⁰ At one point,

²²⁴⁴ Witness 3, T. 7953-7954.

²²⁴⁵ Witness 3, T. 7954.

²²⁴⁶ Witness 3, T. 7954-7955.

²²⁴⁷ Witness 3, T. 7955-7956.

²²⁴⁸ Witness 3, T. 7955.

²²⁴⁹ Witness 3, T. 7955, 7957.

²²⁵⁰ Witness 3, T. 7957-7959, 8019-8020; P914 (Photograph on which Witness 3 marked his escape route and Lahi Brahimaj's room).

²²⁵¹ Witness 3, T. 7957, 7959-7960, 8010-8011, 8016.

²²⁵² Witness 3, T. 7960, 7968, 8012, 8015-8016, 8026.

²²⁵³ Witness 3, T. 8003-8005, 8012.

²²⁵⁴ Witness 3, T. 8012.

²²⁵⁵ Witness 3, T. 7944-7945, 7961-7962, 8027.

²²⁵⁶ Witness 3, T. 7962.

²²⁵⁷ Witness 3, T. 7962, 8026-8028.

²²⁵⁸ Witness 3, T. 7962.

²²⁵⁹ Witness 3, T. 7947-7948, 7962.

²²⁶⁰ Witness 3, T. 7962.

Brahimaj stopped the car and put Witness 3 in the trunk.²²⁶¹ 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.²²⁶² Brahimaj shut the boot and drove on.²²⁶³ At around 6 or 7 p.m. they arrived in Glodane/Gllogjan, in Dečani/Dečan municipality.²²⁶⁴ Brahimaj took Witness 3 to a house and left.²²⁶⁵ A man offered food to Witness 3, asked whether he had any relatives in Glodane/Gllogjan to spend the night with, and then offered him a place to sleep in the house.²²⁶⁶ 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.²²⁶⁷ Witness 3 heard a soldier refer to the man at the house in Glodane/Gllogjan as a commander.²²⁶⁸

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.²²⁶⁹ Witness 6 took food and water to his room.²²⁷⁰ Witness 6 testified that the man from Grabanica/Grabanicë was not beaten.²²⁷¹ 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.²²⁷²

444. Pekka Haverinen, a Finnish police officer who worked as an ICTY investigator from June 2002 to March 2005,²²⁷³ testified that he showed seven photo boards to Witness 3 during an interview in May 2004.²²⁷⁴ Witness 3 recognized Lahi Brahimaj

²²⁶¹ Witness 3, T. 7962-7963.

²²⁶² Witness 3, T. 7963, 8029.

²²⁶³ Witness 3, T. 7963.

²²⁶⁴ Witness 3, T. 7963-7964.

²²⁶⁵ Witness 3, T. 7964.

²²⁶⁶ Witness 3, T. 7964-7965.

²²⁶⁷ Witness 3, T. 7964, 7966-7967.

²²⁶⁸ Witness 3, T. 7966-7967.

²²⁶⁹ Witness 6, T. 5206, 5233, 5247-5249, 5252-5255, 5293, 5297-5298, 5331-5332, 5334-5335, 5386, 5388-5389, 5391.

²²⁷⁰ Witness 6, T. 5204-5205, 5332-5333, 5335-5337; P332 (Photo of Jablanica/Jabllanicë compound).

²²⁷¹ Witness 6, T. 5235, 5237, 5336.

²²⁷² Witness 6, T. 5236-5238, 5338-5339, 5389-5390.

²²⁷³ P375 (Pekka Haverinen, witness statement, 26 June 2007), para. 1; Pekka Haverinen, T. 6299-6300.

²²⁷⁴ P375 (Pekka Haverinen, witness statement, 26 June 2007), para. 28, 31.

and Ramush Haradinaj in the photo boards.²²⁷⁵ Witness 3 marked the numbers indicating Haradinaj's and Brahimaj's pictures and signed the photo boards.²²⁷⁶

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

²²⁷⁵ P375 (Pekka Haverinen, witness statement, 26 June 2007), paras 34, 38, Annex 16; Pekka Haverinen, T. 6301.

²²⁷⁶ 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 Glodane/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,²²⁷⁷ 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.²²⁷⁸ Fadil Fazliu and Naser Lika arrived at the house of Tal Zeka in Žabelj/Zhabel in Đakovica/Gjakovë municipality around 10 or 11 p.m.²²⁷⁹ On the evening of 22 May 1998, a group of 7-8 KLA soldiers arrived at Tal Zeka's house.²²⁸⁰ According to Fadil Fazliu these men, including Nazmi Brahimaj and a person referred to as Tahir (the commander of Žabelj/Zhabel) first came to speak to those present and sound out their readiness to return to Grabanica/Grabanicë and fight against the Serbs.²²⁸¹ 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.²²⁸² The next day, 23 May 1998, Ujku returned with Arbnor Zeneli, and again began to insult those present.²²⁸³ Tahir and Arbnor Zeneli rebuked

²²⁷⁷ Fadil Fazliu, T. 7397; D155 (Fadil Fazliu, defence witness statement, 15 June 2006), p. 1.

²²⁷⁸ Fadil Fazliu, T. 7413-7415, 7460-7461; D155 (Fadil Fazliu, defence witness statement, 15 June 2006), pp. 3-4.

²²⁷⁹ Fadil Fazliu, T. 7417-7418, 7423; D155 (Fadil Fazliu, defence witness statement, 15 June 2006), p. 4.

²²⁸⁰ Fadil Fazliu, T. 7423; D155 (Fadil Fazliu, defence witness statement, 15 June 2006), p. 4.

²²⁸¹ Fadil Fazliu, T. 7423-7425, 7427-7430; D155 (Fadil Fazliu, defence witness statement, 15 June 2006), pp. 4-5.

²²⁸² Fadil Fazliu, T. 7429, 7464-7465; D155 (Fadil Fazliu, defence witness statement, 15 June 2006), pp. 4-6.

²²⁸³ Fadil Fazliu, T. 7430-7431; D155 (Fadil Fazliu, defence witness statement, 15 June 2006), pp. 5-6.

Ujku for his conduct towards the men.²²⁸⁴ Arbnor Zeneli then told those present that they should all go to Jablanica/Jabllanicë in Đakovica/Gjakovë municipality to discuss mobilisation.²²⁸⁵ 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.²²⁸⁶ Fadil Fazliu testified that he went of his own free will and was not forced.²²⁸⁷ They arrived in Jablanica/Jabllanicë on the afternoon of what may have been 24 May 1998.²²⁸⁸ The men went into the courtyard of the KLA headquarters in Jablanica/Jabllanicë.²²⁸⁹ 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.²²⁹⁰ 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.²²⁹¹ Arbnor Zeneli drove Fadil Fazliu and Naser Lika to the house of Haxhi Bajrami, where Fadil Fazliu and Naser Lika parted company.²²⁹² 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.²²⁹³ Fadil Fazliu stated that he never saw anyone being ill-treated at the Jablanica/Jabllanicë headquarters.²²⁹⁴ 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.²²⁹⁵

455. Witness 3 testified that he knew Naser Lika and Fadil Fazliu.²²⁹⁶ At the end of May 1998, Witness 3 was with them in the house of Tal Zeka in Žabelj/Zhabel, in Đakovica/Gjakovë municipality.²²⁹⁷ He testified that “Ujku”, Tahir Qorri, and a third

²²⁸⁴ Fadil Fazliu, T. 7431, 7464-7465; D155 (Fadil Fazliu, defence witness statement, 15 June 2006), p. 5.

²²⁸⁵ Fadil Fazliu, T. 7430-7432; D155 (Fadil Fazliu, defence witness statement, 15 June 2006), pp. 5-6.

²²⁸⁶ Fadil Fazliu, T. 7431-7432; D155 (Fadil Fazliu, defence witness statement, 15 June 2006), p. 6.

²²⁸⁷ Fadil Fazliu, T. 7435, 7466-7467; D155 (Fadil Fazliu, defence witness statement, 15 June 2006), p. 6.

²²⁸⁸ Fadil Fazliu, T. 7439; D155 (Fadil Fazliu, defence witness statement, 15 June 2006), p. 6.

²²⁸⁹ Fadil Fazliu, T. 7439-7440; D155 (Fadil Fazliu, defence witness statement, 15 June 2006), p. 6.

²²⁹⁰ Fadil Fazliu, T. 7439-7443; D155 (Fadil Fazliu, defence witness statement, 15 June 2006), pp. 6-7.

²²⁹¹ Fadil Fazliu, T. 7440, 7442-7443, 7469; D155 (Fadil Fazliu, defence witness statement, 15 June 2006), pp. 7-8.

²²⁹² Fadil Fazliu, T. 7443, 7470-7471; D155 (Fadil Fazliu, defence witness statement, 15 June 2006), p. 8.

²²⁹³ Fadil Fazliu, T. 7471-7472; D155 (Fadil Fazliu, defence witness statement, 15 June 2006), p. 7.

²²⁹⁴ Fadil Fazliu, T. 7472-7475; D155 (Fadil Fazliu, defence witness statement, 15 June 2006), p. 8.

²²⁹⁵ Fadil Fazliu, T. 7476; D155 (Fadil Fazliu, defence witness statement, 15 June 2006), p. 7.

²²⁹⁶ Witness 3, T. 7930-7931, 7978-7981.

²²⁹⁷ Witness 3, T. 7931, 7933-7934, 7937-7938, 7993, 8033.

person who might have been Sadri Berisha, came to the house.²²⁹⁸ 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.²²⁹⁹ All three men were armed and wore uniforms; Ujku wore a black uniform and the two others wore camouflage uniforms.²³⁰⁰ Witness 3 believed them to be members of the KLA.²³⁰¹ 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.²³⁰² 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.²³⁰³

456. Witness 6 testified that he was detained at Jablanica/Jabllanicë between 13 June and 25 July 1998.²³⁰⁴ 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.²³⁰⁵

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.

²²⁹⁸ Witness 3, T. 7935, 7938-7939, 8007-8008.

²²⁹⁹ Witness 3, T. 7935, 7938, 7940, 8007, 8032-8033.

²³⁰⁰ Witness 3, T. 7940.

²³⁰¹ Witness 3, T. 7939-7940.

²³⁰² Witness 3, T. 7938-7939.

²³⁰³ Witness 3, T. 7940-7942.

²³⁰⁴ Witness 6, T. 5206, 5252-5255, 5293, 5297-5298, 5386.

²³⁰⁵ 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,²³⁰⁶ 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.²³⁰⁷ She could not describe the soldiers, because it was dark.²³⁰⁸ The men asked the witness’s father-in-law where his son was, saying that they needed to ask him about something.²³⁰⁹ 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/Irznj, in Deçan/Dečani municipality.²³¹⁰ The house was commonly referred to as the “KLA headquarters” and was located near the road leading to Glodane/Gllogjan.²³¹¹ Witness 1 was taken to a well near the house by two men.²³¹² Two other persons took Witness 61 to the house.²³¹³ The witness was directly taken to a room with a table, some chairs, a TV, and a bed.²³¹⁴ There was no one in the room

²³⁰⁶ Witness 61, T. 3970-3972, 4028-4029.

²³⁰⁷ Witness 61, T. 3977-3985, 3987-3988, 4014-4015, 4032.

²³⁰⁸ Witness 61, 4043.

²³⁰⁹ Witness 61, T. 3982, 3984.

²³¹⁰ Witness 61, T. 3988, 3990-3991, 4016-4017, 4032-4033.

²³¹¹ Witness 61, T. 3988, 4003, 4016-4022; P269 (Photograph of Rznić/Irznj marked by Witness 61).

²³¹² Witness 61, T. 3991, 4005-4007.

²³¹³ Witness 61, T. 4006

²³¹⁴ Witness 61, T. 3991-3992, 4034.

except “Toger” and the witness.²³¹⁵ 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.²³¹⁶ The lights were on and the witness could clearly see the face of “Toger”.²³¹⁷ “Toger” had a knife and a pistol which he put on the table.²³¹⁸ He asked a guard to bring him a wooden stick, which was also put on the table.²³¹⁹ At the table, “Toger” interrogated the witness for approximately half an hour, asking her whether her husband had collaborated with the Serbian police.²³²⁰ Following the interrogation, “Toger” told the witness to go to the bed and undress herself.²³²¹ He switched off the lights, but the television remained lit; he came to the bed and took off his clothes.²³²² “Toger” then raped the witness several times over the course of approximately one-and-a-half hours.²³²³ The witness was afraid that he would kill her.²³²⁴ “Toger” told the witness not to tell her husband what had happened.²³²⁵ After the witness got dressed, “Toger” told her to leave.²³²⁶ Around 3 a.m. the witness went home with her husband.²³²⁷ 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.²³²⁸ Witness 61 did not see Witness 1 in the well herself.²³²⁹ Witness 61 testified that Witness 1’s clothes were wet from the waist down and that he changed clothes when they arrived home.²³³⁰ When the witness came home, she told her husband and her relatives, who were present, what had happened.²³³¹ At approximately 5 a.m. the witness’s husband and father-in-law went to the KLA headquarters and reported the incident.²³³² Later, three persons came to the witness’s house and asked her what had happened.²³³³ One of them was in KLA uniform, the others in plain clothes.²³³⁴ The

²³¹⁵ Witness 61, T. 3991.

²³¹⁶ Witness 61, T. 3991, 4041.

²³¹⁷ Witness 61, T. 3991, 3993, 4034, 4036-4037.

²³¹⁸ Witness 61, T. 3992-3993.

²³¹⁹ Witness 61, T. 3993.

²³²⁰ Witness 61, T. 3991-3992, 4034.

²³²¹ Witness 61, T. 3993.

²³²² Witness 61, T. 3993-3994, 4044-4045, 4047.

²³²³ Witness 61, T. 3994-3996.

²³²⁴ Witness 61, T. 3993-3996.

²³²⁵ Witness 61, T. 3996.

²³²⁶ Witness 61, T. 3996.

²³²⁷ Witness 61, T. 3996, 4008, 4045.

²³²⁸ Witness 61, T. 4005-4007.

²³²⁹ Witness 61, T. 4005-4007.

²³³⁰ Witness 61, T. 4007.

²³³¹ Witness 61, T. 3996, 4046.

²³³² Witness 61, T. 3997, 4007-4008.

²³³³ Witness 61, T. 3997-3998.

²³³⁴ Witness 61, T. 3998.

witness stated that one of them was named Shemsedin Ceku.²³³⁵ 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.²³³⁶ About two weeks after this incident, the witness and her family left their village, because of heavy fighting between KLA and Serbian forces.²³³⁷ The witness did not have prior knowledge of the man she called “Toger”, or his real name.²³³⁸ 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”.²³³⁹ He was also referred to as “Toger” by the four men accompanying him to the house of the witness.²³⁴⁰ 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.²³⁴¹ Idriz Balaj measured 1.78 metres.²³⁴² 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.²³⁴³ Witness 61 saw “Toger” at least once after the incidence.²³⁴⁴ He was driving a black jeep.²³⁴⁵ The witness was shown a photo board containing eight photographs including a photograph of the Idriz Balaj, but she did not recognize him.²³⁴⁶ 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.²³⁴⁷ The witness also stated that she would not be able to recognize “Toger” today.²³⁴⁸

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.²³⁴⁹ The men were armed and all wore black uniforms bearing KLA insignia on

²³³⁵ Witness 61, T. 4050.

²³³⁶ Witness 61, T. 3997-3999.

²³³⁷ Witness 61, T. 3999, 4006.

²³³⁸ Witness 61, T. 3981-3982, 4000-4001, 4005.

²³³⁹ Witness 61, T. 3981-3982, 4003, 4005.

²³⁴⁰ Witness 61, T. 4001.

²³⁴¹ Witness 61, T. 4000, 4061, 4063.

²³⁴² T. 10519-10520.

²³⁴³ Witness 61, T. 4002-4003, 4044, 4047.

²³⁴⁴ Witness 61, T. 3999, 4050.

²³⁴⁵ Witness 61, T. 3999, 4050.

²³⁴⁶ Witness 61, T. 4048-4049.

²³⁴⁷ Witness 61, T. 4050-4051.

²³⁴⁸ Witness 61, T. 4000.

²³⁴⁹ 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.²³⁵⁰ Two of the men wore masks.²³⁵¹ “Toger” ordered Witness 1 and Witness 61 to come with them.²³⁵² 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/Irznij.²³⁵³ The KLA headquarters were located in a one story house that belonged to the local school.²³⁵⁴ The house consisted of two or three rooms.²³⁵⁵ 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.²³⁵⁶ According to the witness he stood up to his neck in the water.²³⁵⁷ Around 4:00 a.m., Witness 1 and Witness 61 were released and they went home.²³⁵⁸ 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.²³⁵⁹ When they had arrived home, Witness 61 told Witness 1 that “Toger” had raped her.²³⁶⁰ Around 5:00 a.m. that same day, the witness went to the local KLA commander, Shemsedin Cekaj, and told him what had happened.²³⁶¹ 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 61.²³⁶² 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/Irznij.²³⁶³ There, Witness 1 told Ramush Haradinaj what had happened to him and Witness 61.²³⁶⁴ Ramush Haradinaj said it was impossible that “Toger” would do such a thing, and Witness 1 was denounced as a liar.²³⁶⁵ The witness also testified that he told Witness 56 what had happened on the day after the

²³⁵⁰ P1250 (Witness 1, witness statement, 24 August 2002), p. 3.

²³⁵¹ P1250 (Witness 1, witness statement, 24 August 2002), p. 3.

²³⁵² P1250 (Witness 1, witness statement, 24 August 2002), p. 3.

²³⁵³ P1250 (Witness 1, witness statement, 24 August 2002), p. 3.

²³⁵⁴ P1250 (Witness 1, witness statement, 24 August 2002), p. 3.

²³⁵⁵ P1250 (Witness 1, witness statement, 24 August 2002), p. 3.

²³⁵⁶ P1250 (Witness 1, witness statement, 24 August 2002), p. 3; P1253 (Witness 1, witness statement, 11 August 2006), para. 7.

²³⁵⁷ P1250 (Witness 1, witness statement, 24 August 2002), p. 3.

²³⁵⁸ P1250 (Witness 1, witness statement, 24 August 2002), p. 5.

²³⁵⁹ P1250 (Witness 1, witness statement, 24 August 2002), p. 3; P1252 (Witness 1, witness statement, 28 May 2006), para. 38.

²³⁶⁰ P1251 (Witness 1, witness statement, 16 October 2002), p. 4; P1252 (Witness 1, witness statement, 28 May 2006), para. 38.

²³⁶¹ P1250 (Witness 1, witness statement, 24 August 2002), pp. 3, 5; P1251 (Witness 1, witness statement, 16 October 2002), p. 3.

²³⁶² P1250 (Witness 1, witness statement, 24 August 2002), p. 5; P1251 (Witness 1, witness statement, 16 October 2002), p. 3.

²³⁶³ P1251 (Witness 1, witness statement, 16 October 2002), p. 3.

²³⁶⁴ P1251 (Witness 1, witness statement, 16 October 2002), p. 3.

²³⁶⁵ P1251 (Witness 1, witness statement, 16 October 2002), p. 3.

incident.²³⁶⁶ Around 31 August 1998, Witness 1 and his relatives left their village.²³⁶⁷ 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.²³⁶⁸

462. Witness 1 testified that he had seen “Toger” on several occasions prior and subsequent to this incident in early August.²³⁶⁹ On 15 and 16 October 2002, Witness 1 was shown a photo board with eight pictures.²³⁷⁰ The witness stated that he recognized “without any doubt” picture number six as the photo of the man he called “Toger”.²³⁷¹ Picture number six is the picture of the Accused Idriz Balaj.²³⁷²

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”.²³⁷³ According to the witness, the men were from the KLA.²³⁷⁴ 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.²³⁷⁵ Witness 56 noticed that his son’s clothes were wet.²³⁷⁶ According to Witness 56, his son and daughter-in-law were taken from the house and brought back by car.²³⁷⁷ 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”.²³⁷⁸ Witness 56 also heard his daughter-in-law mention the name “Toger”, but did not provide more information about this.²³⁷⁹ The morning following the incident, Witness 56 went to see the village KLA commander, Shemsedin Cekaj, but he was asleep.²³⁸⁰ Some two hours later, Shemsedin Cekaj, and another commander came to Witness 56’s house and spoke to his relatives about what had happened.²³⁸¹ Witness

²³⁶⁶ P1252 (Witness 1, witness statement, 28 May 2006), para. 39.

²³⁶⁷ P1250 (Witness 1, witness statement, 24 August 2002), p. 2; P1252 (Witness 1, witness statement, 28 May 2006), para. 35.

²³⁶⁸ Shemsedin Cekaj, T. 4517-4518.

²³⁶⁹ P1252 (Witness 1, witness statement, 28 May 2006), paras 30-35.

²³⁷⁰ P1251 (Witness 1, witness statement, 16 October 2002), p. 9, Annex 1.

²³⁷¹ P1251 (Witness 1, witness statement, 16 October 2002), p. 9.

²³⁷² P1251 (Witness 1, witness statement, 16 October 2002), p. 9, Annex 1-2.

²³⁷³ Witness 56, T. 7101-7103, 7111, 7114-7115, 7126, 7128-7129.

²³⁷⁴ Witness 56, T. 7113.

²³⁷⁵ Witness 56, T. 7103-7104, 7108-7109, 7111, 7128-7129.

²³⁷⁶ Witness 56, T. 7111-7112.

²³⁷⁷ Witness 56, T. 7126-7127.

²³⁷⁸ Witness 56, T. 7109-7110.

²³⁷⁹ Witness 56, T. 7108-7109, 7112-7113, 7127.

²³⁸⁰ Witness 56, T. 7101, 7105-7106.

²³⁸¹ Witness 56, T. 7105.

56 was not involved in this conversation.²³⁸² 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.²³⁸³

464. Roel Versonnen, an ICTY investigator,²³⁸⁴ testified that he interviewed Witness 1 on 15 and 16 October 2002.²³⁸⁵ Versonnen showed Witness 1 a photo board, compiled by his team, containing pictures of eight male individuals.²³⁸⁶ Other than Versonnen, the only people present at the time were Witness 1 and an interpreter.²³⁸⁷ Versonnen asked Witness 1 if he could recognize or identify any of the individuals from the photo board.²³⁸⁸ 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.²³⁸⁹ Versonnen was standing to the side of Witness 1 when he showed him the photo board.²³⁹⁰ Witness 1 looked at the photo board and immediately pointed at picture number 6 as being the person he referred to as “Toger”.²³⁹¹ Picture number 6 is of the Accused Idriz Balaj.²³⁹² Versonnen did not remember if Witness 1 gave a description of “Toger”.²³⁹³ 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 1.²³⁹⁴ Versonnen did not ask Witness 1 to sign the photo board.²³⁹⁵

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/Irznj. 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

²³⁸² Witness 56, T. 7102, 7105-7106, 7116-7117.

²³⁸³ Witness 56, T. 7113-7114.

²³⁸⁴ P1225 (Roel Versonnen, witness statement, 12 February 2007), para. 2; Roel Versonnen, T. 10610, 10902.

²³⁸⁵ P1225 (Roel Versonnen, witness statement, 12 February 2007), paras 8-9; Roel Versonnen, T. 10896.

²³⁸⁶ 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.

²³⁸⁷ P1225 (Roel Versonnen, witness statement, 12 February 2007), para. 13; Roel Versonnen, T. 10896, 10910.

²³⁸⁸ P1225 (Roel Versonnen, witness statement, 12 February 2007), paras 12-13; Roel Versonnen, T. 10896.

²³⁸⁹ P1225 (Roel Versonnen, witness statement, 12 February 2007), para. 13.

²³⁹⁰ P1225 (Roel Versonnen, witness statement, 12 February 2007), para. 13; Roel Versonnen, T. 10896.

²³⁹¹ Roel Versonnen, T. 10897-10899.

²³⁹² Roel Versonnen, T. 10900; P1230 (Photo board shown to Witness 1), pp. 1-2.

²³⁹³ Roel Versonnen, T. 10908.

²³⁹⁴ Roel Versonnen, T. 10905-10906.

²³⁹⁵ 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.²³⁹⁶ 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.

²³⁹⁶ 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”.²³⁹⁷ 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 Nurije 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 1998,²³⁹⁸ testified that it was never KLA policy to target civilians of any ethnicity.²³⁹⁹ A KLA policy statement, issued on 29 April 1998, condemned violence directed against the civilian population and persons in captivity.²⁴⁰⁰ Krasniqi acknowledged that the KLA stopped people at checkpoints, detained and questioned them, and then released them.²⁴⁰¹ 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.²⁴⁰² The witness testified that “collaborators” were killed during battle, at

²³⁹⁷ Indictment, para. 26.

²³⁹⁸ 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.

²³⁹⁹ 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.

²⁴⁰⁰ P328 (Jakup Krasniqi, witness statement, 24 May 2007), Annex 12 (KLA political statement, 29 April 1998), p. 2.

²⁴⁰¹ P340 (Jakup Krasniqi, *Limaj et al.* transcript, 10-12 February 2005), p. 3449; Jakup Krasniqi, T. 5114-5115, 5152-5153.

²⁴⁰² 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.²⁴⁰³ 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.²⁴⁰⁴

472. Two KLA communiqués, dated 13 May 1998 and 13 July 1998, respectively, state that the KLA carried out operations against collaborators during March, April, May, and July 1998.²⁴⁰⁵ However, the KLA communiqués do not specify what these operations were.²⁴⁰⁶ An earlier communiqué, dated 27 February 1998, described “a series of attacks against forces of the Serbian police and their collaborators” during January and February 1998.²⁴⁰⁷ 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 communiqués aimed to inform the public of KLA activity, but were also used as propaganda, to boost KLA morale, raise KLA standing, and encourage recruitment.²⁴⁰⁸ He testified that although the events described in the communiqués did occur, they exaggerated KLA successes and organizational level, while talking down KLA failures and losses.²⁴⁰⁹

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.²⁴¹⁰ At the meeting, the witness was given a list of persons.²⁴¹¹ The list, as reproduced in the notes of the witness, included the

²⁴⁰³ P340 (Jakup Krasniqi, *Limaj et al.* transcript, 10-12 February 2005), p. 3321; Jakup Krasniqi, T. 5066, 5115, 5117.

²⁴⁰⁴ 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.

²⁴⁰⁵ P328 (Jakup Krasniqi, witness statement, 24 May 2007), Annex 13 (KLA communiqué in Koha Ditore, 13 May 1998), p. 1, Annex 16 (KLA communiqué in Koha Ditore, 13 July 1998); P340 (Jakup Krasniqi, *Limaj et al.* transcript, 10-12 February 2005), p. 3350; Jakup Krasniqi, T. 4972.

²⁴⁰⁶ P328 (Jakup Krasniqi, witness statement, 24 May 2007), Annex 13 (KLA communiqué in Koha Ditore, 13 May 1998), p. 1, Annex 16 (KLA communiqué in Koha Ditore, 13 July 1998).

²⁴⁰⁷ P966 (KLA communiqué in Zëri, 27 February 1998).

²⁴⁰⁸ 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.

²⁴⁰⁹ 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.

²⁴¹⁰ P885 (Witness 17, witness statement, 14 August 2007), para. 56; Witness 17, T. 7583-7586.

²⁴¹¹ 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, Shekretet Sadiku (together with his family), “two women collaborators Turjak-Kosturic”, Misin Berisha “- Roman person, Glllogjan”, and Skënder Sali Kuçi “- Lutogllavë”.²⁴¹² The witness did not know any of the persons on the list.²⁴¹³ 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.²⁴¹⁴ He could not remember whether he had received the list orally or in writing.²⁴¹⁵ The witness did understand that the persons were sought for but not by whom, or for what purpose, and he did not enquire.²⁴¹⁶ 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,²⁴¹⁷ testified that he was aware of many people who had been “blacklisted” by two KLA soldiers called Faton Mehmetaj and Fitnete 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.²⁴¹⁸ 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.²⁴¹⁹ The purpose of this was to “compromise” or discredit those who had been “blacklisted”.²⁴²⁰ 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 1998.²⁴²¹ Although he felt that the interrogation had been conducted in a threatening manner, he was at no point mistreated

²⁴¹² P885 (Witness 17, witness statement, 14 August 2007), para. 57; P886 (Notes of Witness 17), pp. 13-14

²⁴¹³ P885 (Witness 17, witness statement, 14 August 2007), para. 58; Witness 17, T. 7694.

²⁴¹⁴ P885 (Witness 17, witness statement, 14 August 2007), para. 57; Witness 17, T. 7584, 7699.

²⁴¹⁵ Witness 17, T. 7694.

²⁴¹⁶ P885 (Witness 17, witness statement, 14 August 2007), paras 57-58; Witness 17, T. 7696-7697, 7700.

²⁴¹⁷ P265 (Rrustem Tetaj, witness statement, 17 April 2007), para. 1; Rrustem Tetaj, T. 3604-3605.

²⁴¹⁸ P265 (Rrustem Tetaj, witness statement, 17 April 2007), paras 14-15, 29; Rrustem Tetaj, T. 3671.

²⁴¹⁹ P265 (Rrustem Tetaj, witness statement, 17 April 2007), para. 29; Rrustem Tetaj, T. 3863, 3858-3859, 3863.

²⁴²⁰ P265 (Rrustem Tetaj, witness statement, 17 April 2007), para. 29; Rrustem Tetaj, T. 3671, 3858-3859.

²⁴²¹ P265 (Rrustem Tetaj, witness statement, 17 April 2007), para. 30.

during the two-hour long questioning.²⁴²² 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.²⁴²³ With regard to the murders of Sanije Balaj and Istref and Nurije 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

²⁴²² P265 (Rrustem Tetaj, witness statement, 17 April 2007), para. 30.

²⁴²³ *Čelebići* 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”.²⁴²⁴ When this test is not met, the conviction on the more specific provision will be entered.²⁴²⁵ The more specific offence subsumes the less specific one because the commission of the former necessarily entails the commission of the latter.²⁴²⁶

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

²⁴²⁴ *Čelebići* 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.

²⁴²⁵ *Čelebići* 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.

²⁴²⁶ *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.²⁴²⁷ 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.²⁴²⁸

485. As a form of retribution, the sentence expresses society's condemnation of the criminal act and of the person who committed it.²⁴²⁹ To fulfil the objective of retribution, the Trial Chamber must therefore impose a sentence which properly reflects the personal culpability of the wrongdoer.²⁴³⁰ 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.²⁴³¹ 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.²⁴³² 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

²⁴²⁷ *Blaškić* Appeal Judgement, para. 679.

²⁴²⁸ *Aleksovski* Appeal Judgement, para. 185; *Čelebići* Appeal Judgement, para. 806; *Stakić* Appeal Judgement, para. 402.

²⁴²⁹ *Jokić* Trial Sentencing Judgement, para. 31; *Mrđa* Sentencing Judgement, para. 14.

²⁴³⁰ *Kordić and Čerkez* Appeal Judgement, para. 1075.

²⁴³¹ *Kordić and Čerkez* Appeal Judgement, para. 1076.

by the norms underpinned by substantive criminal law or face prosecution and, if convicted, sanctions.²⁴³³ 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.²⁴³⁴

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.²⁴³⁵ 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.²⁴³⁶ 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.²⁴³⁷ 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.²⁴³⁸ Aggravating circumstances must be directly related to the charged offence.²⁴³⁹ 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.²⁴⁴⁰ Only factors which have been

²⁴³² *Kordić and Čerkez* Appeal Judgement, paras 1077-1078; *Dragan Nikolić* Appeal Sentencing Judgement, para. 45.

²⁴³³ *Kordić and Čerkez* Appeal Judgement, para. 1078.

²⁴³⁴ *Čelebići* Appeal Judgement, para. 806; *Kordić and Čerkez* Appeal Judgement, para. 1079; *Stakić* Appeal Judgement, para. 402.

²⁴³⁵ *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.

²⁴³⁶ *Bralo* Sentencing Judgement, para. 27; *Krajišnik* Trial Judgement, para. 1139.

²⁴³⁷ *Deronjić* Appeal Sentencing Judgement, paras 106-107; *Limaj* Appeal Judgement, para. 143.

²⁴³⁸ *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.

²⁴³⁹ *Stakić* Trial Judgement, para 911.

²⁴⁴⁰ *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.²⁴⁴¹

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.²⁴⁴² These positions of authority, although he was not the Deputy Commander when most of the crimes were

²⁴⁴¹ *Čelebići* Appeal Judgement, para. 763.

²⁴⁴² Jakup Krasniqi T. 5009, 5055-5056, 5070, 5075, 5077-5078, 5138, 5140-5141; Rustem 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.²⁴⁴³ 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.²⁴⁴⁴ Witness 6 testified how he saw the beating of Skender Kuqi and later learned that Kuqi had been sent for treatment in Glođane/Gllogjan 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.

²⁴⁴³ See *Kunarac et al.* Appeal Judgement, para. 352; *Blaškić* Appeal Judgement, para. 683; *Deronjić* Appeal Sentencing Judgement, para. 124.

²⁴⁴⁴ *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.²⁴⁴⁵ Such factors only need to be proven by the balance of probabilities.²⁴⁴⁶ The only mitigating factor specifically mentioned in the Rules is the “substantial cooperation with the Prosecutor by the convicted person before or after conviction”.²⁴⁴⁷ Other mitigating factors include: voluntary surrender;²⁴⁴⁸ good character, including no prior criminal record;²⁴⁴⁹ comportment in detention,²⁴⁵⁰ personal and family circumstances;²⁴⁵¹ and age.²⁴⁵² 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.²⁴⁵³ Even well-documented good behaviour in detention does not weigh significantly in favour of mitigation.²⁴⁵⁴ 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.²⁴⁵⁵ Generally, accused persons 25 years old at the time of the commission of their crimes will not have their age considered a mitigating factor.²⁴⁵⁶

495. The Brahimaj Defence did not raise any argument regarding mitigating factors including any personal circumstances.²⁴⁵⁷ 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

²⁴⁴⁵ *Erdemović* Sentencing Judgement, para. 46; *Bralo* Sentencing Judgement, para. 42; *Zelenović* Trial Sentencing Judgement, para. 44.

²⁴⁴⁶ *Blaškić* Appeal Judgement, para. 697.

²⁴⁴⁷ Rule 101 (B) (ii).

²⁴⁴⁸ *Blaškić* Appeal Judgement, para. 696; *Babić* Appeal Sentencing Judgement, para. 43.

²⁴⁴⁹ *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.

²⁴⁵⁰ *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.

²⁴⁵¹ *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

²⁴⁵² *Blaškić* Appeal Judgement, para. 696; *Babić* Appeal Sentencing Judgement, para. 43; *Simić et al.* Appeal Judgement, para. 266.

²⁴⁵³ *Naletilić and Martinović* Appeal Judgement, para. 600.

²⁴⁵⁴ *Momir Nikolić* Sentencing Judgement, para. 168; *Deronjić* Sentencing Judgement, para. 273.

²⁴⁵⁵ *Furundžija* Trial Judgement, para. 284; *Jelisić* Trial Judgement, para. 124; *Banović* Sentencing Judgement, paras 75-76; *Orić* Trial Judgement, paras 756-757.

²⁴⁵⁶ *Češić* Sentencing Judgement, para. 91; *Mrdić* Sentencing Judgement, para. 93; *Bralo* Sentencing Judgement, paras 47-48; *Orić* Trial Judgement, paras 756-757.

²⁴⁵⁷ T. 11195-11197.

Indictment against him.²⁴⁵⁸ 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.²⁴⁵⁹ 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.²⁴⁶⁰ 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.²⁴⁶¹ 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.²⁴⁶² 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

²⁴⁵⁸ Decision on Motion on Behalf of Lahi Brahimaj for Provisional Release, 14 December 2007, paras 8, 13.

²⁴⁵⁹ 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.

²⁴⁶⁰ Decision on Motion on Behalf of Lahi Brahimaj for Provisional Release, 14 December 2007, paras 10, 21.

²⁴⁶¹ 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.

²⁴⁶² Fourth Amended Indictment, 16 October 2007, para. 11.

penalty. This does not mean that the Trial Chamber is obliged to conform to that practice.²⁴⁶³ 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.²⁴⁶⁴ Moreover, the Trial Chamber may diverge from the sentencing practice of the former Yugoslavia if this practice is inadequate in light of international law.²⁴⁶⁵

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.²⁴⁶⁶ 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”).²⁴⁶⁷ 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.²⁴⁶⁸

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.

²⁴⁶³ *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.

²⁴⁶⁴ *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; *Simić et al.* Appeal Judgement, para. 264.

²⁴⁶⁵ *Kunarac et al.* Appeal Judgement, para. 377.

²⁴⁶⁶ *Dragan Nikolić* Appeal Sentencing Judgement, para. 85.

²⁴⁶⁷ 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.

²⁴⁶⁸ 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

Judge Frank Höpfel

**Judge Alphons Orié
Presiding**

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”.²⁴⁶⁹ 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.

²⁴⁶⁹ 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

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 2005.²⁴⁷⁰ 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.²⁴⁷¹ On 25 October 2006, Trial Chamber II confirmed the Amended Indictment.²⁴⁷² On the same day, the Prosecution sought leave to further amend the Amended Indictment.²⁴⁷³ 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.²⁴⁷⁴ On 12 January 2007, Trial Chamber II confirmed the Revised Second Amended Indictment.²⁴⁷⁵ 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 37.²⁴⁷⁶ The Accused entered new pleas to all charges contained in these counts at the Pre-Trial Conference on 1 March 2007.²⁴⁷⁷ On 13 June 2007, the Prosecution sought leave to amend the Revised Second Amended Indictment.²⁴⁷⁸ On 5 September 2007, the Trial Chamber confirmed the Revised Third Amended Indictment.²⁴⁷⁹ The amendment concerned the identification of two previously unidentified victims.²⁴⁸⁰ Since it did not result in the addition of a new charge against the Accused, there was no need to enter new pleas.²⁴⁸¹ On 28 September 2007, the Prosecution sought leave to amend the Third Amended Indictment.²⁴⁸² On 15 October 2007, the Trial Chamber confirmed the Fourth Amended Indictment.²⁴⁸³ The

²⁴⁷⁰ Decision on Review of the Indictment, 4 March 2005.

²⁴⁷¹ Motion for Leave to Amend the Indictment, 26 April 2006.

²⁴⁷² Decision on Motion to Amend the Indictment and on Challenges to the Form of the Amended Indictment, 25 October 2006.

²⁴⁷³ Prosecution Motion Seeking Leave to Amend the Indictment, 25 October 2006.

²⁴⁷⁴ Motion Seeking Leave to Amend the Amended Indictment by Substituting a Revised Second Amended Indictment, 10 November 2006.

²⁴⁷⁵ Decision on Motion to Amend the Amended Indictment, 12 January 2007.

²⁴⁷⁶ *Ibid.*, para. 7.

²⁴⁷⁷ T. 265-266.

²⁴⁷⁸ Motion Seeking Leave to Amend the Revised Second Amended Indictment, 13 June 2007.

²⁴⁷⁹ Decision on Prosecution's Motion Seeking Leave to Amend the Revised Second Amended Indictment, 5 September 2007.

²⁴⁸⁰ *Ibid.*, para. 15.

²⁴⁸¹ *Ibid.*, paras 11-15.

²⁴⁸² Prosecution's Motion Seeking Leave to Amend the Third Amended Indictment, 28 September 2007.

²⁴⁸³ 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.²⁴⁸⁴ 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.²⁴⁸⁵

2. *Reduction of the Indictment.* On 6 February 2007, the Trial Chamber invited the Prosecution to reduce the scope of the Indictment.²⁴⁸⁶ On 13 February 2007, the Prosecution declined the invitation.²⁴⁸⁷ 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”.²⁴⁸⁸

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.²⁴⁸⁹

4. On 9 March 2005, the case was assigned to Trial Chamber II of the Tribunal by the Acting President.²⁴⁹⁰ The initial appearance of all three Accused was held before Judge Carmel Agius on 14 March 2005.²⁴⁹¹ Each Accused pleaded not guilty to the charges.²⁴⁹² 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.²⁴⁹³ 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

²⁴⁸⁴ Ibid., para. 5.

²⁴⁸⁵ Ibid., para. 6.

²⁴⁸⁶ Request to the Prosecutor to Make Proposals to Reduce the Scope of the Indictment, 6 February 2007.

²⁴⁸⁷ 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.

²⁴⁸⁸ Decision Pursuant to Rule 73 *bis* (D), 22 February 2007, para. 9.

²⁴⁸⁹ Order for Detention on Remand, 11 March 2005.

²⁴⁹⁰ Order Assigning a Case to a Trial Chamber, 9 March 2005.

²⁴⁹¹ Order Designating Judge for Initial Appearance, 11 March 2005.

²⁴⁹² T. 1-51.

²⁴⁹³ 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.²⁴⁹⁴

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.²⁴⁹⁵ On 18 April 2005, the Registrar assigned Mr Gregor Guy-Smith as counsel for Balaj, and Mr Richard Harvey as counsel for Brahimaj.²⁴⁹⁶ On 26 July 2006, Mr Paul Troop was assigned as co-counsel to Brahimaj.²⁴⁹⁷ On 9 February 2007, Ms Colleen Rohan was assigned as co-counsel to Balaj.²⁴⁹⁸

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 2007.²⁴⁹⁹ The following day, Judge Alphons Orie appointed himself as Pre-Trial Judge.²⁵⁰⁰ 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.²⁵⁰¹ On 19 January 2007, the President of the Tribunal assigned the same *ad litem* judges to the Trial Chamber for the trial.²⁵⁰²

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 2007.²⁵⁰³

8. *Pre-trial briefs.* The Prosecution filed its pre-trial brief on 29 January 2007.²⁵⁰⁴ Each Accused filed a pre-trial brief on 12 February 2007.²⁵⁰⁵

9. *Preliminary motions.* On 5 February 2007, the Balaj Defence requested clarification of paragraph 29 of the 12 January 2007 Indictment.²⁵⁰⁶ The Trial Chamber found that the Defence had not identified any continuing lack of clarity or uncured

²⁴⁹⁴ Order Regarding Composition of Trial Chamber and Designating Pre-Trial Judge, 14 July 2006.

²⁴⁹⁵ Power of Attorney, 31 March 2005.

²⁴⁹⁶ 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.

²⁴⁹⁷ Decision by the Registrar re: Assignment of Co-Counsel to Lahi Brahimaj, 26 July 2006.

²⁴⁹⁸ Decision by the Registrar re: Assignment of Co-Counsel to Idriz Balaj, 9 February 2007.

²⁴⁹⁹ Order Reassigning a Case to a Trial Chamber, 15 January 2007.

²⁵⁰⁰ Order Appointing a Pre-Trial Judge, 16 January 2007.

²⁵⁰¹ Order Assigning Ad-Litem Judges for Trial Work, 17 January 2007.

²⁵⁰² Order Assigning Ad-Litem Judges to a Case Before a Trial Chamber, 19 January 2007.

²⁵⁰³ Scheduling Order, 24 January 2007.

²⁵⁰⁴ Prosecution's Pre-Trial Brief, 29 January 2007.

²⁵⁰⁵ 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.

²⁵⁰⁶ 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 29.²⁵⁰⁷

10. *Provisional release motions.* On 16 April 2005, duty Judge Iain Bonomy granted a request by Haradinaj for a 48-hour provisional release.²⁵⁰⁸ On 6 June 2005, Trial Chamber II granted provisional release to Haradinaj until ordered to return to the custody of the Tribunal.²⁵⁰⁹ Haradinaj was under an obligation to notify UNMIK 24 hours in advance every time he intended to move between Priština/Prishtinë and Glodane/Gllogjan.²⁵¹⁰ 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".²⁵¹¹ 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.²⁵¹²

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".²⁵¹³ 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.²⁵¹⁴ On 1 February 2007, due to the upcoming trial, the Trial Chamber recalled Haradinaj from provisional release.²⁵¹⁵

12. On 10 October 2005, Brahimaj Defence requested provisional release.²⁵¹⁶ On 3 November 2005, Trial Chamber II denied the request.²⁵¹⁷ Brahimaj Defence appealed

²⁵⁰⁷ Decision on Idriz Balaj's Preliminary Motion Concerning Paragraph 29 of the Indictment, 31 May 2007.

²⁵⁰⁸ Decision on Urgent Defence Motion on Behalf of Ramush Haradinaj for Provisional Release, 16 April 2005.

²⁵⁰⁹ Decision on Ramush Haradinaj's Motion for Provisional Release, 6 June 2005.

²⁵¹⁰ Ibid., para. 53, sub-para. 6b.

²⁵¹¹ Ibid., para. 53, sub-para. 5.

²⁵¹² Ibid.

²⁵¹³ 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.

²⁵¹⁴ Decision on Ramush Haradinaj's Modified Provisional Release, 10 March 2006, para. 104.

²⁵¹⁵ Order Recalling Ramush Haradinaj from Provisional Release, 2 February 2007.

²⁵¹⁶ Defence Motion on Behalf of Lahi Brahimaj for Provisional Release, 10 October 2005.

²⁵¹⁷ Decision on Lahi Brahimaj's Motion for Provisional Release, 3 November 2005.

and the Appeals Chamber directed the Trial Chamber to reconsider.²⁵¹⁸ On 3 May 2006, the Trial Chamber again denied Brahimaj's request.²⁵¹⁹

13. On 29 June 2007, the Haradinaj Defence requested temporary provisional release during the Tribunal's summer recess.²⁵²⁰ On 11 July 2007, the Prosecution objected to this request.²⁵²¹ On 16 July 2007, Haradinaj replied.²⁵²² 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.²⁵²³

14. On 3 October 2007, the Haradinaj Defence requested urgent provisional release on compassionate grounds following the death of a close relative of Haradinaj.²⁵²⁴ On the same day, the Prosecution requested that strict conditions be imposed upon the provisional release.²⁵²⁵ On 3 October 2007, the Trial Chamber granted the provisional release of Haradinaj from 3 to 7 October 2007.²⁵²⁶ With the exception of the funeral attendance, Haradinaj was ordered to remain in his home in Glodane/Gllogjan and avoid any media or political contacts.²⁵²⁷

15. On 7 December 2007, the Haradinaj Defence requested Haradinaj's provisional release during the winter court recess.²⁵²⁸ On 12 December 2007, the Prosecution objected to this request.²⁵²⁹ On 14 December 2007, the Trial Chamber granted the provisional release of Ramush Haradinaj from 21 December 2007 to 4 January 2008.²⁵³⁰ 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.²⁵³¹ The Trial Chamber further requested UNMIK to report every second day on his

²⁵¹⁸ Decision on Lahi Brahimaj's Interlocutory Appeal Against the Trial Chamber's Decision Denying his Provisional Release, 9 March 2006, paras 30-31.

²⁵¹⁹ Further Decision on Lahi Brahimaj's Motion for Provisional Release, 3 May 2006, paras 42-43.

²⁵²⁰ Motion on Behalf of Ramush Haradinaj for Temporary Provisional Release, 29 June 2007.

²⁵²¹ Prosecution's Response to Motion on Behalf of Ramush Haradinaj for Temporary Provisional Release, 11 July 2007, para. 38.

²⁵²² Reply on Behalf of Ramush Haradinaj to Prosecution's Response to Defence Motion for Temporary Provisional Release, 16 July 2007.

²⁵²³ Decision on Motion on Behalf of Ramush Haradinaj for Provisional Release, 20 July 2007, paras 24, 27, 29-30.

²⁵²⁴ Motion on Behalf of Ramush Haradinaj for Urgent Provisional Release, 3 October 2007.

²⁵²⁵ Response to Ramush Haradinaj's Motion for Provisional Release, 3 October 2007.

²⁵²⁶ Decision on Defence Motion on Behalf of Ramush Haradinaj for Urgent Provisional Release, 3 October 2007.

²⁵²⁷ Ibid.

²⁵²⁸ Motion on Behalf of Ramush Haradinaj for Temporary Provisional Release, 7 December 2007.

²⁵²⁹ Prosecution's Response Opposing Haradinaj's Motion for Provisional Release, 12 December 2007.

²⁵³⁰ Decision on Motion on Behalf of Ramush Haradinaj for Provisional Release, 14 December 2007.

²⁵³¹ Ibid.

compliance with the terms and conditions of the provisional release.²⁵³² 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.²⁵³³ On 12 December 2007, the Prosecution objected to this request.²⁵³⁴ On 14 December 2007, the Trial Chamber granted the provisional release of Brahimaj from 21 December 2007 to 4 January 2008.²⁵³⁵ 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.²⁵³⁶ On 30 November 2007, the parties filed additional agreed facts concerning the chain of custody of certain documents.²⁵³⁷

18. *UNMIK.* On 12 January 2007, the Balaj Defence requested that the Trial Chamber order UNMIK to lift Rule 70 constraints over certain documents.²⁵³⁸ On 31 January 2007, the Prosecution opposed ordering the disclosure of the files without the consent of UNMIK, the Rule 70 provider.²⁵³⁹ 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.²⁵⁴⁰ 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".²⁵⁴¹ The Prosecution further informed the Trial Chamber that UNMIK had refused to consent to the disclosure of the requested

²⁵³² Ibid., pp. 8-9.

²⁵³³ 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.

²⁵³⁴ Prosecution's Response Opposing Lahi Brahimaj's Motion for Provisional Release, 12 December 2007.

²⁵³⁵ Decision on Motion on Behalf of Lahi Brahimaj for Temporary Provisional Release, 14 December 2007, para. 25.

²⁵³⁶ Joint Motion on Agreed Facts, 26 November 2007.

²⁵³⁷ Joint Motion on Additional Agreed Facts, 30 November 2007.

²⁵³⁸ 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.

²⁵³⁹ Prosecution's Response to Motion by Idriz Balaj for Order to Disclose Material Protected under Rule 70, 31 January 2007.

²⁵⁴⁰ 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.

²⁵⁴¹ Prosecution Report on UNMIK Rule 70 Material Subject to Rule 68, 5 April 2007, para. 3.

files to the Defence.²⁵⁴² On 19 April 2007, the Trial Chamber invited UNMIK to assign an informed representative to appear before it.²⁵⁴³ 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.²⁵⁴⁴ 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.²⁵⁴⁵ The Defence for Balaj withdrew its motion of 12 January 2007 at the end of this hearing.²⁵⁴⁶

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.²⁵⁴⁷ On 22 March 2007, the Prosecution responded.²⁵⁴⁸ 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.²⁵⁴⁹

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.²⁵⁵⁰ On the same date, the Trial Chamber issued an Order in Lieu of Indictment, ordering the prosecution of Kabashi for contempt of the Tribunal.²⁵⁵¹ The Trial Chamber decided to prosecute the matter itself and summoned Kabashi to appear before it on 7 June 2007.²⁵⁵² Kabashi did not appear on the prescribed date, but rather returned to the United States, his country of residence,

²⁵⁴² Ibid., para. 4.

²⁵⁴³ 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.

²⁵⁴⁴ T. 3923.

²⁵⁴⁵ T. 3907-3911.

²⁵⁴⁶ T. 3925.

²⁵⁴⁷ Defence Submissions on the Procedure for the Proofing of Prosecution Witnesses, 22 March 2007, paras 2-3.

²⁵⁴⁸ Prosecution's Written Submissions Opposing Verbatim Recording of "Proofing" Sessions with Witnesses, 22 March 2007.

²⁵⁴⁹ Decision on Defence Request for Audio-recording of Prosecution Witness Proofing Sessions, 23 May 2007.

²⁵⁵⁰ T. 5414 et seq.

²⁵⁵¹ Order in Lieu of Indictment on Contempt Concerning Shefqet Kabashi, 5 June 2007.

²⁵⁵² 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.²⁵⁵³ 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.²⁵⁵⁴ 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 2007.²⁵⁵⁵ 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.²⁵⁵⁶ On 13 December 2007, the Prosecution filed an indictment against Kabashi.²⁵⁵⁷ 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.²⁵⁵⁸ 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.²⁵⁵⁹ 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.²⁵⁶⁰ 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.²⁵⁶¹ On 19 October 2007, the Trial Chamber ordered Avni Krasniqi to appear before the Tribunal as a witness on 29 October 2007.²⁵⁶² Krasniqi persisted in his refusal to testify, citing fear for the safety of him and his family.²⁵⁶³ On 30 October 2007, the Prosecution requested the Trial Chamber to direct the Prosecution to

²⁵⁵³ T. 10939-10941.

²⁵⁵⁴ Decision to Refer the Case to the Prosecution, 11 December 2007, para. 7.

²⁵⁵⁵ *Ibid.*, para. 7.

²⁵⁵⁶ *Ibid.*, para. 6.

²⁵⁵⁷ Prosecution's Submission of an Indictment Against Shefqet Kabashi, 13 December 2007, Annex A.

²⁵⁵⁸ *Ibid.*, para. 11.

²⁵⁵⁹ Prosecution's Addendum to 13 December 2007 Motion Concerning Indictment of Shefqet Kabashi, 19 December 2007.

²⁵⁶⁰ Decision Granting Leave to Amend the Indictment, 18 February 2008.

²⁵⁶¹ Prosecution's 22nd Application for a Subpoena ad Testificandum, 17 October 2007.

²⁵⁶² Subpoena ad Testificandum, 19 October 2007.

²⁵⁶³ 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.²⁵⁶⁴ 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.²⁵⁶⁵ On 2 November 2007, the Prosecution filed an indictment for contempt of the Tribunal against Avni Krasniqi.²⁵⁶⁶ The Trial Chamber confirmed the indictment on 5 November 2007 and it was made public on 9 November 2007.²⁵⁶⁷ On 12 November 2007, the Prosecution corrected the indictment.²⁵⁶⁸ 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 2007.²⁵⁶⁹ After consulting with his counsel, Avni Krasniqi decided to testify in the *Haradinaj et al.* case, which he did on 14 and 15 November 2007.²⁵⁷⁰ On 15 November 2007, the Prosecution applied to withdraw the indictment against him.²⁵⁷¹ 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.²⁵⁷² He was released shortly thereafter. On 5 December 2007, the Trial Chamber confirmed in writing the withdrawal of the indictment.²⁵⁷³

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.²⁵⁷⁴ On 1 June 2007, the Trial Chamber issued the requested subpoena.²⁵⁷⁵ 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.²⁵⁷⁶ On 28 June 2007, the Trial Chamber directed Selca to provide a representative of UNMIK with all

²⁵⁶⁴ Prosecution's Acceptance of the Trial Chamber's Invitation to Consider Initiating a Contempt Proceeding against Avni Krasniqi, 30 October 2007.

²⁵⁶⁵ Order to Prosecution to Investigate with a View to Preparation and Submission of an Indictment for Contempt, 31 October 2007.

²⁵⁶⁶ Prosecution's Submission of an Indictment against Avni Krasniqi for Contempt, 5 November 2007.

²⁵⁶⁷ Decision on Review of Indictment, 5 November 2007; Lifting of Confidentiality, 9 November 2007.

²⁵⁶⁸ Prosecution's Filing of a Corrected Indictment, 12 November 2007.

²⁵⁶⁹ Order for Detention on Remand, 13 November 2007.

²⁵⁷⁰ Decision Granting the Prosecution's Application to Withdraw an Indictment for Contempt against Avni Krasniqi, 5 December 2007.

²⁵⁷¹ Prosecution's Application to Withdraw an Indictment for Contempt against Avni Krasniqi, 15 November 2007.

²⁵⁷² T. 10850.

²⁵⁷³ Decision Granting the Prosecution's Application to Withdraw an Indictment for Contempt against Avni Krasniqi, 5 December 2007.

²⁵⁷⁴ Prosecution's Application for Issuance of Subpoena (Witness SST 7/18), 31 May 2007.

²⁵⁷⁵ Subpoena ad Testificandum, 1 June 2007.

²⁵⁷⁶ Memorandum of Service filed by the Kosovo Police Service of UNMIK, 15 June 2007.

medical records in support of his claim.²⁵⁷⁷ On 1 August 2007, UNMIK filed a report with a statement from Selca and two medical documents attached.²⁵⁷⁸ 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.²⁵⁷⁹ On 19 October 2007, the Prosecution requested the Trial Chamber to direct the Prosecution to investigate the witness for possible contempt of the Tribunal.²⁵⁸⁰ 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.²⁵⁸¹ On 7 November 2007, the Trial Chamber confirmed the indictment for contempt of the Tribunal against Sadri Selca.²⁵⁸² On the same day, the Trial Chamber issued an arrest warrant against Selca.²⁵⁸³ The indictment was made public on 13 November 2007.²⁵⁸⁴ On the same day, the arrest warrant was executed, and the Accused was transferred to The Hague.²⁵⁸⁵ 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.²⁵⁸⁶ 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.²⁵⁸⁷ He was released shortly thereafter. On 5 December 2007, the Trial Chamber confirmed in writing the withdrawal of the indictment.²⁵⁸⁸

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.²⁵⁸⁹ The Prosecution submitted that the

²⁵⁷⁷ Request for Medical Reports of a Subpoenaed Witness and Request for Judicial Assistance, 28 June 2007.

²⁵⁷⁸ UNMIK filing, 1 August 2007.

²⁵⁷⁹ Invitation to Prosecution to Consider Initiating Contempt Proceedings against Sadri Selca, 23 August 2007.

²⁵⁸⁰ Response to Invitation in Respect of Sadri Selca, 19 October 2007, para. 7.

²⁵⁸¹ Order Pursuant to Rule 77(C)(i) in Relation to Witness 18, 31 October 2007.

²⁵⁸² Decision on Review of Indictment, 7 November 2007.

²⁵⁸³ Warrant of Arrest and Order for Surrender of Sadri Selca, 7 November 2007.

²⁵⁸⁴ Order on the Lifting of Confidentiality, 13 November 2007.

²⁵⁸⁵ *Ibid.*

²⁵⁸⁶ Prosecution's Application to Withdraw an Indictment for Contempt against Sadri Selca, 15 November 2007.

²⁵⁸⁷ T. 10891.

²⁵⁸⁸ Decision Granting the Prosecution's Application to Withdraw an Indictment for Contempt against Sadri Selca, 5 December 2007.

²⁵⁸⁹ T. 2594-2596.

evidence of Witness 8 was consistent on the critical issues on relevant counts.²⁵⁹⁰ The Defence argued that the testimony of Witness 8 was manifestly unreliable and incredible and had to be excluded from the evidence.²⁵⁹¹ 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.²⁵⁹²

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.²⁵⁹³ On 12 June 2007, the Trial Chamber issued the requested subpoena.²⁵⁹⁴ Lika persisted in his refusal to testify before the Tribunal.²⁵⁹⁵ On 30 August 2007, the Prosecution requested the compelled testimony of Lika via video-conference link.²⁵⁹⁶ 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.²⁵⁹⁷ However, on 13 November 2007, the date scheduled for his testimony, Lika again failed to appear.²⁵⁹⁸ 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.²⁵⁹⁹ 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 2007.²⁶⁰⁰ On 26 November 2007, the Prosecution informed the Trial

²⁵⁹⁰ 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.

²⁵⁹¹ 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.

²⁵⁹² Decision on Whether to Resume Hearing Testimony of Witness 8 and Call Chamber Witness, 20 June 2007.

²⁵⁹³ Prosecution's Application for Issuance of Subpoena, 25 May 2007.

²⁵⁹⁴ Subpoena ad Testificandum, 12 June 2007.

²⁵⁹⁵ Memorandum of Service of 16 June 2007, 20 June 2007; T. 6171, 6390.

²⁵⁹⁶ Prosecution's Motion for an Order for Compelled Testimony via Video Link, 30 August 2007.

²⁵⁹⁷ Decision on Motion for Videolink (Witness 30), 14 September 2007.

²⁵⁹⁸ T. 10621-10624, 10628, 10635.

²⁵⁹⁹ T. 10631-10632, 10640-1646, 10762, 10876, 10892-10893.

²⁶⁰⁰ 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.²⁶⁰¹ 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.²⁶⁰² Naser Lika never testified.²⁶⁰³

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.²⁶⁰⁴ The order set out the requirements and the deadline for the final trial briefs, which were filed on 14 January 2008.²⁶⁰⁵ The closing arguments were held on 21, 22, and 23 January 2008.²⁶⁰⁶ On 28 March 2008, the Trial Chamber issued a scheduling order for rendering the judgement on 3 April 2008.²⁶⁰⁷

²⁶⁰¹ T. 10975.

²⁶⁰² T. 10975.

²⁶⁰³ T. 10975.

²⁶⁰⁴ Scheduling Order for Final Trial Briefs and Closing Arguments, 30 November 2007.

²⁶⁰⁵ 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.

²⁶⁰⁶ T. 11027-11262.

²⁶⁰⁷ Scheduling Order for the Pronouncement of Judgement, 28 March 2008.

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