

**THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA**

CASE NO. IT-04-84bis-T

IN TRIAL CHAMBER II

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

Registrar: Mr. John Hocking

Date filed: 8 November 2012

THE PROSECUTOR

v.

**RAMUSH HARADINAJ
IDRIZ BALAJ
LAHI BRAHIMAJ**

PUBLIC

**NOTICE OF FILING OF PUBLIC REDACTED VERSION OF HARADINAJ
DEFENCE FINAL TRIAL BRIEF AND REQUEST TO ASSIGN EXHIBIT
NUMBERS**

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Mr. Richard Harvey
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1. The Defence for Ramush Haradinaj hereby files the public redacted version of the Defence Final Trial Brief of 11 June 2012 in accordance with the Trial Chamber's Confidential Decision of 29 August 2012.¹ It is attached hereto as Annex A.
2. The Defence also notes that three exhibits that were cited in the Defence Final Brief (in Annex 1) have not been assigned exhibit numbers: P251, P257 and P193 from the original trial.² These exhibits were admitted into evidence in the retrial by the Trial Chamber on 29 August 2011,³ the Prosecution and Defence having agreed that these documents should be admitted as additional associated exhibits for two witnesses whose testimony and exhibits from the original trial had been admitted into evidence.⁴ These three exhibits need only be assigned exhibit numbers for the record, which the Defence requests the Registry is directed to so assign.

Word Count: 232

Dated this day the 8th of November 2012

Counsel for Mr. Ramush Haradinaj,



Ben Emmerson QC

¹ Confidential Decision on Prosecution's Request to File Public Redacted Version of Final Trial Brief, Notification of Corrigendum to Final Trial Brief and Request to Lift the Under Seal Status of an Exhibit, 29 August 2012.

² Cited in Annex 1 to the Defence Final Brief, footnotes 2 and 46.

³ See T.777: 9-24.

⁴ See emails of 24 and 25 August 2011 between the Prosecution and the Defence on admission of additional associated exhibits for witnesses from the original trial whose testimony and exhibits were admitted in the retrial.

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Rodney Dixon

A handwritten signature in black ink, appearing to be 'Andrew Strong', written in a cursive style.

Andrew Strong

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v.

**RAMUSH HARADINAJ
IDRIZ BALAJ
LAHI BRAHIMAJ**

PUBLIC REDACTED VERSION

**FINAL BRIEF ON BEHALF OF RAMUSH HARADINAJ
FOR THE PARTIAL RETRIAL**

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PART 1: INTRODUCTION

1. The Defence for Ramush Haradinaj files its Final Brief in the partial retrial pursuant to Rule 86(B).

The charges for the partial retrial

2. The partial retrial of Mr. Haradinaj was ordered by the Appeals Chamber for (i) Mr. Haradinaj's alleged "participation in a JCE to commit crimes at the KLA headquarters and the prison in Jablanica/Jabllanicë" in respect of six counts only and (ii) Mr. Haradinaj's direct participation in two of these counts; Counts 1 and 6 of the operative Indictment for the retrial.¹
3. Pursuant to the Appeals Chamber's order the Prosecution amended the Indictment from the original trial (the fourth amended Indictment) by excluding all of the counts that did not concern Jabllanicë/Jablanica, leaving the six counts involving Jabllanicë/Jablanica as the counts for the retrial. In respect of the alleged Joint Criminal Enterprise ("JCE"), the Prosecution initially amended and limited it to a common plan to commit crimes at Jabllanicë/Jablanica.² However, the Trial Chamber held that the Appeals Chamber had not ordered any amendment to the JCE. The Trial Chamber thus ordered that the JCE as alleged in the original trial, of which Mr. Haradinaj had been acquitted, should remain in the operative Indictment for the retrial but that "*the crimes for which the Accused are to be retried relate only to their participation, if any, in the crimes committed at the KLA headquarters and the prison in Jabllanice*".³ The Appeals Chamber upheld

¹ Judgment of Appeals Chamber, 19 July 2010, para. 50.

² Prosecution Submission of New Version of the Revised Fourth Amended Indictment, 9 November 2010, Public Appendix A, para. 24.

³ Decision on Shortened Form of the Fourth Amended Indictment, 14 January 2011, para. 30.

this decision and stressed that the Accused cannot be held criminally responsible for any crimes other than those charged in the six Jabllanicë/Jablanica counts.⁴

4. The operative Indictment for the retrial thus alleges that Ramush Haradinaj and others planned and implemented a common criminal enterprise “*to consolidate the total control of the KLA over the Dukagjin Operational Zone by the unlawful removal and mistreatment of Serb 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 Serbian Forces or otherwise not supporting the KLA.*” It is alleged that this campaign occurred between March and September 1998.⁵ The operative Indictment specifically alleges that the JCE included the establishment and operation of, and the mistreatment of detained persons at, the KLA’s headquarters in Jabllanicë/Jablanica.⁶
5. In accordance with the Trial Chamber’s decision, the retrial is limited to Mr. Haradinaj’s alleged participation in the crimes that occurred at Jabllanicë/Jablanica as charged in Counts 1-6 of the operative Indictment.
6. In ordering the retrial, the Appeals Chamber emphasised that two witnesses in particular, who had refused to testify in the original trial, Shefqet Kabashi and [REDACTED] should be called to testify in the retrial.⁷ It was always accepted by the parties that the evidence of these two witnesses, together with the evidence of a new witness, Witness 81, would be central to the retrial. The Prosecution repeatedly stated that they were the “crucial” witnesses⁸.

⁴ Decision on Haradinaj’s Appeal on Scope of Partial Retrial, 31 May 2011, paras. 32, 39.

⁵ Revised Fourth Amended Indictment (“Operative Indictment”), 21 January 2011, para. 25.

⁶ Operative Indictment, para. 24.

⁷ Judgement of Appeals Chamber, 19 July 2010, para. 49.

⁸ See, for example, Prosecution Notice of Appeal, 2 May 2008, para. 5; Prosecution Appeals Brief, 17 July 2008, para. 8.

Defence submissions

7. Witness 81 is the only witness in the retrial who makes any allegations about Mr. Haradinaj's participation in the crimes charged in Counts 1-6. The Haradinaj Defence submits that his evidence was shown to be demonstrably false and dishonest. It cannot be relied on to make any adverse findings against Mr. Haradinaj. The Prosecution has stated that his evidence will not even be referred to in the Prosecution's Final Brief. As Witness 81's evidence will not be addressed at all in the Prosecution's closing submissions, the Prosecution must be taken to have abandoned placing any reliance on this evidence.⁹

8. The remainder of the Prosecution's evidence does not prove the existence of a common criminal purpose to detain and mistreat persons at Jabllanicë/Jablanica to which Mr. Haradinaj was party. The Prosecution has not proved his personal participation in any crimes charged. Nor has the Prosecution proved that he ordered, authorised or condoned any of these crimes. None of the allegations made by the Prosecution concerning Mr. Haradinaj's contribution to the alleged JCE have been established on the evidence.

⁹ Confidential Response to Defence motion on behalf of Ramush Haradinaj for admission of evidence in respect of Witness 81, 1 June 2012.

Structure of Final Brief

9. The Final Brief of the Haradinaj Defence is divided into three parts:
- (a) Part 1 provides an overview of the Defence submissions. It also sets out, by way of background, the evidence about the military context of the Indictment period to show the realities faced on the ground in 1998.
 - (b) Part 2 deals with the JCE as alleged by the Prosecution under the following main headings¹⁰:
 - (i) Mr. Haradinaj's alleged presence in Jabllanicë/Jablanica when the crimes charged were committed;
 - (ii) Mr. Haradinaj's alleged overall command of the KLA in the Dukagjin area and his leadership role;
 - (iii) Mr. Haradinaj's alleged "close association" with Lahi Brahimaj and Idriz Balaj; and,
 - (iv) The alleged "context of violence" in the Dukagjin area.
 - (c) Part 3 covers the particular allegations in relation to each of the six counts in the retrial.

¹⁰ These headings are based on the allegations that the Prosecution relies on to seek to prove Mr. Haradinaj's participation in the JCE as set out in the Prosecution's Pre-Trial Brief.

Overview of Defence submissions

10. The evidence of the Prosecution's "crucial" witnesses (Witness 81 [REDACTED] and Shefqet Kabashi) does not prove that Mr. Haradinaj directly participated in any of the crimes alleged, nor does their evidence on its own or together with any other evidence prove the existence of any JCE involving Mr. Haradinaj to commit the crimes charged in Counts 1-6.

Direct evidence

11. The Prosecution has no credible direct evidence of Mr. Haradinaj's presence or personal involvement in the commission of any crimes charged or to support its allegation that Mr. Haradinaj participated pursuant to a JCE to commit any of these crimes:
- (a) The testimony of Witness 81 about Mr. Haradinaj's presence when crimes were allegedly committed lacks any credibility or reliability. It has all of the hallmarks of being fabricated with deceit. The Prosecution has abandoned his evidence in stating that it will not be relied on at all in the Prosecution's closing submissions. The Haradinaj Defence submits that this evidence should therefore be rejected in its entirety. It cannot be relied on in any way to seek to establish that Mr. Haradinaj is criminally responsible for any of the alleged crimes at Jabllanicë/Jablanica.¹¹
 - (b) Witness 80 testified that he did not recall Mr. Haradinaj being present when three boys were allegedly mistreated in Jabllanicë/Jablanica (Count 1) or when [REDACTED] was beaten in Jabllanicë/Jablanica (Count 6).¹²
 - (c) Shefqet Kabashi's testimony in the *Limaj* case, which was admitted in the retrial, does not concern Mr. Haradinaj. He is not mentioned at all by this

¹¹ See paras. 57-82.

¹² See paras. 83-91.

witness in relation to Jabllanicë/Jablanica. Shefqet Kabashi testified that he had been based in Jabllanicë/Jablanica as a KLA soldier from April until September 1998. He never mentioned seeing Mr. Haradinaj in Jabllanicë/Jablanica throughout this period.¹³

- (d) No other witnesses testified that Mr. Haradinaj was present when any crimes were committed in Jabllanicë/Jablanica:
- (i) Witness 75, who testified about visiting his brother while he was allegedly detained at Jabllanicë/Jablanica in about March-May 1998, stated that he never saw Mr. Haradinaj at Jabllanicë/Jablanica and that Mr. Haradinaj was not in command there.¹⁴
 - (ii) Witness 75's mother, Witness 76, similarly stated that she never saw Mr. Haradinaj at Jabllanicë/Jablanica.¹⁵
 - (iii) Witness 6, whose testimony from the original trial was admitted, never saw Mr. Haradinaj at Jabllanicë/Jablanica at any time he was detained there for about six weeks from 13 June 1998.¹⁶
 - (iv) Witness 3 never testified that Mr. Haradinaj was present in Jabllanicë/Jablanica when he was detained there in mid-July 1998. He stated that the commander (who he believed was Mr. Haradinaj) who he had met in Glllogjan/Glođane when brought there at the end of July 1998 took good care of him, arranged for him to be sent home immediately, and that he was never bothered

¹³ See paras. 93(h), 121(g)(iv).

¹⁴ See paras. 93(g), 121(g)(iii).

¹⁵ See paras. 93(g), 121(h).

¹⁶ See paras. 221-225.

again.¹⁷ This evidence is entirely inconsistent with Mr. Haradinaj being involved in a JCE to mistreat persons.

- (v) Rrustem Tetaj stated that he went with Mr. Haradinaj to Jabllanicë/Jablanica in mid-late July to demand Skender Kuqi's release and that Mr. Haradinaj had no knowledge of the incident before this point. He testified that Mr. Haradinaj intervened to help Mr. Kuqi and stated that this mistreatment should never have happened.¹⁸ Witness 80 testified in similar terms that Mr. Haradinaj had not been involved in Skender Kuqi's detention and mistreatment, but that when he found out about it, Mr. Haradinaj was "very concerned" about Skender Kuqi's condition and confronted Lahi Brahimaj about why this mistreatment had occurred.¹⁹ This is an intervention completely at odds with the allegation that Mr. Haradinaj participated in a JCE to mistreat persons detained at Jabllanicë/Jablanica.

Circumstantial evidence

12. The Prosecution is thus left to rely on circumstantial evidence of a most generalised character. The Prosecution has sought to piece together evidence from the original trial and the retrial to make some connection between Mr. Haradinaj and the alleged crimes in Jabllanicë/Jablanica. These efforts all amount to nothing.
13. The Prosecution bears the burden of proving the JCE as alleged in the Indictment, and the guilt of the Accused on each of the individual counts, beyond reasonable doubt. On the evidence adduced at the retrial, the case against Mr. Haradinaj rests on inferences which the Prosecution invites the Trial Chamber to draw from

¹⁷ See paras. 240-248.

¹⁸ See paras. 234-239.

¹⁹ See paras. 88-91.

circumstantial evidence. In order for the Prosecution to discharge the burden of proving guilt based on circumstantial evidence, it must (a) prove the primary facts upon which it relies beyond reasonable doubt and (b) prove, to the same standard, that all reasonable inferences consistent with innocence have been excluded. Where the evidence is reasonably open to more than one inference, the Prosecution will have failed to prove guilt to the requisite standard, and the Accused must be acquitted.²⁰

14. None of the circumstantial evidence admitted from the original trial or introduced in the retrial permits any inference to be drawn that Mr. Haradinaj can be held criminally responsible pursuant to a JCE for any of the Jabllanicë/Jablanica counts.

KLA organisation

15. The Prosecution alleges that Mr. Haradinaj was the central figure in coordinating and organising KLA units and operations in the Dukagjin zone, and unifying them under his command. The Prosecution contends in particular that Mr. Haradinaj commanded and controlled KLA activities in Jabllanicë/Jablanica in a “hands on” way including by using the detention facilities there to detain and mistreat perceived opponents as part of a joint criminal enterprise to suppress opposition with the aim of consolidating KLA control over the Dukagjin area.²¹
16. On analysis, the Prosecution is really arguing that, because Mr. Haradinaj was a prominent and charismatic local commander, and latterly Commander of the Dukagjin Plain Operational Zone, he must be taken to have authorised or condoned any crime committed in Jabllanicë/Jablanica.

²⁰ *The Prosecutor v. Delalić et al.*, Case No. IT-96-21-A, Appeal Judgement, 20 February 2001, para. 458; *The Prosecutor v. Stakić*, Case No. IT-97-24-A, Appeal Judgement, 22 March 2006, para. 219; *The Prosecutor v. Hadžihasanović and Kubura*, Case No. IT-01-47-A, Appeals Judgement, 22 April 2008, para. 286; *Prosecutor v. Milutinović*, Case No. IT-05-87-T, Trial Judgment, 29 February 2009, para. 39; *Prosecutor v. Gotovina*, Case No. IT-06-90-T, Trial Judgment, 15 April 2011, para. 43.

²¹ See, for example, Prosecution Pre-Trial Brief, paras. 7, 20.

17. The Haradinaj Defence submits that this is the fallacy which lies at the heart of the Prosecution's case against Mr. Haradinaj. It entirely overlooks the reality on the ground. All of the evidence establishes that the KLA emerged as a movement in the Dukagjini region, over a period of time, without any of the formal command structures of a conventional army. Many witnesses have spoken of a horizontal rather than a vertical command structure.²² The reality of Mr. Haradinaj's position during the Indictment period bears no real comparison to the position of a conventional military commander.
18. To suggest that, merely because he emerged as the leader of the KLA in the Dukagjin region, Mr. Haradinaj must have authorised or condoned the commission of the crimes in Jabllanicë/Jablanica is entirely illogical.

Chronology of main KLA developments

19. The organisational developments within the KLA over the Indictment period show that Mr. Haradinaj could not, and did not, exercise authority and operational control over Jabllanicë/Jablanica (or other areas in the Dukagjin area):
- (a) In March-May 1998 rudimentary defences emerged spontaneously in many villages in western Kosova/Kosovo in response to intense Serbian offensives that were launched in this period.
- (b) On 26 May 1998, the leaders of certain of these villages came together for the first time to attempt to co-ordinate their efforts. A Regional Staff was formed with five sub-zones. Jabllanicë/Jablanica was not incorporated within this structure. Jabllanicë/Jablanica had been and continued to operate as an independent grouping of KLA fighters.

²² See paras. 97-121.

- (c) Jabllanicë/Jablanica was only included in a joint structure on 23 June, when the Dukgajin Zone was established.²³ The minutes of a prior meeting on 21 June in Irzniq/Rznić refer in terms to the need to incorporate Jabllanicë/Jablanica within a joint structure for the purpose of improving co-operation and co-ordination.²⁴
- (d) During May-June 1998 Jabllanicë/Jablanica functioned as a separate centre of KLA activity. During this period Jabllanicë/Jablanica and Gllogjan/Glodane operated independently.²⁵
- (e) It is during this period that it is alleged that the crimes charged in **Count 1** (mistreatment of three boys), **Count 2** (abduction of Ukë Rexhepaj and Nesret Alijaj), **Count 3** (detention of Witness 6 on 13 June for about 6 weeks), and **Count 4** (mistreatment of Nenad Remištar and others) were committed.
- (f) Mr. Haradinaj was elected as the commander of the Dukgajin Zone on 23 June,²⁶ but the evidence does not establish that, after 23 June, Mr. Haradinaj was kept informed of the actions of those in Jabllanicë/Jablanica, or that he was in effective day-to-day command or control there.²⁷
- (g) During this period in July, it is alleged that the crimes as charged in **Count 5** (mistreatment of Pal Krasniqi, Skender Kuqi, and Witness 3) and **Count 6** (beating of [REDACTED]) were committed. [REDACTED] however, testified that [REDACTED] took place much earlier and certainly before the beginning of June.²⁸
- (h) Each of these stages of development was punctuated by sustained Serbian attacks on Albanian villages in western Kosova/Kosovo with catastrophic

²³ P191 (Minutes of meeting on 23 June 1998); P192 (Minutes of meeting on 23 June 1998).

²⁴ P190 (Minutes of meeting).

²⁵ See paras. 100-118.

²⁶ P191 (Minutes of meeting); P192 (Minutes of meeting).

²⁷ See paras. 119-124.

²⁸ See paras. 83-86. In particular, T.2424.

effects for the civilians living there as well as the ability of the KLA to organise itself. The main evidence about these attacks is summarised below.²⁹

20. The realities of KLA organisation were reinforced by the new evidence presented by the Prosecution in the retrial:

(a) Bislim Zyrapi testified that there were at least three independent centres of KLA resistance in western Kosova/Kosovo based around: the Jashari family in Prekaz, the Haradinaj family in Gllogjan/Glođane and the Brahimaj family in Jabllanicë/Jablanica. None of the families had the authority or ability to impose their will on any of the other families. He confirmed that the Haradinajs could not tell the Brahamijs what to do or vice versa.³⁰

(b) The Prosecution also called Skender Rexhahmetaj to seek to support its contention that Mr. Haradinaj's participation in the Jabllanicë/Jablanica counts can be inferred from his command and leadership position; in fact, his evidence was the opposite:

(i) He testified that Jabllanicë/Jablanica was not included in the first attempt to establish a regional staff on 26 May 1998 and that the Jabllanicë/Jablanica staff continued to act independently.³¹

(ii) It was Mr. Rexhahmetaj who thereafter proposed that steps should be taken to incorporate Jabllanicë/Jablanica.³²

(iii) Even after the Dukagjin Zone was established on 23 June 1998 (which included Jabllanicë/Jablanica and other villages), with Mr. Haradinaj elected as the commander, Mr. Rexhahmetaj testified that: the organisation remained "horizontal in reality", "no one

²⁹ See para. 27-45.

³⁰ See paras. 104-108.

³¹ T.1058:11-1059:4.

³² T.1061:18-1062:22.

could give orders to the other”, “everything was done by consensus”³³, and the commanders of various subzones continued to act independently³⁴, with volunteers making up the force.³⁵

- (iv) He said that the Dukagjin zone structure was an “aspirational blueprint” for the military organisation they were hoping to create in the future.³⁶

21. This evidence from the Prosecution’s own witnesses directly undermines the Prosecution’s case that it can be inferred from the organisation of the KLA that Mr. Haradinaj directed or controlled those allegedly committing crimes in Jabllanicë/Jablanica, or was involved in any common criminal plan with them as a result of his command or leadership position.

Serb intelligence reports

22. As in the original trial, the Prosecution sought to rely on Serbian intelligence materials. The Prosecution recalled Zoran Stijović, the Head of the Analytical Department of the Serbian Intelligence (DB) in 1998, to introduce and testify about Serbian intelligence reports of alleged KLA crimes.
23. Much of this evidence was general in character, and prone to bias. Generic assessments were put forward without any factual support. He mostly relied on (i) information obtained from unidentified informants, and (ii) information obtained during MUP or DB interrogations of suspected members or supporters of the KLA. As regards the first category, Zoran Stijović testified that information was obtained from associates through methods which included the payment of money

³³ T.1077:5-9.

³⁴ T.1077:22-1078:6.

³⁵ T.1080:1-18.

³⁶ T.1074:17-1076:1; T.1077:22-1078:6.

according to the “value” of the information provided, and the use of blackmail.³⁷ As regards the second category, the Trial Chamber has received evidence of the systematic use of torture on suspected members of the KLA detained in Serb police custody.³⁸

24. Mr. Stijović also stated in his testimony in the retrial that he had no way of knowing whether certain statements that were used to compile his reports were in fact reliable.³⁹
25. The Defence submits that evidence of this nature, coming from an adversary in the conflict, must be approached with the utmost caution.⁴⁰

Incidents unrelated to Jabllanicë/Jablanica counts

26. The Prosecution has also sought to use evidence of alleged unlawful conduct outside of Jabllanicë/Jablanica (as specified in its Pre-Trial Brief and presented in the retrial) to attempt to support its contention that Mr. Haradinaj was involved in a JCE to commit crimes in Jabllanicë/Jablanica. This evidence is wholly unrelated to the alleged incidents at Jabllanicë/Jablanica, and does not establish that Mr. Haradinaj was party to any JCE in respect of the alleged Jabllanicë/Jablanica crimes, or any other crimes. It has no probative value. The Prosecution has “cherry-picked” evidence irrespective of whether it has anything to do with Jabllanicë/Jablanica. For example:

- (a) The Prosecution relies on evidence of a spontaneous attack by Albanian villagers on some members of a Serb family (the Stojanoviés) in

³⁷ P123 (Zoran Stijovic testimony), T.8884:20-T.8894:4, See paras. 183-185.

³⁸ See para. 183(c). Reliance by a court on such material as evidence of the truth of its contents is fundamentally antithetical to the rule of law (*The Prosecutor v. Furundžija*, Case No. IT-95-17/1, Trial Judgement, 10 December 1998, paras 147-157). As to the duty of a court to investigate such allegations where there is generic evidence of state practice, see *A and others v. Secretary of State for the Home Department and others*, [2006] 2 AC 221; UN Convention Against Torture, 1984, Article 15.

³⁹ T.590:6-T.594:13.

⁴⁰ *Milutinović* Trial Judgement, *supra* note 20, para. 53-55.

Glllogjan/Glođane on 18 April 1998. The evidence showed that the Stojanovićs had been previously involved in the Serbian attack on Glllogjan/Glođane on 24 March 1998 in which Albanian civilians were killed. This single incident on 18 April involving the Stojanovićs is completely unconnected to the alleged crimes in Jabllanicë/Jablanica. It does not prove that the crimes alleged in the six Jabllanicë/Jablanica counts were committed pursuant to a common criminal plan of which Haradinaj was a party. There is no reliable evidence that Mr. Haradinaj was even present when this incident occurred.⁴¹

- (b) The Prosecution seeks to characterise the early tensions between FARK forces and the KLA as Mr. Haradinaj wanting to exclude FARK as opponents of the KLA. Yet the evidence shows exactly the opposite. With Mr. Haradinaj's assistance, the two forces assimilated and integrated soon after FARK entered Kosova/Kosovo and became one army.⁴² The single confrontation on 4 July 1998 that the Prosecution highlights is entirely irrelevant and unrelated to any of the Jabllanicë/Jablanica alleged crimes. It was a conflict between soldiers from different armed forces in another part of western Kosova/Kosovo all together. It has nothing to do with any of the incidents alleged in the counts of the retrial. FARK was never in Jabllanicë/Jablanica.⁴³

Military context of the Indictment

27. It is agreed between the parties that an armed conflict existed at the times material to the six Jabllanicë/Jablanica counts from 22 April 1998.⁴⁴ An extensive body of evidence from the original trial about the military context of the Indictment period has been admitted by agreement.⁴⁵ It is not disputed that Serbian offensives were

⁴¹ See paras. 186-187.

⁴² See paras. 153-160.

⁴³ See paras. 161-165.

⁴⁴ Joint Prosecution and Defence Submission on the Existence of an Armed Conflict in Kosovo with Annex A, 19 November 2010.

⁴⁵ Joint Motion for Admission of Agreed Evidence, with Confidential Annex A and Public Annex B, 27 June 2011 (admitted pursuant to Trial Chamber Oral Ruling of 17 August 2011, T.175:7 to 176:8).

waged against the Albanian population in western Kosova/Kosovo from early 1998 and throughout the period of the Indictment. The Trial Chamber heard evidence about Serbian attacks in early 1998 including on Mr. Haradinaj's family compound in Gllogjan/Glođane (and the surrounding areas) on 24 March 1998.⁴⁶ As a result, the targeted Albanian communities took steps to defend themselves against these Serbian offensives. To the extent possible, they organised and armed themselves. They sought to defend their villages against the waves of Serbian attacks that followed in May, the summer months and September, all of which severely hampered the KLA's ability to organise itself effectively into a regular army.

Early Serb attacks

28. Early Serbian operations took place in Likoshan/Likošane (against the Ahmeti family on 28 February 1998) and Prekaz/Prekaze (against the Jashari family on 5th and 6 March 1998), in which 83 Albanian civilians were indiscriminately murdered, including the elderly, and at least 24 women and children.⁴⁷
29. These attacks were closely followed by a similar assault on the Haradinaj family compound in Gllogjan/Glođane on 24 March. The evidence shows that heavy weapons systems were employed by the Serb forces including the PRAGA air defence system and a BOV-3 armed personnel carrier with a triple-barrelled gun.⁴⁸ There is evidence that Serb military helicopters fired rockets into the village and that many houses in the village, including the Haradinaj family home were severely damaged, three Albanian teenagers were killed whilst trying to flee⁴⁹, and

⁴⁶ Skender Rexhahmetaj, T.1027:18-1028:4; T.1034:1-17. Also see, P355 (Witness 28 testimony), T. 10208:19-10209:4; P440 (Marijana Anđelković testimony) T.635:2-643:11); P446 (HLC Incident Reports), pp. 6-13, 16-21, 26-51.

⁴⁷ The evidence of the events at Likoshan/Likošane and Prekaz/Prekaze comes, *inter alia*, from John Crosland who visited both places in the immediate aftermath. See, P8 (Crosland testimony), T.3098:10—3103:19; and, P358 (Witness 28 *92ter* Statement paras. 17-26. Also see Trial Judgment in *Limaj* case, 30 November 2005, para. 49.

⁴⁸ P17.

⁴⁹ P75 (R.Tetaj testimony), T.3702-3703.

130 school children were used as human shields.⁵⁰ Skender Rexhahmetaj testified that the Serbian attack on Glllogjan/Glođane terrified the civilian population. People in the surrounding villages “began to think seriously about defence, as a result of the attack on the Haradinaj family in Glllodjane”.⁵¹

30. Colonel John Crosland, the British military attaché to Belgrade, reported a massive build-up of Serb security forces at this time, which were poised to mount strikes in the Deçan/Dečani-Gjakovë/Đakovica area. [REDACTED]⁵², he described these forces being organised on three levels: (i) an outer ring capable of deploying 8 - 10 000 MUP (Serbian police) “assisted by imported thugs”⁵³ who would control the area; (ii) an inner cordon of 500-700 PJP troops⁵⁴, supported by 10/15 APC’s with heavy cannon, who acted as infantry troops; and, (iii) a specialist assault force of SAJ and JSO troops⁵⁵ of about 200-400 men, equipped with helicopters, who would spearhead assault operations with the assistance of the PJP.

Serbian offensives that followed in Spring 1998

31. In the immediate aftermath of the 24 March attack, the evidence is that Serbian forces took up positions on elevations near Glllogjan/Glođane, namely Suka Baballoq/Babaloć (also known as Suka Hereq/Ereć), Suka Bitesh/Biteš (also known as Suka Radoniq/Radonička), and Suka Cermjan/Crmljane, and remained there throughout the Indictment period. From April until September 1998, they frequently shelled from these positions into the surrounding villages, accompanied by Serbian ground operations.

⁵⁰ P446 (HLC Incident Reports: Muharem Sejfić, Djevat Zeqiraj), pp 9, 48.

⁵¹ T.1034:1-13.

⁵² [REDACTED] P8 (Crosland testimony), T. 3044:7-3052:11.

⁵³ P8 (Crosland testimony), T.3050:18-3052:11 (describing these “thugs” as groups of men driving 4x4 vehicles with number plates from Montenegro, Macedonia and Belgrade, whom he had seen in Pejë/Peć).

⁵⁴ P8 (Crosland testimony), T.3045:10-T.3046:2 (describing these forces as a special police unit who were used to carry out infantry tasks and were “well-armed, much more aggressive”).

⁵⁵ P8 (Crosland testimony), T.3046:8-15] (describing the SAJ as “grunt infantry, barely policeman” who were a well-trained anti-riot section of the police); P8 (Crosland testimony), T.3048-3049 (describing the JSO as outside the MUP structure, reporting directly to the Serbian State Security (RDB), and led by Frenki Simatović and Milorad Luković, nicknamed “Legija”) T.3048:6-T.3049:18.

32. Branko Gajić, the chief of VJ intelligence, confirmed that in March 1998 Serb forces were deployed in the area of Lake Radoniq/Radonjić.⁵⁶ He described the specific deployments of VJ units during this period at Cermjan/Crmljane, Rakoc/Rakoc, and at the base of Suka Bitesh/Biteš.⁵⁷ He testified that the VJ forces were deployed in a horseshoe formation around Lake Radoniq/Radonjić and acted as “a bone in the throat of the terrorists”.⁵⁸ This made communication and movement between Gllogjan/Glođane and surrounding villages to places to the east on the other side of the lake, including Jabllanicë/Jablanica, extremely difficult:

(a) Skender Rexahahmetaj testified that travel to Jabllanicë/Jablanica was dangerous and difficult.⁵⁹ They had to travel by car at night and turn off the headlights because Serb forces occupied high ground on Suka Radoniq/Radonička and Suka Bitesh.⁶⁰ Commanders from other villages would only make the journey to Jabllanicë/Jablanica if it was strictly necessary.⁶¹

(b) Bislim Zyrapi testified that it took a long time to travel from Gllogjan/Glođane to Jabllanicë/Jablanica, about 2-3 hours.⁶² There was heavy shelling in the area which “certainly made it more difficult, not only the attempts to organise but also to stay put”.⁶³

⁵⁶ P27 (Gajić 92ter statement), para. 22.

⁵⁷ P27 (Gajić 92ter statement), para. 22.

⁵⁸ P25 (Gajić testimony), T.9702:1-13]; P27 (Gajić 92ter statement), para. 22. For further evidence of Serb positions, shelling, and operations at this time, see P75 (R.Tetaj testimony), T.3724, 3729-3730, 3646-3647, 3651; P2 (S.Çekaj testimony), T.4473-4476; P54 (C.Krasniqi 92ter statement), para. 50; P8 (Crosland testimony), T.3068, 3085-3086, 3088, 3117:12-3119; and D51 (VJ order, 2 May 1998, deploying 155mm howitzer battery in Lake Radoniq/Radonjić sector).

⁵⁹ T.1064:4-1065:3

⁶⁰ T.1064:10-19.

⁶¹ T. 1064:24-1065:3.

⁶² T.717:20-22.

⁶³ T.719:9-10.

33. Gllogjan/Glodane and surrounding areas in western Kosova/Kosovo were targeted in Serb offensives that occurred in May. These attacks did not represent a single occurrence; the attacks continued in June, July/August and September.⁶⁴
34. The evidence shows that Jabllanicë/Jablanica and surrounding villages were attacked or completely overrun by Serb forces in the second half of May 1998, and thereafter in late July/early August 1998 and in early September 1998.⁶⁵ It is simply wrong for the Prosecution to claim that Jabllanicë/Jablanica was a “KLA stronghold in an area which had not been under Serbian control for several years”.⁶⁶
35. [REDACTED].⁶⁷ The OSCE reported that 8 civilians were extra-judicially executed by Serbian police in Lybeniq/Ljubenić.⁶⁸ Skender Rexhahmetaj testified about this attack during his evidence.
36. Mr. Rexahahmetaj said that throughout this time the organisation of defences was limited by the reality on the ground. He testified that, “It was difficult to organise. It took time. Because, in addition to organisation, we had to face the war”.⁶⁹
37. Indeed, only a few days after the meeting on 26 May to form the Regional staff with the five sub-zones, Serbian military and police forces attacked the village of Vranoq/Vranovac. Rrustem Tetaj and Shemsedin Çekaj who led fighters to assist

⁶⁴ March: P75 (R. Tetaj testimony), T.3701-3704; [REDACTED]; May: P75 (R.Tetaj testimony), T.3714-3717; P4 (S. Çekaj 92ter statement), paras. 13-16; June: [REDACTED], D103 (VJ order of 23 June 1998), [REDACTED]; August: [REDACTED]; P53 (C. Krasniqi testimony), T.5709-5710 and T.5818; D97 (BBC video showing Serbian offensive on Glodjane, 12 August 1998); [REDACTED]; September: [REDACTED] There is extensive evidence of consistent daily shelling of the area by Serbian forces, for example, P75 (R. Tetaj testimony), - 3729-3730, 3646-3647, P2 (S. Çekaj testimony), T.4473-4476; P8 (J. Crosland testimony), 3085-3086, 3088, 3117-3119.

⁶⁵ May: P114 (VJ regular combat report of 20 May 1998), P115 (VJ regular combat report 22 May 1998); August: P343 (Witness 17 testimony under seal), T.7771; D113 (Minutes of Serbian joint command), p. 35 (ET).

⁶⁶ Prosecution Pre-Trial Brief, para. 1.

⁶⁷ [REDACTED].

⁶⁸ D100 (OSCE Report, 28 May 1998).

⁶⁹ T.1050:16-17.

the village described this attack.⁷⁰ Serbian forces entered the village and slaughtered 450 heads of livestock, burned down many houses in the village and killed four civilians who did not manage to flee.⁷¹ The Serbian forces withdrew that evening and attacked the villages of Dubovik and Kryshec on the way back to their barracks.⁷² The villages of Isniq/Istnić, Lybeniq/Ljubenić, Rastavicë/Rastavica and Carrabreg/Crnobreg were also attacked that day.⁷³ Mr. Tetaj said that there was no possibility to contact Mr. Haradinaj the entire day.⁷⁴ Shemsedin Çekaj testified that he was also not able to communicate with Mr. Haradinaj, or any of the other sub-zone commanders during this attack.⁷⁵

38. Bislim Zyrapı provided similar evidence about Serbian offensives disrupting all efforts to organise defences. He said that in June there were several groups in villages who were self-organised to try and protect their villages and homes.⁷⁶ According to the tradition in these villages, the elder of the village would be the head of such groups.⁷⁷ The reality, however, was that attempts to organise were very difficult and were taking place under a barrage of attacks which involved Serbian incursions into villages in which villagers would be killed, their crops, homes and livestock burnt.⁷⁸ He said the entire road running north/south from Gjakovë/Đakovića to Pejë/Peć was always under effective Serb control, and that this made it very difficult to co-ordinate defences between the east and west sides of the road.⁷⁹

⁷⁰ P52 (C. Krasniqi testimony), T.5816:6-13; P36 (Z. Hasanaj testimony) T.8723:5-8724:4

⁷¹ P52 (C. Krasniqi testimony), T.5817:1-5; P36, (Z. Hasanaj testimony) T.8734:12-22.

⁷² P75 (R. Tetaj testimony) T.3716:18-T.3717:4.

⁷³ P75 (R. Tetaj testimony) T.3716:5-15.

⁷⁴ P75 (R. Tetaj testimony), T.3664.

⁷⁵ P3 (S. Çekaj 92^{ter} statement), para. 30

⁷⁶ T.696:24-T.697-8.

⁷⁷ T.697:9-15.

⁷⁸ T.727:9-17.

⁷⁹ T.713:13-T.714:9.

The Summer offensives

39. The evidence shows that throughout the summer the KLA in western Kosova/Kosovo were fighting against overwhelming fire power and relentless attacks by Serbian forces:

(a) A VJ order of 23 June tasks heavily armed VJ units stationed at Lake Radoniq/Radonjić with preventing “terrorist” operations in Irznić/Rznić, Glllogjan/Glođane and Gramaqel/Gramočelj villages (among others).⁸⁰

(b) [REDACTED]

[REDACTED]⁸¹

On 28 July 1998 he witnessed the shelling of Junik/Junik⁸² and reported⁸³:

[REDACTED].

(c) A VJ Order of 1 August instructs several heavily armed VJ brigades to destroy the “terrorists” in Jabllanicë/Jablanica. By 3 August 1998, Witness 17 testified that Jabllanicë/Jablanica and its surrounding villages fell to the Serbs.⁸⁴

(d) Witness 17 stated that the villages of the Baran/Barane Valley were also attacked from the direction of Çeskovë/Českovo and Bokshiq/Bokšić. Serbian forces burned down Catholic Glllogjan/Glođane, Napolë/Nepolje

⁸⁰ D103 (VJ order of 23 June 1998).

⁸¹ [REDACTED].

⁸² P8 (J. Crosland testimony) T.3084:23-3086:4.

⁸³ [REDACTED].

⁸⁴ P343 (Witness 17 testimony), T.7771:11-7772:21.

and 38 other villages in the area.⁸⁵ He commented that this was an “overall offensive, not only in Jabllanice but in the entire Lugi i Baranit”⁸⁶.

- (e) Cufë Krasniqi testified that the KLA had no centrally coordinated defence during these offensives. KLA units from the villages spontaneously came to one another’s assistance⁸⁷:

“If a village came under attack, all the villages voluntarily offered to help. So, for example, when the attack began on Jabllanice I asked for assistance from other villages, because Ramush could not come from Glllogjan to the place where I was. So whichever village was able to send volunteers to help, they would do so.”

- (f) In August Serbian forces moved against Glllogjan/Glođane and surrounding villages.⁸⁸ Dragan Živanović marked a map showing the routes followed by the joint VJ/MUP forces between 11 and 13 August 1998.⁸⁹
- (g) Cufë Krasniqi travelled to Glllogjan/Glođane with 25 of his soldiers to assist in the defence of the village on 12 August 1998⁹⁰. Upon arriving there he explained that “it was horror”⁹¹. He said the village was being bombarded from every quarter. He saw shelling from heavy guns demolishing houses in the village. Other villages were receiving the same treatment⁹². Mr. Haradinaj in Glllogjan/Glođane was awaiting assistance as attacks were taking place from Dečan/Dečani, Baballoq/Babaloc, Carrabreg/Crnobreg, Gramaqel/Gramočelj, and Shaptej/Šaptelj.⁹³

⁸⁵ P343 (Witness 17 testimony), T.7773:7-12.

⁸⁶ P343 (Witness 17 testimony), T.7773:10-12.

⁸⁷ P52 (C. Krasniqi testimony), T.5808:5-15.

⁸⁸ [REDACTED]; D110 (VJ Order of 10 August 1998).

⁸⁹ D88 (Map produced by Dragan Živanović).

⁹⁰ P52 (C. Krasniqi testimony), T.5709:7-Y.5710, T.5818:4.

⁹¹ P52 (C. Krasniqi testimony), T.5818:3.

⁹² P52 (C. Krasniqi testimony), T.5709:7-12.

⁹³ P52 (C. Krasniqi testimony), T.5710:18-5711.

- (h) The shelling of houses in Gllogjan/Glođane and the subsequent occupation of the village was recorded in a BBC report on 14 August 1998. It notes “the village of Glodjani in flames, shelled and machine-gunned into submission.”⁹⁴
- (i) Shemsedin Çekaj testified that the Serbian forces attacked Prejlep/Prilep, Isniq/Istinić, Rastavicë/Rastavica, Baballoq/Babaloć, Gllogjan/Glođane, and Irzniq/Rznić. He said that they approached “in other parts from Ratishe along the canal, and they came on 12th August with their units armed to the teeth, and set fire to the houses and looted and raided them.”⁹⁵ He said that the Serbian forces had special “looting units” which moved in after the combat troops and stole everything of value and burned down villages⁹⁶.
- (j) Following the attack on Gllogjan/Glođane, [REDACTED] noted that the KLA strongholds in Gllogjan/Glođane and Irzniq/Rznić were “destroyed”.⁹⁷ Serbian forces refocused their efforts west of the road. An order of 15 August 1998 signed by Dragan Živanović directed troops towards Junik/Junik, Lloqan/Ločane, Sllup/Slup and Voksh/Vokša⁹⁸. VJ orders between 18 and 24 August 1998 deployed troops for combat activities west of the main road.⁹⁹
- (k) Jakup Krasniqi explained that the Serb offensives in the summer seriously undermined the ability of the KLA to consolidate and unify its structures. He said that:

⁹⁴ D97 (BBC video showing Serbian offensive on Gllogjan/Glođane, 12 August 1998); [REDACTED].

⁹⁵ P3 (S. Çekaj testimony), T.4428:1-4.

⁹⁶ P3 (S. Çekaj testimony), T.4511:6.

⁹⁷ [REDACTED].

⁹⁸ D77 (VJ order of 15 August 1998).

⁹⁹ D111, D78, D79, D80, D81, D82 (VJ Orders from 18-24 August 1998).

“During the period June July, August we had this people’s army, a voluntary army, and the first attempts to have a better-organised army were being made at that time. But then the summer offensive started, so it was impossible to have this better organisation of the KLA. The summer offensive thwarted our efforts to better organise ourselves.”

September offensive

40. The final offensive of the Indictment period took place during the first week of September:
- (a) The evidence shows that VJ brigades in coordination with several MUP units attacked villages around Prejlep/Prilep and Irzniq/Rznić. They were equipped with tanks and anti-aircraft weaponry.¹⁰⁰ On 5 September, General Pavković issued an order directing six VJ Brigades, in coordination with several MUP units, to conduct operations along a series of axes across the Dukagjin Plain.¹⁰¹
 - (b) Dragan Živanović produced a map showing the Serb deployments during this offensive.¹⁰²
 - (c) Rrustem Tetaj testified that it was this offensive which forced a retreat of soldiers and civilians from Kosova/Kosovo to Albania¹⁰³.
 - (d) Travelling through Prejlep/Prilep towards Glllogjan/Glođane on 8 September 1998 in the aftermath of this offensive, [REDACTED] both Prejlep/Prilep and Irzniq/Rznić were totally gutted; 90 percent of the houses had been destroyed and haystacks were still burning. [REDACTED]¹⁰⁴. He testified

¹⁰⁰ P110 (D. Živanović testimony), T.9470:16-T.9472.

¹⁰¹ P119 (VJ Order of 5 September 1998).

¹⁰² D93 (Map produced by Dragan Živanović).

¹⁰³ P75 (R. Tetaj testimony), T.3818-3819.

¹⁰⁴ [REDACTED].

that the entire village of Prejlep/Prilep had been reduced to rubble some 18 inches high¹⁰⁵. On this tour Colonel Crosland witnessed a group of mixed Serbian forces burning, looting, and firing with small arms at houses in Irzniq/Rznić with no return fire¹⁰⁶.

- (e) [REDACTED] described Serb attacks on 7 September from Dollovë/Dolovo and Grabanicë/Grabanica towards Jabllanicë/Jablanica, and from Pejë/Pec down the main road into Prejlep/Prilep, Baballoq/Babaloc, Glllogjan/Glođane¹⁰⁷. He said that about 60,000 persons had been displaced as a result and were gathered in Strellec/Streoc.

Evidence from other cases

41. It is noteworthy that the Prosecution has in other cases before the ICTY charged Serbian commanders with conducting a systematic campaign of ethnic cleansing and persecution of the Albanian civilian population in the very area covered by operative Indictment. These commanders have been convicted by the ICTY of crimes against humanity and war crimes in which it was found that Albanian civilians were targeted, killed, mistreated and deported in a brutal and well-organised campaign.¹⁰⁸
42. As was held, for example, in the Judgment of the trial of General Djordević:

“It is argued by the Defence that the Serbian military and police operations in the municipality, which are charged in the Indictment, were in response to KLA criminal and terrorist activities in the municipality of Orahovac/Rahovec; they were part of legitimate anti-terrorist activities ... The Chamber is of the view that what was done

¹⁰⁵ P8 (J. Crosland testimony), T.3088:4.

¹⁰⁶ P8 (J. Crosland testimony), T.4668:23-4669.

¹⁰⁷ [REDACTED].

¹⁰⁸ See *Prosecutor v Djordević*, Case No. IT-05-87/1-T, Trial Judgment, 23 February 2011; *Prosecutor v Milutinović*, Trial Judgment, Case No. IT-05-87-T, 26 February 2009.

by the Serbian forces was not at all what would have been done during a genuine police action to flush out and arrest (or even kill) KLA fighters. On the contrary, the conduct of the MUP and VJ forces was directed at all Kosovo Albanians and was part of a policy of expelling Kosovo Albanians from the area and destroying their property. The actions of these forces ... belie any anti KLA operation.”¹⁰⁹

43. General Djordević was himself instrumental in the Serbian attacks on Jabllanicë/Jablanica. On 1 August 1998 he is recorded in the Joint Command minutes as discussing the preparation of a “third phase” of operations which was to include attacks on Rastavicë/Rastavica, Prejlep/Prilep, Carrabreg/Crnobreg, Glllogjan/Glođane, and Jabllanicë/Jablanica.¹¹⁰ On the same day General Pavković ordered the first of these attacks against Jabllanicë/Jablanica and Junik/Junik.¹¹¹

The state of KLA defences

44. The evidence shows that the KLA were operating defensively during 1998, that it lacked any proper and centralised organisation, and that its military operations were conducted by poorly organised and ill-equipped volunteers fighting against the vastly superior firepower of the Serbian forces.
45. As explained in Part 2 on the alleged JCE, the evidence does not in any way support an inference that there existed a common plan or policy to mistreat civilians in Jabllanicë/Jablanica in particular, or elsewhere, that was implemented through organised KLA structures under the authority or control of Mr. Haradinaj:
- (a) There is no evidence of any orchestrated or systematic retaliation by the KLA against either the Serb civilian population or against civilians from

¹⁰⁹ *Djordević*, para. 548.

¹¹⁰ D113 (Minutes of Serbian joint command), p. 35 (ET).

¹¹¹ D108 (VJ order of 1 August 1998).

other ethnic groups. Indeed, the Prosecution is no longer pursuing any charges of crimes against humanity in the partial retrial.

- (b) The mere fact that crimes were committed by armed Albanians in the Dukagjin region does not prove that the perpetrators were acting under orders, or pursuant to any military policy, or common criminal purpose, shared by the emerging leadership of the KLA.
- (c) The fragmentary, spontaneous and autonomous nature of the armed Albanian resistance groupings that spread through the Dukagjin region during 1998 makes it impossible to draw inferences of command responsibility or common purpose which might be appropriate to actions carried out by members of a conventional army.
- (d) During the Indictment period there were no effective structures for the enforcement of law and order in rural areas of Western Kosova/Kosovo. Many people had weapons, and, as the movement began to spread, more and more of them pledged allegiance to the emerging KLA. The fact that Mr. Haradinaj and others attempted, and to some extent succeeded, in creating an organisational structure for this movement, cannot support an inference that any crime committed in the area must have been part of a common criminal plan to which Mr. Haradinaj was a party.
- (e) The nature of this insurgency calls for a close examination of the reality of command relationships on the ground as they evolved over the Indictment period. The Haradinaj Defence submits that the KLA in the Dukagjin region was a rudimentary and fledgling organisation for most of 1998, which lacked clear, effective, or vertical lines of command.¹¹²

¹¹² See paras. 95-133.

PART 2: THE ALLEGED JOINT CRIMINAL ENTERPRISE

Summary submissions

46. The Prosecution contends that Mr. Haradinaj “significantly contributed” to a JCE to commit crimes in Jabllanicë/Jablanica.¹¹³ Based on its Pre-Trial Brief and the evidence it relied on at the retrial, the Prosecution’s case about the JCE and Mr. Haradinaj’s alleged participation rests on four main allegations: (i) his presence when alleged crimes were being committed at Jabllanicë/Jablanica; (ii) Mr. Haradinaj’s alleged overall command of the KLA in the Dukagjin area; (iii) his alleged “close association” with Lahi Brahimaj and Idriz Balaj; and, (iv) alleged acts of violence that occurred in the Dukagjin area.
47. None of these allegations have been established on the evidence. The Prosecution has not proved that Mr. Haradinaj participated in or contributed to any JCE to commit crimes in Jabllanicë/Jablanica.
48. The Prosecution placed great emphasis on Mr. Haradinaj’s alleged active participation in the mistreatment at Jabllanicë/Jablanica of Ivan Zarić, Agron Berisha and Burim Bejta (as alleged in Count 1) and the mistreatment of [REDACTED] in Jabllanicë/Jablanica (as alleged in Count 6).¹¹⁴ These are the only two counts in which the Prosecution alleges that Mr. Haradinaj directly participated in the commission of crimes at Jabllanicë/Jablanica. The Prosecution contends that Mr. Haradinaj’s active participation in the crimes in Counts 1 and 6 encouraged others to commit similar crimes at Jabllanicë/Jablanica as charged in the other counts.¹¹⁵ There is no credible and reliable evidence to support any of these allegations:

¹¹³ Prosecution Pre-Trial Brief, para. 61.

¹¹⁴ *Ibid*, paras 61-65.

¹¹⁵ *Ibid*, para. 64.

- (a) The only evidence of Mr. Haradinaj's direct involvement came from Witness 81's testimony. This evidence was shown to be untruthful and deliberately concocted. The Prosecution has now abandoned this evidence by conceding in clear terms that the Prosecution will place no reliance on it in its closing submissions. The Defence submits that Witness 81's evidence should be disregarded in its entirety.
 - (b) [REDACTED] did not testify that Mr. Haradinaj was present when the alleged crimes in Count 1 and Count 6 were committed. There is nothing else in his testimony which permits any inference to be drawn that Mr. Haradinaj was involved in any crimes charged in Counts 1-6 pursuant to a JCE.
 - (c) There is no other evidence admitted from the original trial or any new evidence from the retrial which permits any conclusion to be drawn that the alleged crimes committed at Jabllanicë/Jablanica were part of a common criminal plan to which Mr. Haradinaj was a party.
49. The Haradinaj Defence deals below with each of the allegations relied on by the Prosecution to seek to establish a JCE involving Mr. Haradinaj. This section is prefaced by an overview of the legal requirements of this form of liability.

Legal requirements

50. The Prosecution relies on JCE I and JCE III. The legal elements of JCE are well-established in the Tribunal's jurisprudence. The Prosecution must prove beyond reasonable doubt that¹¹⁶:
- (a) The participants had a common state of mind to commit the crimes that constitute the criminal purpose of the JCE (or for JCE III that such offences were a natural and foreseeable consequence of the JCE and the Accused knowingly assumed the risk that they would occur).
 - (b) The alleged members of the JCE acted together, or in concert with each other, in the implementation of the common purpose and objective.
 - (c) The Accused shared the requisite criminal intent to commit the crimes forming part of the JCE. In order to prove this, the Prosecution must show that it is the "only reasonable inference on the evidence".
 - (d) The Accused committed crimes forming part of the JCE, or made a significant contribution, either by procuring or by giving assistance to the execution of the crimes forming part of the common purpose and objective.
51. The Appeals Chamber has emphasised that JCE is "not an open-ended concept that permits convictions based on guilt by association".¹¹⁷ The Accused must do "far more than merely associate with criminal persons". He must possess "the intent to commit a crime", have "joined with others to achieve this goal", and make "a significant contribution to the crime's commission".¹¹⁸

¹¹⁶*Prosecutor v Brđanin*, Appeal Judgment, 3 April 2007, paras 428-431. Also see *Prosecutor v. Krajišnik* Trial Judgment, 27 September 2006, para. 883.

¹¹⁷ *Brđanin* Appeal Judgment, para 428.

¹¹⁸ *Ibid*, para 431.

52. As noted by the original Trial Chamber, “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”. Such an objective is not sufficient as it is “the interaction or cooperation among persons – their joint action – in addition to their common objective, that forges a group out of a mere plurality. 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 criminal responsibility for crimes committed through the JCE.”¹¹⁹
53. In the *Milutinović* case, the Trial Chamber rejected so-called “omission liability” in circumstances in which the accused lacked real authority over the persons committing the offences and the Prosecution had not established that there was any duty to act. The Trial Chamber held that it must be proved beyond reasonable doubt that the accused participated in the implementation of the joint criminal enterprise and that his contribution was sufficiently significant.¹²⁰
54. The evidence relied on by the Prosecution does not prove the existence of a common criminal purpose in which Mr. Haradinaj participated together with others in the implementation of any shared objective to commit the crimes charged in Counts 1-6.

¹¹⁹ Trial Judgment, para. 139, citing *Brđanin* Appeal Judgment, paras 410 and 430. Also see *Gotovina* para. 1954, *supra* note 20.

¹²⁰ *Milutinović* Trial Judgement, *supra* note 20, para. 273-275.

A. Mr. Haradinaj's alleged presence when crimes committed

55. There is no credible evidence that Mr. Haradinaj was present or participated in the mistreatment of persons in Jabllanicë/Jablanica or knew of persons being mistreated there, with the exception of Skender Kuqi when he intervened to assist him – an intervention that is entirely inconsistent with Mr. Haradinaj participating in any JCE to mistreat persons detained at Jabllanicë/Jablanica.¹²¹
56. Mr. Haradinaj was only ever present in Jabllanicë/Jablanica on a few occasions when no crimes were committed and for reasons unrelated to any of the incidents alleged in the six Counts (other than the assistance he provided to Skender Kuqi).¹²² His mere presence there on these occasions does not indicate, much less prove, that he was part of any alleged JCE to commit any crimes at Jabllanicë/Jablanica.

Witness 81

57. Witness 81 testified that Mr. Haradinaj was present at Jabllanicë/Jablanica when three boys were detained and mistreated, as alleged in Count 1. He provided his various accounts in separate interviews with the OTP on 23-26 November 2010 and 7-8 December 2010 after which he signed witness statements on each occasion on 26 November 2010 and 8 December 2010, respectively.
58. As noted above, the Prosecution has now conceded that no reliance can be placed on Witness 81's testimony. His evidence will not be referred to in the Prosecution's closing submissions. The Defence has only addressed this evidence in its submissions below as it is evidence in the retrial proceedings that must be dealt with for the record.

¹²¹ See paras. 234-239.

¹²² See paras. 92-93.

59. The Defence submits that Witness 81's evidence was shown in cross-examination to be completely untrue. It should be rejected as a whole by the Trial Chamber as lacking any credibility:
- (a) He changed his version of events so many times on the most material allegations in his statements and his testimony that it can only be concluded that his evidence was fabricated.
 - (b) He admitted that he had provided the Prosecution with detailed information about allegations that he knew at the time was false.
 - (c) His reasons for the shifts in his account were themselves shown to be lies, and his explanations were irrational, illogical and unbelievable.
 - (d) He admitted that he never mentioned the crimes he claims he witnessed in Jabllanicë/Jablanica in 1998 in all of his previous dealings [REDACTED] until by a quite startling coincidence he happened to be [REDACTED] in late 2010, and asked about crimes committed in Jabllanicë/Jablanica that were the subject of the retrial that had recently been ordered.
 - (e) He denied all of his previous convictions, including for making a false report to the police, despite the official documents that record these convictions.
 - (f) His written statements in a previous trial in Kosova/Kosovo were found to be incredible because of the material changes he had made to his accounts in these proceedings, much like those he made in the present case.

Accounts about ear-cutting and eye being taken out

60. Witness 81 claims that he travelled to Jabllanicë/Jablanica for the first time in April or May 1998 with six soldiers from his special unit on the orders of his commander, [REDACTED].¹²³ Even when ordered by the Trial Chamber, he refused to name in private session any of the soldiers he was supposedly with on this trip.¹²⁴ This is most significant as Witness 81 claims that these soldiers all witnessed the alleged mistreatment of the Serb boy and two Romas at Jabllanicë/Jablanica on the occasion of this visit when he claimed that Mr. Haradinaj was present. He gave no plausible reason for refusing to provide their identities. There was hence no possibility to investigate the truthfulness of his account.
61. Witness 81's evidence is wholly unbelievable in light of the numerous changes he made to his account on the most material of allegations:
- (a) The first account he gave to the OTP when interviewed on 23 November 2010 about this incident was that:
- (i) Maxhup (Lahi Brahimaj) cut the ear off of one of the Roma boys and that Maxhup had hit the Serb boy in the eye with a baseball bat after which he took out his eye.¹²⁵
- (ii) Toger (Idriz Balaj) was present but Witness 81 could not recall him doing anything apart from cursing and insulting the prisoners.¹²⁶
- (iii) Nazmi Brahamij was also present and joined in the beating.¹²⁷

¹²³ T.1882:23-1884:11.

¹²⁴ T.1885:5-1893:24.

¹²⁵ T.2042:9-13. D201, para. 7.

¹²⁶ T.2042:14-17. D201, para. 7.

¹²⁷ T.2060:9-14.

- (b) He then changed this account on the following day, 24 November 2010, when his OTP interview continued:
- (i) It was Toger, and not Maxhup, who cut the Serb boy's ear off, not the ear of the Roma boy.¹²⁸
 - (ii) It was Toger who took the Serb boy's eye out, and not Maxhup. Toger also stabbed the two Roma several times with full force to the chest and Toger's uniform was covered in blood.¹²⁹
- (c) In his evidence before the Trial Chamber he again changed his story on these critical aspects:
- (i) Witness 81 said that both the Serb boy and the Roma boy's ears were cut off by Toger – he now claimed that *two* ears were cut off.¹³⁰
 - (ii) When examined in chief he did not mention an eye being cut out at any time. But when his previous statement was put to him in cross-examination he said that it was Maxhup who cut out the Serb boy's eye and not Toger.¹³¹
 - (iii) He testified that Nazmi Brahamij was present but did *not* participate in the interrogation and beating of the boys, which directly contradicted what he had told the OTP when interviewed.¹³²

¹²⁸ T.2047:13-21. D201, paras. 8 and 11.

¹²⁹ T.2045 and T.2051. D201, para. 12.

¹³⁰ T.2052 and T.2054. Also see T.1922.

¹³¹ T.2045 and T.2050.

¹³² T.1937 and T.2059.

62. The only conclusion that can be drawn is that Witness 81 changed his version of events on these key allegations in so many fundamental ways because he is not telling the truth about witnessing such an incident in Jabllanicë/Jablanica:
- (a) He was given ample opportunity in extensive interviews with the OTP on 23-26 November 2010 and 7-8 December 2010 and in the statements he signed after each interview to provide his account of events. He not only changed his account during these interviews but in his testimony before the Trial Chamber he invented completely new allegations, in particular that the ears of two of the boys had been cut off.
 - (b) Witness 81 had initially said to the OTP that Toger had not committed any acts of violence, yet this changed to him cutting off the Serb boy's ear and then in his testimony to him cutting off both the Serb and Roma boys' ears.
 - (c) It is inconceivable that Witness 81 could have forgotten to tell the Trial Chamber that he saw the Serb boy's eye being taken out if this had really happened. He had mentioned in both his statements to the OTP that it was Toger who took out the Serb boy's eye. When cross-examined about why he had not mentioned this allegation in his testimony in chief, he suddenly claimed that he recalled that the eye was taken out, but by Maxhup and not Toger as he had said in both of his statements to the OTP.
 - (d) Witness 81's shifting account about Nazmi Brahimaj's alleged participation is also telling. He confirmed during cross-examination that Nazmi Brahimaj had not participated at all in the beatings, and yet in his statements to the OTP, he claimed that Nazmi Brahimaj had joined in the beatings.

What happened after the alleged incident

63. Witness 81 also changed his account on a significant point about what he claims happened to the boys after their alleged mistreatment. He testified that they were taken to a house (that he learnt was a hospital) about 100 metres away by villagers in uniform and that he and his six fellow soldiers (who he refused to name) accompanied them. He stated that the three boys were still alive when they entered the hospital. Witness 81 claimed he waited outside the hospital and after about a quarter hour, the three boys were taken out of the hospital. He testified that they were no longer alive. He claimed that their dead bodies were then carried on stretchers to the lake area by local soldiers with him and the six soldiers from his unit accompanying them. He said that it took them about an hour and a half to two hours to walk from Jabllanicë/Jablanica to the lake, where he claims the bodies were dumped.¹³³
64. This account is patently false:
- (a) Witness 81 first told the OTP in his interview on 23 and 24 November 2010 that the three boys were taken alive from Jabllanicë/Jablanica straight to the lake and were left at the lake alive. However, when his interview continued the following day (on 25 November 2010) Witness 81 changed his account stating that the three boys were first taken to the hospital in Jabllanicë/Jablanica. He claimed that they were alive when they arrived there, but were dead when taken out of the hospital, and it was their dead bodies that were carried to the lake and dumped.¹³⁴
- (b) Witness 81 admitted when cross-examined about this major change in his evidence that he knew that the information he had first given the OTP on 23-24 November 2010 was incorrect. He agreed that he had misled the OTP

¹³³ T.2066-2067 and T.2084-2085.

¹³⁴ T.2067; D201, para. 16.

because he thought it would make him safer.¹³⁵ However, there is no rational explanation for why he chose to mislead the OTP about whether the boys were dead or alive at the lake. He had already given the OTP information about the mistreatment of the three boys and an ear-cutting incident.

- (c) Not only did he mislead the OTP on this point, Witness 81 agreed that he had supplied detailed information to the OTP that he knew was false. He had said to the OTP in his interview that it was difficult to drag the boys to the lake and that their hands had to be tied behind their backs using rope and wire.¹³⁶
- (d) Before the Trial Chamber Witness 81 gave an explanation for his lies to the OTP which was shown itself to be another lie. He claimed that the first two days of his interviews with the OTP had taken place at the office of the [REDACTED] were present which had made him afraid to speak the truth. He claimed that the location had changed for his interview on the following day and that it had taken place at the Prosecutor's office.¹³⁷ This was not true. There had in fact been no change of venue. The OTP disclosed to the Defence that the interviews from 23-26 November had all taken place at [REDACTED]. This information was placed on the record before the Trial Chamber.¹³⁸ It shows that Witness 81 had lied about the location of his interview to seek to explain his untruthful account. It reveals the lengths that he was prepared to go to conceal the truth.
- (e) It is a matter of record that the bodies of the boys were never found at the lake¹³⁹ despite Witness 81 marking two different locations where he claims he dumped the bodies and extensive forensic investigations made by the

¹³⁵ T.2073.

¹³⁶ T.2074-2075 and T.2077.

¹³⁷ T.2078-2079.

¹³⁸ T.2099-2100.

¹³⁹ T.2080.

OTP in these areas.¹⁴⁰ Witness 81 had said in his OTP interview that these bodies would never be found¹⁴¹, but in subsequent statements he claimed to know where they would be located.¹⁴²

- (f) When pressed about the nature of the terrain he crossed to take the bodies to the lake, Witness 81 agreed that they travelled over mountains and that the terrain was rough. He agreed that the distance was about 10 km, yet he had said that it only took them about one and a half to two hours to get to the lake from Jabllanicë/Jablanica while carrying three bodies on stretchers.¹⁴³

Detention of Serb police officer

65. Witness 81 testified that he travelled to Jabllanicë/Jablanica with the same six companions on two further occasions. Witness 81 claimed that on his third visit he was taken to the basement by Maxhup where he saw two “young Serbs” detained. He claimed that one detainee was wearing a military uniform and according to Maxhup and a local soldier his name was “Senad” or “Nenad” and that he was a police officer. He testified that Maxhup interrogated and beat this police officer in his presence.¹⁴⁴
66. These allegations too are clearly false and cannot be relied on by the Trial Chamber:
- (a) Witness 81 first told the OTP in his interview on 24 November 2010 that he did not recall any Serbian police officers being imprisoned in Jabllanicë/Jablanica. He then changed his account later that day when asked by the OTP whether he knew a “Nenad Remištar”. Witness 81 stated that he had seen a policeman called “Nenad” who was detained in

¹⁴⁰ T.2082.

¹⁴¹ T.2081.

¹⁴² T.2082.

¹⁴³ T.2084-2085. D202 (map of terrain).

¹⁴⁴ T.1963-1964 and T.1967-1970.

Jabllanicë/Jablanica with two other Serb police officers. When questioned in cross-examination about this sudden change in what he claimed happened, he again accepted that he had deliberately misled the Prosecution. He stated that he knew at the time that it was not true to tell the OTP that he had seen no Serb police officers imprisoned at Jabllanicë/Jablanica.¹⁴⁵

- (b) Witness 81 claimed in his evidence before the Trial Chamber that the reason he did so was because he was at first afraid and embarrassed to mention this incident [REDACTED]. However, he testified that he later had a private conversation with Paul Rogers from the OTP [REDACTED] that lasted for about two and a half hours and that he was then able to tell Mr. Rogers alone about the Serb police officer.¹⁴⁶
- (c) Immediately after this testimony, Mr. Rogers confirmed in an email to the Defence, which was placed on the record, that no private meeting had been held between Mr. Rogers and Witness 81 at any stage during the interviews on 23-26 November, and that at no time were the OTP in the presence of the witness without either [REDACTED] being present as well.¹⁴⁷ When put to him in cross-examination, Witness 81 still maintained that he had met with Paul Rogers in private.¹⁴⁸ His evidence is directly contradicted by the Prosecution and cannot be regarded as credible.

Explanation for changes in his account

67. Witness 81 repeatedly stated that he changed his versions of events because he feared for his safety while being interviewed in [REDACTED]. This explanation was shown to be wholly unbelievable:

¹⁴⁵ T.2087-2088. D201, para. 22.

¹⁴⁶ T.2088-2089.

¹⁴⁷ T.2099.

¹⁴⁸ T.2103-2105.

- (a) He testified that he trusted [REDACTED] as she had been there to help him when he “was going through the roughest of periods” long before he was spoken to by the OTP.¹⁴⁹ He had told the OTP that he wanted her and [REDACTED] to travel with him to The Hague because they were the only people he trusted.¹⁵⁰ Yet, they were the very persons present in the interviews who he claimed he feared and sought to use as a justification for changing his account so many times.
- (b) [REDACTED].¹⁵¹ [REDACTED].¹⁵²
- (c) [REDACTED].¹⁵³ [REDACTED].

When did Witness 81 first mention his Jabllanicë/Jablanica allegations?

68. Witness 81 volunteered in his testimony that a [REDACTED] , had attended one of his last meetings with [REDACTED]. He asked Witness 81 whether he knew anything about Jabllanicë/Jablanica. Witness 81 confirmed that up until that moment the [REDACTED] had no reason to believe that he knew anything about Jabllanicë/Jablanica as he had never told them (or anybody else) anything about Jabllanicë/Jablanica.¹⁵⁴
69. It became apparent to all in the courtroom that the sheer coincidence of [REDACTED] just happening at this point in time to locate Witness 81 who as it turned out claimed that he had witnessed the very incident alleged in Count 1 of the Indictment for the retrial, was so extraordinary that it exposed the real sham and deceit of his testimony. The reaction of Witness 81 at this moment revealed

¹⁴⁹ T.2094:9.

¹⁵⁰ T.2094:19-23.

¹⁵¹ T.2106 and T.2108-2110. [REDACTED].

¹⁵² T.2115-2116.

¹⁵³ T.2117-2118.

¹⁵⁴ T.2119:12-2120:20.

that he knew that he had been found out; he said “kill me. That would be the best”.¹⁵⁵

Previous convictions

70. Witness 81 stated that he had no previous convictions, other than for traffic offences.¹⁵⁶ This testimony was shown to be dishonest. The official records from [REDACTED] of three previous convictions against Witness 81 were put to Witness 81 in cross-examination. Although he was familiar with the incidents which were the subject of these cases he pointedly denied that he had been convicted for any of these offences, claiming that the official records of these convictions were forgeries.
71. His testimony is clearly false in light of the official records which were provided by [REDACTED] to the OTP. Witness 81 was forced to accept that the records of the convictions accurately recorded his name, date and place of birth, parents’ names and place of residence. It is significant that on each occasion the courts found that the accounts he put forward in his defence were not credible. He tried to rely on these same accounts to deny the convictions before the Trial Chamber.
- (a) *Conviction on [REDACTED] for making false allegations to the police*¹⁵⁷:
 Witness 81 was convicted for making a false complaint to the [REDACTED] police that his wife, [REDACTED] (who he accepted was his wife at the time) was threatened with a gun in their home [REDACTED] (which he accepted was his residence) by three men who robbed her.¹⁵⁸ He had initially claimed that there were three persons with the same first and last name as him living in [REDACTED]¹⁵⁹. However, he had to accept that the records of this case recorded his personal details, his place of residence, as well as referring to his wife at the time, [REDACTED]. Witness 81

¹⁵⁵ T.2121:5-6.

¹⁵⁶ T.2000.

¹⁵⁷ D198, D199, D200.

¹⁵⁸ T.2001-2004.

¹⁵⁹ T.1990:1-2 and T.2010:20-2011:1.

denied that this incident ever occurred and claimed he never made such a statement to the police.¹⁶⁰ When shown the official court records of his conviction he claimed that the documents were a forgery. He accused Defence Counsel of personally forging these documents.¹⁶¹ There is no issue between the parties as to their authenticity. They were provided to the Prosecution [REDACTED]. Nevertheless, Witness 81 maintained that he had never given a false statement to police and that the detailed events described in the official note of his conviction were all fabrications.

- (b) *Conviction on [REDACTED] for the theft of a car [REDACTED]*¹⁶²: When asked whether he had ever been convicted of stealing a car, Witness 81 became evasive and aggressive.¹⁶³ He denied having been convicted of stealing a car and claimed that the owner had brought it to him to pay a debt [REDACTED].¹⁶⁴ This was the same defence that he put forward to [REDACTED], which was rejected by the court in light of the evidence in the case (although in that case he claimed the debt was 500 euro). When the records of his conviction were put to the witness, he maintained that he had never been convicted for this crime. The Presiding Judge asked the witness whether he could see the official court stamp on the document recording his conviction. The witness responded, “Anybody can do that. [REDACTED] will pay for this. So I will not comment upon this.”¹⁶⁵
- (c) *Conviction on [REDACTED] for threatening officers from a electricity company with an axe at his home [REDACTED]*¹⁶⁶: Witness 81 recalled this incident but claimed that he had not threatened any public officials. He said that he had an axe in his hand because he was a farmer cutting wood in his yard. This was the same defence he had used during his trial by

¹⁶⁰ T.2003:24.

¹⁶¹ T.2003.

¹⁶² D205.

¹⁶³ T.2144:9-T.2146:4.

¹⁶⁴ T.2145:2; T.2146:10.

¹⁶⁵ T.2149:16-17.

¹⁶⁶ D206.

[REDACTED]; it was rejected by that court and he was convicted. When asked whether he had ever been convicted for this particular crime, Witness 81 was evasive. His answers caused Judge Delvoie to intervene and ask the witness to answer the question directly.¹⁶⁷ The witness denied that he ever was convicted of this crime.¹⁶⁸ Once again he alleged that the court document that described his conviction in detail was a “blatant forgery” crafted by the Defence.¹⁶⁹

- (d) A further conviction by the courts in [REDACTED] for assault by Witness 81 on his wife was admitted into evidence.¹⁷⁰

Witness 81’s evidence [REDACTED]

72. Witness 81’s evidence in this trial provides yet another example of him making substantial changes to his account with no acceptable explanation. It resulted in [REDACTED] finding that his evidence could not be relied on to establish the guilt of the accused [REDACTED].¹⁷¹ It illustrates that he was prepared to make false allegations against an accused which were not corroborated by any other evidence.
73. Witness 81 confirmed that he gave a witness statement to the police and a statement to the [REDACTED] in the case against [REDACTED] in criminal proceedings [REDACTED].¹⁷² He accepted that [REDACTED] he had made an allegation to the police that [REDACTED] had kidnapped him [REDACTED] and that they were beaten by [REDACTED].¹⁷³

¹⁶⁷ T.2165:23.

¹⁶⁸ T.2166:5.

¹⁶⁹ T.2169:16.

¹⁷⁰ Confidential Decision on Ramush Haradinaj’s Motion for Admission for Admission of Evidence in Respect of Witness 81, 10 June 2012; Confidential Defence Motion on Behalf of Ramush Haradinaj for Admission of Evidence in respect of Witness 81 with Confidential and Ex Parte Annexes 1, 2 and 3, 4 May 2012 (ex parte status lifted by the Trial Chamber on 11 May 2012), Confidential Annexes 1 and 2.

¹⁷¹ D204.

¹⁷² T.2114.

¹⁷³ T.2126.

74. [REDACTED].¹⁷⁴ Thereafter, he substantially changed his account [REDACTED].¹⁷⁵
75. When pressed in cross-examination before the Trial Chamber on which account was accurate, he came up with a third version of events [REDACTED].¹⁷⁶
76. [REDACTED].¹⁷⁷
77. The persons he claimed were with him in this case were investigated by the authorities. They denied Witness 81's allegations and he was exposed as being incredible. This could explain why Witness 81 in the present case was not prepared to name the persons who he claims were with him when he went to Jabllanicë/Jablanica.¹⁷⁸

Other evidence that undermines Witness 81's account

78. There are further reasons to find that Witness 81's evidence should be rejected in its entirety:
- (a) The commander [REDACTED] provided a witness statement to the Defence (that was put to Witness 81) in which he stated that Witness 81 had never been a member of this unit and was never sent to Jabllanicë/Jablanica as Witness 81 claimed. [REDACTED].¹⁷⁹
 - (b) Witness 81 took some time in a break in the proceedings to consider his testimony about the name of the unit that he claimed he joined. Witness 81 stated that he had made a mistake earlier about the name of his unit and that

¹⁷⁴ D204.

¹⁷⁵ D204, T.2133 and T.2135-2137.

¹⁷⁶ T.2140.

¹⁷⁷ D204.

¹⁷⁸ T.2142.

¹⁷⁹ T.2181-2185 and T.2025.

upon reflection his unit was actually called [REDACTED].¹⁸⁰ He also got the number of the brigade wrong, [REDACTED].¹⁸¹

- (c) He claimed that he had not joined the unit under his real name, but under the nickname [REDACTED] which only his relative knew. He refused to name his relative.¹⁸² He then said that many people could confirm that this was his nickname. It was pointed out to him by the Trial Chamber that he had said earlier that only his relative knew this name.¹⁸³
- (d) Witness 81's father-in-law [REDACTED] gave a statement to the Defence, which was put to Witness 81, in which he said that he had seen Witness 81 daily [REDACTED] in 1998, and that Witness 81 was never in the KLA.¹⁸⁴ [REDACTED] also stated in his statement that Witness 81 had been violent to his wife and that he had tried to hang himself. Witness 81 initially claimed that he would never have harmed himself, but then accepted that he had tried to hang himself.¹⁸⁵

Witness 81's allegations are not corroborated by any other witness

79. Witness 81's allegations about Mr. Haradinaj's involvement in the commission of crimes at Jabllanicë/Jablanica stand alone. No other witness corroborates his testimony.
80. Witness 80 testified about Toger allegedly cutting off the ear of a young boy in Jabllanicë/Jablanica, but did not state that Mr. Haradinaj was present at this incident.
81. Witness 80's evidence does not corroborate the account given by Witness 81:

¹⁸⁰ T1957 and T.1993-1995.

¹⁸¹ T.2023.

¹⁸² T.2015-2016.

¹⁸³ T.2018-2019.

¹⁸⁴ T.2173 and T.2177.

¹⁸⁵ T.2135 and T.2174-2176.

- (a) The description Witness 80 provided of a young boy's ear being cut off is substantially different to Witness 81's evidence about the ears of *two* boys being cut off, an eye of one of the boys being cut out by Maxhup, and the boys being taken to a hospital 100 metres away from where they were allegedly mistreated.
- (b) Witness 80 gave no evidence at all that Mr. Haradinaj was present at any time during this incident.
- (c) In particular, Witness 81 specifically stated that it was Mr. Haradinaj who ordered that the boys be "taken to Drenice"¹⁸⁶, whereas Witness 80 testified that he saw Toger and Lahi Brahimaj say that the papers for "Drenice" should be prepared.¹⁸⁷

Summary submission

82. Witness 81's evidence has all of the hallmarks of being fabricated by him based on allegations that were the subject of the retrial. He was unable to parrot these allegations with any consistency, changing his versions of events so markedly and so many times that the only conclusion that should be drawn is that he never witnessed the events he described. His evidence should be rejected in its entirety.

¹⁸⁶ T.1939.

¹⁸⁷ T.2462:4-2463:2.

Witness 80

83. Witness 80 did not state that Mr. Haradinaj was present when three young boys were allegedly mistreated (Count 1), [REDACTED]:

- (a) When asked directly whether Mr. Haradinaj was present at any time during the alleged incident with the three boys, Witness 80 testified that he did not recall Mr. Haradinaj being present and he did not name Mr. Haradinaj as one of the persons who were present. He stated that “*now I’m telling the truth ... I am not saying he [Mr. Haradinaj] was part of that massacre*”.¹⁸⁸
- (b) Witness 80 did not name Mr. Haradinaj as one of the persons who was present when [REDACTED] allegedly beaten at Jabllanicë/Jablanica.¹⁸⁹ This was the occasion when [REDACTED] and brought to Jabllanice.¹⁹⁰ When asked directly if Mr. Haradinaj was present during [REDACTED] alleged beating, Witness 80 stated that he did not know whether he was there or not, and that he could not say with any certainty whether Mr. Haradinaj was present or not.¹⁹¹
- (c) There is clearly no evidence from Witness 80 that can be relied on by the Prosecution to suggest that Mr. Haradinaj was present when these crimes were allegedly committed, or that he was in any way involved in the commission of these alleged crimes.

84. Witness 80 did recall seeing Mr. Haradinaj in Jabllanicë/Jablanica on two specific occasions at different times, and unrelated, to the incidents alleged above: (i) when [REDACTED] was in Jabllanicë/Jablanica [REDACTED] (ii) when Skender Kuqi’s body was taken out. No inference can be drawn from Witness

¹⁸⁸ T.2455:3-6.

¹⁸⁹ T.2415-2417.

¹⁹⁰ T.2415 and T.2370-2371.

¹⁹¹ T.2417-2418 and T.2419. And see T.2432 where the Prosecution agrees that the witness has not stated that Mr. Haradinaj was present on either occasion.

80's evidence about these occasions that Mr. Haradinaj participated in any way in any of the crimes alleged in Counts 1-6 or any other crimes. On the contrary, the evidence about him being "very concerned" about Skender Kuqi's condition and confronting Lahi Brahimaj about why Skender Kuqi had been mistreated shows that Mr. Haradinaj could not have been involved in any common plan to commit any crimes at Jabllanicë/Jablanica.

Occasion [REDACTED] in Jabllanicë/Jablanica

85. Witness 80 stated that he saw Mr. Haradinaj at Jabllanicë/Jablanica [REDACTED] in May (after the Serbian attack on [REDACTED]).¹⁹² This took place on a different occasion to the incident with the three boys and at a subsequent date. [REDACTED].¹⁹³
86. When Witness 80's evidence is considered as a whole, the Haradinaj Defence submits that the Trial Chamber cannot safely make any findings based on his recollection of this event:
- (a) He initially testified that he had first seen Mr. Haradinaj in Jabllanicë/Jablanica when Skender Kuqi's body was taken out. He said he saw Mr. Haradinaj in the staff, "inside, in the staff, that's where he was"¹⁹⁴.
 - (b) He then corrected this testimony and stated that the first time he saw Mr. Haradinaj was [REDACTED] in May when Mr. Haradinaj "was sitting there and ... listening to the threats made [REDACTED] by Lahi and his brother Nazmi".¹⁹⁵ Witness 80 said that on this occasion Lahi Brahimaj introduced Mr. Haradinaj to him as the Dukagjin commander and that Mr. Haradinaj

¹⁹² T.2420 and T.2347-2348.

¹⁹³ T.2413-2414. Also see T.2392.

¹⁹⁴ T.2374:2-20.

¹⁹⁵ T.2382:22-23.

was the general commander of the staff for the Dukagjini plain.¹⁹⁶ It was then that Witness 80 “found out who he was, and then I [Witness 80] got to know him. Until then, I didn’t know him at all”.¹⁹⁷

- (c) Witness 80 then clarified his evidence in relation to the occasion [REDACTED] saying that when he saw Mr. Haradinaj, he “*was protected by people who stood around him. He was so much protected that there was very little of him I could see*”.¹⁹⁸ He was not asked to provide any evidence about his recognition of Mr. Haradinaj in circumstances when he says that he could hardly observe him. Taking into account that this was the first time ever when he claimed he saw Mr. Haradinaj¹⁹⁹, this evidence does not provide a safe basis to conclude that it was Mr. Haradinaj who the witness observed on this occasion.
- (d) Apart from the Skender Kuqi occasion, Witness 80 said that Mr. Haradinaj came to Jabllanicë/Jablanica “other times, but I didn’t go near him to know why he came”.²⁰⁰
- (e) Witness 80 was not asked by the Prosecution to explain, and did not clarify, on what basis he could know what Mr. Haradinaj (if it was him) was doing [REDACTED] given that Witness 80 had said that Mr. Haradinaj was so protected that Witness 80 could only see very little of him and did not go near him.²⁰¹
- (f) There is no other evidence in the retrial that clarifies or corroborates Witness 80’s testimony on this subject. Indeed, the other evidence is to the effect that Mr. Haradinaj was not seen in Jabllanicë/Jablanica during May.²⁰²

¹⁹⁶ T.2383:5-8 and T.2384:3-11.

¹⁹⁷ T.2383:3-4.

¹⁹⁸ T.2420:19-2421:1.

¹⁹⁹ T.2420:23.

²⁰⁰ T.2381:16-18.

²⁰¹ T.2420:19-2421:1.

²⁰² See paras. 92-93.

- (g) Furthermore, Witness 80 must be mistaken about Mr. Haradinaj being introduced as the commander of the Dukagjini plain or zone as this structure was not yet established in May.²⁰³ The official records and evidence of all of those involved (which is not disputed) is that the zone structure was only formed on 23 June 1998. The evidence shows that Jabllanicë/Jablanica was acting independently, outside of any regional structure, in May.²⁰⁴ Mr. Haradinaj could have been introduced to Witness 80 with this title when the Skender Kuqi incident occurred (which Witness 80 originally said was the first time that he saw Mr. Haradinaj²⁰⁵). The undisputed evidence is that this incident happened in mid-late July by which time the Dukagjin zone was established.²⁰⁶ The Prosecution never sought to clarify these matters with Witness 80 in his evidence in chief.
- (h) It must also be taken into account that Witness 80 gave confusing evidence about the occasions when he says he was in Jabllanicë/Jablanica, which the Prosecution also did not seek to clarify with him:
- (i) He first said that the Skender Kuqi incident occurred when [REDACTED] was taken to Jabllanicë/Jablanica having been arrested in [REDACTED] and that this arrest took place after [REDACTED].²⁰⁷
 - (ii) He later said that the ear-cutting incident took place when [REDACTED] and brought to Jabllanice.²⁰⁸ But he clearly placed the ear-cutting incident as having occurred *before* the

²⁰³ T.2383-2384.

²⁰⁴ See paras. 100-119.

²⁰⁵ T.2374.

²⁰⁶ See paras. 234-239.

²⁰⁷ T.2349 (in preceding pages of the transcript the witness describes the prior incident involving [REDACTED] and T.2354-2355 (describing the Skender Kuqi incident when he was in Jabllanice following his arrest in [REDACTED])).

²⁰⁸ T.2413.

incident [REDACTED] and before the Skender Kuqi occasion.²⁰⁹
 In fact, he testified that the ear-cutting incident took place before
 [REDACTED]²¹⁰, [REDACTED]²¹¹, [REDACTED].²¹²

- (i) Witness 80 also gave two different versions of [REDACTED], which the Prosecution did not explore further when examining the witness: (i) [REDACTED]²¹³, and (ii) [REDACTED].²¹⁴
- (j) Witness 80 also said he had seen Mr. Haradinaj in other places during the war, including in Baran/Barane and in Glogjan/Glođane, but he gave no evidence about when they had occurred.²¹⁵ He was not asked by the Prosecution when these occasions took place in relation to his evidence about seeing Mr. Haradinaj in Jabllanicë/Jablanica.

87. Even assuming that this evidence is taken at its highest, it does not establish that Mr. Haradinaj participated directly or pursuant to any common criminal plan in any of the crimes charged in Counts 1-6:

- (a) Witness 80 gave no evidence that Mr. Haradinaj was in any way involved in [REDACTED] being brought to Jabllanicë/Jablanica, or that Mr. Haradinaj knew anything about this matter or why they had been brought there.²¹⁶ There is no other evidence which shows that Mr. Haradinaj was in any way involved in this incident. Witness 3 who testified about [REDACTED] being arrested and brought to Jabllanicë/Jablanica does not mention that Mr. Haradinaj participated in any way at all.²¹⁷

²⁰⁹ T.2414.

²¹⁰ T.2414 and T.2392.

²¹¹ T.2321.

²¹² [REDACTED].

²¹³ T.2349.

²¹⁴ T.2424.

²¹⁵ T.2420, T.2374 and T.2381.

²¹⁶ T.2326:1-9, T.2327:1-15, T.2347:17-2348:14.

²¹⁷ T.1530-1537.

- (b) There is no evidence that Mr. Haradinaj was involved in what happened to [REDACTED] during the time they were at Jabllanicë/Jablanica.
- (c) Witness 80's evidence is that he could not get close to Mr. Haradinaj and could see very little of him.²¹⁸ He did not go near him to know why he came.²¹⁹ Mr. Haradinaj did not say anything to him [REDACTED].²²⁰
- (d) [REDACTED].²²¹ When he described these particular details in his testimony, Witness 80 gave no evidence of Mr. Haradinaj being present or knowing anything about these matters. There is no evidence from which it could be inferred that Mr. Haradinaj was acting together with Lahi Brahimaj or anyone else when any of these statements were allegedly made.
- (e) Similarly, when he stated that Lahi Brahimaj ordered Bandash to talk to him and threaten him to eat something, he gave no evidence about Mr. Haradinaj being involved in any way.²²²
- (f) [REDACTED].²²³
- (g) [REDACTED].²²⁴ [REDACTED].
- (h) Witness 80 does not state that he saw Mr. Haradinaj at any place where people were detained or mistreated on this occasion or at any other time. He saw him in the staff at Jabllanicë/Jablanica on the occasion with Skender Kuqi.²²⁵

²¹⁸ T. T.2420:19-2421:1.

²¹⁹ T.2381:16-18.

²²⁰ T.2386:7-9.

²²¹ T.2348:8-11.

²²² T.2348:15-2349:12.

²²³ T.2348:25-2349:1.

²²⁴ T.2349:5-12.

²²⁵ T.2374.

Skender Kuqi

88. Witness 80 testified that he saw Mr. Haradinaj in the staff at Jabllanicë/Jablanica when Skender Kuqi's body was there.²²⁶ Witness 80 clearly stated that Mr. Haradinaj had not been involved in the beating of Skender Kuqi but he had like many others ("thousands of people"), including Mr. Kuqi's family, seen Skender Kuqi's body.²²⁷
89. He said that he had seen Mr. Haradinaj inside the staff at Jabllanicë/Jablanica and that Skender Kuqi's "family, too, came there and intervened".²²⁸
90. Witness 80 testified that Mr. Haradinaj "was very concerned about what happened to" Skender Kuqi and that "there was a problem between him and Lahi in relation to the fact that that body was reduced to that situation". Witness 80 said that Mr. Haradinaj said to Lahi Brahimaj: "Why did you do that to him?"²²⁹
91. Witness 80's account is corroborated by Rustem Tetaj's evidence. He testified that in mid- to late July when he told Mr. Haradinaj about Skender Kui's detention, Mr. Haradinaj immediately drove to Jabllanicë/Jablanica with Rustem Tetaj in order to intervene over the detention of Skender Kuqi.²³⁰ Mr. Haradinaj was "very sad about such a gesture".²³¹ Together they went to Nazmi Brahimaj's house²³². Ramush Haradinaj told Nazmi Brahimaj that "this person should be released immediately"²³³. Mr. Tetaj described the conversation in these terms²³⁴:

²²⁶ T.2374.

²²⁷ T.2379.

²²⁸ T.2374-2375.

²²⁹ T.2380:1-8.

²³⁰ See, para. 234-239.

²³¹ P75 (R. Tetaj testimony), T.3778:14.

²³² P75 (R. Tetaj testimony), T.3681:3.

²³³ P75 (R. Tetaj testimony), T.3681:23-24 and T.3778:9-22.

²³⁴ P75 (R. Tetaj testimony), T.3682:2-5.

“Ramush Haradinaj knew nothing about it until the moment that I told him, and immediately after that Ramush gave the ultimatum that this person should be immediately released and he said no such thing should happen anymore because this is damaging our cause.”

Other evidence of presence in Jabllanicë/Jablanica

92. Other than the Skender Kuqi incident, it can only reliably be established on the evidence that Mr. Haradinaj visited the KLA headquarters in Jabllanicë/Jablanica on three specific occasions during the Indictment period:
- (a) On 23 June 1998 he attended a meeting at which the Dukagjin Plain Operational Staff was created, and he was elected as zone commander.²³⁵
 - (b) On 1 July 1998 he attended a meeting of the newly formed Operational Staff²³⁶.
 - (c) On a date in mid-July, he attended a meeting with members of the General Staff including Bislim Zyrap and Jakup Krasniqi.²³⁷
93. There is, however, no evidence at all that he entered the barracks enclosure (where Witness 3 and Witness 6 state they were held) on any of these visits:
- (a) Pjetër Shala testified that the commanders would meet at Lahi Brahimaj’s house²³⁸ in the “heart” of the village²³⁹. He said that the barracks building

²³⁵ P191 (Minutes of meeting on 23 June 1998); P192 (Minutes of meeting on 23 June 1998).

²³⁶ P204 (Minutes of meeting on 1 July 1998).

²³⁷ See para. 93(d).

²³⁸ P69 (P. Shala testimony), T.9946:16-9947:8.

²³⁹ P69 (P. Shala testimony), T.9948:9-10.

(which he identified on D118²⁴⁰) was at the entrance of the village²⁴¹, about 5-7 minutes walk from Lahi Brahimaj's house.

- (b) Rrustem Tetaj testified that the meeting on 23 June was held in a private house in Jabllanicë/Jablanica.²⁴² He believed it was Lahi Brahimaj's house²⁴³ but he could not be sure.²⁴⁴
- (c) The minutes of the meeting of 1 July do not record precisely where in Jabllanicë/Jablanica the meeting was held, and there is no other evidence on this issue.
- (d) Bizlim Zyrapi testified that he went to Jabllanicë/Jablanica in mid-July²⁴⁵ to meet with Ramush Haradinaj²⁴⁶. He travelled there with Jakup Krasniqi, Hashim Thaçi and other members of the General Staff²⁴⁷. He testified that the meeting took place in the KLA command post which he believed was situated in Lahi Brahimaj's house²⁴⁸. Mr. Zyrapi said that he had arrived late for the meeting because he was visiting the KLA units in the area²⁴⁹. He said he conducted a tour around Jabllanicë/Jablanica and looked at various KLA positions in the village²⁵⁰. He said that he had not come across

²⁴⁰ P69 (P. Shala testimony), T.9950:18-25.

²⁴¹ P69 (P. Shala testimony), T.9948:24-9949:3.

²⁴² P75 (R. Tetaj testimony), T.3658:21.

²⁴³ P75 (R. Tetaj testimony), T.3658:23.

²⁴⁴ P75 (R. Tetaj testimony), T.3815:5-12.

²⁴⁵ Bislim Zyrapi testified that the meeting took place a day or two after his appointment as director of the operational department of the General Staff (P159, T.3208:11-15). He gave the date of his appointment to this post as mid-July (P159, T.3258:5-7). See also, P159 (B. Zyrapi testimony), T.3234:21.

²⁴⁶ P159 (B. Zyrapi testimony), T.3208-3209.

²⁴⁷ P159 (B. Zyrapi testimony), T.3212:23.

²⁴⁸ P159 (B. Zyrapi testimony), T.3388:9-11. Jakup Krasniqi also testified about this meeting and said that he went to Jabllanicë/Jablanica to meet Ramush Haradinaj (P63, T.5054:17-20), which was the only contact he had with Mr. Haradinaj before the autumn of 1998 (P63, T.5034:16-22). At one point he said this meeting occurred at the end of June or the beginning of July (P63, T.5051:7-10). However, he later accepted that it was in "around about the middle of July" (P63, T.5075:16-21). Given that Bislim Zyrapi testified that Jakup Krasniqi came with him to meet Mr. Haradinaj in mid-July, the inevitable inference is that both witnesses were referring to the same meeting.

²⁴⁹ P159 (B. Zyrapi testimony), T.3211:11-12.

²⁵⁰ P159 (B. Zyrapi testimony), T.3345:15-20.

any detention facility²⁵¹ and that he neither saw nor heard of anyone being detained there²⁵²

- (e) Rrustem Tetaj testified that he went to Jabllanicë/Jablanica with Ramush Haradinaj in mid- to late July in connection with the detention of Skender Kuqi²⁵³. He said that the conversation with Nazmi Brahimaj occurred at Nazmi Brahimaj's house²⁵⁴ and that he had not personally been to the place where Skender Kuqi had been detained²⁵⁵.
- (f) Witness 6 testified that he never saw Mr. Haradinaj at Jabllanicë/Jablanica in all the time he was there from about the middle of June for 6 weeks.
- (g) Witness 75 and Witness 76 also stated that they had never seen Mr. Haradinaj in Jabllanicë/Jablanica when they went there to see [REDACTED] on several occasions at least up until the end of May.²⁵⁶ Witness 75 stated that Lahi Brahamij was in charge in Jabllanicë/Jablanica in the period he went there and that Mr. Haradinaj was not yet the commander of the Dukagjin area.²⁵⁷
- (h) Shefqet Kabashi testified that he had been based in Jabllanicë/Jablanica as a KLA soldier from April until September 1998. He never mentioned seeing Mr. Haradinaj in Jabllanicë/Jablanica throughout this period. He testified that there was no one in a more senior position to Lahi Brahimaj in Jabllanicë/Jablanica.²⁵⁸

²⁵¹ P159 (B. Zyrapi testimony), T.3345:21-3346:1.

²⁵² P159 (B. Zyrapi testimony), T.3387:13-19.

²⁵³ P75 (R. Tetaj testimony), T.3852:24.

²⁵⁴ P75 (R. Tetaj testimony), T.3681:3.

²⁵⁵ P75 (R. Tetaj testimony), T.3852:21-22.

²⁵⁶ T. 1845:3-7; P304 (Witness 76 92^{ter} statement), para. 13.

²⁵⁷ T.1845:8-1846:3.

²⁵⁸ P119 (S. Kabashi testimony in *Limaj* trial), T.4265.

Summary submissions

94. The Prosecution has not proved that Mr. Haradinaj was present and involved in the commission of any alleged crimes at Jabllanicë/Jablanica, nor that he participated in any criminal activity pursuant to the alleged JCE.

B. KLA organisation and command

Defence submissions

95. The Prosecution alleges that Mr. Haradinaj was a powerful leadership figure in the KLA who commanded and controlled KLA activities in Jabllanicë/Jablanica in a “hands on” way. It is alleged that this included Mr. Haradinaj using the detention facilities there to detain and mistreat perceived opponents as part of a joint criminal enterprise to suppress opposition with the aim of consolidating KLA control over the Dukagjin area.²⁵⁹ This allegation is entirely unsupported by the evidence:
- (a) The evidence of the formation of rudimentary KLA structures in the Dukagjin area in the course of 1998 shows that there was a lack of centralised command and control, and that Jabllanicë/Jablanica in particular operated as a separate and independent area of KLA activity that was not controlled on a day to day basis by Mr. Haradinaj.
 - (b) There is no credible evidence to show that Mr. Haradinaj participated in or knew of the establishment of any alleged detention facility at Jabllanicë/Jablanica.

²⁵⁹ Prosecution Pre-Trial Brief, paras. 6, 7, 48, and 66.

- (c) There is no credible evidence that Mr. Haradinaj participated in the mistreatment of any persons in Jabllanicë/Jablanica or knew of persons being mistreated there.
- (d) There is no credible evidence that Mr. Haradinaj ever visited the rooms in Jabllanicë/Jablanica in which Witness 3, Witness 6 and others were allegedly detained. Mr. Haradinaj was only ever present in Jabllanicë/Jablanica on a few occasions for reasons unrelated to any of the incidents alleged in the six Counts (other than the assistance he provided to Skender Kuqi).²⁶⁰
- (e) There is no evidence that Mr. Haradinaj failed to intervene and take appropriate action in respect of any unlawful behaviour at Jabllanicë/Jablanica.
- (f) The mere fact that crimes were committed in Jabllanicë/Jablanica does not prove that the perpetrators were acting under orders or pursuant to any common criminal purpose. The fragmentary, spontaneous and autonomous development of armed Albanian resistance from early 1998 and in response to the sustained Serbian military offensives in the Dukagjin area in 1998 makes it impossible to draw any inferences of a common criminal purpose within the KLA to which Mr. Haradinaj was a party.

96. The nature of this resistance calls for a close examination of the realities of command and control on the ground. The evidence shows that the KLA in the Dukagjin area was a rudimentary and fledgling organisation during the period of the operative Indictment, which lacked clear and effective, or vertical lines of command. It is not without reason that the Prosecution has always declined to charge Mr. Haradinaj with criminal responsibility under Article 7(3) of the Statute.

²⁶⁰ See paras. 92-93.

97. The Albanian resistance emerged and operated in a *horizontal* and loosely structured manner, with different villages in the Dukagjin region acting spontaneously and autonomously to organise themselves and fend off Serb military offensives during the Indictment period:
- (a) In the wake of major Serbian operations in February and March 1998, ordinary Albanian villagers acted on their own initiative to arm themselves and set up basic village guards to defend against further attacks.
 - (b) Although determined efforts were made to co-ordinate the activities of these local structures, with the creation of sub-zones at the end of May 1998 and an operative staff for the whole Dukagjin area in late June 1998, these structures never managed to function as a regular army.
 - (c) The ability of the KLA to co-ordinate its activities in this period was impeded by continuous Serb offensives. In reality the local KLA staffs continued to act independently when engaging the Serbian forces and did not rely on Mr. Haradinaj and the operative staff for instruction or direction.
98. The mere fact that Mr. Haradinaj and others attempted to create these organisational structures to defend their villages cannot support an inference that any crimes committed in Jabllanicë/Jablanica must have been part of a common criminal plan to which Mr. Haradinaj was a party.
99. The mere fact that Mr. Haradinaj was a highly respected commander due to the manner in which he and his family had repelled the Serbian attack on Gllogjan/Glodane on 24th March 1998 does not mean that he had the ability to control and direct activities in every location of the Dukagjin area, including Jabllanicë/Jablanica. It cannot be inferred that he must have ordered, authorised, assisted in, or condoned the actions of any alleged perpetrators.

The emergence of the KLA in the Dukagjin area

Early 1998

100. The evidence shows that the emergence of the KLA in the Dukagjin area was essentially a reaction to the Serb military actions in the early part of 1998. As a result of the Serbian attacks villagers took steps to organise defences for their villages in anticipation of further Serb attacks. The activities of these emerging village defences were not centrally coordinated or commanded. Villagers appointed their own village commanders.²⁶¹ None of these persons were appointed by Mr. Haradinaj and there is no evidence that Mr. Haradinaj issued orders to any village defences.
101. Skender Rexhahmetaj testified in the retrial about this early period. He explained that in his village of Isniq/Istinić he was approached by his cousin and others from his village to lead them in defending their village.²⁶² He said they were not representatives of any army, “they were just people who were concerned about the fate of the population of the village and wanted someone to lead them in defending the village”.²⁶³ He had to consult with village elders in order to organise the defence of the village.²⁶⁴ At this point he was organising a small group of persons with 4 weapons.²⁶⁵ His village did not take instructions from any other village or person from another village.²⁶⁶ Mr. Rexhahmetaj said that this pattern of organisation was occurring in all villages in the area.²⁶⁷ Village defences were

²⁶¹ P75 (R. Tetaj testimony), T.3707-3709; P53 (C. Krasniqi testimony), T.5793-5794; P36 (Z. Hasanaj testimony), T.8719-8720; P3 (S. Çekaj testimony), T.4481.

²⁶² T.1034:23-T1035:6.

²⁶³ T.1035: 5- 13.

²⁶⁴ T.1039:19-24.

²⁶⁵ T.1035:22.

²⁶⁶ T.1040:6.

²⁶⁷ T.1041:17.

springing up in each village, all operating independently of each other, with no central command.²⁶⁸

102. A village defence was established in Glllogjan/Glođane after the attack on 24 March 1998, as in many other villages. Groups of KLA fighters also existed in Jabllanicë/Jablanica. There is no evidence that Mr. Haradinaj was involved in any way with setting up structures in Jabllanicë/Jablanica or organising any activities there. In particular, there is simply no evidence that suggests that Mr. Haradinaj was involved in establishing any detention facility at Jabllanicë/Jablanica.
103. The fact that Mr. Haradinaj was organising activities in Glllogjan/Glođane while activities were also being undertaken in Jabllanicë/Jablanica cannot support any inference of the emergence of a common plan involving Mr. Haradinaj to commit crimes in Jabllanicë/Jablanica.

Independent bases of support

104. Bislim Zyrapi testified that there were at least three separate support bases in western Kosova/Kosovo from early 1998, established around three families: the Jasharis in Prekaz, the Brahimajs in Jabllanicë/Jablanica and the Haradinajs in Glllogjan/Glođane (and there were other families as well). He said that these families had no authority to impose their will on any one of the other families.²⁶⁹
105. Skender Rexhahmetaj testified that different villages guarded their independence. They would not accept leaders from another village telling them how to conduct their affairs.²⁷⁰ Village commanders in each village “were appointed through the will of the local people” and persons in each village would not have agreed to a leader being appointed or commanding from outside their village.²⁷¹ He stressed

²⁶⁸ T.1041:17-1042:2.

²⁶⁹ T.703-T.709.

²⁷⁰ T.1028-1029.

²⁷¹ T.1081:1.

that “the village structures were all independent from each other and were concerned about the interests of their own people and perhaps surrounding villages”.²⁷² All villages were operating independently of each other with no central command.²⁷³

106. This evidence plainly demonstrates that in reality commanders in Glogjan/Glođane were not able to direct and control activities in Jabllanicë/Jablanica or elsewhere.
107. In April and May, emerging defences in different villages were seeking to make contact to assist and support each other where possible.²⁷⁴ Skender Rexhahmetaj testified that he made contact with Mr. Haradinaj in the second half of April because of the experience Glogjan/Glođane had had in repelling the Serb forces.²⁷⁵ Mr. Rexhahmetaj wanted to prepare for the eventuality of further Serb attacks.²⁷⁶ He said that it was therefore necessary to seek ways of co-operating with and assisting other villages.²⁷⁷ He wanted to make sure that Glogjan/Glođane would support them if they were attacked by the Serbian forces.²⁷⁸
108. These early contacts between village defences do not establish that Mr. Haradinaj was in any way involved in a JCE to detain and mistreat persons in Jabllanicë/Jablanica or elsewhere.

²⁷² T.1037:17.

²⁷³ T.1041:17.

²⁷⁴ T.1045:10 and T1088:5. Also see P75 (R. Tetaj testimony), T.3708:12, T.3624:9, T.3713:24; and, P3 (S. Çekaj, T.4429).

²⁷⁵ T.1045:16- T.1046:20.

²⁷⁶ T.1045:10.

²⁷⁷ T. 1045. He also said that he sought out Rrustem Tetaj for assistance because of his military experience (T.1088:5).

²⁷⁸ T.1086:8.

Formation of Regional Staff: 26 May 1998

109. The first steps towards broader coordination of the rudimentary village defences occurred at a meeting of village leaders on 26 May when a regional staff was formed with five sub-zones.²⁷⁹
110. It was agreed that Mr. Haradinaj would be the “co-ordinator” of the regional structure because he was respected for having fought the Serbian forces on 24 March.²⁸⁰ Mr. Rexhahmetaj, who was elected as the commander of sub-zone 4 in the Regional Staff, testified that there was no “vertical” chain of command for the staff; it operated “horizontally”.²⁸¹ No-one, including Mr. Haradinaj, ever issued any orders. The staff operated, and was based, on consent and agreement in which one KLA leader could not issue orders to another.²⁸²

Jabllanicë/Jablanica not involved and operating independently

111. When these first steps were taken to coordinate various village defences on 26 May 1998, Jabllanicë/Jablanica was not involved, and did not participate in, the creation of four sub-zones and a Regional Staff.²⁸³ Jabllanicë/Jablanica and its surrounding area (known as Dushkaja) were operating independently at this time and they were not included in the Regional Staff:
- (a) Rrustem Tetaj’s evidence is that between 50 and 100 persons attended the meeting in 26 May 1998, representing about 24 villages.²⁸⁴ More than 80 percent of those present were in civilian clothes and did not have any weapons or military experience.²⁸⁵ They “were elderly people or civilians

²⁷⁹ P75 (R. Tetaj testimony), T.3715:19-25.

²⁸⁰ S. Rexhahmetaj, T.1060:16-24 and T.1061:4-9.

²⁸¹ T.1052:19-T1053:6.

²⁸² T.1056:1, T.1061:19, T.1073:1. Also see P75 (R. Tetaj testimony), T.3648-3650.

²⁸³ S. Rehahmetaj, T.1058:15-19. This evidence is supported by the testimony of Mr. Tetaj and Mr. Çekaj cited immediately below in sub-paragraph (c).

²⁸⁴ P75 (R. Tetaj testimony), T.3631.

²⁸⁵ P75 (R. Tetaj testimony), T.3709:6-11.

who had led the village life for ages.”²⁸⁶ Shemsedin Çekaj testified that Ramush Haradinaj “opened the meeting, but not as a commander of the area. If he was a commander at the time, he was a village commander.”²⁸⁷

- (b) The meeting adopted Rustem Tetaj’s proposal to create four sub-zones, which together would comprise a “Regional Staff”²⁸⁸:
- (i) Zone 1 (Gllogjan/Glodane, Shaptej/Šaptelj, Dubravë/Dubrava, Baballoq/Babaloc, Prejlep/Prilep, and Rastavicë/Rastavica) under the command of Ramush Haradinaj;
 - (ii) Zone 2 (Irnjari/Rznić, Ratishë/Gornji Ratiš, Ratishë/Donji Ratiš, Beleg and Kodralija) under the command of Shemsedin Çekaj;
 - (iii) Zone 3 (Lluka e Epërme/Gornji Luka, Donja Luka/Lukë ë Ultë, Pozhar/Požar, Lumbardh/Ljumbarda, Dashinoc/Dašinovac, Vranoc e Madhe/Velika Vranovać) under the command of Rustem Tetaj; and
 - (iv) Zone 4 (Prapaçan/Prapaçane, Isnjari/Istinić, Strelc/Streoc, Dubovik, Krushec/Kruševac and Rasiq/Rasić) under the command of Skender Rexhahmetaj and Gani Gjokaj.
- (c) Neither Shemsedin Çekaj nor Rustem Tetaj mentioned representatives from Jabllanicë/Jablanica being present at or taking part in the meeting. As was made clear in Tetaj’s testimony and by the map he submitted, Jabllanicë/Jablanica was not part of any of the sub-zones formed at the 26 May meeting.²⁸⁹ When asked specifically why Jabllanicë/Jablanica was not

²⁸⁶ P75 (R. Tetaj testimony), T.3709:8-9.

²⁸⁷ P3 (S. Çekaj testimony), T.4481.

²⁸⁸ P78 (Map marked by R. Tetaj); P75 (R. Tetaj testimony), T.3642-3644.

²⁸⁹ P75 (R. Tetaj testimony), T.3720.

included in the sub-zones Mr. Tetaj explained, “*Jabllanicë/Jablanica was a separate zone so it was not included in these four subzones.*”²⁹⁰

112. The Prosecution cites Skender Rexhahmetaj’s evidence to support its claim that representatives from Jabllanicë/Jablanica did attend this meeting.²⁹¹ However, his statement of 24 March 2006, which was admitted into evidence, states in terms that no one from Jabllanicë/Jablanica was represented at the 26 May 1998 meeting in Glllogjan/Glođane.²⁹² In a subsequent witness statement (also admitted into evidence) he said that Lahi Brahimaj was not at the 26 May meeting and he did not know if there was a representative from Jabllanicë/Jablanica present or not.²⁹³
113. During his testimony he confirmed that Jabllanicë/Jablanica was not included in this first structure and was operating independently. Further, it was *him* who proposed thereafter that Jabllanicë/Jablanica should be incorporated.²⁹⁴
114. The Prosecution’s assertion that “the Jablanica/Jabllanicë headquarters were represented at meetings of the Glllogjan/Glođane Regional Staff from its inception” is thus contradicted by the very evidence upon which the Prosecution relies.²⁹⁵ The Regional Staff was not called the “Glllogjan/Glođane Regional Staff” – it was the staff for all four sub-zones.

Lack of command and coordination

115. Even with the formation of the Regional Staff co-ordination between the different villages covered by the staff remained very limited. Communication between the sub-zones was extremely difficult because networks and equipment did not exist.

²⁹⁰ P75 (R. Tetaj testimony), T.3720:17. Also see P78 (Map marked by R. Tetaj).

²⁹¹ Prosecution's Motion for Admission of Evidence Pursuant to 92ter, 27 June 2011, pp.6-7. (Relevance and Summary of Evidence of Skender Rexhahmetaj)

²⁹² P298 (S. Rexhahmetaj 92ter statement, 24 March 2006), para. 38.

²⁹³ P297 (S. Rexhahmetaj 92ter Statement, 24 September 2010), para. 13.

²⁹⁴ T.1061:18-1062:22.

²⁹⁵ Prosecution Pre-Trial Brief, para. 16.

Regular contact between Mr. Haradinaj and other sub-zone commanders was non-existent.²⁹⁶

116. Mr. Rexhahmetaj testified that the sub-zone commanders were of equal status and in meetings they had to decide jointly on action to be taken; no orders as in a normal army could be or were given.²⁹⁷ He said that Mr. Haradinaj never once issued an order.²⁹⁸ He was mainly engaged in his own zone, and Mr. Rexhahmetaj had contact with him only about once a week. He clarified that what he meant by Mr. Haradinaj having *de facto* authority²⁹⁹, was that the “population always respected him” because they were suffering as “ordinary people and he defended them”.³⁰⁰ He said that, at that time and until September, the only way of getting anyone to do what was needed was by consent because they did not have any legal authority from a state on which to base any orders.³⁰¹
117. There is certainly no evidence that shows that after the formation of the Regional Staff Mr. Haradinaj “oversaw the activities of the Jablanica/Jabllanicë headquarters”.³⁰² There is no evidence of any communication at all between Jabllanicë/Jablanica and the newly formed Regional Staff. In the minutes of all four meetings of the Regional Staff, there is no reference to the Jabllanicë/Jablanica area.³⁰³ The reality was that Jabllanicë/Jablanica (as with other villages outside of the regional staff) was operating independently.
118. The Prosecution seeks to support the broad allegation that Mr. Haradinaj oversaw activities in Jabllanicë/Jablanica with evidence that on 9 June 1998 Mr. Haradinaj ensured that those who were hospitalised in Jabllanicë/Jablanica were transferred

²⁹⁶ T.1052:14-1056:6 and T.1058:22-1059:4. Also see P75 (R. Tetaj testimony), T.3649:7-11; P52 (C. Krasniqi, T.5734-5735). See paras. 36-38 above.

²⁹⁷ T.1060:19-1061.

²⁹⁸ T.1061:10-17 and T.1076:15-1077:2.

²⁹⁹ P297 (S. Rexhahmetaj, 92^{ter} statement), para. 18.

³⁰⁰ T1099: 5-6.

³⁰¹ T.1055: 21- 1056: 6.

³⁰² Prosecution Pre-Trial Brief, para. 16.

³⁰³ P177 and P179 (Minutes of Regional Staff meetings).

to other parts of Kosova/Kosovo which had better medical facilities.³⁰⁴ The document cited as the source for this apparently benign suggestion is a short handwritten note which is purportedly signed by Nazmi Brahimaj and is not addressed to anyone.³⁰⁵ It states: “Today, 9 June 1998, Fazli is transferred from our dispensary facility upon the request of the /illegible/ friends, and pursuant to the request from the other zone, which has better medical facilities”. There is nothing in this evidence that suggests that Mr. Haradinaj controlled or oversaw activities at Jabllanicë/Jablanica. The Prosecution is “clutching at straws” by using this evidence to try to support its case that Mr. Haradinaj was controlling Jabllanicë/Jablanica in a “hands on” way.

Formation of Operative Staff for Dukagjini Plain: 23 June 1998

119. Jabllanicë/Jablanica was only incorporated into a rudimentary joint command structure as a result of the formation of the Dukagjini Operational Zone at meetings held between 21 and 24 June 1998. This initiative was not proposed by Mr. Haradinaj, but by Skender Rexhahmetaj.³⁰⁶ His testimony is similar to the evidence of Mr. Tetaj and Mr. Çekaj, all of whom were present when the Operational Zone was established:
- (a) The purpose of the meeting of 23 June was to “co-ordinate activities, exchange experiences and arrange a single command.”³⁰⁷ For the first time the staffs of Reka, Jabllanicë/Jablanica, and Baran/Barane, together with the staffs from the sub-zones were represented in one meeting.
 - (b) It was unanimously agreed by all at the meeting to merge the separate staffs represented and to form the Operative Staff of the Dukagjin Plain.³⁰⁸

³⁰⁴ Prosecution Pre-Trial Brief, para. 16.

³⁰⁵ P178. The Prosecution has not established that this is the signature of Nazmi Brahimaj and has led no evidence in connection with this document.

³⁰⁶ S. Rexhahmetaj, T.1061:18-1062:22

³⁰⁷ P191 (Minutes of meeting of 23 June 1998), p.1 (ET)

³⁰⁸ P191, p.2 (ET)

- (c) By a process of nomination and election, a staff structure was formed with Ramush Haradinaj as commander and Lahi Brahimaj as deputy commander.³⁰⁹ Rrustem Tetaj nominated Mr. Haradinaj.³¹⁰

No vertical command structure

120. Despite the creation of Operative Staff, the KLA still did not function as a regular army with a vertical command structure:

- (a) Skender Rexhahmetaj stated that the structure and positions created were “a blueprint of how we would function in the future. This is a skeleton of responsibilities that we were going to cover in the future.”³¹¹ He said the positions and titles of the Zone structure were “aspirational”.³¹² None of the functions that were assigned at the meeting on 23 June could be applied and realised.³¹³ Even the Chief of Staff position was more theoretical than practical. It was not like a conventional army; it was only the first attempt to try to create a military structure.³¹⁴
- (b) Some of the titles given to persons on the staff were “fictitious”.³¹⁵ For example, Skender Rexhahmetaj was elected with responsibility for “anti-armoured unit combat” and Muhamet Berisha was to be in charge of “chemical and biological defence”.³¹⁶ Rrustem Tetaj testified, “[T]he titles are good on paper, but they are, indeed, a bit bloated”.³¹⁷

³⁰⁹ P191, p.3-4 (ET).

³¹⁰ P75 (R. Tetaj testimony), T.3743:3-3744: 1; P191, p.3 (ET).

³¹¹ T.1075: 10-12.

³¹² T.1075:25- T1076:1.

³¹³ T1075: 12-13.

³¹⁴ 1073: 23- 1074:16

³¹⁵ P75 (R. Tetaj testimony), T.3745:17.

³¹⁶ P191, p.4 (ET); P75 (R. Tetaj testimony), T.3744:1 -3746:10.

³¹⁷ P75 (R. Tetaj testimony), T.3745:11-12.

- (c) In practical terms the command structure remained as before 23 June: “it remained horizontal in reality, which means that no one could give orders to the other. Everything was done by consensus. It remained the same”.³¹⁸
- (d) The commanders from the various sub-zones continued to operate independently of each other without orders being issued by anyone.³¹⁹ Commanders in reality were dealing with a force made up of volunteers, and hence a commander from one sub-zone could not impose his will on the commander of another, everything had to be agreed by consent.³²⁰
- (e) Bislim Zyrapi gave similar evidence about the KLA General Staff existing in name, but not being able to meet as a constituted staff body and effectively co-ordinate the operational zones.³²¹
- (f) He said that titles given to persons in this period did not reflect any conventional military authority.³²² The fact that Mr. Haradinaj was the zone commander did not imply that he had effective operational control on the ground throughout the Dukagjini zone.³²³

No operational command over Jabllanicë/Jablanica

121. The evidence does not establish that after this meeting Mr. Haradinaj exercised day-to-day operational command in Jabllanicë/Jablanica, or any other area within the Dukagjin Zone:

- (a) Cufë Krasniqi testified that through June and July 1998 leading villages such as Gillogjan/Glodane, Jabllanicë/Jablanica, Prapaçan/Prapaçane,

³¹⁸ S. Rexhahmetaj, T.1077:7. Also see B. Zyrapi, T.726:24 and T.727:20.

³¹⁹ S. Rexhahmetaj, T.1078:2.

³²⁰ S. Rexhahmetaj, T.1056 and T.1080.

³²¹ T.694:12- 698:2

³²² B. Zyrapi, T.702:8.

³²³ B. Zyrapi, T.737:10.

Bardhaniq/Bardnonić and Baran/Barane each operated independently because the KLA had no means or possibility to communicate with each other.³²⁴ Communication took place via courier and villages coordinated and helped each other where they could. He testified that during this time each village had its own leaders and its own command that led the village.³²⁵ Villages would voluntarily help each other if they needed assistance, but the witness's testimony is very clear that through July 1998 a horizontal command structure existed where leading villages such as Jabllanicë/Jablanica, Prapačan/Prapačane, Baran/Barane and Gllogjan/Gllođane operated independently.³²⁶

- (b) Similarly, Rrustem Tetaj testified that, although part of the purpose for the 21 and 23 June meetings was to address the lack of coordination and communication between groups on the ground,³²⁷ the possibilities of consulting with Mr. Haradinaj thereafter concerning military operations were very few.³²⁸
- (c) Jakup Krasniqi stated: “The responsibility in the way we were organised was quite difficult to be taken upon by the commander of the zone, because every zone was divided in physical terms because the largest part of Kosovo was occupied by the Serbian police and military forces. And in many zones, the units acted separately. So there wasn’t a proper organisation and regular communication, so the possibility to discipline in the entire space was impossible.”³²⁹

³²⁴ P52 (C. Krasniqi testimony), T.5733-T.5734; T.5807-T.5809.

³²⁵ P52 (C. Krasniqi testimony), T.5737:9.

³²⁶ P52 (C. Krasniqi testimony), T.5808.

³²⁷ P75 (R. Tetaj testimony), T.3738:7.

³²⁸ P75 (R. Tetaj testimony), T.3665:3.

³²⁹ P64 (J. Krasniqi testimony), T.4970: 17-2.

- (d) Mr. Krasniqi's evidence is that until August 1998, the KLA had no rigid hierarchical structure, but a horizontal command structure, and communication between KLA groups was limited.³³⁰
- (e) Bislim Zyrapi testified that the KLA was operating up to September as independent pockets attempting to come together to form cohesive structure but that in reality headquarters were sprouting up and all acting independently from one another.³³¹ The KLA was not operating as an army with a conventional command structure.³³²
- (f) Skender Rexhahmetaj gave similar evidence, that he never received any orders from Mr. Haradinaj even after 23 June, as the reality on the ground remained that commanders from different subzones continued to operate independently without orders being issued by any one commander.³³³
- (g) Witness 80 gave evidence about Mr. Haradinaj's command position which when viewed in light of all of the above evidence cannot be regarded as accurate:
- (i) He testified that Mr. Haradinaj was the general commander of the staff of the Dukagjini plain "from May to the arrival of Tahir Zemaj in Baran and Prapaqan ... sometime in June".³³⁴ His evidence was that during this time Mr. Haradinaj "was the commander of the region, and therefore went to the staff [in Jabllanicë/Jablanica], and it's impossible for him not to know what was going on".³³⁵ This evidence does not accord with the indisputable body of evidence that Mr. Haradinaj only became the

³³⁰ P67 (J. Krasniqi, *Limaj* transcript, 10-12 February 2005), T.3350-3351, T.3454-3455.

³³¹ T.726:11

³³² T.702:8 and T.727:2-8.

³³³ T.1077:2.

³³⁴ T.2385-2386.

³³⁵ T.2421:4-7.

commander of the Dukagjin region after 23 June and that even then he did not exercise “hands on” control over the day-to-day activities in Jabllanicë/Jablanica.

- (ii) The Prosecution did not seek to explore this evidence with Witness 80, nor establish the source of his knowledge about KLA command and organisation, nor seek to clarify the dates of developments in light of the agreed evidence in the retrial about the emergence of KLA structures. His statements are therefore left unsupported and unsourced by any evidence and in conflict with all other evidence in the case on this subject.
- (iii) As noted above, Witness 75 (who allegedly went to Jabllanicë/Jablanica until at least the end of May to see his brother with his mother, Witness 76) also said that in this time Mr. Haradinaj was not yet the commander of the Dukagjin Zone.³³⁶
- (iv) Shefqet Kabashi testified that in his time in Jabllanicë/Jablanica from April until September 1998 there was no-one in a more senior position to Lahi Brahimaj in Jabllanicë/Jablanica.³³⁷
- (v) Witness 80 in any event gave no evidence about Mr. Haradinaj’s knowledge of any crimes committed at Jabllanicë/Jablanica, except in respect of Skender Kuqi. Witness 80 said that Mr. Haradinaj only found out about Skender Kuqi’s mistreatment after it had occurred and that there was then a “problem” between

³³⁶ T.1845-1846.

³³⁷ P119 (S. Kabashi testimony in *Limaj*), T.4265.

him and Mr. Brahimaj about this situation with Mr. Haradinaj saying to Mr. Brahimaj: “Why did you do that to him?”³³⁸

- (h) Witness 76 stated that Mr. Haradinaj was “like the Lord of Dukagjini”.³³⁹ She provided no basis for making this assumption other than the general assertion that the “whole army was mentioning his name”.³⁴⁰ It cannot be inferred from this kind of sweeping opinion evidence that Mr. Haradinaj was working with others as part of a criminal conspiracy to commit crimes at Jabllanicë/Jablanica. Witness 76 stated that she had never seen Mr. Haradinaj at Jabllanicë/Jablanica.³⁴¹ She said that Lahi Brahimaj was “in charge of Jabllanice, including the prison”.³⁴² Her son, Witness 75, also testified that Lahi Brahimaj was in charge in Jabllanicë/Jablanica in the period he went there with his mother and that Mr. Haradinaj was not yet the commander of the Dukagjin area.³⁴³
- (i) The Prosecution relies on Zymer Hasanaj saying “God in heaven, Ramush on earth ... No one was superior to him”.³⁴⁴ However, Mr. Hasanaj explained that he said this because of the resistance that Mr. Haradinaj had put up against the Serbian attacks, and said that by this phrase he meant that Mr. Haradinaj “was good then, and he’s good now – I mean, he’s loved by people ... he’s held in esteem by the Albanian people”.³⁴⁵

³³⁸ T.2380. Also see evidence of Rustem Tetaj at paras. 234-239.

³³⁹ P304 (Witness 76 92ter statement), para. 13.

³⁴⁰ P304 (Witness 76 92ter statement), para. 13.

³⁴¹ P304 (Witness 76 92ter statement), para. 13.

³⁴² P304 (Witness 76 92ter statement), para. 12.

³⁴³ T.1845-1846.

³⁴⁴ P36 (Zymer Hasanaj testimony), 8717:12-13.

³⁴⁵ P36 (Zymer Hasanaj testimony), T.8721:17-8722:20.

No presence when crimes were committed

122. The evidence does not show that Mr. Haradinaj frequently visited Jabllanicë/Jablanica. There is evidence that he was only present in Jabllanicë/Jablanica on a few occasions during the period of the Indictment and that he never went to the barracks where persons allegedly were detained.³⁴⁶

No evidence of orders and control

123. There is no evidence that Mr. Haradinaj issued any orders or instructions in relation to Jabllanicë/Jablanica or authorised anyone to issue any such documents:

(a) Mr. Haradinaj did remove Lahi Brahimaj as Deputy Zone Commander and appointed Nazmi Brahimaj in his place on 5 July.³⁴⁷ Whilst this order reflects his authority over the appointments to the joint structure that had been created on 23 June, it does not imply close knowledge (or *de facto* control over) the activities of those based at Jabllanicë/Jablanica, and it certainly does not imply any knowledge of the detention and ill-treatment of any persons at Jabllanicë/Jablanica.

(b) When Witness 6 was released from Jabllanicë/Jablanica on 25 July, he was given two documents signed by Nazmi Brahimaj in the name of the “Operative Staff of the Dukagjini Sub-zone, Local Staff of Jabllanice”³⁴⁸. There is no evidence that either of these documents was issued with the authority of Ramush Haradinaj or that they were ever brought to his attention.

124. No inference can be drawn from the evidence that Mr. Haradinaj was part of any JCE to commit crimes in Jabllanicë/Jablanica on account of his position in the KLA or how he was regarded by the Albanian population.

³⁴⁶ See paras 92-93.

³⁴⁷ P218 (Order of 5 July 1998).

³⁴⁸ P91 (Document signed by Nazmi Brahimaj).

Other organisational allegations relied on by the Prosecution

125. In its Pre-Trial Brief and the evidence relied on in the retrial the Prosecution has selected other materials about the KLA's organisational capacity to seek to argue that Mr. Haradinaj was part of a JCE to commit crimes in Jabllanicë/Jablanica. The Prosecution is "scraping the bottom of the barrel" with this evidence. It proves nothing of any value for the Prosecution's case.

Military police and regulations

126. The Prosecution alleged in its Pre-Trial Brief that Mr. Haradinaj issued MP Regulations on 21 June 1998 which included taking measures against perceived KLA opponents.³⁴⁹ The Prosecution has misrepresented the evidence of its own witnesses:

- (a) Rrustem Tetaj, who was present at the meeting on 21 June 1998, confirmed that a military police unit was not in fact formed at this point³⁵⁰.
- (b) There was further discussion of "work on the creation of the military police" recorded in the minutes of a meeting of the Operational Staff on 25 July 1998³⁵¹. The minutes record the steps taken towards the formation of this unit and the appointment of "Tigri" (Fadil Nimonaj) as its commander. It is noted that the FARK brigades (which had by then been established) "support the idea of military police"³⁵². It is thus clear that this unit was not formed any earlier than 25 July 1998. This was confirmed by Rrustem Tetaj³⁵³ and Shemsedin Çekaj³⁵⁴, both of whom attended this meeting.

³⁴⁹ Prosecution Pre-Trial Brief, para. 68.

³⁵⁰ P75 (R. Tetaj testimony), T.3740:3.

³⁵¹ P81 (25 July 1998 Minutes of Meeting).

³⁵² P81, p. 1(ET).

³⁵³ P75 (R. Tetaj testimony), T.3741.

³⁵⁴ P3 (S. Çekaj testimony), T.4457:11-4458.

- (c) There is no basis at all to conclude that individuals detained at Jabllanicë/Jablanica by individuals “in MP uniforms” bears any relation to these draft proposals.³⁵⁵
- (d) Another Prosecution witness, Pjetër Shala, testified that he joined a “so-called” police unit in Jabllanicë/Jablanica.³⁵⁶ He testified that his unit was autonomous and reported to the local staff in Jabllanice/Jablanica. He said that “nobody had ever undergone any military police training as such.”³⁵⁷ He said that both Hashim Thaçi and Lahi Brahimaj were involved in his appointment.³⁵⁸ He produced a set of temporary internal regulations for the military police signed by Nazmi Brahimaj, the commander of the local staff, and Gjela Hajda.³⁵⁹ This undated document states clearly that the military police “reports to the Commander of P.U. or to the commander of the Local Staff from where it receives the orders.”

Checkpoints and travel authorisations

127. The Prosecution alleged that Mr. Haradinaj targeted perceived opponents by requiring travel authorisations.³⁶⁰ There is no evidence that checkpoints or travel authorised were used as part of a policy to commit crimes in Jabllanicë/Jablanica or elsewhere. It is of course not unlawful for armed forces to set up checkpoints.
128. One of the sources cited by the Prosecution is Witness 17’s evidence that he was stopped by “Toger” in early July in Irzniq/Rznić and asked whether he had permission to be there.³⁶¹ He reacted by showing Toger a Kalashnikov and some hand grenades, saying that these weapons were all the permission he needed.³⁶²

³⁵⁵ Prosecution Pre-Trial Brief, para. 68.

³⁵⁶ P69 (P. Shala testimony), T.9956-9957.

³⁵⁷ P69 (P. Shala testimony), T.9956.

³⁵⁸ P69 (P. Shala testimony), T.9960-9961.

³⁵⁹ P69 (P. Shala testimony), T.9962-9963; P72.

³⁶⁰ Prosecution Pre-Trial Brief para. 67.

³⁶¹ Prosecution Pre-Trial Brief, para. 15.

³⁶² P344 (Witness 17, 92^{ter} statement). para. 40; P342 (Witness 17 testimony), T7572:22-7573: 20.

Witness 17 accepted in cross-examination that it was his own reaction that caused the incident.³⁶³ He said that he told Toger that he was a commander, that he had permission to move around the area, and that nobody could stop him.³⁶⁴ Some days later Witness 17 reported this incident to Ramush Haradinaj and demanded that Toger be dismissed or disciplined for it.³⁶⁵ According to Witness 17, Mr. Haradinaj responded by saying, “it wasn’t a good thing from your side to do, to show him your weapon”. Nonetheless, he agreed to speak to Toger about it.³⁶⁶

129. There is no basis for criticising Mr. Haradinaj’s response. Toger neither used nor threatened violence. It was Witness 17 who reacted in a confrontational manner by showing an automatic weapon in response to a request which he perceived to be a challenge to his authority. This evidence does not show that Mr. Haradinaj condoned the unlawful use of travel authorisations or violent behaviour to enforce them or target opponents, yet the Prosecution repeatedly cites this incident to claim that Mr. Haradinaj ignored complaints about Mr. Balaj’s behaviour.³⁶⁷ The incident, harmless as it was, had nothing to do with any of the alleged incidents at Jabllanicë/Jablanica.
130. As explained below, there is also no reliable evidence that village guards were given “blacklists”, let alone that Mr. Haradinaj had provided such lists or had any authority over such matters.³⁶⁸
131. Other documents referred to by the Prosecution do not show that authorisations to travel were used as part of an organised plan to target civilians in Jabllanicë/Jablanica or elsewhere.³⁶⁹

³⁶³ P342 (Witness 17 testimony), T.7573:3.

³⁶⁴ P342 (Witness 17 testimony), T.7572:14-7576:5.

³⁶⁵ P342 (Witness 17 testimony)T.7576:6-10

³⁶⁶ P342 (Witness 17 testimony), T.7576:8-10.

³⁶⁷ Prosecution Pre-Trial Brief, paras. 15 and 65.

³⁶⁸ Prosecution Pre-Trial Brief, para. 67. See paras. 177-178 below.

³⁶⁹ Prosecution Pre-Trial Brief, para. 67.

Mobilisation order

132. The Prosecution also relies on the order of 24 June 1998 to seek to prove that Mr. Haradinaj is responsible for crimes committed at Jabllanicë/Jablanica.³⁷⁰ But the Prosecution led no evidence about this order in the retrial. Seen in its proper context, the order of 24 June was part of a call to arms addressed to the general population, aimed at creating the impression of a functioning army. One of the Prosecution's witnesses, Witness 17, who issued similar mobilisation orders, stated that such orders were in reality designed to ensure that individuals responded to calls for mobilisation and that any threatening measures of arrest were empty threats which could not have been carried out.³⁷¹

Summary submissions

133. The Prosecution's contentions that Mr. Haradinaj exercised authority over Jabllanicë/Jablanica from 23 June 1998, and that he had done so prior to this date is not supported by the evidence. No inference can be drawn from the evidence about organisation and command within the KLA that there was any common criminal plan to detain and mistreat persons at Jabllanicë/Jablanica to which Mr. Haradinaj was a party.

³⁷⁰ Prosecution Pre-Trial Brief, para. 70.

³⁷¹ P342 (Witness 17 testimony), T.7680-7687.

C. The alleged “association” between the Accused

Defence submissions

134. The Prosecution alleges that the “close association” of the Accused is a basis upon which the Trial Chamber can conclude that they acted together as part of a common criminal enterprise to detain and mistreat persons at Jabllanicë/Jablanica.³⁷²
135. There is no evidence that supports such a contention. Merely because persons are related to one another or operate in the same organisation cannot be a basis to conclude that they acted together to commit crimes. The Prosecution has failed to prove that a common criminal plan and enterprise existed to which Mr. Haradinaj was a party.
136. In its Pre-Trial Brief the Prosecution relied heavily on Witness 80, Witness 81 and Shefqet Kabashi to assert that Mr. Haradinaj was present and participating with Mr. Brahimaj and Mr. Balaj in allegedly mistreating detainees.³⁷³ As shown above, their evidence in the retrial does not prove that Mr. Haradinaj was present with Mr. Brahimaj and Mr. Balaj when any alleged crimes were committed.³⁷⁴
137. As explained above, the evidence demonstrates that Gllogjan/Glodane and Jabllanicë/Jablanica were separate centres of KLA activity. They operated independently and it was not possible for one grouping to direct or control the activities of the other. The evidence is that in Jabllanicë/Jablanica there was no one higher than Lahi Brahimaj.

³⁷² Prosecution Pre-Trial Brief, para. 10.

³⁷³ Prosecution Pre-Trial Brief, paras. 64, 190-193, 199-123.

³⁷⁴ See paras 55-93.

138. There is no other evidence from which an inference can properly be drawn that Mr. Haradinaj was working closely with any persons as part of a joint enterprise to commit crimes at Jabllanicë/Jablanica or elsewhere.

Importation of weapons

139. The Prosecution alleges that Mr. Haradinaj and Mr. Brahimaj cooperated in procuring and distributing weapons.³⁷⁵ This is not an accurate representation of the evidence.
140. In its Pre-Trial Brief the Prosecution cites the testimony of Pjeter Shala³⁷⁶, but provides no specific reference to any part of his testimony. There is in fact no part of his testimony which shows that Mr. Haradinaj cooperated in an organised way with Mr. Brahimaj to procure weapons from Albania.
141. There is no evidence which shows that the importation and distribution of weapons was centrally organised and coordinated:
- (a) The evidence from many witnesses is that volunteers formed groups and independently travelled to Albania on behalf of their villages to obtain weapons to protect their villages from Serb attacks.³⁷⁷
 - (b) Skender Rexhahmetaj testified that their village took their own initiative to get weapons from Albania.³⁷⁸
 - (c) A handwritten letter from a “Gani” in Tropoja (Albania) to “Smalj” in Gllogjan/Glodane, dated 30 May 1998,³⁷⁹ asking that he should stop sending people to Albania, does not establish that Mr. Haradinaj was acting together

³⁷⁵ Prosecution Pre-Trial Brief, para. 12.

³⁷⁶ Prosecution Pre-Trial Brief, para. 12

³⁷⁷ For example, P40 (Ylber Haskaj *92ter* statement), para. 6. Also see P52 (Cufë Krasniqi testimony), T.5795.

³⁷⁸ T.1031:20-T.1033.

³⁷⁹ P127.

with Mr. Brahimaj in any way or that he was contributing to a JCE to commit crimes in Jabllanicë/Jablanica.

Military activities

142. The Prosecution alleges that the Glllogjan/Glođane and Jabllanicë/Jablanica headquarters cooperated during military actions.³⁸⁰ There is, however, no evidence which shows that military activities were co-ordinated in an organised way at any time during the Indictment period:

- (a) As noted above, there is no reference to Jabllanicë/Jablanica in any of the documents of the Regional Staff.³⁸¹
- (b) There is no reliable evidence that Mr. Haradinaj was present in Jabllanicë/Jablanica before the meeting there on 23 June to establish the Operative Staff, and he only ever visited Jabllanicë/Jablanica on three occasions thereafter.³⁸²
- (c) A letter dated 25 October 1998 sent by Mr. Haradinaj on behalf of the staff of the Dukagjini Plain thanking the village of Jabllanicë/Jablanica for their “constant readiness to help” the KLA does not establish that military operations were co-ordinated.³⁸³ As Bislim Zyrapi stated, it was a general letter of gratitude which applied to many villages, not only Jabllanicë/Jablanica, which had assisted the KLA with the provision of food and accommodation.³⁸⁴

³⁸⁰ Prosecution Pre-Trial Brief, para. 14.

³⁸¹ See para. 117.

³⁸² See paras. 92-93.

³⁸³ P171.

³⁸⁴ T.695:9

143. The Prosecution relies on a Serbian intelligence report from after the 24 March attack on the Haradinaj family compound.³⁸⁵ The report is un-sourced and of dubious provenance. It merely notes that “terrorist” groups in Jabllanicë/Jablanica and Glllogjan/Glođane are connected without explaining the nature of this alleged relationship.³⁸⁶ In the submission of the Haradinaj Defence no weight can be accorded such reports which are unsubstantiated and when the identity of the sources is not known.³⁸⁷

Formation of Operative Staff of the Dukagjini Plain

144. In its Pre-Trial Brief the Prosecution alleged that Mr. Haradinaj and Mr. Brahimaj nominated each other “to assume command over the Dukagjin zone”.³⁸⁸ Again, this allegation is wrong. Rustem Tetaj’s evidence is that he nominated Mr. Haradinaj as zone commander and that Mr. Selimi proposed that Mr. Brahimaj should be appointed as the commander.³⁸⁹ All those present then voted on the matter, electing Mr. Haradinaj as the commander and Lahi Brahimaj as Deputy Commander.

145. As shown above, up until this meeting the KLA in Jabllanicë/Jablanica operated autonomously and independently.³⁹⁰ Thereafter, the evidence does not demonstrate that Mr. Haradinaj controlled the day to day activities of the KLA in Jabllanicë/Jablanica. Indeed, he did not exercise effective command over the different areas that formed part of the Dukagjini Plain.³⁹¹ The organisation of the KLA remained de-centralised throughout the period of the Indictment. The operational realities on the ground do not support an inference of any close supervision by Mr. Haradinaj over activities in Jabllanicë/Jablanica.

³⁸⁵ P151.

³⁸⁶ P151.

³⁸⁷ See Decision on the Admission of Zoran Stijović’s 92^{ter} Statement and Annexes, 29 November 2007, para 11; See below paras. 101-102.

³⁸⁸ Prosecution Pre-Trial Brief, para. 17.

³⁸⁹ P75 (R. Tetaj testimony), T.3660; and P191 and P192

³⁹⁰ See paras. 100-118.

³⁹¹ See paras. 119-124.

Black Eagles

146. In its Pre-Trial Brief the Prosecution alleged that Mr. Haradinaj approved the creation of the Black Eagles, appointed Mr. Balaj as its commander, and used the Black Eagles to intimidate opponents.³⁹² The evidence simply does not support this allegation.
147. The evidence shows that the Black Eagles were established as a rapid reaction force which deployed in various locations including Irzniq/Rznić and Voksh/Vokša.³⁹³ There is no evidence about who created the Black Eagles or the appointment of any commander of the unit.
148. As to the command of the Black Eagles and Mr. Balaj:
- (a) Mr. Haskaj (who was a member of the unit) stated that he never saw Mr. Balaj receiving orders.³⁹⁴
 - (b) Witness 17's evidence is that Mr. Haradinaj did not appear to consult with Mr. Balaj on the occasions he saw them together.³⁹⁵
 - (c) Rrustem Tetaj stated that Mr. Balaj was never present in the meetings he had with Mr. Haradinaj.³⁹⁶
 - (d) Other witnesses were either uncertain as to who commanded and deployed the unit in reality, or had no knowledge.³⁹⁷

³⁹² Prosecution Pre-Trial Brief, para. 15.

³⁹³ See evidence of Ylber Haskaj who stated that the Black Eagles were established at a meeting in Irzniq/Rznić on 14 May 1998 (P40 [92^{ter} statement], paras 10-13 and P39, T.10334-10338).

³⁹⁴ P40 (Y. Haskaj 92^{ter} statement) para. 16.

³⁹⁵ P342 (Witness 17 testimony), T.7557.

³⁹⁶ P75 (R. Tetaj testimony), T.3669.

³⁹⁷ For example, P159 (B. Zyrapi testimony), T.3356-3358.

- (e) Witness 80 testified that he did not see Mr. Balaj with Mr. Haradinaj each time when he had seen Mr. Haradinaj in Jabllanicë/Jablanica.³⁹⁸ He said that when Mr. Haradinaj came to Jabllanicë/Jablanica he came separately from Mr. Balaj: “One came before, the other came after ... They didn’t come together by the same car”.³⁹⁹
- (f) Bislim Zyropi testified that the rapid reaction unit that he visited in Irzniq/Rznić reported to the zone commander, Mr. Haradinaj.⁴⁰⁰ However, he said that the fact that Mr. Haradinaj was the zone commander did not imply that he had effective operational control throughout the zone at that time (July 1998).⁴⁰¹ The KLA did not operate as a conventional command structure and titles did not reflect any conventional military authority.⁴⁰²
- (g) A handwritten report from “soldier Kajtaz Krasniqi” in Voksh/Vokša to Mr. Haradinaj, dated 3 July 1998, in which he notes that Voksh/Vokša is grateful to the KLA special unit led by Toger, ⁴⁰³ does not demonstrate day-to-day control by Mr. Haradinaj over the Black Eagles. It amounts to nothing more than a handwritten note from a soldier, which mentions that Toger had assisted in defending Voksh/Vokša, a village far to the west of the main road between Pejë/Peć and Gjakovë/Đakovića, from a Serbian attack.

149. In any event, the evidence does not support the allegation that the Black Eagles, as a unit, were engaged in any pattern of intimidation or crimes against civilians. The only allegations against the Black Eagles are based on unsourced rumours. Rrustem Tetaj’s evidence is that although there were rumours of the unit being involved in crimes, there was no information to substantiate them.⁴⁰⁴ Bislim

³⁹⁸ T.2421:20-2422:3.

³⁹⁹ T.2422:6-10.

⁴⁰⁰ T.650:5.

⁴⁰¹ T.737:10

⁴⁰² See paras. 120.

⁴⁰³ P162.

⁴⁰⁴ P75 (R. Tetaj testimony), T.3670, T.3677-3678, T.3859.

Zyrapi did not testify about any problems with this unit during his visit to western Kosova/Kosovo.

150. There is no evidence that Mr. Haradinaj was present with or acting with Mr. Balaj in any criminal conduct in relation to Jabllanicë/Jablanica or at all, or that Mr. Haradinaj condoned any such activity. As noted above, the example repeatedly referred to by the Prosecution of Mr. Balaj stopping Witness 17, was a harmless incident to which Mr. Haradinaj's response was proper and beyond criticism.⁴⁰⁵

Allegation of propensity to violence

151. The Prosecution alleges that Mr. Haradinaj and Mr. Balaj committed acts of violence together. The Prosecution refers to two incidents: (i) the mistreatment of four FARK soldiers on 4 July 1998 in Glllogjan/Glođane (relying on the evidence of Witness 29 and Witness 77) and (ii) ECMM monitors being taken to Glllogjan/Glođane on 11 August 1998 (relying on the evidence of Achilleas Pappas).⁴⁰⁶
152. The evidence of both of these incidents is irrelevant to the JCE as alleged. It has no probative value. There is also no evidence of any other incidents that could show "a propensity to violence" and certainly none which concern Jabllanicë/Jablanica.

⁴⁰⁵ See paras. 128-129.

⁴⁰⁶ Prosecution Pre-Trial Brief, para. 21.

FARK

153. Paragraph 28(c) of the operative Indictment contains allegations about FARK forces in the Dukagjin Operational Zone and Mr. Haradinaj's alleged exclusion of such forces from the Zone in order to allow his soldiers "the ability to dominate the area and to persecute civilians".

No possible relevance to Jabllanicë/Jablanica counts

154. These allegations concern events far beyond the Jabllanicë/Jablanica area. There is no evidence that FARK was ever in Jabllanicë/Jablanica. On the Prosecution's own case these allegations have no relevance whatsoever to the crimes charged in Jabllanicë/Jablanica.
155. A vast amount of evidence from the original trial about FARK has been admitted in the retrial, including evidence about its arrival as an independent armed force in western Kosova/Kosovo, its relationship to the KLA, various disputes and conflicts that occurred between the KLA and FARK, and the resolution of these conflicts.⁴⁰⁷ The evidence was wide-ranging and often inconsistent. The original Trial Chamber did not find it necessary to make any findings about this evidence as having any bearing on the charges.
156. The Haradinaj Defence submits that none of this evidence has the slightest bearing on a JCE to commit the crimes alleged in the six Jabllanicë/Jablanica counts. It has no probative value and no findings are required for the purposes of Mr. Haradinaj's alleged involvement in a JCE to commit crimes at Jabllanicë/Jablanica.

⁴⁰⁷ See Annex 1.

Integration of KLA and FARK

157. In any event, the Defence submits that the allegation that Mr. Haradinaj sought to exclude, marginalise, and subordinate the FARK for purposes connected to the alleged JCE is entirely without foundation. A proper examination of the evidence establishes that there was a period of two weeks following the unexpected entry of the FARK forces (in late June) during which there were legitimate differences of opinion on military strategy and deployment, and two incidents of direct confrontation. However, by 10 July 1998, these differences had been resolved and the two forces had amalgamated. Most of this evidence has been admitted in the retrial from the original trial. For completeness, and should there be any need to make any findings on this evidence, the Defence has included its submissions on this evidence from its Final Brief in the original trial in Annex 1 attached hereto.
158. In summary, the evidence does not support the Prosecution's allegation that Mr. Haradinaj sought to exclude FARK for purposes connected with the alleged JCE. Rather, it shows a process of negotiation and assimilation between two forces serving different political commands.

Witness 77

159. Witness 77 was called as a new witness by the Prosecution in the retrial to seek to show that the KLA and Mr. Haradinaj had sought to exclude FARK. He was shown in fact to be unaware of much of what had actually occurred during the integration of FARK and the KLA. [REDACTED].⁴⁰⁸
160. He tried in vain to discredit the KLA. His evidence was contradicted by the testimony of the FARK and KLA commanders who had participated in the negotiation and integration process. When he was confronted with this evidence, he was compelled to accept its truth and accuracy:

⁴⁰⁸ T.1226-1227.

- (a) Although he initially claimed that the KLA had sought to prevent FARK from entering into western Kosova/Kosovo and that the dispute was not about the distribution of FARK soldiers into the KLA units and villages⁴⁰⁹, once the testimony of those directly involved, including Witness 17 and Rrustem Tetaj, was put to him, he accepted that the essence of the dispute was about the distribution of FARK soldiers into the existing KLA units.⁴¹⁰
- (b) He claimed that he heard that Mr. Haradinaj had been obstructive in the negotiations, but he shifted his position when the evidence of a FARK commander who had participated in the meetings, Witness 17, was put to him. Witness 17 testified that Mr. Haradinaj had been very constructive and moderate.⁴¹¹ Witness 77 said that he had not been present in the meetings but agreed that the discussions were constructive and about how to move forward.⁴¹²
- (c) He claimed that he knew nothing about the formation of joint brigades⁴¹³, but accepted that at this time on 10 July, Mr. Haradinaj and Mr. Zemaj (FARK commander) were close.⁴¹⁴

Incident on 4 July

161. The particular FARK-related incident that the Prosecution has selected to rely on involves an attack on FARK members by KLA soldiers during the early period of conflict between the two forces on 4 July 1998 before they were integrated. This incident is not the subject of any charge in the retrial. The Prosecution's attempt to relate it to the issues in the retrial is contrived and lacks any proper foundation:

⁴⁰⁹ T.1219

⁴¹⁰ T.1236-1237.

⁴¹¹ T.1246-1247.

⁴¹² T.1247.

⁴¹³ T.1276.

⁴¹⁴ T.1281.

- (a) It is clear from the evidence that the FARK soldiers were combatants and not civilians.⁴¹⁵
- (b) Witness 77 agreed that at the time of this incident before any agreement had been reached between FARK and the KLA, there was a conflict between the two armed forces over deployment. He accepted that he was a combatant travelling into KLA territory on 4 July and that he could have been lawfully shot.⁴¹⁶
- (c) The FARK soldiers were not detained in Jabllanicë/Jablanica or elsewhere in KLA custody when the confrontation occurred.
- (d) This evidence concerns an alleged conflict between KLA soldiers and FARK soldiers on the opposite side of the Dukagjin Zone from Jabllanicë/Jablanica, FARK having had no involvement in the Jabllanicë/Jablanica area at all.

162. The evidence about this incident from Witness 29 (admitted from the original trial) and Witness 77 cannot safely be relied on to make any findings:

- (a) Witness 77 claimed in his testimony that he did not know that there would be any problem with passing through KLA checkpoints as a FARK soldier on their journey without proper authorisation.⁴¹⁷ In his statement he had said precisely the opposite. He stated that the leader of the group he was travelling with had gone to get a permission to travel from the KLA headquarters in Irzniq/Rznić because other villages would not accept their permission to travel from Mr. Zemaj.⁴¹⁸ He tried to wriggle out of this lie by claiming that it was after his companion had gone to the headquarters to collect a pass that he knew that there was a problem with travel. But this is not what he had told the

⁴¹⁵ See Witness 77, T.1217-1219.

⁴¹⁶ T.1289, T.1294, T.1298, and T.1217-1219.

⁴¹⁷ T.1291.

⁴¹⁸ T.1292

Trial Chamber in his testimony.⁴¹⁹ His evidence to the Trial Chamber was clearly that he did not know at any time, including when he testified before the Chamber, that there was any problem with travel.⁴²⁰

(b) To the extent that it is even necessary to consider making any findings about this incident, Witness 77's description of the event leaves room for doubt about the precise nature of Mr. Haradinaj's participation. He claimed that he was sure that it was Mr. Haradinaj who had hit him and that he could recognise his voice. Yet, Witness 77 was not even able to recall whether Mr. Haradinaj was wearing a uniform or civilian clothes at the time.⁴²¹ He had only seen him once before at a meeting on 26 June and had not heard him say anything until the incident on 4 July.⁴²² He said that there were possibly as many as 200-300 persons present.⁴²³ He accepted that the incident was a fast-moving, chaotic and confusing situation.⁴²⁴ He was being beaten from all sides by those around him.⁴²⁵ Furthermore, the fact that he had shown himself to be eager to blame Mr. Haradinaj for the conflict with FARK (contrary to all the evidence before the Trial Chamber), requires that his account be viewed with special caution.

(c) There were signs of unreliability in Witness 29's testimony that was admitted from the original trial. For completeness, and should there be any need to make any findings on this evidence, the Defence has included its submissions on the evidence of Witness 29 from its Final Brief in the original trial in Annex 2 attached hereto.

163. The evidence shows, at its highest, that a confrontation occurred in Glogjan/Glođane on 4 July 1998 when a group of FARK soldiers (including

⁴¹⁹ T.1292-T.1294

⁴²⁰ T.1293 (see comment of Presiding Judge).

⁴²¹ T.1303.

⁴²² T.1301, T1305-1306.

⁴²³ T.1299.

⁴²⁴ T.1301.

⁴²⁵ T.1304.

Witness 29 and Witness 77) were stopped and taken voluntarily to the KLA headquarters in Gllogjan/Glodane; a dispute arose because the FARK soldiers refused to take orders from the KLA; a fight broke out, shots were fired, Witness 29 received a gunshot injury to his upper arm, and Witness 77 was beaten.

164. The Defence's case is that Mr. Haradinaj arrived after the fight had begun. The Defence denies that he drew his weapon or shot Witness 29. Mr. Haradinaj apologised for the incident at a meeting held the following day.⁴²⁶ By 10 July the differences between the two forces had been resolved, and they had been integrated into a combined force.⁴²⁷
165. The Defence submits that this incident, regrettable though it was, does not establish or in any way support the existence of a criminal plan to mistreat civilians at Jabllanicë/Jablanica to which Mr. Haradinaj was a party. The specific nature of the incident, arising in a wholly unrelated context, and in an entirely different location, does not permit any conclusion to be drawn that Mr. Haradinaj must have ordered, committed, or condoned any of the acts of violence alleged in the six Jabllanicë/Jablanica counts.

Evidence of Achilles Pappas

166. Mr. Pappas testified at the original trial about being detained at the Gllogjan/Glodane headquarters with his ECMM team members during the Serb offensive in August. They were driving directly into the Serbian offensive which was closing in on Gllogjan/Glodane when they were stopped by armed men.⁴²⁸ They were taken to the KLA headquarters where Mr. Pappas' interpreter was struck by these men. The interpreter told Mr. Pappas that the men suspected that they were spying for the Serbs.⁴²⁹ After about 25 minutes, Mr. Haradinaj arrived

⁴²⁶ P215 (meeting on 5 July between Mr. Zemaj and Mr. Haradinaj).

⁴²⁷ P360 (Witness 29 testimony), T.3558-3565; and T.3572-3573, P342 (Witness 17 testimony), T.7626-7627.

⁴²⁸ P318 (A. Pappas testimony), T.4275:15-18, T.4083:14, T.4281:18.

⁴²⁹ P318 (A. Pappas testimony), T.4131:10.

and began to question them. Mr. Pappas emphasised, however, that “it was totally different, the way he was asking information or the way he was behaving.”⁴³⁰ Once Mr. Haradinaj arrived, everything was “quite civilised.”⁴³¹ When Mr. Pappas explained their mission, Mr. Haradinaj was “quite open” and understood.⁴³² He took them to their car, searched it for weapons, and then told them they were free to leave.⁴³³ He arranged for them to be escorted safely out of the area.⁴³⁴ Mr. Pappas confirmed that throughout this encounter Mr. Haradinaj was “absolutely calm and controlled” and that his manner was both “gentle” and “polite.”⁴³⁵

167. It is obvious from the description of this particular incident that it is entirely irrelevant to the incidents alleged in Jabllanicë/Jablanica. It concerned international observers being stopped and questioned in the middle of a major Serbian offensive when many Albanian villages were in flames. The incident bears no similarity to any of the allegations about civilians being mistreated in Jabllanicë/Jablanica. There is also no reliable evidence that Mr. Balaj was present.⁴³⁶
168. The evidence shows that Mr. Haradinaj acted entirely appropriately. His handling of the incident was exemplary. The ECMM monitors were questioned politely, in a language they understood, permitted to leave the area, and given an escort to ensure their safety. There is no suggestion that Mr. Haradinaj was present during the alleged assault on the interpreter, or that he authorised it, condoned it, or even knew about it. His own conduct towards the ECMM team suggests the opposite. Mr. Pappas confirmed that, despite the fact that Glllogjan/Glodane was under fire and Serb ground troops were “very close”, Mr. Haradinaj behaved calmly and

⁴³⁰ P318 (A. Pappas testimony), T.4132.

⁴³¹ P318 (A. Pappas testimony), T.4132.

⁴³² P318 (A. Pappas testimony), T.4133.

⁴³³ P318 (A. Pappas testimony), T.4133.

⁴³⁴ P318 (A. Pappas testimony), T.4134.

⁴³⁵ P318 (A. Pappas testimony), T.4303-4304.

⁴³⁶ Prosecution Pre-Trial Brief, para. 45. See P318 (A. Pappas testimony), T.4136-4150.

reasonably throughout.⁴³⁷ No inference can be drawn that Mr. Haradinaj's conduct demonstrates a propensity for violence.

Summary submission

169. None of the evidence about an alleged "close association" establishes that Mr. Haradinaj acted jointly with others as part of a common criminal enterprise to commit crimes in Jabllanicë/Jablanica as charged.

D. The alleged "context of violence"

Defence submissions

170. The Prosecution asserts that the alleged crimes at Jabllanicë/Jablanica occurred within a context of KLA violence, and that evidence of violent conduct in locations other than Jabllanicë/Jablanica during the period of the Indictment is thus relevant to the counts as charged.
171. The Haradinaj Defence submits that the evidence about alleged incidents of violence in locations outside of Jabllanicë/Jablanica has no bearing whatsoever on the crimes that are the subject of the retrial. The Prosecution has not proven that any of these incidents occurred, let alone that they have any connection with the crimes charged in Jabllanicë/Jablanica. It is a futile and misguided attempt to establish its case by cobbling together a random selection of allegations of violence throughout the whole Dukagjin area (and even beyond it).
172. In any event, there is no evidence of any KLA campaign of violence against the civilian population. The Prosecution has not proved that alleged incidents that took place at different times over an approximately six month period in different villages located in different parts of the Dukagjin area occurred as a result of a

⁴³⁷ P318 (A. Pappas testimony), T.4305:1-10.

common criminal purpose, still less a common criminal purpose to which Mr. Haradinaj was a party:

- (a) The Prosecution makes the general assertion that various groupings were victimised by the KLA as part of a policy to target civilians. There is no concrete evidence to support this sweeping claim, still less that Mr. Haradinaj participated in furthering any such policy and objective.
- (b) [REDACTED].⁴³⁸ However, when he was questioned about this report by the Prosecution during the *Limaj* trial, Colonel Crosland testified that although collaboration was a plausible explanation, “there was no conclusive evidence as to how they came there and who had shot them”⁴³⁹. Furthermore, these bodies were found in a forest in Rahovec/Orahovac⁴⁴⁰ well outside the Indictment area.
- (c) The Prosecution cites to [REDACTED] as evidence of the KLA’s use of violence against perceived opposition.⁴⁴¹ The report actually deals with ongoing Serbian police activity in Prekaz in the aftermath of the Serbian assault on the area. It clearly does not support the Prosecution’s contention that the KLA was using unlawful violence against perceived opponents and civilians.
- (d) The Prosecution relies on other sources, none of which support the Prosecution’s contention that the KLA had a policy to target civilians who were opposed to the KLA.⁴⁴²

173. The Prosecution claims that the atmosphere of fear and intimidation is reflected in (i) KLA communiqués, (ii) “blacklists” of suspected persons, (iii) the use of the

⁴³⁸ Prosecution Pre-Trial Brief, para. 25.

⁴³⁹ P9 (J. Crosland testimony *Limaj* trial), T.1882.

⁴⁴⁰ [REDACTED]

⁴⁴¹ [REDACTED]

⁴⁴² Prosecution Pre-Trial Brief, para. 26.

Military Police, (iv) contemporaneous Serb police and intelligence reports, and (iv) alleged incidents of violence.⁴⁴³ Each of these allegations is addressed below. Much of this evidence is entirely irrelevant to the alleged crimes at Jabllanicë/Jablanica and the JCE as charged. None of the evidence referred to by the Prosecution shows that there was a coordinated and common plan by the KLA to mistreat civilians to which Mr. Haradinaj was a party.

KLA communiqués

174. The Prosecution refers to various KLA public statements and communiqués. None of these documents were authored by Mr. Haradinaj or issued on his authority. They do not reflect the policy of Mr. Haradinaj or the KLA in the Dukagjin area. None of the communiqués relate to any incident alleged on the Indictment in relation to Jabllanicë/Jablanica.
175. Evidence about the communiqués was given which raises serious questions over their reliability and the accuracy of their contents.⁴⁴⁴ They were unreliable propaganda tools which often exaggerated successes whereas setbacks and failures were minimised.⁴⁴⁵ No policy of killing, kidnapping or mistreatment can be inferred from this evidence.⁴⁴⁶
176. The new communiqués that were admitted in the retrial all concern alleged incidents completely outside of Indictment area and the time period of the Indictment.⁴⁴⁷ None of them mention Mr. Haradinaj or concern the crimes

⁴⁴³ Prosecution Pre-Trial Brief, para. 27.

⁴⁴⁴ Jakup Krasniqi, who was the KLA spokesman of the General Staff from 11 June 1998, gave evidence and his testimony has been admitted by agreement in the retrial. There is no basis for imputing Mr. Krasniqi's opinions to Mr. Haradinaj, and he cannot be regarded as having spoken on behalf of Mr. Haradinaj. Mr. Krasniqi met Mr. Haradinaj only once during the Indictment period and there is no evidence that the communiqués were ever discussed between them (P63, J. Krasniqi testimony, T.5043 and T.5051).

⁴⁴⁵ P63 (J. Krasniqi testimony), T.5011-5012, T.5035-5040; Judgment from original trial, para. 472.

⁴⁴⁶ Judgment from original trial, paras. 472 and 478.

⁴⁴⁷ P126.

charged whatsoever. It is hard to see for what purpose the Prosecution has introduced these new documents.

“Blacklists”

177. The Prosecution claims that the KLA “blacklisted” those suspected of being disloyal.⁴⁴⁸ The allegation is that it was a policy, which Mr. Haradinaj authorised and implemented, to place the names of collaborators and opponents on lists so that they could be detained and executed. The evidence simply does not allow for such a conclusion to be drawn:

- (a) Witness 17 clearly stated that he was not aware of the purpose of a list of persons (that included the name of Skender Kuqi) which had been given to him. He did not even know who had provided it to him.⁴⁴⁹
- (b) Witness 17’s evidence is that he did not consider the list to be evidence of any improper or criminal intentions⁴⁵⁰, and he confirmed that he did not inform Ramush Haradinaj that he had been given this list.⁴⁵¹
- (c) No conclusions can be drawn 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 and Mr. Haradinaj.

178. The Prosecution also alleges that Rrustem Tetaj “knew of many people who had been blacklisted.”⁴⁵² This certainly does not accurately reflect Mr. Tetaj’s testimony. Rrustem Tetaj described lists that were drawn up in villages for

⁴⁴⁸ Prosecution Pre-Trial Brief, para. 31.

⁴⁴⁹ P342 (Witness 17 testimony), T.7584:10 and T.7694:11.

⁴⁵⁰ P342 (Witness 17 testimony), T.7700:11-14.

⁴⁵¹ P342 (Witness 17 testimony), T.7700:15-18.

⁴⁵² Prosecution Pre-Trial Brief, para.31.

personal reasons and used to discredit individuals for political reasons.⁴⁵³ He stated that Mr. Haradinaj was not involved in creating these lists.⁴⁵⁴ Mr. Tetaj's evidence is that his interactions with Mr. Haradinaj were constructive and encouraging.⁴⁵⁵

Military Police

179. The Prosecution makes the general and unsubstantiated allegation that the "KLA MP pursued and located those opposed to the KLA."⁴⁵⁶ The Defence repeats its submissions on the lack of any organised MP formation within the KLA as set out above⁴⁵⁷. There is no evidence at all that suggests that Mr. Haradinaj was authorising any MP formation to identify and locate opponents of the KLA.
180. In addition, the Prosecution has misrepresented the evidence about Rrustem Tetaj being questioned.⁴⁵⁸ Mr. Tetaj said that he was not mistreated in any way during his questioning.⁴⁵⁹ Mr. Tetaj did not testify that Faton Mehmetaj was a commander of the military police. He said that he did not know what position Mr. Mehmetaj held until 23 June and that subsequently Mr. Mehmetaj was in charge of contacts and information with the media.⁴⁶⁰ Further, there is no evidence that Mr. Mehmetaj ever acted on any orders from Mr. Haradinaj. Mr. Tetaj was appointed as a sub-zone commander in the Regional Staff shortly after he was questioned and said that he worked closely and constructively with Mr. Haradinaj.⁴⁶¹

⁴⁵³ P75 (R. Tetaj testimony), T.3671:15.

⁴⁵⁴ P75 (R. Tetaj testimony), T.3671:19.

⁴⁵⁵ P76 (R. Tetaj testimony), T.3621, T.3635-3636, T.3775-3778.

⁴⁵⁶ Prosecution Pre-Trial Brief, para. 34.

⁴⁵⁷ See para. 126.

⁴⁵⁸ Prosecution Pre-Trial Brief, para. 34.

⁴⁵⁹ P77 (R. Tetaj *92ter* statement), para. 30.

⁴⁶⁰ P75 (R. Tetaj testimony), T.3630:7-15.

⁴⁶¹ See para. 111.

181. As to the allegation that Mr. Mehmetaj ordered Zenun Gashi to be brought to Glllogjan/Glođane⁴⁶², there is no evidence to support this assertion. The Prosecution has ignored the evidence from the original trial that is admitted in the retrial. There was no reliable evidence presented that Zenun Gashi was ever taken to Glllogjan/Glođane. Witness 17 only heard that a man he referred to as “Zenun LNU” had been arrested on the orders of Faton Mehmetaj. He provided no source for this information and was not able to verify it.⁴⁶³ This “Zenun” was from a different village, according to Witness 17’s evidence, to the village of Zenun Gashi.⁴⁶⁴
182. This is a prime example of the selective and piecemeal approach of the Prosecution to the evidence it cites in support of its case for the retrial. Moreover, the allegations in respect of Zenun Gashi (which formed the basis of Count 20 of the original Indictment) concern events in another part of the Dukagjin area, Baran/Barane, that are not the subject of the retrial. Mr. Gashi’s disappearance was associated with the FARK barracks at Baran/Barane, which were under the command of Witness 17, and not Mr. Haradinaj. This incident is irrelevant to the retrial. It does not show that Mr. Haradinaj participated in any way in the six Jabllanicë/Jablanica counts.

VJ and Serb police and intelligence reports

183. The Prosecution relies on a collection of Serb military, police and intelligence reports. The Defence submits that none of these documents can be given any weight:

⁴⁶² Prosecution Pre-Trial Brief, para. 34.

⁴⁶³ P342 (Witness 17 testimony): T.7604, T.7705, and T.7707.

⁴⁶⁴ P344 (Witness 17 92^{ter} statement), para. 71.

- (a) They include vague and un-sourced allegations which do not provide any evidence in support of the generalised claims (such as “terrorist ... are ... increasing their activities aimed at frightening the Serb population”⁴⁶⁵).
- (b) The documents constitute anonymous hearsay and the reliability of the source cannot be tested or verified. They provide no information about who it is alleged may be involved in the unlawful activities other than blaming “Šiptar [a derogatory name for Albanians] terrorists” in general.
- (c) Moreover, the MUP and intelligence reports relied on must be viewed with great caution. Zoran Stijović testified that information was obtained for such reports from associates through methods which included the payment of money according to the “value” of the information provided, and by the use of bribery.⁴⁶⁶ He testified in the retrial about blackmail as a method for gathering information in the following terms: “I call it choice. Either you’ll work for us or we will disclose all this – all these immoral things to your friend”.⁴⁶⁷ There is also evidence of the systematic use of torture on suspected members of the KLA detained in Serb police custody.⁴⁶⁸
- (d) According to Branko Gajić the VJ gathered evidence in the same way as the Serbian intelligence services (DB). He said that their sources were the same as were the methodologies they employed.⁴⁶⁹
- (e) Mr. Stijović accepted that he could not confirm the reliability of DB reports as he was not able to verify how the information was obtained and how those providing information had been treated.⁴⁷⁰

⁴⁶⁵ P35 (VJ order of 13 May 1998), p. 2.

⁴⁶⁶ P123 (Z. Stijović testimony), T.8874-8881 and T8899-8913; and, T.585:4-594:18; T.595:21-598:2; T.607:20-611:12.

⁴⁶⁷ T.611:1

⁴⁶⁸ D143 (Humanitarian Law Centre Report) discussed at P356 (Witness 28 testimony), T.10210-10212; P450 (N. Avramovic testimony), T.6626:8-22; and, Z. Stijović, T.586 and T.591.

⁴⁶⁹ P26 (B. Gajic testimony), T.9670:19.

⁴⁷⁰ T.594.

184. A report about the attack on Gllogjan/Glodane on 24 March was admitted through Mr. Stijović which claimed that the “terrorist” group in Gllogjan/Glodane was connected with the terrorist group in Jabllanicë/Jablanica.⁴⁷¹ The source of this allegation is not named, no explanation is provided for this assertion and no evidence is supplied about the nature of the alleged “connection”. This is illustrative of the type of unsubstantiated Serbian intelligence reports relied on by the Prosecution which have no evidentiary value.
185. Mr. Stijović also gave evidence about lists of Albanians who were suspected of cooperating with the Serbian security forces he claimed were found in the Haradinaj family compound.⁴⁷² This testimony was based on an allegation in his Rule 92*ter* statement that after the 24 March attack the MUP found a list of individuals targeted for assassination as Serb spies at the compound.⁴⁷³ However, the report cited by Mr. Stijović in his statement offered no support for this allegation. It in fact stated that the MUP did not know whether these were lists of KLA members or targets.⁴⁷⁴ This report was not admitted in the original trial and the Prosecution has not sought its admission in the retrial. The allegation is thus completely unsubstantiated and without any supporting evidence; it has no probative value.

Alleged incidents of violence outside of Jabllanicë/Jablanica

186. The Prosecution relies on evidence of alleged incidents that was led during the original trial which have nothing at all to do with the six Jabllanicë/Jablanica counts. None of this evidence shows that Mr. Haradinaj participated in a JCE to commit crimes at Jabllanicë/Jablanica.

⁴⁷¹ P151.

⁴⁷² T.570:13

⁴⁷³ P121, para. 42.

⁴⁷⁴ 65*ter* 977 (not admitted into evidence).

Stojanovićs

187. The Prosecution refers to the statements and testimony of members of the Stojanović family that concern their mistreatment on 18 April 1998 in Gllogjan/Glođane (charged in the original trial as Counts 3 and 4 of the Indictment). This evidence is plainly irrelevant and has no probative value because:

- (a) The alleged incident occurred on a date before a state of armed conflict existed (as agreed by the parties as being from 22 April 1998) and thus was not subject to International Humanitarian Law.
- (b) The evidence relevant to Counts 3 and 4 of the original Indictment (and the considerable body of background evidence relating to the attack on 24 March 1998) has nothing whatever to do with the alleged mistreatment of civilians in Jabllanicë/Jablanica.
- (c) The allegations are completely unrelated to the alleged JCE to commit crimes at Jabllanicë/Jablanica. The alleged attack on the Stojanović family was *sui generis*. It was common knowledge that their house had been used by Serb forces (in effect, as a military facility) from which to attack the Haradinaj family compound, during the assault on the village of Gllogjan/Glođane on 24 March 1998.
- (d) The beatings of the Stojanovićs on 18 April were an act of opportunistic retaliation for the involvement of the Stojanović family in the Serb assault on 24 March 1998, which had resulted in the deaths of a number of young Kosovar Albanians, and the destruction of a great deal of property in the village.⁴⁷⁵ The incident was not alleged to have been pre-planned, and it was not part of a general attack on the Serb civilian population in that area.

⁴⁷⁵ See Annex 3.

(e) There is no reliable evidence that Mr. Haradinaj was present at, or party to, the conduct alleged. It cannot be concluded on the basis of the identification evidence that Mr. Haradinaj was personally involved in any way. Nor is there any evidence that Mr. Haradinaj ordered or was otherwise in command of the events which occurred. The original Trial Chamber found on the same evidence that the Prosecution had not proved that Mr. Haradinaj was involved in this incident in any way. Should it be necessary for the retrial Trial Chamber to make any findings about this incident, the Defence has included its full submissions on the identification evidence from the original trial in Annex 3 hereto. As no additional evidence on this incident has been led at the retrial, the Defence rests again on these submissions.

Incident on 22 April 1998

188. The Prosecution also relies on the mistreatment of Novak Stijović and Staniša Radošević in Gllogjan/Glođane on 22 April 1998 (charged as Counts 5 and 6 at the original trial).
189. As with the incident above, this evidence is completely unrelated to the counts in the retrial and should be accorded no weight. The Haradinaj Defence submits that the Trial Chamber need make no findings in respect of this evidence for the purposes of determining whether the charges in the retrial are proven.
190. The evidence shows that the assaults were acts of disorganised, ill-disciplined and unauthorised mistreatment carried out by unidentified men under no clear command.⁴⁷⁶ There is no evidence that Mr. Haradinaj was present, involved in any way, or authorised any of these acts. No evidence supports a finding that these acts were committed pursuant to a common criminal plan or policy involving Mr. Haradinaj. There is no evidence that the mistreatment formed part of any

⁴⁷⁶ P492 (N. Stijović testimony), T. 7172-7173 and T.7187-7188.

general or authorised policy to attack Serb civilians.⁴⁷⁷ The original Trial Chamber found that the Prosecution had not proved that Mr. Haradinaj was involved in any of these incidents. Should it be necessary for the retrial Trial Chamber to make any findings on this evidence, the Defence has included its submissions from the original trial as Annex 4 hereto. Given that no further evidence has been led at the retrial in respect of these allegations, the Haradinaj Defence relies on the same submissions as in the original trial.

ECMM

191. As to the allegation that ECMM monitors were mistreated in Glllogjan/Glođane on 11 August 1998 the Defence repeats in its submissions above at paragraphs 166-168. The evidence is that Mr. Haradinaj treated them very politely and ensured that they were able safely to leave the area that was under a heavy attack from Serbian forces. The Prosecution's reference to Mr. Balaj being present is also not supported by reliable evidence.⁴⁷⁸

Baballoq/Babaloć

192. The Prosecution has alleged that, "KLA forces mounted attacks on Serbian Police targets in the Dukagjin region and also on a neighbouring camp of Serbian/Montenegrin refugees located in the village of Babaloć/Baballoq, and, as a consequence, on 24 March 1998, Serbian Police forces surrounded the compound of the family of Ramush Haradinaj in Glođane/Glllogjan"⁴⁷⁹ These unsubstantiated allegations have nothing to do with the alleged crimes in Jabllanicë/Jablanica, and do not support the charge that Mr Haradinaj participated in crimes in

⁴⁷⁷ Staniša Radošević testified that he had in fact not left the area out of fear for the KLA (P307, T.1025 and T.1028). The original Trial Chamber found that it could not conclude that there was any attack against the civilian population as civilians had fled "out of fear, grounded or not" of being attacked by the KLA but also because of a general fear of being caught up in a conflict between Serbian forces and the KLA (Trial Judgment, para. 477).

⁴⁷⁸ Prosecution Pre-Trial Brief, para. 45. See P318 (A. Pappas testimony), T.4136-4150.

⁴⁷⁹ Operative Indictment, para. 34.

Jabllanicë/Jablanica as a result of any JCE. There is in any event no reliable evidence that Serb civilians at the Baballoq/Babaloć refugee settlement were ever targeted by the KLA during the Indictment period:

- (a) The Rule 92*ter* statement of Witness 28 records an interview with two refugees from the settlement, who told her that the house of Žarko Zlaticanina was attacked on 18th April.⁴⁸⁰ There is no direct testimony concerning this incident and no means of verifying the accuracy of what Witness 28 was told. Indeed, she said she had “mistrusts [sic] towards them, because they insisted there was no police force there” at the time.⁴⁸¹
- (b) At the same time, Albanian civilians in nearby villages were reporting that they had come under attack from Serb forces stationed inside the refugee camp, at the nearby Agro-Combinat and on Suka Baballoq/Babaloć.⁴⁸² Witness 28 confirmed that Albanian witnesses said that Serbian PJP forces were “occupying the physical accommodation in the refugee camp closest to the road”⁴⁸³, and that they had reported military planes flying over the area.⁴⁸⁴
- (c) There is no other evidence of any attacks against civilians in this camp. (There was evidence admitted in the original trial from Rade Repić, a PJP company commander, that he deployed approximately 100 men inside the Baballoq/Babaloć refugee camp itself.⁴⁸⁵ Mr. Repić did not recall any attacks directed at civilians in Baballoq/Babaloć during his tour of duty.⁴⁸⁶ The Prosecution has not sought to admit this evidence in the retrial.)

⁴⁸⁰ P358 (Witness 28, 92*ter* statement), para. 40.

⁴⁸¹ P356 (Witness 28 testimony), T.10181:5-8

⁴⁸² P358 (Witness 28, 92*ter* statement), para. 42; P356 (Witness 28 testimony), T.10239-10240.

⁴⁸³ P356 (Witness 28 testimony), T.10240:24-10241:3.

⁴⁸⁴ P356 (Witness 28 testimony), T.10244:1-4.

⁴⁸⁵ Transcript from original trial: T.8494:12-19, 8578:20-8579.

⁴⁸⁶ Transcript from original trial: T.8498:11-13.

Summary submissions

193. The so-called “contextual” evidence relied on by the Prosecution is entirely unconnected to the crimes as charged in Jabllanicë/Jablanica. None of the evidence presented by the Prosecution proves that Mr. Haradinaj was acting in concert with others with the common objective of mistreating persons in Jabllanicë/Jablanica, or anywhere else.
194. The evidence taken as a whole does not support the Prosecution’s central allegation that Mr. Haradinaj “significantly contributed” to a JCE to mistreat perceived collaborators and opponents of the KLA in Jabllanicë/Jablanica in order to consolidate KLA control over the Dukagjin area.

**PART 3: ALLEGATIONS IN EACH OF
THE SIX JABLLANICË/JABLANICA COUNTS**

COUNT 1: Ivan Zarić, Agron Berisha and Burim Bejta

195. Mr. Haradinaj is charged with the cruel treatment, torture, and killing of Ivan Zarić, Agron Berisha and Burim Bejta by virtue of acts or omissions committed as part of the JCE as alleged, or in the alternative by committing or aiding and abetting such acts.⁴⁸⁷
196. The Prosecution has stated that it will no longer rely on the evidence of Witness 81 which concerns Count 1. His evidence lacks any credibility and cannot be a basis for any findings in respect of this count.
197. As set out above, the evidence of Witness 80 does not prove that Mr. Haradinaj personally committed or aided and abetted any of the crimes charged in this count.⁴⁸⁸ There is also no evidence that he participated in any joint criminal enterprise to mistreat these persons.
198. The Defence's additional submission is that the Prosecution has not proved on the evidence that Ivan Zarić, Agron Berisha and Burim Bejta as charged in this count were themselves mistreated and killed in KLA custody in Jabllanicë/Jablanica or elsewhere:
- (a) There is evidence about these three particular persons last being seen leaving their village to go to Grabanice on a horse-drawn cart on 19 May⁴⁸⁹, but there is no conclusive evidence that they were taken to Jabllanicë/Jablanica and mistreated and then killed.

⁴⁸⁷ Operative Indictment, para. 49.

⁴⁸⁸ See paras 83-91.

⁴⁸⁹ P106 (Witness 66 testimony), T.8422-8431 and P101 (Witness 31 testimony), T.9515-9521.

- (b) Witness 80 did not name and identify the boys he saw being taken to Jabllanicë/Jablanica as Ivan Zarić, Agron Berisha and Burim Bejta, and there is no other evidence which allows such a finding to be made beyond reasonable doubt. Witness 80's evidence is that "three young men" arrived in Grabanicë/Grabanica on a horse and cart and that they were taken from the mill to Jabllanicë/Jablanica by KLA soldiers, Metë Morina and Hazir Morina⁴⁹⁰, who were collaborators with the Serbs.⁴⁹¹ Witness 80 did not know the names of the three boys he alleges were taken to Jabllanicë/Jablanica, and he had never spoken to them.⁴⁹² He could not identify their ethnicities. He said that they spoke Albanian.⁴⁹³ He was not asked to describe their appearances or shown any photographs of them in his testimony.
- (c) [REDACTED] was only asked about the ages of the three individuals he had stopped around 17 or 18 May [REDACTED]. He said that the "two children" were about 10-12 years old and the other person was about 30 years old⁴⁹⁴, "one of them being of Serbian ethnicity".⁴⁹⁵ They had come on a horse-cart⁴⁹⁶ and they said they were going to the mill.⁴⁹⁷ He did not see them leave the village again, [REDACTED].⁴⁹⁸
- (d) The remains of Ivan Zarić, Agron Berisha and Burim Bejta have never been found.
- (e) There was ongoing military activity in the area during the time period when Ivan Zarić, Agron Berisha, and Burim Bejta disappeared. There is evidence of a Serbian attack on Dolac/Dollc in the evening of 12 May 1998 and that

⁴⁹⁰ T.2393:19-2395:1-13.

⁴⁹¹ T.2394:24-25.

⁴⁹² T.2394:1-2.

⁴⁹³ T.2394:5-8.

⁴⁹⁴ [REDACTED].

⁴⁹⁵ [REDACTED].

⁴⁹⁶ [REDACTED].

⁴⁹⁷ [REDACTED].

⁴⁹⁸ [REDACTED].

Serbian forces began to shell Grabanicë/Grabanica on 19 May 1998 and eventually entered the village on 21 May 1998.⁴⁹⁹ In view of the intense combat activities in the area and the lack of bodily remains of Ivan Zarić, Agron Berisha and Burim Bejta, and thus a cause of death, it is possible that either these young men were caught up in combat activities, or that other forces or persons, unaffiliated with the KLA, were responsible for their disappearance.

199. Whatever the position, there is no evidence that Mr. Haradinaj was involved directly or in any other way in the commission of the crimes charged in Count 1.

COUNT 2: Ukë Rexhepaj and Nesret Alijaj

200. Mr. Haradinaj is charged with the cruel treatment and murder of Ukë Rexhepaj and Nesret Alijaj, pursuant to the JCE as alleged.
201. There is no evidence that the crimes alleged in this count were committed pursuant to a JCE to which Mr. Haradinaj was a party.
202. There is in any event no reliable evidence that Ukë Rexhepaj and Nesret Alijaj were killed in KLA custody in Jabllanicë/Jablanica or elsewhere. Witness 54's testimony in the original trial, which has been admitted in the retrial, is that on 20 May 1998 the two men were detained and abducted by unidentified armed men in uniform who spoke to them in Albanian. The abduction occurred at an unspecified location somewhere between Krapanic and Dollovë/Dolovo. Witness 78 and Witness 79's evidence was added in the retrial. However, neither of them are aware of what happened to the two men and they cannot say whether the KLA abducted them or not. They both state that on the day Ukë Rexhepaj went missing

⁴⁹⁹ D58 (VJ Order of 13 May 1998); P114 (VJ Order of 20 May 1998); Witness 3, T.1509:8-12, T.1514:25, T.1615:12.

he had gone with Nesret Alijaj to the post office in Klina and collected about 200 German Marks that Witness 78 had sent to him.

203. The remains of Ukë Rexhepaj and Nesret Alijaj have not been found.

Witness 54

204. [REDACTED].⁵⁰⁰ He testified that [REDACTED] two men stopped them on a dirt road.⁵⁰¹ [REDACTED] this incident took place on 20 May 1998.⁵⁰² [REDACTED].⁵⁰³[REDACTED]⁵⁰⁴ and they were travelling in the direction of the village of [REDACTED] in order to tend to the family's livestock.⁵⁰⁵
205. The men were wearing "something like military but camouflage military, dark green"⁵⁰⁶. They were carrying light machine guns⁵⁰⁷. The men said that, if Nesret Alija and Ukë Rexhepaj went any further, they would shoot them⁵⁰⁸. The men spoke Albanian⁵⁰⁹. They searched Nesret Alija and Ukë Rexhepaj and then put them in a car⁵¹⁰. Their hands were tied and they were blindfolded⁵¹¹. The men said they would bring them back.⁵¹²
206. One of the men called or waved to a man called Ismet to come and collect Witness 54.⁵¹³ Witness 54 did not know Ismet from before⁵¹⁴ and did not see him again after this one occasion.⁵¹⁵

⁵⁰⁰ P105 (Witness 54 testimony), T.8271:16.

⁵⁰¹ P105 (Witness 54 testimony), T.8275.

⁵⁰² P105 (Witness 54 testimony), T.8277.

⁵⁰³ P105 (Witness 54 testimony), T.8274.

⁵⁰⁴ P105 (Witness 54 testimony), T.8278:11.

⁵⁰⁵ P105 (Witness 54 testimony), T.8275:13.

⁵⁰⁶ P105 (Witness 54 testimony), T.8276:5.

⁵⁰⁷ P105 (Witness 54 testimony), T.8276:10.

⁵⁰⁸ P105 (Witness 54 testimony), T.8275:16.

⁵⁰⁹ P105 (Witness 54 testimony), T.8276:13.

⁵¹⁰ P105 (Witness 54 testimony), T.8275.

⁵¹¹ P105 (Witness 54 testimony), T.8276:23.

⁵¹² P105 (Witness 54 testimony), T.8276:20.

⁵¹³ P105 (Witness 54 testimony), T.8275:19, T8277:23.

⁵¹⁴ P105 (Witness 54 testimony), T.8278:2.

⁵¹⁵ P105 (Witness 54 testimony), T.8281:19.

207. Ismet took him to a house where there were animals. The journey took about five minutes on foot.⁵¹⁶ [REDACTED].⁵¹⁷

Witness 78

208. [REDACTED]. He was not present when [REDACTED] was taken away. He stated that [REDACTED] told him that according to [REDACTED] and Nesret Alija were stopped somewhere on the road between Grabanica and Dollovë/Dolovo by two Albanian speaking men who were armed and dressed in military camouflage uniforms.⁵¹⁸

209. Witness 78 stated that he does not know if they were kidnapped by KLA. He does not know why they were taken away.⁵¹⁹

210. Witness 78 said that on the day they went missing he had sent about 200 German Marks to [REDACTED], who had collected it at the post office in Klina. According to [REDACTED] had most of this money on him when he was kidnapped.⁵²⁰

211. Witness 78 does not know what happened to [REDACTED]. [REDACTED] told him that a Serbian [REDACTED] from Dollovë/Dolovo, Živan Garić, told her that he had seen his father in Gllogjan/Glođane (probably referring to the Gllogjan/Glođane near [REDACTED] Dollovë/Dolovo). He gave no further details other than that he had allegedly seen him while observing Gllogjan/Glođane through binoculars. [REDACTED].

⁵¹⁶ P105 (Witness 54 testimony), T.8275:20.

⁵¹⁷ P105 (Witness 54 testimony), T.8275:20, T.8280-8281.

⁵¹⁸ P286 (Witness 78 statement) para. 11.

⁵¹⁹ P286 (Witness 78 statement), paras. 14-15.

⁵²⁰ P286 (Witness 78 statement), para. 18.

Witness 79

212. [REDACTED]. She lived in [REDACTED]. She said that on 20 May 1998, she was at home [REDACTED]. [REDACTED] left with Nesret Alija to collect money from the post office in Klina which, Witness 78, had sent to him. She warned him not to go because she could hear shooting in the village.⁵²¹
213. On the same day she heard from [REDACTED], that she had seen two masked men wearing camouflage uniforms taking [REDACTED] away. She had not heard what language they were speaking.⁵²²
214. Witness 79 then left for her [REDACTED]. When there she [REDACTED] who told her what happened.⁵²³
215. Witness 79 states that to this day she does not know what happened to [REDACTED].⁵²⁴ She said that 2-3 months later she went to Dollovë/Dolovo again. She saw that all of the houses were torched, Serbian, Albanian and Roma alike. While there she saw [REDACTED] Živan Garić, who told her he had seen [REDACTED] in Glllogjan/Glodane village “chasing cows to slaughter them”. She did not believe this story because [REDACTED] would never do this, and he would not leave his family.⁵²⁵
216. She does not know why [REDACTED] and Nesret Alija were kidnapped. They had lived in harmony with both Serbs and Albanians in their village.⁵²⁶

⁵²¹ P1 (Witness 79 92bis statement), paras. 3-5.

⁵²² P1 (Witness 79 92bis statement), para. 5.

⁵²³ P1 (Witness 79 92bis statement), para. 6.

⁵²⁴ P1 (Witness 79 92bis statement), para. 9.

⁵²⁵ P1 (Witness 79 92bis statement), parad. 10-11.

⁵²⁶ P1 (Witness 79 92bis statement), parad. 10-12.

Shefqet Kabashi

217. In this testimony from the *Limaj* trial, Shefqet Kabashi stated that on 21 May he saw two persons who were said to be Romas detained at Jabllanicë/Jablanica.⁵²⁷ They were son-in-law and father-in-law.⁵²⁸ He was not able to name them or provide any further details about who they were, how they looked, or where they came from. He did not know who had brought them to Jabllanicë/Jablanica, why they had been taken there, and he could not describe their physical condition.⁵²⁹ There is no way that this vague evidence can safely be relied on to conclude that these persons are those referred to in Count 2. There is no other evidence that clarifies or supports this evidence from Mr. Kabashi. He was not cross-examined about these allegations in the *Limaj* trial. As the Trial Chamber noted when it admitted Shefqet Kabashi's evidence from the *Limaj* Trial, the weight to be attached to any part of it would depend on whether there was any credible corroborating evidence.⁵³⁰

Summary submissions

218. The evidence does not establish where this abduction occurred (save that the men were *en route* towards Dollovë/Dolovo at the time). There is no evidence as to the motive for the abduction, and therefore nothing to prove that it occurred pursuant to the alleged JCE.
219. The evidence does not show where the men were taken or what happened to them thereafter. There is no evidence as to how, why, where or by whom they were killed. No bodies have ever been found. There is evidence that Ukë Rexhepaj had a relatively large sum of money on him when he went missing. Further, as the

⁵²⁷ P120 (S. Kabashi testimony from *Limaj*), T.4252.

⁵²⁸ P120 (S. Kabashi testimony from *Limaj*), T.4252.

⁵²⁹ P120 (S. Kabashi testimony from *Limaj*), T.4253.

⁵³⁰ Decision on Joint Defence Oral Motion pursuant to Rule 89(D), 28 September 2011.

Defence points out above⁵³¹, a Serb military offensive was taking place in this area at the time. Both these facts provide plausible alternatives to the Prosecution's allegation that the two men were killed in KLA custody at Jabllanicë/Jablanica or elsewhere.

220. There is no evidence as to the identity of the men in uniform. The Prosecution has not proved that they were members of the KLA, or that they were under the command of Ramush Haradinaj. The mere fact that they spoke Albanian does not justify an inference that Ukë Rexhepaj and Nesret Alija were targeted as part of the alleged JCE.

COUNT 3: Witness 6

221. The Prosecution alleges that Mr. Haradinaj is responsible for the mistreatment of Witness 6 in Jabllanicë/Jablanica pursuant to the JCE as alleged.
222. The Prosecution relies on the same evidence for this count from Witness 6 as given at the original trial.
223. This evidence does not, nor does any other evidence, support an inference that the alleged crimes in Count 3 were committed pursuant to a JCE to which Mr. Haradinaj was a party:
- (a) Witness 6 testified that he was detained for a period of six weeks from 13 June⁵³² to 25 July 1998.⁵³³ He said that during all this time, he did not see Mr. Haradinaj at Jabllanicë/Jablanica.⁵³⁴ There is no evidence that Mr. Haradinaj was involved in any way in the alleged detention and mistreatment of Witness 6.

⁵³¹ See para. 198(e).

⁵³² P85 (Witness 6 testimony), T.5170:12, T.5386:11.

⁵³³ P85 (Witness 6 testimony), T.5206:23.

⁵³⁴ P85 (Witness 6 testimony), T.5382:3-10.

- (b) At the time of Witness 6's arrest on 13 June, Jabllanicë/Jablanica had not yet been incorporated into a joint command structure with the four sub-zones that were established on 26 May 1998.⁵³⁵ At that stage, Jabllanicë/Jablanica and Glllogjan/Glođane operated independently.
- (c) Although Mr. Haradinaj was elected as Commander of the newly formed Dukagjin Plain Operational Zone on 23 June 1998, there is no evidence he was kept informed about the activities of those based at Jabllanicë/Jablanica, or that he was in effective day-to-day command there.
- (d) On 5 July, Mr. Haradinaj issued an order removing Lahi Brahimaj as Deputy Zone Commander and appointing Nazmi Brahimaj in his place.⁵³⁶ Whilst this order reflects his authority over the appointments to the joint structure which had been created on 23 June, it does not imply close knowledge of (or *de facto* control over) the activities of those based at Jabllanicë/Jablanica. It certainly does not imply any knowledge of the detention and alleged ill-treatment of Witness 6.
- (e) The evidence shows that Ramush Haradinaj attended meetings at the Jabllanicë/Jablanica staff headquarters on a total of four occasions during the Indictment period. Three of these four meetings took place at the Staff headquarters in a private house in the village.⁵³⁷
- (f) There is no evidence that Mr. Haradinaj ever visited the barracks area where Witness 6 was allegedly detained.⁵³⁸

⁵³⁵ See paras. 100-118.

⁵³⁶ P218 (order of 5 July 1998).

⁵³⁷ See paras. 92-93.

⁵³⁸ See paras. 92-93.

(g) As to knowledge of the detention and alleged ill-treatment of persons at Jabllanicë/Jablanica generally:

- (i) As noted above, Rrustem Tetaj testified that, when Mr. Haradinaj was first informed that Skender Kuqi had been detained at Jabllanicë/Jablanica, he immediately travelled to Jabllanicë/Jablanica and intervened to order his immediate release. He said that Mr. Haradinaj ordered Nazmi Brahimaj never to do such a thing again, as it was damaging to the cause of the KLA.⁵³⁹ Witness 80 stated that Mr. Haradinaj was very concerned about Skender Kuqi and that he confronted Lahi Brahimaj about why he had been mistreated.
- (ii) Other than this one instance, there is no evidence that Mr. Haradinaj was ever informed of the detention or alleged ill-treatment of any individual at Jabllanicë/Jablanica.
- (iii) In particular, there is no evidence (a) that he was ever consulted about, or made aware of, the detention of Witness 6 or (b) that he ever authorised or condoned the ill-treatment alleged in this count, or any other count.

⁵³⁹ See paras. 234-239.

Witness 6

224. As noted above, Witness 6 testified that he was detained for a period of six weeks from 13 June⁵⁴⁰ to 25 July 1998⁵⁴¹. For most of the time he was at Jabllanicë/Jablanica, he was the only person detained there:

- (a) He said that for the first four and a half weeks he was held in a room inside the building depicted on exhibit P88.
- (b) He said that a policeman called Nenad was detained with him for the first 24 hours and was then taken away.⁵⁴²
- (c) After about two weeks⁵⁴³, a Bosnian and three Montenegrins were detained for a period of about three days.⁵⁴⁴
- (d) Apart from those three days, he was the only person in detention during this period.⁵⁴⁵
- (e) Approximately a week and a half before his release on 25 July⁵⁴⁶, he was granted relative freedom of movement around the barracks yard.⁵⁴⁷
- (f) He testified that, one or two days after he had been given this limited freedom of movement⁵⁴⁸, three men were brought into the barracks area in quick

⁵⁴⁰ P85 (Witness 6 testimony), T.5170:12, T.5386:11.

⁵⁴¹ P85 (Witness 6 testimony), T.5206:23.

⁵⁴² P85 (Witness 6 testimony), T.5211:6.

⁵⁴³ P85 (Witness 6 testimony), T.5217:23. At one point Witness 6 suggested that this occurred three and half to four weeks after his initial detention (T.5227:5). However, he later corrected himself and confirmed that the period was approximately two weeks (T.5387:10).

⁵⁴⁴ P85 (Witness 6 testimony), T.5227:24, 5387:20-21.

⁵⁴⁵ P85 (Witness 6 testimony), T.5387:23-5388:7.

⁵⁴⁶ P85 (Witness 6 testimony), T.5386:23.

⁵⁴⁷ P85 (Witness 6 testimony), T.5231:5.

⁵⁴⁸ P85 (Witness 6 testimony), T.5391:18.

succession: The first to arrive was a man from Zahaq/Zahać.⁵⁴⁹ The following day Pal Ded Krasniqi arrived, followed by a man from Grabanicë/Grabanica.⁵⁵⁰

- (g) Witness 6 believed that it was later the same day that the man from Grabanicë/Grabanica escaped, but the other two were caught⁵⁵¹. He testified that the man from Zahaq/Zahać was taken to hospital on the day after the escape attempt, although he had not seen him being taken away.⁵⁵²
- (h) From that point onwards, there was once again only one person, Pal Ded Krasniqi, in detention.⁵⁵³ He remained at Jabllanicë/Jablanica when Witness 6 was released on 25 July.⁵⁵⁴
- (i) During his period of relative freedom, Witness 6 was able to observe “all the comings and goings into and out of that walled compound area”⁵⁵⁵. He did not see Ramush Haradinaj at the barracks at Jabllanicë/Jablanica at any time⁵⁵⁶.
- (j) When Witness 6 was released on 25 July, he was given two documents signed by Nazmi Brahimaj in the name of the “Operative Staff of the Dukagjini Sub-zone, Local Staff of Jabllanice”⁵⁵⁷. There is no evidence that either of these documents was issued with the authority of Ramush Haradinaj or that they were ever brought to his attention.

⁵⁴⁹ P85 (Witness 6 testimony), T.5388:8-14, 5231:14-21.

⁵⁵⁰ P85 (Witness 6 testimony), T.5388:15-18, 5233:1.

⁵⁵¹ P85 (Witness 6 testimony), T.5389:11-23.

⁵⁵² P85 (Witness 6 testimony), T.5389:24-5391:6.

⁵⁵³ P85 (Witness 6 testimony), T.5391:7-10.

⁵⁵⁴ P85 (Witness 6 testimony), T.5239:19-25.

⁵⁵⁵ P85 (Witness 6 testimony), T.5395:8-11.

⁵⁵⁶ P85 (Witness 6 testimony), T.5392:3-10.

⁵⁵⁷ P91 (Document signed by Nazmi Brahimaj).

225. The Haradinaj Defence submits that there is no evidence that the crimes alleged in this count were committed pursuant to a JCE to which Ramush Haradinaj was a party.

COUNT 4: Nenad Remištár, one Bosnian and three Montenegrins

226. Mr. Haradinaj is charged with the murder, cruel treatment and torture of Nenad Remištár, an unknown individual of Bosnian ethnicity and three unknown individuals of Montenegrin ethnicity pursuant to the JCE as alleged.
227. The Haradinaj Defence submits that there is no evidence that the crimes alleged in this count were committed pursuant to a JCE involving Mr. Haradinaj. The Haradinaj Defence adopts without repetition the submissions made above about there being no basis to conclude that any of the alleged crimes committed at Jabllanicë/Jablanica were perpetrated pursuant to a JCE involving Mr. Haradinaj.

Nenad Remištár

228. As noted above, Witness 6 testified that he saw a policeman called “Nenad” for 24 hours at Jabllanicë/Jablanica. Witness 81’s account about a “Senad” cannot be relied on as it lacks all credibility.⁵⁵⁸ The remains of Nenad Remištár have never been discovered.

Bosnian and Montenegrins

229. The evidence in relation to the crimes allegedly committed against these unnamed individuals comes entirely from Witness 6.⁵⁵⁹ The remains of these persons have never been discovered.

⁵⁵⁸ See paras. 65-69.

⁵⁵⁹ P85 (Witness 6 testimony), T.5217-5227.

230. There is no evidence of any motive for their mistreatment, and no evidence that Mr. Haradinaj was involved at all.

COUNT 5: Pal Krasniqi, Skender Kuqi, Witness 3

231. Mr. Haradinaj is charged, pursuant to the alleged JCE, with the cruel treatment and torture of Pal Krasniqi, Skender Kuqi and Witness 3 and for the murder of Pal Krasniqi and Skender Kuqi.⁵⁶⁰ As explained above, there is no evidence of a JCE to mistreat persons at Jabllanicë/Jablanica of which Mr. Haradinaj was a party. The Haradinaj Defence adopts without repetition the submissions made above about there being no basis to conclude that any of the alleged crimes committed at Jabllanicë/Jablanica were perpetrated pursuant to a JCE involving Mr. Haradinaj.
232. In addition, the Haradinaj Defence submits that the evidence of Ramush Haradinaj's intervention to secure the release of Skender Kuqi, and the evidence of Witness 3's treatment in Glllogjan/Glođane by the commander there in late July, are each directly inconsistent with the allegation that these men were ill-treated pursuant to a JCE in which Mr. Haradinaj participated.

Pal Krasniqi

233. The evidence from the original trial in respect of Pal Krasniqi has been admitted in the retrial, namely the evidence of Mahir Demaj, Witness 6, and Ded Krasniqi. The Defence has made the same admissions in respect of the forensic evidence relevant to Pal Krasniqi as at the original trial.⁵⁶¹

⁵⁶⁰ Operative Indictment, para. 63.

⁵⁶¹ Joint Motion on Agreed Facts, 26 November 2007, No. 56.

Skender Kuqi

234. Rrustem Tetaj testified that, on a date in mid- to late July⁵⁶², Imer Jusaj from Strelle e Poshtme/Donji Streoc approached him and said that the KLA had abducted Skender Kuqi and was holding him in Jabllanicë/Jablanica⁵⁶³. Rrustem Tetaj spoke to Ramush Haradinaj who “had no knowledge of what I told him”⁵⁶⁴. Mr. Haradinaj was “very sad about such a gesture” and made immediate arrangements to drive to Jabllanicë/Jablanica with Rrustem Tetaj⁵⁶⁵.
235. Together they went to Nazmi Brahimaj’s house.⁵⁶⁶ Time was limited because “the situation on the ground was very serious”⁵⁶⁷. Ramush Haradinaj told Nazmi Brahimaj that “this person should be released immediately”⁵⁶⁸. Mr. Tetaj described the conversation in these terms⁵⁶⁹:
- “Ramush Haradinaj knew nothing about it until the moment that I told him, and immediately after that Ramush gave the ultimatum that this person should be immediately released and he said no such thing should happen anymore because this is damaging our cause.”
236. Nazmi Brahimaj replied that Skender Kuqi had tried to escape, and that a soldier from Jabllanicë/Jablanica had “injured him slightly”⁵⁷⁰. He said that Skender Kuqi would be released as soon as he was well.⁵⁷¹
237. Skender Kuqi was subsequently taken to the field hospital in Irzniq/Rznić where he died of kidney failure.⁵⁷² However, the evidence of Rrustem Tetaj establishes

⁵⁶² P75 (R. Tetaj testimony), T.3852:24.

⁵⁶³ P75 (R. Tetaj testimony), T.3680:8-20.

⁵⁶⁴ P75 (R. Tetaj testimony), T.3680:25.

⁵⁶⁵ P75 (R. Tetaj testimony), T.3778:14.

⁵⁶⁶ P75 (R. Tetaj testimony), T.3681:3.

⁵⁶⁷ P75 (R. Tetaj testimony), T.3681:22-23.

⁵⁶⁸ P75 (R. Tetaj testimony), T.3681:23-24, T.3778:9-22.

⁵⁶⁹ P75 (R. Tetaj testimony), T.3682:2-5.

⁵⁷⁰ P75 (R. Tetaj testimony), T.3682:12.

⁵⁷¹ P75 (R. Tetaj testimony), T.3682:13-14.

(a) that Ramush Haradinaj had been entirely unaware of Skender Kuqi's detention until Rrustem Tetaj told him about it; (b) that Mr. Haradinaj took prompt steps to bring his detention immediately to an end; and (c) that he gave an express order to Nazmi Brahimaj that such incidents should not occur in the future.

238. As set out above, Witness 80 testified in similar terms about Mr. Haradinaj having no involvement in or knowledge of Skender Kuqi's mistreatment until he saw his body in the staff at Jabllanicë/Jablanica, as did many other people including his family. He said that Mr. Haradinaj was "very concerned" about his condition and confronted Lahi Brahimaj about why this had happened.

239. The Prosecution also relies on Witness 17 who introduced a list of persons allegedly wanted by the KLA which appears to mention Skender Kuqi.⁵⁷³ As noted above, the evidence of this witness was that he did not know from whom he got the list and for what purpose persons were sought and by whom. He could not remember whether he had received the list orally or in writing. In the circumstances, the list has no evidentiary value. There is no evidence whatsoever that the existence of this list was brought to Mr. Haradinaj's attention at any time. It does not provide any support for the JCE alleged against Mr. Haradinaj.

Witness 3

240. Mr. Haradinaj is charged with the mistreatment of Witness 3 pursuant to the JCE as alleged. There is no evidence that Mr. Haradinaj was involved in any way with his alleged mistreatment in Jabllanicë/Jablanica. As to the allegation that Witness 3 was taken to Gllogjan/Glođane and mistreated, there is no evidence that Mr. Haradinaj was involved at all in Witness 3 being brought to Gllogjan/Glođane or in any mistreatment of Witness 3. On the contrary, Witness 3 testified in the retrial that he was treated very well by the commander there (whom he believed

⁵⁷² P82 (UNMIK Statement of Haki Shehu).

⁵⁷³ Prosecution Pre-Trial Brief, para. 163.

was Mr. Haradinaj) who arranged for him to go home after a few hours, and that thereafter he was never threatened or bothered again.⁵⁷⁴

241. Witness 3 was unable to say with certainty whether the commander who dealt with him in Glllogjan/Glođane was Ramush Haradinaj.⁵⁷⁵ Nonetheless, it was plainly a person in command in Glllogjan/Glođane, who had the authority to ensure the safety of Witness 3.
242. Witness 3 testified that around the end of July, Lahi Brahimaj had taken him in the boot of a car and that they ended up in what he thought was Glllogjan/Glođane.⁵⁷⁶ He was taken first to a staff building, where he was beaten by a man with blonde hair in uniform in one room. He was alone with this man, who he did not know, when this happened.⁵⁷⁷ Witness 3 stated that nobody was in authority over this man and directing him what to do. Two younger men in black uniforms then arrived and asked Witness 3 why he was there. They stopped the blonde man beating Witness 3 any further.⁵⁷⁸ The two younger men asked Witness 3 what he was accused of and who had brought him there as they did not know how or why he had been brought to Glllogjan/Glođane.⁵⁷⁹
243. Witness 3 testified that he was treated very well by the two younger men. They brought him cigarettes. They respected me, “Maybe even more than I deserved. Because I was taken there as a traitor. But they respected me. They asked me my name, what have you done? But respectfully”. He said that “The wish of my life is to meet those two young men and thank them for treating me humanely”.⁵⁸⁰

⁵⁷⁴ T.1671.

⁵⁷⁵ T.1587.

⁵⁷⁶ T.1583.

⁵⁷⁷ T.1672.

⁵⁷⁸ T.1672-1673 and T.1674.

⁵⁷⁹ T.1673-1674.

⁵⁸⁰ T.1675.

244. They took him into a larger room and that is where he met the man he believed to be Mr. Haradinaj. Witness 3 said that he was treated fairly and courteously throughout by him.⁵⁸¹ This man asked him who had brought him there and of what he was accused. Witness 3 did not believe that this man was aware of who had brought him there and for what reason.⁵⁸² Witness 3 told him that Lahi Brahimaj had taken him there. The man sighed and was “angry” at Lahi Brahimaj for bringing Witness 3 there and for “why these bad things happened”.⁵⁸³
245. The man asked Witness 3 whether he had somewhere else in Gllogjan/Glođane to stay that night. It was clear to Witness 3 from that moment on that he was free to go if he had family or friends in Gllogjan/Glođane.⁵⁸⁴ When he said that he had no one to stay with in the village the man said that he would take Witness 3 himself to his family in the morning or find someone to take him there.⁵⁸⁵ Witness 3’s understanding was that he would stay the night there and then be driven by either the commander or one of his men in the morning to his home. The man who he thought was Mr. Haradinaj offered him a bed there and told him not to sleep near windows in case of being shelled by the Serbian forces.⁵⁸⁶ This man offered him food, which he accepted.⁵⁸⁷ Witness 3 said that he had been given a bed to stay voluntarily if he chose to do so.⁵⁸⁸
246. At about 11pm Witness 3 was called to come downstairs to the commander. He was afraid when going down the stairs, but when he got there the commander (who he thought was Mr. Haradinaj) explained that arrangements had been made for Witness 3 to go home to his family that night.⁵⁸⁹ The commander said that Witness 3 should “forget what has happened, go home to your family and forget

⁵⁸¹ T.1676-1677.

⁵⁸² T.1678.

⁵⁸³ T.1679-1680.

⁵⁸⁴ T.1682.

⁵⁸⁵ T.1682.

⁵⁸⁶ T.1682.

⁵⁸⁷ T.1683

⁵⁸⁸ T.1686.

⁵⁸⁹ T.1687.

about everything, you are free”.⁵⁹⁰ Witness 3 said that “Had I known before he had called me downstairs, I wouldn’t be afraid”, and that “When he said these words and when I saw the people who had come to fetch me, I knew that no harm would ever come to me from this person. And, in fact, I’ve never been afraid of Mr. Haradinaj ... I am not afraid even now”.⁵⁹¹

247. Witness 3 was taken to his family that night. Witness 3 testified that once he came to the attention of the man he believed to be Mr. Haradinaj, from that point onwards he was safe: “I never had any problems”.⁵⁹²
248. Witness 3’s treatment by the commander whom he believed to be Mr. Haradinaj in Glogjan/Glodane is wholly inconsistent with the charge that he was ill-treated pursuant to a JCE involving Mr. Haradinaj.

COUNT 6: Fadil Fazliu [REDACTED]

249. [REDACTED]. Mr. Haradinaj is charged pursuant to the alleged JCE and, in the alternative, with ordering, instigating or aiding and abetting the commission of the crimes alleged.
250. There is no reliable evidence to support any of these allegations. As set out above, Witness 80 testified that he did not recall Mr. Haradinaj being present when [REDACTED] was beaten in Jabllanicë/Jablanica.⁵⁹³ There is no other evidence from this witness or any other evidence that proves that Mr. Haradinaj participated directly or pursuant to any JCE in the crimes alleged in this count.
251. As to the separate occasion when Witness 80 testified about seeing Mr. Haradinaj in Jabllanicë/Jablanica [REDACTED], as explained above, this evidence does not

⁵⁹⁰ T.1687.

⁵⁹¹ T.1687.

⁵⁹² T.1688.

⁵⁹³ See paras. 83-84.

establish that Mr. Haradinaj participated in the commission of any crimes at Jabllanicë/Jablanica or is criminally responsible pursuant to the JCE as alleged:

- (a) Witness 80, in effect, said that he could not see what Mr. Haradinaj was doing as he was surrounded by many persons protecting him, so much so that Witness 80 could see very little of him.⁵⁹⁴
- (b) There is no evidence that Mr. Haradinaj was involved at all in [REDACTED] being brought to Jabllanicë/Jablanica on this occasion, or in what happened when they were there.⁵⁹⁵

252. The Prosecution has elected not to adduce the evidence from the original trial of the other alleged victim, Fadil Fazliu. He gave exculpatory evidence at the original trial. The original Trial Chamber, who heard his testimony, made no findings adverse as to his credibility. It is frankly eccentric for the Prosecution to seek a conviction in respect of a crime allegedly committed against Mr. Fazliu whilst seeking at the same time to prevent the Trial Chamber from admitting his evidence from the original trial record, in which he testified on oath that he was not the victim of the criminal conduct alleged.

⁵⁹⁴ See paras. 85-86.

⁵⁹⁵ See paras. 87.

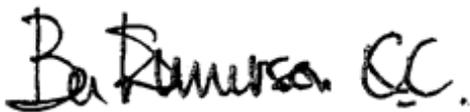
CONCLUSION

253. For the reasons set out above, the Haradinaj Defence submits that the Trial Chamber should return verdicts of not guilty of all counts on the Indictment for the retrial.
254. The Defence also submits with its Final Brief two character statements, attached hereto in Annex 5, which will be referred to in the Defence's closing oral submissions.

Word count: 45, 886
(Including Annexes)

Dated this the 11th day of June 2012,

Counsel for Mr. Ramush Haradinaj,



Ben Emmerson QC



Rodney Dixon

A handwritten signature in black ink, appearing to read "Andrew Strong". The signature is written in a cursive style with a large, looping initial 'A' and a long, sweeping underline.

Andrew Strong

**THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA**

CASE NO. IT-04-84bis-T

IN TRIAL CHAMBER II

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

Registrar: Mr. John Hocking

Date filed: 11 June 2012

THE PROSECUTOR

v.

**RAMUSH HARADINAJ
IDRIZ BALAJ
LAHI BRAHIMAJ**

PUBLIC REDACTED

**ANNEX 1
TO HARADINAJ DEFENCE FINAL TRIAL BRIEF**

The Office of the Prosecutor:

Mr. Paul Rogers

Counsel for Ramush Haradinaj:

Mr. Ben Emmerson QC
Mr. Rodney Dixon
Mr. Andrew Strong

Counsel for Idriz Balaj:

Mr. Gregor Guy-Smith
Ms. Colleen M. Rohan

Counsel for Lahi Brahimaj:

Mr. Richard Harvey
Mr. Paul Troop

FARK SUBMISSIONS

Relationship with FARK

1. The Prosecution alleges that Mr. Haradinaj sought to exclude, subordinate, and marginalise the FARK forces as a means of facilitating the continued execution of the alleged JCE¹. The Defence submits that this allegation is completely unsupported by the evidence:
 - a. Mr. Haradinaj attended a number of meetings with the newly arrived FARK commanders. Although there were serious and legitimate differences of opinion on the deployment of the FARK officers, the discussions were constructive and were aimed at assimilating the two forces.
 - b. Mr. Haradinaj permitted the FARK officers and soldiers to occupy the Prapaqan/Papraçane training facility which the KLA had set up and financed.
 - c. Despite two incidents of direct confrontation, on 4th and 10th July 1998, the FARK forces were successfully integrated through the formation of three mixed brigades on 10th July 1998.
 - d. On 21st August 1998, following a serious military defeat in Glllogjan/Glođane, Mr. Haradinaj resigned as Zone Commander, agreed to serve under the command of Tahir Zemaj, and transferred to the Prapaqan/Papraçane barracks where they worked together.²
 - e. The reversal of this decision on 2nd September 1998 was the result of intervention by the General Staff, which sought to retain political control of KLA forces in Western Kosovo.

¹ Revised Fourth Amended Indictment, para. 28(c)

² P251 (appointment of Tahir Zemaj as Dukagjin Zone commander) and P257 (Order from Tahir Zemaj). These are the exhibit numbers from the original trial. Both exhibits were admitted by agreement between the parties in the retrial but are still to be assigned exhibit numbers for the retrial.

Arrival of the FARK forces

2. A group of FARK soldiers consisting of about 23 officers and 100 soldiers, under the command of Tahir Zemaj, entered Western Kosovo on 24th June 1998³. The FARK commanders understood that their deployment had been agreed with the KLA General Staff at a meeting in Oslo in May⁴. However, the evidence establishes clearly that this message had not reached the leadership of the KLA in the Dukagjin region⁵ or indeed the General Staff inside Kosovo⁶.

Initial series of meetings between the KLA and the FARK

3. Witness 17 described a series of four meetings that took place over a week between 25th June and 2nd July 1998:
- a. The first meeting between the FARK and the KLA took place on 25th June in Jasiq/Jasić⁷. The KLA was represented by Sali Veseli and Naim Maloku who were both local commanders in Reka e Keqe.
 - b. The next day, Mr. Haradinaj arrived for discussions with Tahir Zemaj⁸. Witness 17 said that Mr. Haradinaj's position was that the FARK should join the existing KLA structures or return to Albania⁹. Tahir Zemaj was unable to accept this saying that "the FARK already had a command structure set up under the authority of the Ministry of Defence of the government-in-exile"¹⁰.
 - c. Witness 17 and Sali Veseli attended a further meeting on 30th June. Witness 17 conveyed Tahir Zemaj's position which was "basically the same"¹¹. He said that the FARK intended to continue its deployment to Isniq/Istinić and

³ P344 (Witness 17 92^{ter} statement), paras 10, 13.

⁴ P344 (Witness 17 92^{ter} statement), para. 9.

⁵ P344 (Witness 17 92^{ter} statement), para. 14; P342 (Witness 17 testimony), T.7600.

⁶ P159 (B. Zyrapi testimony), T.3369:1-11.

⁷ P344 (Witness 17 92^{ter} statement), para 14.

⁸ P344 (Witness 17 92^{ter} statement), para 15.

⁹ P342 (Witness 17 92^{ter} statement),T.7616-7617.

¹⁰ P344 (Witness 17 92^{ter} statement), para. 17.

¹¹ P344 (Witness 17 92^{ter} statement), para. 18.

that, “if anyone got in our way, then we would have to act according to military rules”¹².

- d. Later that evening the FARK contingent left Jasiq/Jasić, arriving at Isniq/Istinić the following morning¹³. They were initially billeted in private homes in Isniq/Istinić¹⁴.
- e. On 2nd July a further meeting between FARK commanders and KLA commanders was held in Isniq/Istinić. Tahir Zemaj again presented the FARK position and Rrustem Tetaj presented the position of the KLA. Mr. Tetaj indicated that the Dukagjin KLA would support the creation of brigades. The meeting “ended amicably”¹⁵.

Essence of the dispute

4. Witness 17 agreed that the essence of the dispute centred on the distribution and deployment of the FARK forces¹⁶. Mr. Haradinaj wanted the FARK officers to be integrated and distributed among the existing village staffs and operative units¹⁷, whereas the FARK officers had orders to maintain their own brigade structure¹⁸. He summarised the situation in these terms¹⁹:

“[Haradinaj] asked for the senior officers to be distributed in the operative units and in the villages and to carry out their tasks within the structure of the Dukagjini operative staff; however, we were already an established military structure under the command of the Ministry of Defence. These were the frictions that continued. We were not in a position to do such a thing, to systematize 23 senior officers and destroy our own structure and enter the villages.”

¹² P344 (Witness 17 92ter statement), para. 18.

¹³ P344 (Witness 17 92ter statement), para. 20.

¹⁴ P75 (R.Tetaj testimony), T.3752:9.

¹⁵ P344 (Witness 17 92ter statement), para. 24.

¹⁶ P342 (Witness 17 testimony), T.7561:23-7562.

¹⁷ P342 (Witness 17 testimony), T.7560:7-7562, 7614:4.

¹⁸ P342 (Witness 17 testimony), T.7614 and T.7560.

¹⁹ P342 (Witness 17 testimony), T.7614:4-10.

5. Bislim Zyrapi confirmed that, in terms of combat effectiveness, it would have been preferable by far if the FARK officers with military experience had been dispersed to the areas of conflict, rather than leaving untrained villagers to fend for themselves in the absence of properly trained military personnel²⁰. The problem, however, was that Tahir Zemaj was taking orders from the government-in-exile outside Kosovo²¹.
6. Rrustem Tetaj gave a similar account of the dispute²²:

“Tahir Zemaj had the idea that we form operational brigades; and when the Serbs attacked they can intervene, the brigades, and then come back to base. But at that time that was impossible. So in the Dukagjin area, there were very few career military officers. There were many volunteers who were holding makeshift positions. And my opinion, as well as Ramush and others, believed that we should distribute the trained officers around at various points, rather than have them at a computer base in Prapaqan. But we would rather have them on the ground, on the front line, where the proper defence was taking place. And this was a normal diversity of views.”

Mr. Haradinaj’s approach to the negotiations

7. Witness 17 described Mr. Haradinaj as “controlled and orderly”²³ during their first meeting and said that his approach to the negotiations as a whole was “very constructive and moderate”²⁴. He said that, throughout this series of meetings, the discussions were constructive and “both sides were ready to reach an agreement” but neither side wanted to alter its position²⁵.
8. The testimony of Witness 17 (who was a direct participant in the meetings) is inconsistent with the testimony of Witness 29 concerning what had been said during these meetings (which was based on hearsay)²⁶. The Trial Chamber is invited to reject the testimony of Witness 29 on this issue.

²⁰ P159 (B. Zyrapi testimony), T.3370:21-3371.

²¹ P159 (B. Zyrapi testimony), T.3370-3371.

²² P75 (R. Tetaj testimony), T.3754:21-3755.

²³ P334 (Witness 17 92^{ter} statement), para. 17.

²⁴ P342 (Witness 17 testimony), T.7613:22.

²⁵ P342 (Witness 17 testimony), T.7614:15.

²⁶ P359 (Witness 29 testimony), T.3493-3499 and T.3537-3539.

Transfer to Prapaqan/Papraçane barracks

9. By 10th July 1998, the FARK forces had been re-located to the Prapaqan/Papraçane training facility which had been set up and funded by the Dukagjin KLA²⁷. Rustem Tetaj testified that they were welcomed into the barracks by himself and Skender Rexhahmetaj, acting with Ramush Haradinaj's authority²⁸. He confirmed that Mr. Haradinaj "allowed Tahir Zemaj to occupy the best training facility...available in any one of the four sub-zones"²⁹. Witness 17 confirmed, "our presence at the Prapacane barracks was something that was agreed upon by Tahir Zemaj and Ramush"³⁰.
10. The Defence submits that the very fact that Mr. Haradinaj put these facilities at the disposal of FARK commanders, at a time when there was a continuing dispute about the deployment and distribution of FARK officers, is the clearest possible evidence that no policy existed to exclude the FARK from the Dukagjin zone.

Confrontation at Prapaqan/Papraçane on 10th July 1998

11. Witness 17 agreed that, when the FARK officers arrived at the Prapaqan/Papraçane barracks, a group of existing KLA volunteers was already there³¹. He testified that, on 10th July, he was training soldiers some distance away when he was called to return to the barracks. On his return he saw a group of 15 soldiers in black uniforms in the yard. Mr. Haradinaj was involved in a verbal confrontation with Tahir Zemaj³².
12. Witness 17 was not aware of the background to the dispute or the reasons for it, as he had been engaged in training soldiers "during the whole time"³³. It was put to him that the basis for the dispute was that the KLA volunteers at the barracks were being treated as second-class soldiers by the FARK commanders. He was unable to confirm or deny this³⁴.

²⁷ P334 (Witness 17 92ter statement), para. 41.

²⁸ P75 (R. Tetaj testimony), T.3751:23-3752:13.

²⁹ P75 (R. Tetaj testimony), T.3755:14-18.

³⁰ P342 (Witness 17 testimony) T.7632:16-17.

³¹ P342, (Witness 17 testimony) T.7630:14-19; P238 (Order, July 1998); D83 (Order, 8th July 1998); P75 (R.Tetaj testimony), T.3750-3751.

³² P344 (Witness 17 92ter statement), para. 41.

³³ P342 (Witness 17 testimony), T.7632:16.

³⁴ P342 (Witness 17 testimony), T.7632:1.

13. He said that Mr. Haradinaj issued an ultimatum to the FARK officers to leave the barracks within 30 minutes and that he shot his weapon in the air³⁵. In his Rule 92 *ter* statement, he claimed that Mr. Haradinaj threatened “fratricide”³⁶, but he withdrew this claim during his testimony³⁷. Witness 17 said that Tahir Zemaj decided to leave the barracks with the other officers and to return to the private accommodation in which they had been staying³⁸.
14. The FARK soldiers remained behind at the barracks. Rrustem Tetaj, who was present at the time, testified that the reason for the dispute was that the FARK officers “were not implementing the rules”³⁹. He agreed that Ramush Haradinaj had addressed the FARK soldiers and told them that they were “perfectly welcome to remain”⁴⁰. After that, Mr. Tetaj addressed the soldiers himself and told them that the misunderstanding would be sorted out⁴¹.

Resolution of the dispute and the formation of joint brigades

15. Later that day Rrustem Tetaj approached the FARK officers and arranged for a meeting with Mr. Haradinaj to take place in Llukë e Ulet with a view to resolving the situation⁴². Witness 17 said that Tahir Zemaj and Ramush Haradinaj went into another room to talk privately. When they returned, they announced an agreement on the formation of three joint brigades⁴³: The 1st Brigade in Prapaqan/Papraçane commanded by Tahir Zemaj; the 2nd Brigade in Zhabel/Žabelj commanded by Shemsedin Çekaj; and the 3rd Brigade in the Baran/Barane Valley commanded by Rrustem Berisha. [REDACTED] became the acting commander of the 3rd Brigade as

³⁵ P344 (Witness 17 92*ter* statement), para. 41.

³⁶ P344 (Witness 17 92*ter* statement), para. 41.

³⁷ P342 (Witness 17 testimony), T.7565:15-7566:8.

³⁸ P344 (Witness 17 92*ter* statement), paras 43-44, 46.

³⁹ P75, (R. Tetaj testimony), T.3756:17.

⁴⁰ P75, (R. Tetaj testimony), T.3757:1-6.

⁴¹ P75, (R. Tetaj testimony), T.3757:7-13.

⁴² P344 (Witness 17 92*ter* statement), para. 46; P75 (R. Tetaj testimony), T.3757:14-18.

⁴³ P344 (Witness 17 92*ter* statement), para. 47; [REDACTED]

Rrustem Berisha remained in Junik⁴⁴. The FARK officers were to be dispersed among the three brigades⁴⁵.

16. The evidence shows that this structure was a genuine attempt at amalgamation:
- a. The creation of these brigades and the appointment of their commanders was recorded in a series of written requests by Tahir Zemaj⁴⁶ and written authorisations by Ramush Haradinaj⁴⁷. These records show that the brigade commands included not only FARK officers such as Musa Dragaj but also a number of senior KLA officers, including each of the former sub-zone commanders, Rrustem Tetaj, Shemsedin Çekaj, Skender Rexhahmetaj and Gani Gjukaj⁴⁸.
 - b. The brigades were modelled on the three FARK Brigades which had been formed prior to the entry of FARK into Kosovo⁴⁹ (the 131st, 133rd and 134th Brigades⁵⁰). However, only the 134th Brigade had soldiers at that time. The 131st Brigade and the 133rd Brigade consisted only of officers⁵¹.
 - c. Mobilisation for the 131st Brigade and the 133rd Brigade was to occur within Kosovo, from existing KLA volunteers:
 - (i) Soldiers under the command of Skender Rexhahmetaj and Gani Gjukaj in sub-zone 4 were assimilated into this blended force⁵².
 - (ii) Witness 17 testified that in Baran/Barane there was “an agreement that the mobilisation would be done by the territorial staffs of the villages, with the permission of the commanders or

⁴⁴ P342 (Witness 17 testimony), T.7652:23-25.

⁴⁵ D185 (Notes), p.2 (ET); P76 (R.Tetaj testimony, under seal), T.3759:9-25.

⁴⁶ D147. (Also see P193 from the original trial which the parties agreed is to be admitted in the retrial, but which has not yet been assigned an exhibit number in the retrial.)

⁴⁷ P242; P245; P246; P247; P248; P250; P252 (Requests, Authorisations and Orders relating to Brigades).

⁴⁸ P342 (Witness 17 testimony), T.7639:2.

⁴⁹ P344 (Witness 17 *92ter* statement), para. 10.

⁵⁰ P342 (Witness 17 testimony), T.7633:19-23.

⁵¹ P342 (Witness 17 testimony), T.7633:19-23.

⁵² P75 (R.Tetaj testimony), T.3753:14-3754.

the staffs who would send them to the Brigade”⁵³. As a result, the village staffs in the Baran/Barane Valley ceased to exist⁵⁴.

- d. All FARK forces were to be regarded as KLA (and wore KLA insignia)⁵⁵.
- e. The amalgamation between the forces was encapsulated in Witness 17’s statement to the village staffs of the Baran/Barane Valley immediately after his arrival⁵⁶:

“The question whether there is a KLA or a government army has no sense because the leadership has agreed upon that KLA is the core or the foundation of a Kosovo modern army; therefore, *we are the KLA and the KLA are us*. Consequently, all the dilemmas, whether the actions are co-ordinated or not, should be discarded.”

- f. Mr. Haradinaj attended the swearing-in ceremony at the Baran/Barane barracks on 20th July and addressed the recruits from a platform where he stood beside Tahir Zemaj and [REDACTED]⁵⁷.
- g. Witness 17 testified that during this period “the relationship between Tahir Zemaj and Ramush Haradinaj had a tendency to become closer”⁵⁸.
- h. It was Rrustem Tetaj’s view that “the problems that existed when Zemaj arrived in Kosovo on 24th June had been resolved by 10th July”⁵⁹.

⁵³ P342 (Witness 17 testimony), T.7635:14-16.

⁵⁴ P37 (Z. Hasanaj 92^{ter} statement), para. 14.

⁵⁵ P344 (Witness 17 92^{ter} statement), para. 9.

⁵⁶ P342 (Witness 17 testimony), T.7650:13-25.

⁵⁷ P75 (R.Tetaj testimony), T.3766:10; D148 (Video of swearing-in ceremony), which was shown to Witness 77 in the retrial.

⁵⁸ P342 (Witness 17 testimony), T.7642:23.

⁵⁹ P76 (R.Tetaj testimony, under seal), T.3759:23-25.

**THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA**

CASE NO. IT-04-84bis-T

IN TRIAL CHAMBER II

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

Registrar: Mr. John Hocking

Date filed: 11 June 2012

THE PROSECUTOR

v.

**RAMUSH HARADINAJ
IDRIZ BALAJ
LAHI BRAHIMAJ**

PUBLIC REDACTED

**ANNEX 2
TO HARADINAJ DEFENCE FINAL TRIAL BRIEF**

The Office of the Prosecutor:

Mr. Paul Rogers

Counsel for Ramush Haradinaj:

Mr. Ben Emmerson QC

Mr. Rodney Dixon

Mr. Andrew Strong

Counsel for Idriz Balaj:

Mr. Gregor Guy-Smith

Ms. Colleen M. Rohan

Counsel for Lahi Brahimaj:

Mr. Richard Harvey

Mr. Paul Troop

SUBMISSIONS ON WITNESS 29

Confrontation in Gllogjan/Glođane on 4th July 1998

1. The Defence accepts that a confrontation occurred in Gllogjan/Glođane on 4th July 1998 in which shots were fired and Witness 29 received a gunshot injury to his upper arm. The Defence submits that this incident, regrettable though it was, does not establish a policy of excluding or subordinating the FARK for purposes associated with the alleged JCE. Mr. Haradinaj apologised for the incident at a meeting held the following day¹, and by 10th July, the differences between the two forces had been resolved, and they had been integrated into a combined force².

2. This incident is not alleged as a crime on the Indictment. Insofar as the Trial Chamber considers it necessary to make findings of fact, the Defence submits that, taken as a whole, the evidence as to the precise nature of this confrontation is inconsistent, and the testimony of Witness 29 as to the involvement of Mr. Haradinaj is unreliable.

3. The Defence case³ is that Witness 29 and his colleagues [REDACTED] were stopped by KLA guards manning a checkpoint in Gllogjan/Glođane, about 50 metres from the KLA headquarters; a dispute arose because the FARK soldiers refused to take orders from the KLA; a fight broke out and shots were fired. Ramush Haradinaj arrived after the fight had begun. The Defence denies that he drew his weapon or shot Witness 29.

¹ See para 9 below.

² See Annex 1.

³ As put to Witness 29, P359 (Witness 29 testimony), T.3572:18-3573:17.

Witness 29

4. The Defence submits that there were signs of unreliability in the testimony of Witness 29:
- a. The specific allegation that Mr. Haradinaj was responsible for shooting Witness 29 in the shoulder is not corroborated in any of the contemporary documents. Nor was it apparently related to Witness 17 when he interviewed Witness 29 the following day.
 - b. Witness 29 was asked in terms whether Mr. Haradinaj had shot at him once or more than once. He replied: “He shot at me only once, when he wounded me”⁴. However, when interviewed by [REDACTED], he gave a significantly different account, alleging that Mr. Haradinaj had fired several shots at him and had continued firing until he ran out of ammunition⁵. When confronted with this inconsistency, he changed his evidence, saying that Mr. Haradinaj “fired several times and that only one bullet hit me”⁶. The Trial Chamber observed at the time that the inconsistency was not fully explained⁷.
 - c. According to Witness 29, Mr. Haradinaj was standing behind him with a pistol in his hand at the time the shot was fired. However, he claimed to be able to see Mr. Haradinaj pull the trigger (which would not have been possible from the physical positioning he described)⁸. The Trial Chamber pressed for clarification, observing that “from all your gestures, it seems that the weapon was not within sight of your eyes”⁹. Judge Orić pointed out, “I can’t see what is on the back of my shoulder. I may feel it, I may hear it...but I can’t see it”¹⁰. Nonetheless, Witness 29 insisted that he had seen Mr. Haradinaj pull the trigger.

⁴ P359 (Witness 29 testimony), T.3563:23-3564:1.

⁵ P360 (Witness 29 testimony, under seal), T.3565-3569.

⁶ P359 (Witness 29 testimony), T.3569:12.

⁷ P359 (Witness 29 testimony), T.3570:2.

⁸ P359 (Witness 29 testimony), T.3558-3561.

⁹ P359 (Witness 29 testimony), T.3559:21.

¹⁰ P359 (Witness 29 testimony), T.3560:10.

- d. On Witness 29's account, there was no explanation at all for what happened. He had known Mr. Haradinaj all his life; had met him to discuss the conflict in the early months of 1998; had encountered him in Irzniq/Rznić on 4th July and had a friendly exchange; and had then had another friendly conversation with him in Gllogjan/Glodane. He alleged that moments later Mr. Haradinaj attacked [REDACTED] and threatened to kill Witness 29 for no apparent reason. The Defence submits that his account lacks the ring of truth.

Witness 17

5. Witness 17 referred to this incident in his Rule 92ter statement¹¹. He spoke to Witness 29 the following day. Witness 17's Rule 92ter statement contains no suggestion that Witness 29 told Witness 17 that he had been shot by Ramush Haradinaj. He reported that he had been beaten and that his back had been injured in the attack, but there is no mention of Mr. Haradinaj's alleged involvement¹². Witness 17 produced a report on the incident signed by Tahir Zemaj which reflects the confrontation but does not contain any details corroborating the specific allegation made by Witness 29 against Mr. Haradinaj¹³.

Sadri Selca's interview with [REDACTED]

6. Witness 17 did, however, report a different allegation against Mr. Haradinaj, arising out of the same incident, namely that he had shot [REDACTED] in the leg¹⁴ in front of 500 volunteers who were waiting to collect arms from Albania¹⁵. This allegation was based on an interview conducted by Sadri Selca with [REDACTED]¹⁶.
7. Sadri Selca was asked about the note of interview with [REDACTED]¹⁷. He said that he spoke to [REDACTED] "and this person sometimes admits it, sometimes denies

¹¹ P344 (Witness 17 92ter statement), paras 26-34.

¹² P344 (Witness 17 92ter statement), para. 27.

¹³ P217 (Report, 5th July 1998).

¹⁴ P344 (Witness 17 92ter statement), para. 26.

¹⁵ P344 (Witness 17 92ter statement), para. 28.

¹⁶ P345 (FARK report).

¹⁷ P345 (FARK report).

it”¹⁸. He explained that on some occasions [REDACTED] claimed that Ramush Haradinaj shot at him, and on other occasions he claimed that it was someone else¹⁹. Mr. Selca said that he had recorded [REDACTED] account but “in the meantime, he changed his mind”²⁰.

Summary submission

8. This single incident cannot be taken as a reflection of any intention on the part of Mr. Haradinaj to exclude the FARK forces from the area. On the contrary, the evidence of his actions thereafter clearly establishes that he endeavoured to work in co-operation with the FARK, and to unite the two forces.

Joint meeting on 5th July 1998

9. The following day, a meeting was held at Llukë e Ulet in which this incident was discussed and resolved²¹. Mr. Haradinaj apologised for what had happened. According to Witness 17, Tahir Zemaj said that he wanted this to be the first and last such incident, and Mr. Haradinaj said that it would not be repeated²². Witness 17 confirmed that this incident, and the subsequent incident at the Prapaqan/Papraçane barracks on 10th July²³, were the only occasions on which there were confrontations between the KLA and the FARK²⁴.

¹⁸ P332 (Sadri Selca testimony), T.10878:18.

¹⁹ P332 (Sadri Selca testimony), T.10878:21.

²⁰ P332 (Sadri Selca testimony), T.10878:11-24.

²¹ P344 (Witness 17 *92ter* statement), para. 33.

²² P342 (Witness 17 testimony), T.7626:20-7627.

²³ See Annex 1, paras. 11-14.

²⁴ P342 (Witness 17 testimony), T.7627:20.

**THE INTERNATIONAL CRIMINAL TRIBUNAL
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CASE NO. IT-04-84bis-T

IN TRIAL CHAMBER II

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

Registrar: Mr. John Hocking

Date filed: 11 June 2012

THE PROSECUTOR

v.

**RAMUSH HARADINAJ
IDRIZ BALAJ
LAHI BRAHIMAJ**

PUBLIC REDACTED

**ANNEX 3
TO HARADINAJ DEFENCE FINAL TRIAL BRIEF**

The Office of the Prosecutor:
Mr. Paul Rogers

Counsel for Ramush Haradinaj:
Mr. Ben Emmerson QC
Mr. Rodney Dixon
Mr. Andrew Strong

Counsel for Idriz Balaj:
Mr. Gregor Guy-Smith
Ms. Colleen M. Rohan

Counsel for Lahi Brahimaj:
Mr. Richard Harvey
Mr. Paul Troop

SUBMISSIONS ON ALLEGED STOJANOVIC IDENTIFICATION

Individual responsibility

Reliability of identification evidence

1. Dragoslav and Mijat Stojanović testified about three alleged sightings of Ramush Haradinaj during the sequence of events surrounding the assaults upon them. The Defence submits that the identification evidence in respect of each sighting is wholly unreliable:
 - a. No photo-board or other formal identification procedure was conducted with either witness at any time.
 - b. Each identification involved a fleeting glimpse in the most stressful and difficult circumstances.
 - c. Neither of the identifying witnesses had seen Ramush Haradinaj for a period of many years. Given that he had several brothers, the potential for mistake is obvious.
 - d. Neither of the identifying witnesses named Ramush Haradinaj in contemporary accounts of the incident, despite naming others involved.
 - e. Where, as here, identification evidence is weak, the tribunal of fact should be astute to the risk of unreliability or bias. In the present case, there are clear grounds to infer the possibility of bias.

- f. This is a classic case of “delayed assertion of memory...coupled with the ‘clear possibility’ from the circumstances that the witness had been influenced by suggestions from others”¹.

Recognition evidence

2. The fact that these identifications involved claimed recognition does not render them any less vulnerable to error. Many of the considerations affecting the reliability of visual identification evidence apply equally to purported recognition evidence. Factors such as distance and circumstance are critical.
3. The Appeals Chamber has repeatedly emphasised the need to exercise “extreme caution” over visual identification evidence, particularly where the sighting occurred under difficult circumstances². This is because such evidence is vulnerable to³:

“...the frailties of human perceptions and the very serious risk that a miscarriage of justice might result from reliance upon even the most confident witnesses who purport to identify an accused without an adequate opportunity to verify their observations.”

4. A number of relevant considerations are identified in the Tribunal’s jurisprudence. Special caution is required when assessing “identifications of defendants by witnesses who had only a *fleeting glance* or an *obstructed view* of the defendant”; and identifications made “as a result of a *traumatic event* experienced by the witness”⁴. Particular caution is also required where there are “irreconcilable witness testimonies” or where “a witness’ *delayed assertion of memory* regarding the defendant [is] coupled with the ‘clear possibility’ from the circumstances that the witness [has] been influenced by suggestions from others”.

¹ *Prosecutor v. Kupreškić* Appeal Judgement, Case No. IT-95-16-A, Appeals Judgement, 23 October 2001, para. 40 (citation omitted).

² *The Prosecutor v. Kupreškić et al.*, Case No. IT-95-16-A, Appeal Judgement, 23 October 2001, para. 34; *The Prosecutor v. Kvočka et al.*, Case No. IT-98-30-1/A, Appeal Judgement, 28 February 2005, para. 24; *The Prosecutor v. Limaj et al.*, IT-03-66-A, Appeal Judgement, 27 September 2007, paras 27 and 30.

³ *Kupreškić* Appeal Judgement, *supra* note 836, para. 34.

⁴ *Kupreškić* Appeal Judgement, *supra* note 836, para. 40 (emphasis added; citations omitted).

5. In *Kunarac*⁵, the Trial Chamber underlined the added risk of distorted recollection, and vulnerability to suggestion:

“Identification is notoriously uncertain. It depends upon so many variables. They include...the extent of the opportunity for observation in a variety of circumstances; the vagaries of human perception and recollection; and the tendency of the mind to respond to suggestions, notably the tendency to substitute a photographic image once seen for a hazy recollection of the person initially observed.”

6. The Appeals Chamber in *Kupreškić* drew attention to case law from national jurisdictions on this issue⁶:

“[T]he Federal Court of Germany...has pointed out that a trial judge must exercise extreme caution in the evaluation of a witness’ recognition of a person. Particularly in cases where the identification of the accused depends upon the credibility of a witness’ testimony, the trial judge must comprehensively articulate the factors relied upon in support of the identification of the accused and the evidence must be weighed with the greatest care. The Supreme Court of Austria, has emphasised that, where the identification of the accused depends upon a single witness, a fact finder must be extremely careful in addressing specific arguments raised by the defendant about the credibility of the witness. Similarly, the Supreme Court of Sweden has held, on numerous occasions, that all imprecision or inaccuracy in a witness’ testimony must be addressed and analysed thoroughly by the fact finder.”

7. In the leading case of *R. v. Turnbull*⁷, the English Court of Appeal pointed out that mistakes in recognition can be made even where close relatives and friends are involved. Where the alleged recognition “depends solely on a fleeting glance or on a longer observation made in difficult conditions”, it should be regarded as unreliable⁸. The Court emphasised “that a mistaken witness can be a convincing one, and that a number of such witnesses can all be mistaken”.

⁵ *The Prosecutor v. Kunarac et al.*, Case No. IT-96-23 & IT-96-23/1-T, Trial Chamber Decision on Motion for Acquittal, 3 July 2000, para. 8 (citation omitted).

⁶ *Kupreškić* Appeal Judgement, *supra* note 836, para. 38 (citations omitted).

⁷ *R. v. Turnbull*, [1976] 63 Cr. App. R. 132 at 137-140.

⁸ *Ibid.*

8. Even in recognition cases, therefore, it is the quality of the identification that is paramount. As the Trial Chamber held in *Kayishema*, “for the purposes of identification, it is the physical recognition of the accused rather than personal acquaintance which is most pertinent”⁹.

The first alleged sighting

9. The first alleged sighting occurred as the three men were being walked from the Stojanović house in Dubravë/Dubrava towards the village of Gllogjan/Glođane¹⁰. At the time, they had been assaulted and ordered to put their hands in the air, to keep their heads down, and not to look to the left or the right¹¹. Mijat Stojanović nonetheless testified that, as they were walking along, he briefly looked up and to his right and caught sight of Ramush Haradinaj standing approximately half-way along the side road leading to the Haradinaj family home¹². He marked two exhibits to show his own position¹³ and the position at which he says Mr. Haradinaj was standing¹⁴. The distance between these two positions is approximately 71.9 metres¹⁵.
10. The purported identification is thus based upon a fleeting glimpse, in stressful and difficult circumstances, over a distance of 71.9 metres. The effect of distance on the accuracy of visual identification is well recognised in the academic literature¹⁶.
11. The unreliability of this alleged sighting is also apparent from the fact that, although Mijat Stojanović testified that two other people were standing near the man he identified as Ramush Haradinaj, he was unable to give any description of either of them¹⁷. Nor is the Trial Chamber in a position to evaluate whether he had an

⁹ *The Prosecutor v. Kayishema and Ruzindana*, Case No. ICTR-95-1-T, Trial Judgement, 21 May 1999, para. 458.

¹⁰ P421 (M. Stojanović testimony), T.2026.

¹¹ P421 (M. Stojanović testimony), T. 2062:24-2063:2; P493 (V. Stijović testimony), T.2166:17-21.

¹² P421 (M. Stojanović testimony), T. 2026, 2052-2054.

¹³ P421(M. Stojanović testimony), T. 2066-2067; P424 (Photograph).

¹⁴ P421 (M. Stojanović testimony), T. 2057-2058; P423 (Photograph).

¹⁵ Joint Submission on the Admission of Agreed Evidence and an Agreed Fact with Annex, 3 November 2011.

¹⁶ Geoffrey Loftus and Erin Harley, *Why is it Easier to Recognise Someone Close than Far Away?*, Psychonomic Bulletin and Review, 2004.

¹⁷ P421 (M. Stojanović testimony), T. 2062:13-17.

unobstructed view. Mijat Stojanović testified that other people were on the road and between five and ten men were at a trench near to the junction; however, he was unable to remember, one way or the other, whether any other people were standing between his position and the position of the man he claimed to recognise as Mr. Haradinaj.¹⁸

12. Neither of the other witnesses relevant to these counts claimed to have seen Mr. Haradinaj at this point; thus, this identification is uncorroborated.
13. As for the issue of recognition, Mijat Stojanović testified that he had been to school with Mr. Haradinaj between the ages of 7 and 11¹⁹. Mijat Stojanović had then left Dubravë/Dubrava in 1982 when Mr. Haradinaj was 13 years old²⁰. He did not return to live there until 1995²¹ when Mr. Haradinaj was no longer living in Kosovo. He was unable to remember any specific occasions when he had seen Mr. Haradinaj during his visits with his family between 1982 and 1995²², and, in particular, he was unable to identify the last occasion on which he had seen Mr. Haradinaj prior to 18th April 1998²³.
14. The potential risk that the witness confused Ramush Haradinaj with one of his brothers is obvious. Mijat Stojanović testified that he believed that there were six brothers, but he was unable to name any of them other than Ramush and Daut²⁴. He accepted that he did not know what the other brothers looked like²⁵, including the older brother Shkelzen²⁶. In these circumstances it is impossible to exclude the possibility of mistake.

¹⁸ P421 (M. Stojanović testimony), T. 2064: 3-21.

¹⁹ P421 (M. Stojanović testimony), T.2046:14-18.

²⁰ P421 (M. Stojanović testimony), T.2047:1-3, 25. 2048:4.

²¹ P421 (M. Stojanović testimony), T.2047:17-19.

²² P421 (M. Stojanović testimony), T.2050:16-23; 1992:9-18.

²³ P421 (M. Stojanović testimony), T.2067:8-9, 14.

²⁴ P421 (M. Stojanović testimony), T.2048:5-14.

²⁵ P421 (M. Stojanović testimony), T.2069:15-17.

²⁶ P421 (M. Stojanović testimony), T.2069:12-14.

The second alleged sighting

15. Dragoslav Stojanović testified that, as he was lying in the corridor on the upper floor of Smajl Haradinaj's house, Ramush Haradinaj came past with five or six soldiers, shoved him with his leg, and asked whether he recognised him²⁷. When Dragoslav Stojanović said that he did not, he alleged that Ramush Haradinaj kicked him in the back and said that he would eventually learn who he was²⁸. At the time of this encounter, Dragoslav Stojanović was lying on his side on the floor, unable to move due to injuries he had sustained²⁹. Asked whether he could recognise any of the other men present, he replied that he could not because he was "prone and hardly able to have a proper look."³⁰
16. At the time of this alleged sighting, Dragoslav Stojanović was, on his own evidence, slipping in and out of consciousness³¹. He testified: "I kept losing consciousness so the flow of events was interrupted for me because I would come to and then I would again faint."³² He confirmed that he "fainted a number of times"³³. Mijat Stojanović testified that, when he saw his brother in the corridor, he was "not fully conscious [and] could not talk at all."³⁴ He said that his brother was unable to look him in the face because he was "all curled up."³⁵ He went on to say, "He was perhaps able to glance at me, but that was not much."³⁶ He further testified that, when he returned to the corridor, Dragoslav Stojanović was still unconscious on the floor and in even worse condition.³⁷ Veselin Stijović confirmed that Dragoslav Stojanović "would lose consciousness all the time. He drifted in and out."³⁸

²⁷ P410 (D. Stojanović testimony), T.1886:8-14.

²⁸ P410 (D. Stojanović testimony), T.1886:14-16.

²⁹ P410 (D. Stojanović testimony), T.1886:10-11, 1933:6-8.

³⁰ P410 (D. Stojanović testimony), T.1886:25.

³¹ P410 (D. Stojanović testimony), T.1872:23, 1885:18-19.

³² P410 (D. Stojanović testimony), T.1893:17-19.

³³ P410 (D. Stojanović testimony), T.1929:18.

³⁴ P421 (M. Stojanović testimony), T.2093:9-10.

³⁵ P421 (M. Stojanović testimony), T.2093:24-25.

³⁶ P421 (M. Stojanović testimony), T.2094:4-5.

³⁷ P421 (M. Stojanović testimony), T.2095:19-25.

³⁸ P493 (V. Stijović testimony), T.2136:14-15.

17. As for the issue of recognition, Dragoslav Stojanović testified that he had not seen Mr. Haradinaj for ten years prior to this incident³⁹ and that he did not see him at any other point on 18th April⁴⁰. Nor had he seen him at any time since then⁴¹.
18. Neither of the other witnesses relevant to these counts were present at the time of this alleged sighting, and the identification is thus uncorroborated.

The third alleged sighting

19. Mijat Stojanović testified that, as the men were being released, they were taken into a yard outside Smajl Haradinaj's house⁴². Other people were in the yard, standing in small groups⁴³. He was only in the yard for a short time⁴⁴. He claimed that, during this period, he saw Hilmi Haradinaj standing near the main gate⁴⁵ and that Ramush Haradinaj was standing with him⁴⁶.
20. Neither of the other two witnesses relevant to these counts claimed to have seen Ramush Haradinaj at this point. The identification is thus uncorroborated.
21. This observation was brief and made in difficult and traumatic circumstances. The submissions set out above concerning the witness's ability to recognise Ramush Haradinaj at the time, or to distinguish him from his brothers, apply with equal force to this purported identification.

Credibility issues concerning the purported identifications

22. In conversations and interviews recorded at the time, neither Dragoslav nor Mijat Stojanović mentioned seeing Ramush Haradinaj on the day in question.

³⁹ P410 (D. Stojanović testimony), T.1915:12-15.

⁴⁰ P410 (D. Stojanović testimony), T.1915:20-1916:2.

⁴¹ P410 (D. Stojanović testimony), T.1916:3-6.

⁴² P421 (M. Stojanović testimony), T.2068:16.

⁴³ P421 (M. Stojanović testimony), T.2035:20-23.

⁴⁴ P421 (M. Stojanović testimony), T.2069:5-11.

⁴⁵ P421 (M. Stojanović testimony), T.2069:1-4.

⁴⁶ P421 (M. Stojanović testimony), T.2035:18-2036:2.

23. Veselin Stijović testified that he recalled Dragoslav and Mijat Stojanović giving him the names of two individuals who had participated in the events of 18th April⁴⁷. The first was Nasim Haradinaj who made unsuccessful attempts to prevent the men from being beaten inside the Stojanović house⁴⁸. The second was Zeqir Nimonaj who had participated in the beatings⁴⁹. During cross-examination he said that he also had a recollection of Daut Haradinaj's name being used at some point but stated, "I couldn't remember that when I was giving my statement. I don't know who that man is."⁵⁰ There was no suggestion that either Dragoslav or Mijat Stojanović had mentioned to Veselin Stijović that they claimed to have seen Ramush Haradinaj on the day in question⁵¹. There is thus no contemporary corroboration of the purported recognitions.
24. Mijat Stojanović gave an interview to a Serbian magazine called *Illustrojana Politika* on 25th April 1998⁵². In the interview, he named a number of people he had recognised as having been present or having participated in the assault. He did not mention having seen Ramush Haradinaj on the day in question⁵³. He identified Nasim Haradinaj as probably being the "boss" of those involved⁵⁴ – a comment which is not easy to reconcile with the subsequent identification of Ramush Haradinaj as purportedly having been present.
25. Marijana Andjelković testified that she interviewed Mijat Stojanović on 25th April 1998 and produced a record of the interview⁵⁵. Although Mijat Stojanović claimed to have no recollection of the interview⁵⁶, the Trial Chamber is invited to conclude that the interview indeed took place. It contains a detailed account of the events of 18th April 1998 and names two perpetrators: Nasim Haradinaj and Zeqir Nimonaj⁵⁷, the

⁴⁷ P493 (V. Stijović testimony), T.2132:1-7.

⁴⁸ P493 (V. Stijović testimony), T.2162:10-2163:6.

⁴⁹ P493 (V. Stijović testimony), T.2132:8-13.

⁵⁰ P493 (V. Stijović testimony), T.2166:1-3.

⁵¹ P493 (V. Stijović testimony), T.2165:6-20 (mentioning only Nasim and Zeqir).

⁵² P413 (Article from *Illustrojana Politika*).

⁵³ P421 (M. Stojanović testimony), T.2070:13-19.

⁵⁴ P413 (Article from *Illustrojana Politika*), p. 5(ET); P421 (M. Stojanović), T.2071-2072.

⁵⁵ P440 (Andjelković testimony), T.657:17-661:18; P425 (HLC incident report, Mijat Stojanović), pp 22-25; P445 (Andjelković notebooks), pp 9-12.

⁵⁶ P421 (M. Stojanović testimony), T.2085-2086.

⁵⁷ P425, pp 22-23 (HLC incident report, Mijat Stojanović).

same names as those recalled by Veselin Stijović. The interview makes no mention of the presence or alleged involvement of Ramush Haradinaj.

26. The resulting position is that neither Dragoslav nor Mijat Stojanović made any contemporaneous claim to have seen Ramush Haradinaj on the day in question. On the contrary the accounts given by both men to Veselin Stijović and the accounts given by Mijat Stojanović to Marijana Andjelković and to the magazine *Illustrojana Politika* each identify the same alleged individuals but make no suggestion that either Dragoslav or Mijat Stojanović saw Ramush Haradinaj on the day in question.
27. As noted below, the Stojanović family had close connections with the Serbian security forces. Moreover, they hold the Haradinaj family responsible for the loss of their home⁵⁸, which carries a real risk of bias. Given the events of 24th March and thereafter, Dragoslav and Mijat Stojanović have a powerful motive for falsely implicating Ramush Haradinaj in the events of 18th April. Taking account of the inherent weaknesses in the identification evidence, the absence of any mention of Ramush Haradinaj in contemporary conversations and interviews, and the risk of bias, the Defence submits that there is no reliable evidence establishing Ramush Haradinaj's presence at or involvement in the assaults alleged.

No evidence of JCE

28. The evidence does not establish that the alleged crimes were committed pursuant to a JCE. The assaults on the Stojanović brothers and Veselin Stijović were plainly not pre-planned. The family had vacated the house in Dubravë/Dubrava after the events of 24th March because the MUP told them to leave for security reasons⁵⁹. There is no suggestion that anyone in the village was aware that they intended to return on 18th April. The clear inference is that the assaults occurred opportunistically when word spread that the men had been seen returning to the house.

⁵⁸ P410 (D. Stojanović testimony), T.1904:21-1905:6.

⁵⁹ P421 (M. Stojanović testimony), T.2011:4-5; P410 (D. Stojanović testimony), T.1860:14-22.

29. Nor can the assaults be characterised as part of a general attack on the Serb civilian population in the area. The obvious inference from all the evidence is that the Stojanović brothers were spontaneously targeted by people from the village not because of their ethnicity but because of their perceived involvement in the events of 24th March.
30. The evidence establishes strong grounds to believe that people in the village perceived the Stojanović family to have been providing information to the Serb forces, which led to the Serb attack on 24th March 1998. Predrag Stojanović was a police officer and was apparently involved in the police operation on 24th March⁶⁰. The police visited the Stojanović house twice a week⁶¹. Miloica Vlahović testified that Ljubica Stojanović was the first person to discover that military training was taking place in Gllogjan/Glođane⁶², and newspapers reported at the time that Ljubica Stojanović was providing intelligence to the Serb police about movements into and out of the Haradinaj home⁶³. Regardless of the truth of these allegations, they reflect the popular perception in the village.
31. The Humanitarian Law Centre (HLC) report on the events of 24th March 1998 rightly describes the Stojanović family home as having been used by the Serb forces as a “military facility” on the day⁶⁴. Dragoslav Stojanović confirmed this description when he testified that the police used the premises to fire on the Haradinaj home – prior to any “rockets” having been fired in the opposite direction⁶⁵. Vladimir Stojanović’s statement given to the HLC on 9th April 1998 also supports this broad description⁶⁶. Mijat Stojanović testified that a Serbian Pinzgauer had been parked near the Stojanović house on 24th March⁶⁷ and that helicopters were flying overhead⁶⁸. He confirmed that he was concerned that people in the village would want to retaliate

⁶⁰ P410 (D.Stojanović testimony), T.1938:5-7; P421 (M. Stojanović testimony), T.2003:1-4; P444 (M. Andjelković notebooks), p. 14.

⁶¹ P410 (D.Stojanović), T.1950:12-20; P440 (M. Andjelković testimony), T.503:6-13; P446, pp 36-41 (HLC incident reports, Ljubica and Vladimir Stojanović); P444 (Andjelković notebooks), pp 10, 15.

⁶² T.1570-1571 (transcript from the original trial which the Prosecution have not sought to admit in the retrial).

⁶³ D446, p. 40 (HLC incident report, Ljubica Stojanović); P440 (M. Andjelković testimony), T.649-651.

⁶⁴ P440 (M. Andjelković testimony), T.639:3-13.

⁶⁵ P410 (D. Stojanović testimony), T.1970:6-10.

⁶⁶ P446 (HLC Incident Report, Vladimir Stojanović), p. 37.

⁶⁷ P421 (M.Stojanović testimony)T.2113:18-21.

⁶⁸ P421(M.Stojanović testimony),T.2010:4-6, 2103:13-18.

against them because of the perception that their house had been used as a military facility⁶⁹.

32. The inevitable inference is that the inhabitants of the village of Gllogjan/Glođane would have considerable ill-feeling towards the Stojanović family.
33. Elements of the testimony confirm the apparently spontaneous nature of the assaults. All three witnesses testified that Nasim Haradinaj had intervened in the early stages to try to prevent the assault⁷⁰. Despite being described as the person who seemed to be in charge⁷¹, he was apparently unable to control those with him⁷². Mijat Stojanović testified that he felt that the whole village was turning on them⁷³, as people came out of their houses and approached them from the meadows around Gllogjan/Glođane⁷⁴. Veselin Stijović confirmed that, as the men were marched towards the village of Gllogjan/Glođane, villagers spontaneously came out of their homes and attacked them next to the road⁷⁵.
34. Moreover, many of the individuals involved were young and would have been contemporaries of the three teenagers killed on 24th March. Mijat Stojanović testified that he was questioned in Smajl Haradinaj's house by a boy aged 16 or 17⁷⁶ and that a number of the individuals guarding them were 11 to 13 years of age⁷⁷. Veselin Stijović confirmed that they were guarded by "quite a lot of young people"⁷⁸.

⁶⁹ P421(M. Stojanović testimony), T.2115:14-18.

⁷⁰ P410 (D. Stojanović testimony), T.1866:10-11; P421 (M. Stojanović testimony), T.2076:18-23; P493 (V. Stijović testimony), T.2132:4-7; D446, p. 23 (HLC incident report, Mijat Stojanović).

⁷¹ P493 (V. Stijović testimony), T.2163:24-2164:7; P421 (M. Stojanović testimony), T.2071:19-2072:11.

⁷² P493 (V. Stijović testimony), T.2164:11-25; D446 p. 23 (HLC incident report, Mijat Stojanović, 27th April 1998).

⁷³ P421 (M. Stojanović testimony), T.2091:9-11.

⁷⁴ P421 (M. Stojanović testimony), T.2091:2-8.

⁷⁵ P493 (V. Stijović testimony), T.2175:8-11.

⁷⁶ P421 (M. Stojanović testimony), T.2089:11-23.

⁷⁷ P421 (M. Stojanović testimony), T.2089:24-2090:6.

⁷⁸ P493 (V. Stijović testimony), T.2178:13-14.

**THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA**

CASE NO. IT-04-84bis-T

IN TRIAL CHAMBER II

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

Registrar: Mr. John Hocking

Date filed: 11 June 2012

THE PROSECUTOR

v.

**RAMUSH HARADINAJ
IDRIZ BALAJ
LAHI BRAHIMAJ**

PUBLIC REDACTED

**ANNEX 4
TO HARADINAJ DEFENCE FINAL TRIAL BRIEF**

The Office of the Prosecutor:

Mr. Paul Rogers

Counsel for Ramush Haradinaj:

Mr. Ben Emmerson QC
Mr. Rodney Dixon
Mr. Andrew Strong

Counsel for Idriz Balaj:

Mr. Gregor Guy-Smith
Ms. Colleen M. Rohan

Counsel for Lahi Brahimaj:

Mr. Richard Harvey
Mr. Paul Troop

SUBMISSIONS ON 22 APRIL INCIDENT

No evidence that the alleged crimes were committed pursuant to a JCE

1. There is no evidence that the beatings of Staniša Radošević and Novak Stijović were authorised or condoned by Ramush Haradinaj or that they were the result of any policy to ill-treat Serb civilians generally on grounds of their ethnicity. Nor is there any evidence that the individuals who perpetrated the assaults were under the effective command and control of Ramush Haradinaj at this time. Taken as a whole, the evidence suggests that the beatings were spontaneous unauthorised attacks by local armed villagers motivated by the fact that the two men were perceived to have close connections with the Serb police responsible for the 24th March operation.

Lack of organisation

2. There is ample evidence that by 21st April Albanian villagers in the areas of Dashinoc/Dašinovac, Pozhar/Požar, and elsewhere to the East of the main Pejë/Peć-Gjakovë/Đakovica road had begun to arm themselves and were making the first rudimentary attempts to organise village defences¹. The only plausible inference from the evidence is that the local population took these steps as defensive formations designed to protect themselves against anticipated Serb police attacks. For the reasons set out in Part 2 of the Final Brief, there is no basis to conclude that a centralised or “vertical” command structure existed in the area at this time.
3. This lack of organisation on the ground was apparent from the evidence of Staniša Radošević and Novak Stijović. Mr. Radošević testified that, when their cars were first stopped at Pozhar/Požar, about 40 armed men “started debating who was going to go with us to Glodjane, to escort us there”². This process went on for about half an hour³. Although some of the men were uniformed, most wore civilian clothes⁴. They had no

¹ See Part 2 of Final Brief, paras. 44-45 and 95-108.

² P306 (S. Radošević testimony), T.966:4-5.

³ P306 (S. Radošević testimony), T.966:2-6, 1036:20-22, 1037:19-24.

⁴ P306 (S. Radošević testimony), T.966:7-11.

communication devices⁵ and received no instructions from elsewhere⁶. Mr. Radošević was unable to identify any person in charge of this group⁷. He said: “They were all talking at the same time. They were arguing whether they would be taking me to Glodjane or not.”⁸ Novak Stijović confirmed that nobody seemed to be in charge of this group⁹.

4. *En route* from Pozhar/Požar towards Glllogjan/Glođane, Mr. Radošević saw “large numbers of armed men dressed and armed in the same haphazard fashion ... They were milling around but didn’t seem to be moving in any particular direction.”¹⁰ The picture which emerges is of armed Albanian villagers taking to the streets spontaneously, with no clear leadership and no defined or organised purpose.
5. The ill-treatment of the two men occurred after Novak Stijović’s car broke down by chance 200-300 metres outside Glllogjan/Glođane¹¹. At that point a group of unidentified armed men pulled up, questioned them, and began to beat Mr. Stijović¹². When Mr. Radošević intervened, he too was beaten¹³. The initial beatings thus occurred on the roadside where the car happened to break down¹⁴. Novak Stijović and Rosa Radošević were then taken to the nearest private house¹⁵. Nothing suggests that this house had any sort of official status as a headquarters or designated KLA facility¹⁶.
6. The same lack of organisation was apparent when Mr. Radošević was stopped at Bandera on his return from Dashinoc/Dašinovac later in the day. The men who stopped him were armed but in civilian clothes¹⁷. They argued with each other about what should be done: “[T]hey argued. Some wanted to take me to Glodjane with the

⁵ P306 (S. Radošević testimony), T.1039: 6-10.

⁶ P306 (S. Radošević testimony), T.1039: 11-13.

⁷ P306 (S. Radošević testimony), T.1037: 12-16.

⁸ P306 (S. Radošević testimony), T.1038: 11-12

⁹ P491 (N. Stijović), T.7172:18-20.

¹⁰ P306 (S. Radošević testimony) T.1039:14-20.

¹¹ P306 (S. Radošević testimony), T.970:8-971:15.

¹² P306 (S. Radošević testimony), T.971:11-17.

¹³ P306 (S. Radošević testimony), T.972:18-25.

¹⁴ P306 (S. Radošević testimony), T.971:8-17.

¹⁵ P306 (S. Radošević testimony), T.1042: 22-25; P491 (N. Stijović), T.7172:2-5.

¹⁶ P491 (N. Stijović), T.7161:3-14.

¹⁷ P306 (S. Radošević testimony), T.1043:1-15.

rifle that I had surrendered and the others insisted, with Caus at their head, that I should go to Decane to get the other rifle.”¹⁸ He summed up the situation by saying: “I can’t really tell you now whether there was anyone in charge there or anyone responsible.”¹⁹

7. The evidence as a whole suggests that the assaults were acts of disorganised, ill-disciplined, and unauthorised ill-treatment carried out by unidentified men under no clear command. No evidence supports a finding that they were committed pursuant to a JCE involving Ramush Haradinaj.

The ill-treatment was not ethnically motivated

8. There is no evidence that the ill-treatment was part of any general or authorised policy to attack Serb civilians. Staniša Radošević testified that prior to this incident he had not encountered any problems with Albanians in the area²⁰. He had not left Dashinoc/Dašinovac out of fear of the KLA, as was erroneously recorded in his HLC statement²¹. He had in fact taken his mother for a medical appointment in Dečan/Dečani and was stopped when he was returning with her the following day²².
9. The evidence establishes that a total of six Serb civilians were detained (in two groups of three) at the Pozhar/Požar crossroads on 23rd April 1998 and taken for questioning²³. The other group consisted of Novak Stijović’s father Konstantin Stijović, Milka Stijović, and Stana Popović²⁴. These people were all released unharmed (save that Konstantin Stijović’s hat was knocked from his head)²⁵.

¹⁸ P306 (S. Radošević testimony), T.1044: 6-8.

¹⁹ P306 (S. Radošević testimony), T.1044: 22-23.

²⁰ P306 (S. Radošević testimony), T.1034: 3-23.

²¹ P306 (S. Radošević testimony), T.1025: 14-18, 1028:10-15.

²² P306 (S. Radošević testimony), T.1011: 9-14.

²³ P491 (N. Stijović testimony), T.7185-7187; P440 (M. Andjelković testimony), T.590:13-591:11, 654:23-657:16; P446 (HLC incident reports, Konstantin Stijović), pp 4-5.

²⁴ P491 (N. Stijović testimony), T.7185:18-7187:4; P440 (M. Andjelković testimony), T.590:13-591:11, 654:23-657:16; P446 (HLC incident reports, Konstantin Stijović), pp 4-5.

²⁵ P491 (N. Stijović testimony), T.7186:5-7187:4; P440 (M. Andjelković testimony), T.654:23-657:16; P446 (HLC incident reports, Konstantin Stijović), pp 4-5; P445 (M. Andjelković notebooks), p. 15.

10. Nor was Staniša Radošević's mother Rosa beaten or ill-treated in any way²⁶. Mr. Radošević confirmed that one of the men asked him, "Is this your mother?" When he replied in the affirmative the man said: "Then she is my mother too".²⁷ This response, and the treatment of Mrs. Radošević generally, is inconsistent with an ethnic motivation for the violence.
11. In summary, four of the six Serb civilians stopped at the Pozhar/Požar crossroads were released unharmed²⁸. In addition Miloica Vlahović testified about a couple called Radun and Lijlja Dabetić, who had left Dashinoc/Dašinovac on 22nd April 1998, and, after being stopped by armed men, were permitted on their way unharmed²⁹.

Police connections and 24th March

12. The evidence strongly suggests that the motivation for the physical assaults on Mr. Radošević and Mr. Stijović was local resentment, in the aftermath of 24th March, at their perceived involvement with the Serb police and security forces.
13. During the assaults upon them, the men were questioned about Serb police activities, whether they had relatives in the police, and who was responsible for the shooting of Albanians on 24th March 1998³⁰. Staniša Radošević confirmed that the persons who stopped him "would ask me questions about where my weapon was, who was the police commander in Decani, and who had been shooting at them"³¹. Under cross-examination he accepted that the men were referring to the events of 24th March³². He was specifically asked, "Were they asking you about who was responsible for shooting civilians on the 24th of March?" and replied, "Yes. They asked me who was in the police. They were asking me such questions."³³

²⁶ P306 (S. Radošević testimony), T.1074: 8-1075:10; P491 (N.Stijović testimony), T.7153:7-9, 7185:5-7.

²⁷ P306 (S. Radošević testimony), T.1074: 19-1075:2.

²⁸ P491 (N. Stijović testimony), T.7185-7187.

²⁹ T.1642:4-25 (from the original trial which the Prosecution did not apply to admit in the retrial).

³⁰ P306 (Radošević testimony), T.1051:1-1053:12; P491 (N. Stijović testimony), P491 (N. Stijović testimony), T.7173:14-7174:15; P446 (HLC incident reports, N. Stijović), p. 2.

³¹ P306 (S. Radošević testimony), T.1051:1-1053:12.

³² P306 (S. Radošević testimony), T.1051:1-1053:12.

³³ P306 (S. Radošević testimony), T.1053:2-6.

14. Mr. Stijović confirmed that he was being asked questions about the police and 24th March attack whilst Staniša Radošević was still present and during the time they were being beaten outside in the street³⁴. The obvious inference is that the reason these assaults occurred was this perceived connection with the Serb security forces, and not the men's ethnicity.
15. Nor were these perceptions groundless. The evidence of these witnesses concerning their connections with the Serb police was in certain respects contradictory and unsatisfactory³⁵. However, an overall picture emerges of a close association with the Serb security forces.
16. The Defence does not suggest that these connections afford a justification for the assaults. But, taken together with the nature of the questioning, and the absence of any attacks on the other Serb civilians detained at the same time, they give rise to a plausible inference that the motivation of the perpetrators in singling out these two men was not their ethnicity but their perceived connections to the Serb security forces.

Summary submission

17. Whether the perpetrators of these assaults were motivated by a desire for revenge or by fear, they are not crimes for which any form of criminal responsibility can properly be attributed to Ramush Haradinaj.

³⁴ P491 (N.Stijović testimony), T.7173:14-7174:6; P446 (HLC incident reports, N. Stijović), p. 2.

³⁵ P306 (S. Radošević testimony), T.956-957 (he testified that he did not join the police until 2000), but his name appears on a PJP members per diem list for March 1999 (P.422).

**THE INTERNATIONAL CRIMINAL TRIBUNAL
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Judge Guy Delvoie

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Date filed: 11 June 2012

THE PROSECUTOR

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**RAMUSH HARADINAJ
IDRIZ BALAJ
LAHI BRAHIMAJ**

PUBLIC REDACTED

**ANNEX 5
TO HARADINAJ DEFENCE FINAL TRIAL BRIEF**

The Office of the Prosecutor:
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Counsel for Ramush Haradinaj:
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Counsel for Idriz Balaj:
Mr. Gregor Guy-Smith
Ms. Colleen M. Rohan

Counsel for Lahi Brahimaj:
Mr. Richard Harvey
Mr. Paul Troop

ANNEX 5 (A)

STATEMENT of Soren Jessen-Petersen

1. I make this statement voluntarily for the Defence of Mr. Ramush Haradinaj in proceedings brought against him by the Prosecutor at the International Criminal Tribunal for the former Yugoslavia (ICTY). I confirm that I am willing to travel to The Hague and give evidence if so requested.

2. My name is Soren Jessen-Petersen. I have served with the United Nations for some 30 years, mainly with the United Nations High Commissioner for Refugees. I have served in the Balkans on three occasions – as UNHCR Special Envoy in the former Yugoslavia in 1996, based in Sarajevo, as EU Special Representative in the Former Yugoslav Republic of Macedonia from February 2004 to July 2004 and as Special Representative of the Secretary General in Kosovo from August 2004 to July 2006. I have undertaken numerous missions to the region over the last 15 years including 6 to Kosovo before assuming the functions of SRSG.

3. I first met Mr. Haradinaj when I visited Pristina in May 2004 as EU Representative in Macedonia. After arriving in Pristina in August 2004 as the UN Secretary-General's Special Representative, and during my two years in that post, I had regular contacts with him and notably during the 100 days when he served as Prime Minister of Kosovo.

4. I was impressed by his performance as Prime Minister. He provided strong leadership, worked hard and maintained constructive relations with all citizens of Kosovo, political parties and the international community including UNMIK. He was particularly effective in steering substantial progress on the implementation of the standards for a multiethnic, democratic and law abiding Kosovo which the international community had established as criteria for leading Kosovo towards the beginning of the talks to determine the status of Kosovo. In that connection, the situation and treatment of the minorities, and very important the Kosovo Serbs, was of special significance and as Prime Minister Mr. Haradinaj took

several initiatives to reach out to the Kosovo Serbs through personal action or by urging his cabinet members and the citizens of Kosovo to do likewise. Mr. Haradinaj also consented to the visits of President Tadic and Prime Minister Kostunica of Serbia during his time as Prime Minister and said he was ready to meet with them which both visitors declined. There is no doubt that during the 100 days of Haradinaj's leadership, Kosovo took major steps in moving towards the status process.

5. As Mr. Haradinaj got ready to assume the position of Prime Minister in early December 2004, based on recently concluded parliamentary elections, there were reports that the ICTY was working on a possible case against him but it was clear that no decision had been taken nor that a decision to indict would necessarily be taken. Before agreeing to his appointment, which according to Security Council resolution 1244 and the Constitutional Framework of Kosovo is the responsibility of the Special Representative of the Secretary General, I told Mr. Haradinaj that whereas I was not prepared to intervene in a democratic process, I did expect him to resign and proceed to the Hague immediately in case of an indictment. He promised me to do so and on a couple of occasions over the next months I reminded him of our agreement which he confirmed.
6. On 7 March 2005 in the evening, the indictment was handed over to me by a delegation representing ICTY. The next morning, I informed Mr. Haradinaj, in the company of the Commander of KFOR, General Kermabon, and told him that I now expected him to resign and to proceed to The Hague. The same afternoon, Mr. Haradinaj had informed all concerned, had announced his resignation and had also been helpful in arranging for the surrender of two co-indictees. In his public announcement, he appealed for calm in Kosovo and in my statement, I did the same while at the same time regretting the departure of the able Prime Minister while commending him for his example in cooperation with the Tribunal. I also expressed my regret that I would no longer be working with a friend – a statement that raised many eyebrows. For me it is clear that a friend is somebody I can trust.

Mr. Haradinaj had during his 100 days been a trustworthy prime minister and partner for me, and he had fully kept his promise to me to resign and cooperate with the Tribunal in case of an indictment. Both General Kermabon and I appreciated his attitude and response as helpful to the maintenance of calm, law and order in Kosovo.



Soren Jessen-Petersen

Date 15.02.2007

ANNEX 5 (B)

Statement of General (ret.) Dr. Klaus Reinhardt

1. I make this statement voluntarily for the Defence of Mr. Ramush Haradinaj in proceedings brought against him by the Prosecutor at the International Criminal Tribunal for the former Yugoslavia (ICTY). I confirm that I am willing to travel to The Hague and give evidence if so requested.

2. My name is Klaus Reinhardt. I served for almost 41 years in the German Armed Forces and held command positions at every level from platoon commander up to Four Star General. My last active duty appointment was as NATO Commander, Joint Headquarters Centre, in Heidelberg, Germany. In this last assignment, I was responsible for coordinating all operational matters concerning NATO land forces from northern Norway to the Alps. During this tenure, I was also appointed to serve as Commander of the international peace support forces in Kosovo (KFOR) from October 1999 to spring 2000. Before that, I commanded the German contingents in UNSCOM in Somalia plus UNPROFOR, IFOR and SFOR in the Balkans. After my time as Commander KFOR (COMKFOR), I was given the mission of integrating the Polish and Czech land forces into NATO. I retired from active duty in 2001.

3. In my position as COMKFOR, I was visited twice in Pristina by Mrs Carla Del Ponte, Chief Prosecutor of the International Criminal Tribunal for the Former Yugoslavia (ICTY), and more often by some of her **colleagues**. In the course of every such visit, I asked Mrs del Ponte and her colleagues whether they had any indications of war crimes committed by General Agim Çeku, then Commander of the Kosovo Protection Corps, or by his deputy, Mr Ramush Haradinaj. I made it very clear that it would be impossible for me to co-operate with Kosovars who were accused of war crimes. All the answers given to me at that time were negative; I was told again and again by the representatives of the ICTY that there were no indictments and no indications of war crimes committed by either General Çeku or Mr Haradinaj.

4. Four years ago, I co-operated with the ICTY in The Hague again when I was asked by the ICTY to provide advice, conduct analyses and write a report in preparation of evidence given in the cases of General Enver Hadžihasanović and General Amir Kobura. For this purpose, I worked with the Senior Trial Attorney, Mr. E. Withopf, from summer 2002 until my testimony in May 2004.
5. Today, I am an author writing books and articles on international security related issues and I teach at two universities in Germany.
6. I **first** met Mr Ramush Haradinaj when I was COMKFOR. At that time, Mr Haradinaj was Deputy Commander of the Kosovo Protection Corps (KPC). He was a very dedicated and straightforward man and the only one amongst the senior leadership of the KPC to fully accept the new role of the former UÇK as a now civilian support and protection service. He always supported the rule of law and the role of the international organizations. He never resisted the request of the international community to demilitarize the UÇK. He fully assisted me in the very difficult endeavour to disarm the former UÇK and to reorganize it into a civil organization without military ranks. Unfortunately, this policy of demilitarization was changed after my tenure when the KPC was granted military ranks and some kind of a military organization. By that time, however, Mr Haradinaj had already entered politics and was no longer a member of the KPC.
7. Mr Haradinaj is a highly intelligent and honest man whom I trusted wholeheartedly and whose advice I sought actively. He never let me down nor did he ever misuse my confidence in him. I enjoyed his open and convincing character, his charismatic leadership, his absolute reliability and his deep humor. Mr Haradinaj is a born leader dedicated to changing the poor living conditions **in Kosovo** and to stopping the ethnic fighting amongst the peoples of Kosovo. He was and is a man with a vision for a better future for the different ethnic groups in Kosovo, in particular for all of the minorities. He was the only Albanian Kosovar leader I met who always asserted how important it was to reconcile with the Serbs and other minorities and to give all refugees a fair

chance to resettle in Kosovo. He did not say that to please me but he was, I believe, deeply convinced that otherwise the internal struggle in Kosovo would never stop and the people of Kosovo would never get a chance for a better and peaceful future.

8. At the end of the year 1999, General Çeku threatened to resign from the leadership of the KPC for the reason that I did not grant his forces military ranks or a military structure. I immediately asked Mr. Haradinaj to take effective command of the KPC which he did very successfully. In those very difficult days, I saw Mr. Haradinaj every day and it was under his tenure that we succeeded in consolidating the KPC. Following representations by General Ceku to UNMIK and NATO he was reinstated in his former command in January 2000.
9. It was then and after having realised the extraordinary qualities and vision of Mr. Haradinaj for the future of Kosovo, that I discussed with him again and again whether he should not switch from a leadership role in the Kosovo Protection Corps into politics. I strongly supported his political ambition because I was deeply impressed by his exceptional skills and by his high reputation amongst the Kosovo-Albanians who saw in him their most trusted war hero.
10. We continued to see each other very often and established a very close working relationship. After I left Kosovo as COMKFOR, I visited Kosovo again as a private citizen on a couple of occasions. I used each of these opportunities to meet Mr. Haradinaj privately again in order to learn his ideas about the future of Kosovo.
11. I believe Mr. Haradinaj to be a very serious man and a politician with outstanding qualities who will be a key factor for the reconciliation of the different ethnic groups in Kosovo. As such, he will be also a key figure and a unifying force for the international community in its attempt to find a way for a peaceful political future in Kosovo. It is my opinion that Kosovars believe strongly in him. He has an exceptional ability to persuade people that it is time for a change for the better, i.e. from the traditional anti-

Serb attitude to an attitude of co-operation. Thus he could, I believe, become the political leader who is capable of unifying all of the various political attitudes and cultural differences in order to overcome the deep controversies and the historical division in Kosovo.

12. I believe in Mr. Haradinaj's integrity which he demonstrated in accepting the indictment against him. I have no doubt that he will continue, as he has always done, to honour his
- obligations to the international community and to the rule of law, regardless of his personal feelings.

Klaus Reinhardt

Klaus Reinhardt

General (ret.)

Date:

15 January 2007