THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA

Case No. IT-05-87-A

IN THE APPEALS CHAMBER

Before: Judge Liu Daqun, Presiding
Judge Mehmet Güney
Judge Fausto Pocar
Judge Theodor Meron
Judge Andrésia Vaz

Registrar: Mr. John Hocking

Date: 23 September 2009

THE PROSECUTOR

V.

NIKOLA ŠAINOVIĆ
DRAGOLJUB OJDANIĆ
NEBOJŠA PAVKOVIĆ
VLADIMIR LAZAREVIĆ
SRETEN LUKIĆ

PUBLIC WITH CONFIDENTIAL ANNEXES

DEFENSE APPELANT'S BRIEF

The Office of the Prosecutor:
Mr. Paul Rogers

Counsel for Accused Sreten Lukić:
Mr. Branko Lukić and Mr. Dragan Ivetić

Counsel for Co-Accused:

Mr. Toma Fila and Mr. Vladimir Petrović for Mr. Nikola Šainović
Mr. Tomislav Višnjić and Mr. Peter Robinson for Mr. Dragoljub Ojdanić
Mr. John Ackerman and Mr. Aleksandar Aleksić for Mr Nebojša Pavković
Mr. Mihajlo Bakrač and Mr. Đuro Čepić for Mr. Vladimir Lazarević

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Introduction and General Submissions

1. The Chamber rendered its Judgment in the instant case on 26 February 2009. ("Judgment").

2. The Judgment adjudged and found Sreten Lukic ("Appellant") guilty pursuant to Article 7(1) (by way of participation in a Joint Criminal Enterprise) of the Statute of:

a) Count 1: Deportation;
b) Count 2: Forcible Transfer;
c) Count 3: Murder;
d) Count 4: Murder;
e) Count 5: Persecutions

3. The Judgment issued a sentence of twenty-two (22) years imprisonment against the Appellant based on these findings.

4. The Appellant respectfully submits that the Trial Chamber has committed various errors of law and fact, which invalidate the Judgment and/or have occasioned a miscarriage of justice.

5. The Appellant submits that for the reasons set out herein, the Appeals Chamber should: a) reverse the Trial Judgment of the Trial Chamber; b) find the Appellant not guilty on the counts mentioned above; and b) order that the Appellant be immediately released from custody, or in the

alternative that the Sentence imposed be reconsidered and lowered in accord with applicable standards .

6. In addition to the grounds of appeal set forth herein, the Appellant expressly and respectfully reserves the right to raise any and all errors of law or fact that may become apparent: a) subsequent to a full and thorough review and analysis of the entire record of the proceedings; and b) subsequent to the Appellant receiving a copy of the Judgment in his own language.

7. Due only to word restrictions on this filing the Grounds Q-JJ have been consolidated together under Ground Q, except for Grounds U&GG. In no event is the Defense withdrawing such Grounds or the relief sought thereunder.

8. Additionally, due only to word restrictions on this filing, Grounds C,J,L,M have not been dealt with separately and their resulting paragraphs have been distributed to the extent possible among the remaining Grounds. In order to comply with the word limit imposed, discussion of topics has been consolidated under the remaining grounds, causing paragraphs to be displaced to new sections. This was necessary in order to assist the Chamber to understand the arguments within the limited length, and professionally and properly present Appellant's arguments.

9. In evaluating this case, respectfully, the Appeals Chamber must take into account the fundamental flaws in the Judgment's evaluation of the Trial Evidence, as set forth herein.

REQUEST TO EXCEED PAGE LIMIT, INSTANTER

10. All the arguments set forth in Appellant's motion to enlarge word limit are incorporated herein by reference. The instant filing consists of approximately 5956 words beyond the limit imposed. It is again stressed that the Judgment is the size of no fewer than FIVE average-sized judgments, whereas the word-limit is TWO times an average judgment. Although counsel have endeavored to comply, our professional duties to our client require us to adequately set forth the Multitude of Serious errors that form the Grounsd of his appeal and we have not been able to reduce the pages to the limit and also fulfill our obligations. Thus we kindly would request an enlargement, instanter, of 5956 words.

A. THE TRIAL CHAMBER ERRED – JOINDER, INADEQUATE TIME/FACILITIES

1. JOINDER WITH OTHER ACCUSED

11. To assist the Appeals Chamber, it should be noted that the instant case initially consisted of two cases, joined together on 8.7.2005[1] The order joined Prosecutor vs. Milutinovic, Ojdanic and Sainovic(IT-99-37), with 3 years pre-trial and which had been declared ready for assignment to trial; and Prosecutor vs. Pavkovic, Lazarevic, and Lukic(IT-03-70), where the accused had just surrendered to the Tribunal in the months just prior to the decision, and did not have fully appointed teams.[2]

12. Rule 48 requests for joint-trial could be denied where it was in the interests of justice and for purposes of fairness to the accused.[3] Indeed, the Kvocka[4] and Kolundzija[5] cases had been denied joinder precisely because the Kvocka defendants were ready for trial, Kolundzija only had arrived at the tribunal and was in the early pre-trial phase.[6] Under the same factual backdrop, when the Meakic and Fustar cases were joined they were at an advanced stage of pre-trial preparation, the accused having spent years at the tribunal and at that time the court granted joinder.[7]

13. Appellant objected to joinder in writing[8] argued, among other things:

a) Article 21's affirmations that all accused are equal before the Tribunal and shall have adequate time/facilities would be abridged/infringed upon if joinder was granted and trial forced on short-notice.

[1] See,*Decision on Prosecution Motion for Joinder,*8.7.2005
[2] Appellant surrendered 4 April 2005.
[3] Prosecutor v.Kvocka, et al.IT-98-30"Decision on Prosecutor's Motion for Joinder" 10.10.1999
[4] Prosecutor v.Kvocka, et.al.IT-98-30
[5] Prosecutor v.Sikirica et.al. IT-95-8
[6] See. Prosecutor v. Kvockaet al.IT-98-30,and Prosecutor v. Kolundzija,IT-95-8,"Decision on Prosecutor's Motion for Joinder",19.10.1999
[7] Prosecutor v.Meakic et.al. v. Fustar et.al.,IT-95-4/IT-95-8/1[renumbered IT-02-65] "Decision on Prosecution's Motion for Joinder of Accused";17.9.2002.
[8] id

b) There existed an actual conflict of interest as the 3 defendants are ready for trial and have an interest in an expeditious trial without undue delay; whereas the 3 Pavkovic defendants required time to adequately prepare.
c) Citation to the Milosevic bench finding that where the size of a trial was quite large such that a large number of witnesses would be required, two trials rather than one would be more efficient and allow the chamber to easily manage the same even if witnesses repeated.[9] Appellant argued that trial would last 2 years and be quite complex.
d) Citation to the Kvocka, Kolundzija, Meakic and Fustar decisional authority cited above.

14. In granting joinder, the Chamber committed grave/discernible error. Specifically, despite the circumstances relating to the 3 accused from the second case (who had not even had permanent counsel assigned) and the level of preparation and other factors, the pre-trial bench found "that there is no indication that a joint trial could not start in December 2005 to January 2006, the anticipated date for the start of trial in the *Milutinovic et al*. case."[10]

15. Certainly the Chamber's conclusion was erroneous in that Appellant presented multiple grounds with merit opposing joinder precisely due to the proposed imposition of a early trial date. The error was compounded thereafter, when multiple filings were made, opposing the start of trial and due to serious concerns about preparation, which the Chamber still disregarded and denied.

16. Subsequent decisions failing to acknowledge significant indications of problems with the proposed joinder and early trial start included:

a) 7.9.2005 "Decision on Pavkovic Motion to Set Aside Joinder or in the Alternative to Grant Severance" –the Chamber considered "no date has yet been set for trial in the present case and that the Accused will have adequate time and facilities for the preparation of his defense" and denied the Motion.
b) 2.12.2005 "Decision on Nebojsa Pavkovic's Motion to Delay Start of Trial or in the Alternative to Reconsider and grant previous Motion for Severance." - the Chamber considered that none of the events that indicate the impending start of trial have taken place and thus dismissed the Motion as premature.
c) 28.4.2006 "Second Decision on Motions to Delay Proposed Date for Start of Trial" –the Chamber " … is satisfied that the accused will have adequate time and resources to prepare for the trial scheduled to commence on the date proposed in the work plan.

[9] See,Prosecutor v. Milosevic IT-99-37/IT-01-50/IT-01-51 "Decision on Prosecution's Motion for Joinder" (13.12.2001) para.47-48
[10] "Decision on Prosecution Motion for Joinder",8 July 2005,

> Throughout the pre-trial phase of the proceedings, the Chamber has been continuously alert so that unfair prejudice will not be caused to the accused due to the lack of adequate time and resources for the preparation of their defenses, and the Chamber will continue to monitor the progress of the case throughout the remainder of the pre-trial phase. Moreover the Prosecution has offered to assist the defense in relation to some of the issues raised in the motions, and the Chamber encourages the parties to cooperate in this regard.

17. The substantive arguments of the defense, were not dealt with or addressed, and instead of an adequate analysis of the interests of due process and fairness to the accused and the interests of justice, an erroneous standard was adopted whereby the rights of the accused are to be preserved with the assistance of the Prosecution, which is contrary to the very notion of a adversarial system.

18. Among the rather serious arguments that had been presented by the Defense were:
    a) The Amended Joinder Indictment increased the complexity of the case by including allegations of events in 1998.[11]
    b) The lengthy/unproductive efforts to accomplish disclosure/transfer of material from the Milosevic case, due to the Registry's inability to comply with Judge's order.[12]
    c) Despite Judge Bonomy's ruling on 25.08.2005 that the defense be provided with all transcripts and exhibits from the Milosevic proceedings, the same was not completed by the Registry as to Appellant until 30.3.2006, just before the proposed trial.[13]
    d) Appellant received approval from the Registry for 2 investigators long after they were sought.[14]
    e) The Registry's Pre-Trial Legal Aid Policy Handbook which was being applied against Appellant's request for co-counsel, foresaw a level III case would have 22 months of pre-trial preparation from the date of initial appearance – whereas the time period being enforced was a mere 7 months from the initial appearance, and thus would make it impossible for adequate preparation.[15] The Registry's budget/plan required several months beyond the proposed trial date for a **FULLY STAFFED** defense team to

[11] *"Addendum to Pavkovic Motion to Set Aside Joinder or in the Alternative to grant Severance"* 19.8.2005,(para.4.)
[12] "*Sreten Lukic's Response in Support of Pavkovic's Motion to Delay Start of Trial or in the Alternative to Reconsider and Grant Previous Motion for Severance."* 7.11.2005,(para.1-3,5);("November Response") and "Motion to Delay Start of Trial or in the Alternative to Reconsider and Grant Previous Motion for Severance" 7.11.2005(para.5-19.)
[13] "*Sreten Lukic's Motion to Delay Start of Trial or in the Alternative to Grant a Severance of the Proceedings Against This Accused"* 24.4.2006(para.37-41)("April Motion")
[14] November Response(para.26-30).
[15] November Response(para.7-9)

become ready.[16] The Registry refused to assign co-counsel except 5 months before commencement of trial, and requests for co-counsel were "premature".

f) The repeated failure of the Registry to appoint co-counsel hampered the ability to prepare for trial.[17]

g) A delay by OLAD in providing off-site access to the JDB prevented access to from November 2005 through the end of March 2006.[18]

h) The volume of Rule 68 disclosures made it unfeasible to complete review and analysis of the same in time for a 10 July 2006 trial.[19]

i) Lack of access to and obstruction of Serbian authorities as to documents prevented the ability to be adequately prepared for trial.[20]

j) Defense faced with over 21,000 pages of Milosevic transcripts, 2,114 Milosevic Exhibits, 6,000 pages of Rule 70 material, 40,000 pages of witness material, 58,726 pages of EDS Rule 68 material, and 41,538 pages of material disclosed on CD/DVD.[21] Bulk of this material not accessible until March of 2006, just a few months before trial.

19. An admission by Judge Bonomy, was made at the 31.03.2006 status conference when it was stated that due to the death of Slobodan Milosevic "circumstances have changed fairly dramatically" – defense counsel have argued that the earlier start date and speeding up of the trial resulting from Milosevic's death have the effect of depriving the accused of their right to a fair trial and due process.[22]

20. Unfortunately, despite the assurances made earlier by Judge Robinson, the efforts of the Chamber did not take into account and did not address defense concerns about the joinder and the rush to early trial and the effect it had on defense preparations.

21. New Lead Counsel and co-counsel were appointed on 1.05.2006. Trial commenced on 10.07.2006.

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[16] April Motion(para.31-33)
[17] April Motion(para.2,21-25)
[18] April Motion(para.42-50)
[19] April Motion(para.51-55)
[20] April Motion(para.60-70)
[21] See, *"Renewal of ans Supplement to 7 November 2005 pavkovic motion to Delay Start of Trial or in the Alternative to Reconsider and Grant Previous Motion for Severance."At para. 7*
[22] See, *"Renewal of ans Supplement to 7 November 2005 pavkovic motion to Delay Start of Trial or in the Alternative to Reconsider and Grant Previous Motion for Severance."At para. 3.*

22. The prejudice resulting from joinder was evident in several forms. Throughout trial evidence was led as to events in 1998. The voluminous Judgment illustrates multiple findings relating to events from 1998 of which the defense did not have adequate notice and did not have adequate ability to prepare for cross-examination.[23]

23. The Defense was forced to trial without having reviewed all the material that had been disclosed, so as to perform its own investigations and be adequately prepared for cross-examination and presentation of defense witnesses

24. The error resulted in prejudice in that the Chamber concluded that the parties, including the defense were given adequate time and facilities for the presentation of evidence.[24] This is a misrepresentation of the pre-trial and the trial phase.

25. Appellant proceeded to trial with a few months of preparation compared to 3 accused who had over 3 years.

26. During trial due to joinder, the allocation of time for cross-examination as well as the total hours for presentation of the defense case had to be split among 6 teams.

27. With the time constraints imposed by the Chamber, the defense had to dramatically reduce its witness list.

28. The full record of proceedings, respectfully, demonstrates a serious infringement of the rights of the Appellant and mandates a review of the Judgment and sentence.

29. The gravity of the harm can be viewed by the fact that co-accused Milutinovic/Ojdanic, although superior ranking personnel to Appellant in 1999, with over 3 years of preparation, received lesser sentences, with Milutinovic being acquitted.

30. Another of the examples of error can be seen from the erroneous treatment of mitigation and personal circumstances in the Judgment. Had Appellant been tried separately, he would have had the benefit of presenting much more evidence of mitigation. If tried alone, he would have had that

[23] I/842-951
[24] I/46.

mitigation evidence and personal circumstances taken under consideration by the Chamber with appropriate weight being attributed to that evidence.

31. Although significant evidence of mitigation was adduced and accepted by the Chamber[25], some mitigating factors were rejected by the Chamber.[26] Some of the evidence that was led and recognized in the Judgment as mitigation for Appellant was:

a) efforts to stamp out organized crime connected to the Milosevic's tenure in office and reform the MUP.
b) Apprehending the assassins of Prime Minister Djindjic.
c) Establishing multi-ethnic police forces.
d) democratic reforms which brought amnesty to hundreds of Kosovo Albanians who had been arrested by the authorities as part of the KLA.
e) efforts after the war to spearhead uncovering/investigation of crimes dating from the Kosovo War including the clandestine transport of bodies to Serbia.
f) Establishing a database of data relevant to Kosovo in 1998/1999 to preserve evidence.
g) MUP initiating cooperation with the Tribunal before other national organs.

32. The Chamber acknowledged that "on the balance of probabilities Lukic contributed to law and order in a number of cases connected to crimes in the Indictment, and therefore will take this into account in mitigation when determining his sentence.[27] However, the rather significant mitigation evidence accepted was afforded no weight whatsoever. Indeed, the Chamber explicitly announced its error of non-application of mitigation evidence when it stated:

> As can be seen in the foregoing analysis, the Chamber has considered the circumstances of each Accused separately. However, although different circumstances apply to each of the Accused, the Chamber does not consider it appropriate in fixing the term of imprisonment to discriminate between the two Accused convicted on the basis of aiding and abetting and to discriminate among the three Accused convicted on the basis of their participation in the joint criminal enterprise.[28]

33. It has been recognized that the personal circumstances of a particular accused and the factual backdrop of a particular case ought to be taken into account when figuring what sentence is appropriate. As stated in Celebici, "there are certain features of [Appellant's] case that must be taken into account in his favour when deciding upon the measure of sentence to be imposed upon

[25] III/1202
[26] III/1203,1204.
[27] III/1202
[28] III/1205

him."[29] Having concluded Appellant had proper mitigation evidence(leading directly to crimes in the indictment), the Chamber erred in failing to utilize nor even weigh the same, solely because Appellant was in a joint trial with 5 other accused and because he was categorized by the Chamber with 2 other accused "convicted on the basis of their participation in the joint criminal enterprise."

34. Respectfully, the jurisprudence requires to take into account the personal history of an Accused and his good conduct that sets him apart from other accused. In Plavsic the mitigating factors recognized and taken into account in sentencing as substantial mitigating factors were her voluntary surrender to the Tribunal, post-conflict conduct, and age.[30] All these same factors apply to Appellant, and the evidence accepted included significant evidence of post-conflict conduct serving the interests of justice and assisting in the uncovering of crimes committed in Kosovo. Other cases have focused on the individual circumstances of an Accused and prior positive conduct/good character.[31] In Plavsic her conduct was mitigating because after cessation of hostilities she had demonstrated considerable support for the 1995 Dayton Agreemen and attempted to remove obstructive officials order to promote peace.[32] As Plavsic promoted peace in Bosnia, Appellant promoted law/order and the pursuit of justice in Serbia. Thus the Chamber's position treating Appellant differently due to the fact he was convicted alongside other accused is without precedent and inconsistent with the prevailing jurisprudence. While an evaluation of a particular case may legitimately lead to a conclusion that no weight should be afforded to mitigation, this however must be done on a case-by-case basis. For a particular Chamber to routinely/automatically exclude or afford no weight to prior good character, as a matter of policy is not in the spirit of individualized sentencing endorsed by the Tribunal. The fate of an accused should not be dependent and vary depending on the Chamber his case is assigned to. Thus Appellant should be afforded the same rights as other accused in other proceedings to have his mitigation evidence and personal circumstances taken into account in terms of his sentence.

2. LACK OF ADEQUATE TIME/FACILITIES PRIOR TO TRIAL.

[29] Prosecutor vs. Delalic, et al. IT-96-21,TJ;16.11.1998,(para.1283).
[30] Prosecutor vs.Plavsic,IT-00-39&40/1,SJ;27.2.2003,(para.110).("Plavsic")
[31] Prosecutor vs.Krnojelac,IT-97-25,SJ;15.3.2002,(para519);Prosecutor vs. Kupreskic,IT-95-16-A, AJ,23.10.2001,(para. 459).
[32] Plavsic(Para.85-94)

35. The Chamber made the assertion that "all parties had adequate time in which to present their respective case."[33] The Chamber couldn't extend its own judgment of "adequate time" to pre-trial preparation. Due to the completion strategy and rulings of the Chamber trial commenced before adequate preparation, a mis-trial has resulted.

36. As already set forth in detail in the previous section the case was sped up upon joinder of two underlying cases, when it was found that "that there is no indication that a joint trial could not start in December 2005 to January 2006, the anticipated date for the start of trial in the *Milutinovic et al*. case."[34]

37. This decision ignored several factors that were readily apparent and demonstrated at the pre-trial phase as to the lack of adequate time and facilities to be ready for trial.

38. With regard to the staffing of the Defense, many of the critical points for this ground are already incorporated in A(1) and are hereby incorporated by reference. However, it is instructive to highlight some of the points already raised in the previous section in greater detail. The Defense filed its Work Plan with the Registry in December 2005, and citing concerns for the pace of the proceedings, requested immediate assignment of co-counsel[35] to have a trial ready team. The Registry's response was that it could not appoint co-counsel due to its policy which only authorized co-counsel within the last 5 months of the pre-trial phase. The Registry's estimation of when the case would be set for trial were dashed when the Chamber accelerated the proceedings. As a result, Appellant was deprived of having a full team until approximately 25 days before the commencement of trial. All the foregoing was presented to the Chamber and was ignored, which brought great detriment to the defense efforts throughout trial, as they were constantly catching up.

39. Various problems were experienced in obtaining access to documents that were the subject of requests for assistance, leading to filing of "Sreten Lukic's Motion, Pursuant to Rule 54 bis for a Binding Order Directed to Serbia-Montenegro for Production of Documents" on 17 May 2006. The record reflects that no fewer than 26 letter requests for production of documents were sent by the Defense 10 November 2005 through 14 April 2006 which Serbian authorities had not complied with, despite in excess of 23 meetings being held with the authorities. [36] Even with the trial

[33] I/46.
[34] "Decision on Prosecution Motion for Joinder",8 July 2005
[35] Co-Counsel sought was Jovan Simic from Belgrade, who fulfilled the experience and language requirements of Rule 45 and who had previously been Lead Counsel for Dragoljub Prcac and Zeljko Meakic in other proceedings before the Tribunal.
[36] "Decision on Sreten Lukic's Amended Rule 54 *bis* Application"29.9.2006.(para.4)

scheduled for 10 July 2006, the problems still had not been resolved as evidenced at the hearing held on 6 July 2006. The Chamber's Rule 54bis determination came 2 months after the commencement of trial,[37] and granted the application in part, with compliance by Serbia not taking place until the following month. Documents continued to be received from Serbia well into the trial, including during the defense phase of the proceedings. Due to the inability to have sufficient pre-trial time to resolve issues and obtain/review these documents, the Defense began trial without essential documents that to confront Prosecution witnesses. Later many of the same documents were denied admission due to not having been used with witnesses.

40. The onerous requirements of trial double-sessions at the beginning hampered efforts to undertake significant discovery. The end result of the same caused the inability of the defense to confront witnesses with evidence that was only later obtained. An illustrative example includes Rule 70 documents[38] which were only obtained from the Rule 70 provider long after the Prosecution case had ended, and could not be used to confront such witnesses as Shaun Byrnes/General DZ/Ciaglinski/Phillips, and the Kosovo Albanian witnesses of the Prosecution.

41. An inordinate amount of time and energy was expended by the Defense during the Pre-Trial phase to obtain Milosevic documentation, which could not reasonably be obtained even AFTER the Chamber ordered the Registry to do so. Despite Judge Bonomy's ruling on 25 August 2005 that the defense be provided with all transcripts and exhibits from the Milosevic proceedings by the Registry, and two subsequent 65 *ter* conferences at the end of 2005 to effectuate the same, the disclosure order was not completed by the Registry as to Appellant until 30 March 2006, just before trial[39]. In addition, Prosecution disclosures at the pre-trial phase amounted to over 58,000 pages just on EDS.[40] By not granting sufficient/reasonable time to the defense to review/analyze the same prior to the commencement of trial, the Chamber abused its discretion and erred, preventing significant trial.

42. The cumulative effect of the foregoing was that the Defense at start of trial was ill-prepared to face the evidence of the Prosecution and thus fought a continual up-hill battle throughout trial. This denied a fair process and trial, as well as due process.

[37] Ibid.
[38] 6D1635,6D1637,6D1638,6D1639,6D1640
[39] Approximately 1,700 documents of varying length comprising the MFI exhibits from the Milosevic proceedings.
[40] "Motion to Delay Start of Trial or in the Alternative to Reconsider and Grant Previous Motion for Severance"(Pavkovic),7.11.2005,(para. 28.)

3. LACK OF ADEQUATE/FACILITIES AFTER COMMENCEMENT

a. Right to being tried without Delay cannot be to the Prejudice of Accused

43. After trial started the Chamber erred further preventing adequate or meaningful time not only for preparations but also to fully confront the Prosecution or fully present a defense case.

44. The Chamber makes the subjective claim that all parties had adequate time in which to present their respective cases.[41] Respectfully, a detailed review of the record on appeal will convince otherwise. The entire trial seemed to be preoccupied with time, and the shortening of the trial. While it is true that Article 20 of the Statute guarantees for the Accused the right to be "tried with undue delay,"[42] common-sense logic and the tenets of justice/due process dictate that such a guarantee ought to be for the benefit rather than the detriment of the Accused. Other Chambers have even acknowledged that the underlying principles for Art.20(4)(c) are a particular concern for the liberty of an individual and the need to hold this in balance with the need to effectively administer justice by trying those charged with offences and to do so without unreasonable delay.[43] Articles 20 and 21 require that a trial be fair, expeditious and conducted in accordance with the Rules and with full respect of the rights of the Accused. Specifically incorporated in the Statute are the rights set out in Article 14 of the International Covenant on Civil and Political Rights (hereinafter "ICCPR"), as well as the principle of "equality of arms," which expressly guarantees all accused a fair and expeditious trial.[44] With the Chamber being the guardian/guarantor of the procedural and substantive rights of the accused, it follows that evidentiary standards should be heightened and not relaxed or give way to expediency. Article 20(1) provides for the twin requirement of "fairness" and "expediency". Thus, to admit evidence in the interest of expeditiousness but not fairness would be inconsistent with the Chamber's obligation. The manner in which time was marshaled during trial makes one question if the completion strategy or other factors of expediency were given weight instead of a concern for the liberty of an individual or the fairness of the proceedings.

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[41] I/46.
[42] Art.21(4)(c)
[43] Prosecutor vs. Dragomir Milosevic, IT-98-29/1-PT "Decision on second defence motion for provisional release"9.2.2006.
[44] Prosecutor v. Tadic IT-94-1-AR72 "Decision on the Defence motion for Interlocutory Appeal on Jurisdiction" 2.10.1995,(para. 46.)

45. Upon commencement multiple decisions were made by the Chamber that affected the time available to the parties, and the conduct/abilities of counsel. An example of the Chamber's pre-occupation with the speed of the proceedings at the sacrifice of the rights of the Accused, was the shortening of the time period proscribed by the Rules for filing of Replies.[45] This rule was applied against Appellant, to deny admission of reply briefs that were substantive in nature.[46] By preventing Appellant from preserving rights and making an adequate record, the Chamber erred and abused its discretion. Especially in denying an extension of time (one day/2 days) in the face of the flurry of activity deadlines at the same time. These errors, when viewed under the totality of the evidence, occasioned a mis-trial.

b. Limitation of Cross-Examination

46. The Chamber issued its "Decision on Use of Time,"[47] which reduced time for the collective defense examination of witnesses, called for increased sitting days. The limits imposed upon the cross-examination of Prosecution witnesses infringe upon rights conferred under the ICCPR, most notably Article 6 of the same. The jurisprudence of the European Court of Human Rights("ECHR") interpreting Article 6 affirms that the right of cross-examination is fundamental to a fair trial.[48] The ECHR has asserted that "[t]he right to a fair trial holds so prominent a place in a democratic society that there can be no justification for interpreting Article 6 of the Convention restrictively."[49] Furthermore the Court has repeatedly stated that the Defense must be given "an adequate and proper opportunity to challenge and question a witness against him"[50] and that Art. 6(1) is "intended above all to secure the interests of the defense and those of the proper administration of justice."[51]

47. The ECHR has held that any measures restricting the rights of defense ought to be only those strictly necessary, such that if a less restrictive method is available it ought to be employed.[52] The Chamber chose the most restrictive method, essentially employing a "stop-watch" approach to

[45] See."Order on procedure and evidence",11-July-2006
[46] "Decision on Lukic Motion for Reconsideration of Denial of Extension of Time and Leave to File Replies,10.6.2008 ; "Decision on Lukic Defense (1) First, Second, Third, and Fourth Motions for Further Enlargement of Time in Relation to Motions for Admission of Documents from the Bar Table and (2) Motion for Leave to File Replies",2.6.2008.
[47] 9.10.2006
[48] Saidi v. France ECHR,17.EHRR.251[1994]para.44;van Mechelen v. Netherlands,ECHR,25.EHRR.647 [1998]para.51.
[49] Moreira De Azevedo v. Portugal, 11296/84,ECHR,[1991]EHRR.41,para.66;Artico v. Italy(1981);3.EHRR .1 (The right to Counsel must be "practical and effective", and not "theoretical and illusory."); Daud v. Portugal,[1998],EHRLR 684 (that Counsel cannot effectively represent a client if unable to conduct a full and fair cross-examination of Prosecution witnesses.)
[50] Krasniki v. Czech Republic EMDN-1999-51277,ECHR,[2006]EHRR.51277/99,para.33;Kostovski v. Netherlands ECHR,11454/85,[1991]EHRR.434,para.41.
[51] Acquaviva v. France 19248/91 [1995]EHRR.48,para.66.
[52] van Mechelen v. Netherlands ECHR,25.EHRR.647,[1998]para59

cross-examination. At least one effective, but less restrictive measure that was available was the use of 90(f) of the RPE to intervene only where questioning became irrelevant/repetitious/improper. This method would have been more fair/compliant with the customary international law. It would also have been more compliant with Tribunal jurisprudence, as the Appeals Chamber reversed limitations on evidence that could be led in Oric , stating "But unless the Trial Chamber is prepared to reconsider its Rule 98*bis* ruling and grant a partial judgment of acquittal, it must give Oric a reasonable opportunity to present reliable evidence on at least these issues."[53] This was a request made by the Appellant several times in response to the stop-watch mentality of the Chamber, which was trying to cut inquiries that were of critical import.[54] Rigid time constraints placed upon cross-examination necessarily affect the quality of the cross-examination, thus, when rushed, the process loses its effectiveness, which goes to the detriment of Appellant. Likewise, where examination cannot be hurried due to translation, the harm is compounded, as counsel sacrifices tactical advantages inherent to cross-examination to which the Appellant is entitled.

48. It should be recalled that with only the 5th witness of the Defense case, the Chamber attempted to curtail the examination of critical evidence relating to one of the key assertions of the Indictment, namely if Appellant's position entailed expansive powers set forth in a document naming RDB David Gajic as his deputy. From the exchange in court we can see the Chamber's characteristic impatience with the evidence, which demonstrates a preoccupation with speed of trial rather than substance:

> Q. And just to be clear, sir, who were the head or manager of the MUP staff and his deputy in 1998 up until the date of this decision that we have before us?
>
> A. I know that the manager was Sreten Lukic and his deputy was Miroslav Mijatovic. Until the 1st of June, 1999, I think.
>
> Q. Thank you.
>
> JUDGE BONOMY: Mr. Ivetic, Judge Kamenova is asking me how is it possible to be asking a question like this at this stage? **This trial is never going to end.** That seems to you to have to be asked yet again.
>
> MR. IVETIC: Well, Your Honours, the Office of the Prosecution confronts witness after witness with documents stating that someone else was the deputy head of the MUP staff, so until that question is satisfied and until my client is released from custody a free man, I think I am allowed to ask questions and present -- confront the evidence that the Office of the Prosecution time and time again is presenting before us.
>
> JUDGE BONOMY: Yes, we can live without the drama.
>
> Who is the other deputy suggested?
>
> MR. IVETIC: David Gajic, Your Honours.
>
> JUDGE BONOMY: Yes. And he's the one actually named in the order; is that right, the order in 1998?

[53] Prosecutor v. Oric, IT-03-68-AR73.2 "Interlocutory Decision on Length of Defense Case" 20.7.2005.
[54] Tr.22563/12-21

MR. IVETIC: In one of the orders in 1998. We're about to go into another order from 19 --
JUDGE BONOMY: Thank you very much.[55]

49. As to the import of the foregoing evidence, it should be noted that P1505 which was being challenged is relied upon multiple times in the Judgment[56] and is central to the Chamber's deliberations as to the function of the MUP Staff for Kosovo.[57] It is plainly evident that at no time did the Chamber acquit Appellant of responsibility arising from this document, albeit that the Chamber did conclude that he had no authority over the RDB, but asserted this to have no effect on the Chamber's ultimate findings with regard to criminal responsibility.[58] Relying upon P1505 and disregarding other evidence, the Chamber ruled the MUP Staff had a central role in planning/organizing/controlling/directing the work of various MUP units[59], then relied on its own conclusion to then assert Appellant was de-facto commander over MUP forces deployed in Kosovo,[60] and that he was part of a JCE.[61]

50. Another stark example of the Chamber's constant haste curtailing potentially critical evidence was with Radojko Stefanovic, who during the Indictment period, was Operations head of the PrK and thus drafted/planned all the joint VJ/MUP operations for which criminal liability under the JCE is asserted.[62]

51. While the Chamber considered Milan Djakovic(Stefanovic's predecessor) of such great importance so as to subpoena him as a Chamber witness and examine him 3 hours, the Cross-examination for Stefanovic was limited to 55 minutes. Indeed, despite Stefanovic being the more critical witness as to 1999, the cross was hurried by the chamber and attempts to present documents for review were rebuffed.[63] Then, AFTER hurrying the defense, the Chamber later denied admission of critical documentary evidence[64] solely because it had not been presented to hostile witnesses during cross-examination. Although curtailing the examination of Stefanovic as cross-examination, the Chamber counted the same as direct-examination, stating "Part of the questioning, pursuant to Rule 90(H)(i) was on the basis that the witness could give evidence relevant to the Lukic Defence's case, and part went to matters affecting credibility. It was therefore appropriate

[55] Tr.22563/6-22564/3[emphasis added]
[56] III/945,949,950,951,952,957,963,964,965,983,1018
[57] III/947
[58] III/1015
[59] III/1012,1018.
[60] III/1051.
[61] III/1114
[62] E.g.II/1214
[63] Tr. 21733/5 - 21734/3;21739/1-21743/25
[64] Decision on Lukic Defence Motions for Admission of Documents from Bar table,11-June-2008,paras.78-80,82-87,91

for a portion of the time to count toward the total 240 hours that the six Accused have been allotted to present their evidence."[65] If the Defense was free to utilize its time as it saw fit, it should have been able to use as much of it as it wanted in questioning Stefanovic.

c. Extended Sitting Schedule

52. Another Chamber error was the double/extended sitting sessions which again demonstrate a preoccupation with pace/speed of trial over substance. As highlighted previously, Appellant had minimal time/facilities to prepare before trial. During trial, while doing a lion's share of the cross-examination, the Defense faced the same problems of time/resources/staffing trying to make up for preparation deficiencies prior trial. This was hampered and in effect nullified with decision to order double/extended sessions.[66] With the constant state of flux caused by the Prosecution's changing of witness order, and last minute disclosure of supplemental information sheets/exhibits, the extended sitting sessions in court exhausted counsel/staff. It was impossible to foresee/locate all potential documents to be used to effectively cross-examine witnesses on critical points. This was particularly true, for those witnesses had testified in Milosevic,[67] and thus in addition to written OTP statements, hundreds of pages of transcript had to be reviewed from to prepare minimally for each witness. Compounding this difficulty was the constant pressure from the Chamber due to the time limits imposed upon cross-examination. The totality of circumstances created a situation where the effective assistance of counsel was lessened and thus the integrity/fairness of the proceedings were damaged. The harm caused to the defense by these extended sittings was repeatedly brought to the Chamber's attention.[68]

53. These extended-schedule sittings continued into the Defense case-in-chief. A review of the total record will indicate that a total of 100 trial days with sittings 5 hours or more(incl. of breaks) and 10% of those being 7 hours or more.[69] Even more indicative of the strain this placed on the defense, a full 37% of the extended sitting sessions occurred during the Prosecution case-in-chief (which lasted almost one year), and 27% of the extended sitting days occurred during Appellant's case-in-chief (which lasted under 3 months). On 11 February 2009 Appellant filed "Sreten Lukic's Motion Objecting to Trial Sitting Schedule and Seeking Amendment of the Same."(hereinafter "11 Feb. 2008 Motion") At that time, to comply with the time constraints and reduced number of hours

[65] "Decision on Lukic Defence Objection to February 2008 Report on Use of Time" 16.4.2008,(para. 11).
[66] "Decision on Use of Time, 9.10.2006
[67] E.g.Vasiljevic, Ciaglinski,Tanic,Drewienkiewicz,Petritch,Loshi,Kickert,Maisonneuve,Shabani,Krasniqi, Popaj
[68] See.Sreten Lukic's motion Objection to Trial sitting Schedule and seeking Amendment of the same,11 February 2008
[69] See annex "A"

granted to the Defense, Appellant was preparing lengthy statements with defense witnesses. The burden of doing so, combined with the regular defense obligations of intense preparations and the proposed schedule overwhelmed the Defense.

54. Illustrating the extreme harshness of the Chamber's preoccupation with time, the health of Appellant was endangered when the medical treatment/rehabilitation regime could not be continued (the ambulatory therapy portion) due to the late sitting schedules.[70] This was the only objection actually conceded by the Chamber and addressed by alternating some of the days.[71]

55. Both defense counsels, as the Chamber was aware[72], suffered health complications exacerbated by delays in treatment due to keeping up with the pace of the trial and had to seek emergent care. As set forth also in the motion, in addition to hampering the preparation of statements and working with witnesses, the extended sittings prevented essential attorney-client meetings at UNDU.[73]

56. Rather than dealing with the serious concerns raised, the Chamber tried to prevent counsel from making a sufficient record on appeal by pressuring them to withdraw part of the motion.[74] That act on the part of the Chamber constituted an abuse of discretion, and perhaps a realization on its part of the impact those its errors had on the trial.

d. Time Between Cases

57. All the defense filed a "Urgent Joint Defense Request to Reschedule the Timetable for the Filing of Rule 65 ter Submissions, the Pre-Defense Conference, and the Commencement of the Defense Case," on 21 May 2007 (hereinafter "21 May 2007 Motion"). Appellant again reiterated that the defense had not had adequate time simultaneously to prepare for cross-examination of Prosecution witnesses, for its Rule 98 bis submissions and for the Defense case.[75]

58. The Chamber only granted the 21 May 2007 Motion in part, altering the date of the commencement of the Defense cases, but not altering the filing deadlines as had been requested.[76]

[70] 11 Feb, 2008 Motion para. 7-10.
[71] Decision on Lukic motion for Alteration of Court Schedule,20.2.2008,(para.10).
[72] 11 Feb. 2008 Motion,(para.11)
[73] 11 Feb, 2008 Motion,(para..17)
[74] Decision on Lukic motion for Alteration of Court Schedule,20.2.2008,(para.10);Tr.23666/13-23668/17
[75] 21 May 2007 Motion,(para.6-9)
[76] "Decision on Joint Defence Motion to Postpone Trial Schedule",23.5.2007

59. Nevertheless, the Defense was able to identify 109 witnesses and approximately 400 exhibits by the date. However, the defense exhibits were constantly being received and added through the defense case.

e. Reduction of Witness List and Time for Witnesses

60. Appellant's original witness list sought to address and rebut every facet of the prosecution's wide-ranging and diffuse case against the Appellant. The list was carefully prepared based upon the persons who had been interviewed and who had knowledge that was relevant to the case, as well as to cover as much of the Indictment as possible.

61. The Prosecution had a total of 260 hours at their disposal to present their case and used 166 of the same. Rather than having parity Appellant had to share in a lesser total allotment to the defense(240 hours[77]). Appellant's allocation of time was 80 hours from the 240.[78] As a result, Appellant drastically cut down the number of witnesses but also the length and scope of their testimony and eventually presented a total of 35.

62. This reduction in the number of witnesses amounted to the Defense presenting less than half its case. The prejudice can best be seen by the fact that the Defense had to remove several former international observers[79] from the because it could not locate/present them within the time allocated. Of note, the Chamber relied heavily on OTP International observers in determining Appellant's criminal responsibility.[80]

f. Stop-Watch method of Time Reports

63. The Chamber issued monthly reports with the Registry as to the time utilized by each party with respect to the witnesses of the case. These reports were filed pursuant to the "Order on Procedure and Evidence" that was issued on 11 July 2006.

64. In February 2008 in the midst of conducting its case within the allotted time, the Defense became aware of the Chamber's erroneous practice of time-keeping. Appellant filed an objection

[77] Pre-Defense Conference T.12847
[78] "Decision on Use of Time Remaining for Defence Phase of Case,"21.11.2007.
[79] Dietmar Hartwig, John Christopher Clark, Richard Haeslip, and Keith Roland.
[80] III/1041-1048.

seeking the Raw data behind the report. On 18 March 2008 the Chamber issued its Decision[81] and the Registry thereafter produced the "raw" data for the February 2008 report. The first objection was that Radojko Stefanovic, an adverse witness called by another defense had been listed as direct-examination by Appellant, with 1 hour and 19 minutes being deducted from the already preciously low time allocated.[82] In that manner, the vigorous cross-examination of the witness had been counted against the defense, and it had lost time without prior notice, even before their case began. The Second objection was that time spent by the Chamber in examining a witness was under-reported and rather was also allocated as time to be subtracted from the precious 80 hours of the Defense case.[83] Whereas the time report stated that Witness Mijatovic was examined by the defense for 5 hours and 2 minutes in direct and the Chamber only used 14 minutes, the audio/video recording of the session, and transcript revealed that just on the first day the Chamber interventions/questioning amounted to just under half an hour, thus calling into question the time reports.[84] A full analysis of the time for the witness was not performed because the defense had neither the time nor resources to prepare its own report.

65. The Chamber's decision reacting to the Objection was astonishing, and respectfully constitutes gross error denying the Appellant a fair trial. With regard to the recordation of Stevanovic's cross-examination as direct-examination, the Chamber revealed it had indeed done the same previously with other witnesses that were not part of the Defense case-in-chief, deducting over 4 hours in addition to Stefanovic. The Chamber defended its practice and repelled this objection. Likewise, with regard to the complaint of Chamber time being mixed into the defense allocation of time the Chamber found fault with defendants' math and actually acknowledged that EVEN MORE of its questioning had been included in the time that was charged to the defense, while stating this "evidences the fatuity of taking a second by second approach to these issues," defending their practice and continued to allocate their time into defense examination time.[85] Thus, immeasurable detriment was caused to the Appellant, and the fairness of the proceedings was put in doubt. Having already decided to limit the defense, such that the Appellant had less than 1/3 the time the prosecution had used against him in presenting its case, the Chamber applies time-keeping practices which further reduced this time unfairly, and thus prevented Appellant from having an opportunity to be heard fully and also to have equality of arms with the Prosecution.

[81] "Decision on Lukic defense Request for Information on February 2008 Report on Use of Time",18.3.2008.
[82] "Sreten Lukic's Motion Objecting to the Registry's Record of Time in these Trial Proceedings" 26.32008,(para.5).
[83] Id,(para.6)
[84] Id.
[85] Decision on Lukic Defense Objection to February 2008 Report on use of Time, 16 April 2008.

g. Errors relative to CLSS Translation

66. Another error adversely affecting the time/facilities of the defense to prepare and mount a case was the constant problems with CLSS that forced hours to be expended by defense personnel and prevented the introduction of critical evidence that could not be translated within the time allotted for trial by the translation resources available at the Tribunal. The Chamber in this regard erred and mis-applied the facts to exacerbate the capacity problems with the CLSS system, thus preventing the defense a full and fair opportunity to present its evidence, and thus wrongfully convicted Appellant. These errors led to documents being refused admission.

67. Because of the volume of defense exhibits that were required, and CLSS capacities, combined with the lack of adequate preparation time, defense documents disclosed by the 15 June 2007 all defense deadline were not yet fully translated. It should be noted the Lukic defense met and communicated multiple times with CLSS staff who gave priorities to other defense teams over Lukic due to its position as 6th in line. All defense documents on the 65ter list were submitted to CLSS for translation. CLSS raised capacity concerns due to the limited resources afforded by the Tribunal and the Lukic team attempted to mediate with the Registry/CLSS. The Chamber mediated and encouraged for CLSS and the defense to reach an agreement. After that agreement was reached, the Lukic team and CLSS agreed that ALL documents be 'withdrawn' so that new requests could be made(after a re-review of priorities), and deadlines could be re-assessed. However, AFTER encouraging the parties to reach a private agreement, the Chamber unilaterally, issued its "Order on timing of Motions Prior to Winter Recess and Presentation of Lukic Defense Case"[86] ordering that all un-translated documents on the rule 65ter list be submitted to CLSS by 30 November 2007, labeling the Appellant in "breach" for not already having submitted them, in two subsequent decisions[87] which was erroneous and prejudicial. A proper review of the record would have found:

a) All rule 65 ter documents had already been submitted to CLSS prior to the November order;
b) CLSS and the Defense, as encouraged by the Chamber, had reached an agreement to re-submit the documents with new requests, upon a review of the priorities for the same to better allow CLSS to provide translations upon new priorities;

[86] 14.11.2007.
[87] Decision on Lukic Motion for Reconsideration of Denial of Extension of Time and Leave to File Replies,10.6.2008 ; "Decision on Lukic Defense (1) First, Second, Third, and Fourth Motions for Further Enlargement of Time in Relation to Motions for Admission of Documents from the Bar Table and (2) Motion for Leave to File Replies",2.6.2008.

c) This process was underway when CLSS and the defense were surprised by the Chamber's November order that placed an inordinate amount of strain/work on both in terms of submitting the requests within the limited time given;
d) After the Defense scrambled to comply with the Court's order expending countless hours with 3 members (co-counsel and 2 assistants) sending requests around-the-clock, CLSS objected to the same viewing it as a breach of the previous agreement; and
e) That the said selection could not be properly made due to the Chamber's November order.

68. Thus, all the frustration/anger evident from two decisions[88] denying critical evidence from being admitted all resulted from the Chamber's error in the November order, not from any breaches by the Appellant. The harm occasioned was that adequate time/facilities were not available to translate documents, as the Chamber negated the ability to re-prioritize them, thus compounding the original prejudice/harm caused by the failure of the system to adequately resource CLSS.

4. INADEQUATE ABILITY TO GO VISIT THE TERRAIN

69. It is respectfully submitted that the Chamber committed error by failing to take into account and issue appropriate relief to address the inabilities of the defense to go visit the terrain of the alleged crime sites in Kosovo-Metohia to prepare for trial. Insofar as Appellant entered the case after 4 other accused, we relied on the efforts of the Ojdanic defense on behalf of the remaining accused to obtain access. The Appeals Chamber should be aware of the physical attacks upon the person of Defense staff and UN personnel when such a trip was attempted.

70. Due to the restrictions on the size of this brief we cannot go into lengthy detail on this ground of appeal. The Appellant hereby adopts by reference and incorporates as if set forth fully herein the arguments set forth by Co-appellant Ojdanic in his Fifth Ground of Appeal.

B. DENIAL OF CRITICAL DOCUMENTARY EVIDENCE

[88] Id.

71. During the course of the Trial Appellant sought several times to introduce documents, to try and present a full case in spite of the harsh limits on the hours of live testimony to be led. It will be recalled that the Chamber claimed to be open and flexible for such alternative ways to present evidence in lieu of live testimony. However, this was true for the prosecution more so than the defense. Countless times Defense attempts to introduce documents were denied by the chamber.

72. On 6 May 2008 the defense filed its first bar table motion, seeking introduction of documents that were categorized and arranged in such a way so as to demonstrate their significance. On 12 June 2008 the Chamber issued its decision on the initial bar table motion, granting some but denying others (hereinafter "1st Bar Table Decision").

73. Rule 89(c) of the Rules of Procedure and Evidence permit a Chamber to admit any relevant evidence with probative value.[89]

74. The Defense would like to highlight some critical documents that were not introduced, which whose non-introduction constitute discernible error and occasioned unjustified harm to the defense case. By keeping these documents out, the Chamber was left with a faulty and incomplete record of evidence which led to errors of fact and law.

75. Map Extracts of Anti-Terrorist-Actions[90]: These documents speak for themselves and demonstrate the manner/extent to which the Army prepared maps not only for its own units but also for MUP units. Thus it is simply not accurate in the 1st Bar Table Decision when the Chamber concludes that it has not been illustrated how they relate to an issue in the trial.[91] Indeed, similar maps were introduced through Djakovic and the probative value of these was identical. With the manner in which the defense case was hurried through by the Chamber it is inappropriate to deny admission simply because witnesses did not introduce the documents. It should be recalled that the Defense had to cut its witness list from 109 to 35 witnesses. The Chamber alleged a significant role of Appellant and the MUP staff in preparing such maps,[92] which is clearly not the case from even a cursory review of these documents in conjunction with the testimony of army witnesses who denied such documents existed.

[89] RPE-89(c)
[90] 6D1622;6D1623;6D1624;6D1625.
[91] Para.103.
[92] Discussed in section P

76. Official MUP website lists of persons that were attacked and injured/killed in KLA activities on the territory of Kosovo-Metohia[93] and RDB Information on the KLA[94]: These documents are critical as they demonstrate actions of the KLA in areas where the OTP witnesses said there were no KLA. Likewise it should be recalled the Chamber concluded the lack of KLA activity in many alleged crime-base municipalities as the sole reason it discounted the KLA as a reason for persons leaving in 1999[95]. By refusing to admit these the Chamber erred and prevented the Defense from rebutting a crucial point erroneously relied on to convict the Appellant, despite questioning the veracity of OTP witnesses on the same topic.

77. Documents underlying 6D614 and evidencing disciplinary and criminal charges brought against persons, inclusive of Police personnel, for crimes in Kosovo during the indictment period[96] and Overview of the same(6D614): These documents are of a critical nature. Milutinovic was acquitted by the same Chamber for knowing of crimes having been committed, but being advised that appropriate legal actions were underway to investigate and prosecute perpetrators.[97] These documents demonstrate the very same situation for Appellant, who only had knowledge that crimes were being investigated and persons arrested, including Police personnel for crimes. Thus he could not have had the knowledge or intent to be convicted. The Defense actually sought reconsideration of the Chamber for these very same documents, explaining their significance to the Chamber. Nevertheless they were denied admission.[98] We had extensive evidence as to how 6D614 was compiled[99] and thus it was improper to deny admission of the same. It should be noted in this regard, insofar as 6D614 was fully translated, and portions were introduced into evidence by the Chamber, there was no legitimate rationale which could serve the interests of justice in keeping the rest of that document out of evidence.

78. After first limiting the Defense in terms of the time it could present live evidence the Chamber then further limited the defense by refusing to accept documentary evidence. The applicable law of the Tribunal is embodied in Articles 20 and 21 of the Statute of the Tribunal, which guarantee Appellant the right to a fair trial and full equality before the Tribunal. The principle of equality of arms is one of the critical elements of a fair trial. This principle requires that each party be afforded a reasonable opportunity to present his or her case under conditions that

[93] 6D1109;6D1111;6D1112;6D1115;6D1116;6D1117.
[94] 6D1468;6D1469.
[95] II/69;115;147;156;198;230;285;259; 285;728;1156;1175
[96] 6D2,Tr.25474
[97] 6D889,6D925
[98] "Decision on Lukic Motion for Reconsideration of Trial Chamber's Decision on Motion for Admission of Documents from Bar Table and Decision on Defense Request for Extension of Time for Filing of Final Trial Briefs" 2 July 2008; "Corrigendum to Decision on Lukic Defense Motions for Admission of documents from bar table"29 July 2008.
[99] 6D2,Tr.25473/25475;6D1631,para.114;6D1647

do not place him or her at a substantial disadvantage vis-à-vis their opponent.[100] Great emphasis should be placed on appearances.[101] It is thus respectfully submitted that a party must be given the opportunity "to make known any evidence needed for their claims to succeed".[102] Respectfully, in denying documentary evidence sought by Appellant, the Chamber infringed on that right.

D. PROSECUTION EVIDENCE UNRELIABLE AND UNTRUSTWORTHY.

86. In I/50, the Chamber noted that it would partially accept witness statements, namely that it would take into account parts found credible, but leave out any parts found untrustworthy. If the defense showed a witness testified untruthfully, the Chamber could still take into account other parts of that testimony. Appellant respectfully submits that this is an erroneous standard, a witness can be deemed credible only if he/she speaks the truth. All statements made by witnesses who have been found untruthful in any of their testimony cannot be used as evidence, especially not as evidence to determine Appellant guilty. The Chamber accepted the position of the Defense in I/51 that it was not possible to examine every point over the course of these proceedings. Therefore, as an illustration, the Defense respectfully submits that all witnesses who claimed that the KLA was not present in their villages, contrary to a multitude of other evidence, should not be accepted and relied upon for finding Appellant guilty. All these witnesses were asked about the reasons of their departure, and coincidentally denied it was due to KLA instructions/actions. Having testified untruthfully about KLA presence, it follows they would untruthfully deny KLA actions. As a result of such paradoxical acceptance of evidence by the Chamber it took into account witness testimony that was not reliable in the least.

87. The Chamber noted[103], the difficulty was compounded by the fact that the Defense was not required to disclose to the Prosecution details of its witnesses and exhibits until the close of the Prosecution case-in-chief. This position/reproach is rather curious bearing in mind that such a

[100] See,Dombo Beheer B.V. v. The Netherlands Judgment(27October1993)Series A, no.274,p.19§33;Ankeri v. Switzerland,Judgment(23.10.1996)Reports of judgments and Decisions 1996-V,pp.1567-68,§38
[101] See,APEH Uldozotteinik Svoversege v. Hungary,Judgment of 5 October 2000, Reports of Judgments and Decisions 2000-X: Case of $pnisch i.,Austria, Judgment of 6 May 1985, Series A no. 92.
[102] SeeNideröst-Huber v. Switzerland Judgment of 18 February 1997, Reports of Judgments and Decisions 1997-I,p.108,§ 24; and Case of Mantonavelli v. France Judgment of 18 March 1997, Reports of Judgments and Decisions 1997-TI,p.436,§33.
[103] I/52

procedure is stipulated by the Rules, and thus no difficulties in presentation of evidence were compounded by it.

88. The Defense is further reproached when it was not put to Prosecution witnesses that defense witnesses would testify contrary to that testimony, which deprived the Prosecution witnesses of the opportunity to comment on the defense case. The Defense respectfully submits that at the time of the Prosecution case-in-chief, it was not known who the Defense witnesses in this case would be, let alone what they would testify. The Defense believes that this reasoning of the Chamber is unjustified and that it unreasonably put blame on the Defense as if purposefully/unfairly omitting something, which is not true.

89. The explanation the Chamber provided[104], that it was able discern information upon which it could rely even in statements of witnesses who spoke with evident hatred, relates to Prosecution witnesses. Such approach gave undue credibility to witnesses who were shown to have testified untruthfully, or who were "exaggerating the events of which they spoke", as the Chamber put it.[105] Defense witnesses had nothing to exaggerate.

90. The Chamber described problems related to Defense witnesses in I/54. However, it is not clear to what this pertains. The Chamber could come to this conclusion only because it was unfamiliar with the law that governed the functioning of certain institutions. In an attempt to understand how these institutions operated the Chamber found explanations given by witnesses to be to rigid.

91. The Chamber once again confirmed its position by creating the category of a lying witness who occasionally speaks the truth.[106] The Defense respectfully submits that such an approach is not permissible in any civilized legal system. In spite of such an explanation about the use of documents,[107] it is evident that the Chamber did not take into account the exhibits that clearly show that Appellant did not have the authority to punish, or initiate a disciplinary/misdemeanor/criminal proceedings against any policeman, including those who were in Kosovo-Metohija. Otherwise the Chamber would have found that Appellant had no effective control and it would have acquitted him.[108]

[104] I/53
[105] I/53
[106] I/64
[107] I/61
[108] 6D464;6D1339;6D1340;6D1343;6D1344;6D1345;6D1346;6D1348;6D1349;6D1357).

92. The Chamber noted that it did not discuss all the evidence, but that this did not mean that the evidence that was not specifically discussed in the Judgment was not considered.[109] How is the Defense to know what extent the Judgment is based on evidence that was not discussed therein. Or that all evidence was considered correctly.

1. PERSECUTION OF ALBANIANS BEFORE THE ARMED CONFLICTS

93. In Paragraph I/225 the Chamber inference Albanian children were unable to go to school is impermissible. The fact is that the Albanian secessionists worked towards separation from Serbia and that they boycotted the state institutions. Sadije Sadiku testified that he had no problems in attending the state school.[110]

94. The evidence presented indicates that there was a plan of the secessionists/terrorists, which was, besides training, gathering and arming of terrorists, also reflected in parallel institutions education/MUP/armed forces.[111] The Chamber failed to take into account evidence which clearly shows that the separatist movements formed "parallel" state bodies in Kosovo-Metohija as early as at the beginning of the nineties, with the main goal to create "the Republic of Kosovo".[112]

95. The Chamber misquoted the evidence given by witnesses Damjanac and Pantić by noting that they testified about mass dismissals of Albanians,[113] whereas these witnesses testified about the subsequent stage of the Albanian boycott of the state. The said witnesses testified that the Albanians left under pressure exerted by other Albanians. The Chamber noted that the Albanians had to sign a document to indicate their loyalty to the state, suggesting that it was the pressure the Albanians could not endure and that was the reason of their leaving. Not a single such document of loyalty was tendered into evidence. Conversely, there is evidence that shows that all the Albanians who wanted to work remained employed without having any problems caused by the Serbian side. They

[109] I/64
[110] P2252/para2,3
[111] 6D1491/para.11-14,17-21,43
[112] 6D1491/para.11,12,13
[113] I/64

had problems only with the Albanians who pressured them to leave their jobs.[114] The Albanian leaders decided that all the doctors should remain at work since it was in their national interest, and thus, all the Albanian doctors continued working until the end of war in 1999. This fact would be impossible if the Serbs dismissed the Albanians from work.

96. Furthermore, Albanians who participated in the work of legitimate bodies of the FRY/Serbia were considered "traitors" by the terrorists. Numerous Albanians left their jobs attracting sympathy of foreign politicians and showing the alleged "terror" of the state.[115] As early as September 1990, the Democratic League of Kosovo and the Independent Union of Kosovo called upon Kosovo Albanians to leave their posts in the state institutions and the majority of Kosovo Albanians complied with this instruction.[116]

97. The Chamber once again erroneously/incompletely presented the evidence in I/663. No reasonable Chamber would extract the quoted testimony from that context bearing in mind that the same witness explained the issue of reserve forces(in 1999), as a result of a complex security situation in Kosovo-Metohija, i.e. the threat of NATO bombing and terrorist actions, the competent bodies began general mobilization, which the Chamber failed to mention. In consequence, all persons registered as reservists were required to keep their weapons with them.[117] Furthermore, in his response to the Prosecution's question concerning the difference between the reservists in Kosovo-Metohija and those in the rest of Serbia, this witness mentioned that „the ethnic Albanians did not want to take part in the reserve forces"[118]. Therefore, this was not the "systematic discrimination" but it represented a boycott of the state, for which the Chamber provided inadequate argumentation in I/228. It is because of this fact that the VJ/MUP reserve forces were predominantly comprised of Serbs/Montenegrins. The small number of Albanians in Kosovo-Metohija who would respond to the legal obligation of mobilization were threatened.[119] Albanians outside of Kosovo-Metohija responded to the mobilization[120].

[114]Joksic-(6D1491/para.12);Mijatovic-(6D1492);Vojnovic-(6D1532/para.25);Debeljkovic-(6D1533/para.7);Pantic-(6D1604/para.4);
[115] 6D1603,para.18,19,20,21,38;Krga-(Tr.16824/14-21)
[116] 6D1491/para.12;Joksic-(6D1491/para.12);Vojnovic-(6D1532/25);Pantic-(6D1604/para.4)
[117] K25-(T.4738-9/21)
[118] K25-(T.4678-22/25)
[119] Kosovac-(T.15795/15796)
[120] Kosovac-(T.15796/ln.5/7)

2. UNIFORMS AND POLICE INSIGNIA

98. In I/688, which deals with the equipment used by JSO(RDB), the Chamber relied upon the evidence of Vasiljević, of the VJ. This witness never explained how he knew this information.

99. In establishing the facts the Chamber once again impermissibly ascribed more weight to Vasiljević, who was not part of the MUP and cannot be considered a reliable witness in terms of the subject he testified about, completely ignoring the material evidence – the Rules on weapons carried by authorized personnel and employees engaged in specific tasks,[121] issued by the Minister of Interior himself.

100. One of the main indicators that the Prosecution witnesses were instructed to testify as it suited the Prosecution is their testimony about the uniforms and insignia of the Serbian MUP.

101. The Chamber failed to note[122] that the MUP uniforms worn in 1998/1999 were rather distinctive with their fluorescent "*POLICE*" lettering that could be seen at considerable distances, even at night,[123] which was important for proper evaluation of evidence and credibility of witnesses in identification of crime perpetrators as members of the MUP forces.

102. The Chamber's conclusion[124] that the police uniforms were almost black in color is unbelievable. Police uniforms were not black, but blue-camouflaged, and there is a clear difference between the two colors. The formal blue dress uniform that is depicted as black by the Chamber has a light blue shirt under the jacket.[125]

103. In I/715, it should be noted that Zhuniqi, clearly testified that the police had white ribbons around their arms, [126] and this precisely is the trap into which the Albanian witnesses fell. Namely, the photographs they were shown during proofing sessions were obviously from 1998, when the police wore white ribbons. Conversely, in 1999, none of the police wore white ribbons, which can be seen from the evidence presented and accepted by the Chamber.[127]

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[121] 6D989
[122] I/706
[123] 6D106, para.8; Ilic-(Tr.24324/12-24352/10);Paunović-(Tr.21854/1-21855/8)
[124] I/708
[125] Nikčević-(T.23235)
[126] Zhuniqi-(T.4126)
[127] 6D237;6D579;6D667

104. K14 incorrectly stated that the police wore blue ribbons on their blue uniforms to distinguish themselves when moving in the open.[128]

105. Shaqiri also claimed that the police wore white ribbons on their sleeves,[129] which is not true, as shown above. Therefore, all the witnesses who testified to this effect should be excluded as unreliable/untruthful. This is a mere fabrication and a product of witness preparation, and not truthful eyewitness/fact testimony.

106. While true that PJP had two types of uniforms, contrary to the Chamber's conclusion[130] they wore exclusively green-camouflage uniforms after the bombing campaign had started. The units from the rest of Serbia that were deployed to Kosovo did not bring with them blue uniforms.

107. II/875 deals with the testimony of K62 and her husband K63. K62 was certain that the men who assaulted her were not policemen[131] and she was very clear about it. Yet, in II/889, the Chamber found that this witness was raped by VJ or MUP personnel.

108. No reasonable Chamber would find the testimony of witness K14[132] to be trustworthy bearing in mind that her claims are contrary to the evidence presented. Specifically the evidence clearly shows that on the date in question police wore red ribbons,[133] not blue, so it cannot be accepted beyond reasonable doubt that this witness identified perpetrators as members of the MUP. Witness Ilić not only confirmed the above in his testimony, but also explained that it was dangerous not to obey the standard prescribed in terms of uniforms.[134]

109. The Chamber discussed/accepted as reliable the testimony by K81 concerning the activities of VJ and residents of Žegra, some of whom allegedly wore police uniforms.[135] Even if this was the case, it certainly does not mean that policemen participated in these activities. The Chamber found that the villagers wore blue police uniforms taking no notice of the fact that dark blue uniforms were not worn exclusively by policemen. Namely, solid blue uniforms were also worn by members of the Civil Protection. It should be noted that K81 certainly did not speak the truth as he claimed

[128] K14-(T.10981-10983,closed session)
[129] Shaqiri-(T.2789)
[130] I/716
[131] K62-(T.2274/23-2275/8;T.2284/4-7)
[132] II/877 and II/878
[133] 6D579
[134] Ilic-(T.24326)
[135] II/931,II/937,II/946

that he had entered Macedonia from another part of Serbia, via Preševo, and not from Kosovo, and that his documents were taken from him on that occasion.[136] No one else mentioned this possibility and it is evident that this witness is also one of the instructed witnesses who did not speak the truth.

110. The testimony by witnesses who claimed that the police wore black/blue-black/blue-white uniforms,[137] cannot be accepted. In particular, the testimony by witnesses who tried to correct their earlier statements by claiming that they had known that the uniforms were blue, but they called them black, is unacceptable. This entire case has been characterized by numerous Albanian witnesses who often claimed that they were color-blind and that blue color was yellow,[138] or blue color was green,[139] and similar nonsense. It is evident that their statements were adjusted to the needs of this case, which is unacceptable and, if nothing else, calls into question the credibility/truthfulness of their testimony.

111. The testimony of Hyseni is arbitrary and completely unreliable, not only because he incorrectly identified police uniforms as blue-black, but also for the following inconsistencies found further in his testimony: a) witness Hyseni distinguished reservists from "other police officers" by their age[140] (allegedly, "other police officers" were younger), which suggests that the identification made by this witness is arbitrary; b) concerning the statement in which he claimed that the VJ/MUP jointly armed the Serbs, this witness confirmed that he did not see it in person, but that he learned of it from the "mass media". [141] Furthermore, the Chamber failed to note that Hyseni claimed that the group was commanded by Novica Mijović,[142] who was not a member of the police, but worked at the VJ Club. In addition, Hyseni was a member of the Board for Protection of Human Rights and Freedoms associated with the KLA, which also calls into question his credibility/impartiality.

112. It should be noted that the Defense was not able to go to Kosovo, to otherwise test the credibility of witnesses and the question of ribbons worn at the critical time was one of the rare tests which the Defense could apply to these witnesses. Having failed that test, Prosecution witnesses were shown to be untruthful and should not have been relied upon.

[136] K81-(T.7075/25-7076/6);K81-(P2268/page.4/para.4)
[137] II/965,II/968,II/1089,
[138] Zhuniqi-(T.4106/7-T.4107/5)
[139] Popaj-(T.5766/8-9)
[140] Hyseni-(T.3092)
[141] Hyseni-(T.3093)
[142] P2270/page.3/para.3

3. PARAMILITARY/VOLUNTEERS WITHIN THE POLICE

113. The Chamber misquoted the Lukić Final Brief by stating that the Defense "concedes that the former members of the Scorpions, a unit that was supposed to no longer exist in 1998 and 1998, were incorporated into the SAJ".[143] Namely, the Defense explicitly stated in its Final Brief that the Scorpions, as a formation unit, did not exist in 1998 and 1999, but that individual former members of the Scorpions were reservists of the SAJ. The Defense based its claim on the evidence of insider witness Stoparić,[144]

114. I/738 discusses the statement by Gajić wherein he mentioned the Scorpions as a paramilitary formation, as well as other groups associated with the JSO/SAJ, as noted by the Chamber. This witness testified with the only intention to prove that the VJ was not associated with paramilitary groups. Goran Stoparić, who was at one point a member of the Scorpions, confirmed that in 1999, he and others were in Kosovo as a member of the SAJ, and not the Scorpions.[145] In 1999, all mentioned individuals were SAJ reservists, and thus could not have been members of paramilitary or para-police forces at the same time. Stoparić, confirmed during trial that the Scorpions did not exist in 1998/1999, i.e. that they were dissolved.[146] Miroslav Mijatović, also confirmed that members of the SAJ were present in Podujevo in 1999, not any paramilitary/scorpions.[147]

115. The same Paragraph discusses the testimony by Vasiljević who claimed that a group named "Legija", which was commanded by Colonel Kovačević, operated in Kosovo. This witness further stated that he received this information from Sergej Perović, his subordinate officer.[148] Conversely, Perović explained that Vasiljević actually tasked him with investigating those allegations, and he informed his superiors after the investigation that the allegations were not true.[149] The evidence of Perović was confirmed by his superior, Momir Stojanović, who stated that Perović indeed informed his investigation found no evidence that a paramilitary group named "Legija" was operated by the

[143] I/737
[144] Stoparić-(T.705/14-17;T.698/1-10)
[145] Stoparić-(T.699); Stoparić-(P2224/para.80)
[146] Stoparić-(T.698/3-5)
[147] Mijatović-(T.22495/5-19)
[148] Vasiljević-(T.9034/16-T.9035/11)
[149] Perović-(T.21083/10-21084/1).

MUP in Djakovica.[150] This is yet another proof that Vasiljević's testimony is untruthful not based on facts, and as such, it should be rejected as unreliable and largely construed.

116. In the same Paragraph, the Chamber refers to certain parts of the testimony given by Gajić and Vasiljević concerning their stay in Kosovo, [151] in which they stated that they gathered significant information about the MUP units, including the information on the presence of paramilitary units that were attached to the MUP.

117. In establishing Appellant's responsibility, the Chamber relied to a great extent on the testimony of Vasiljević. On the other hand, in establishing Ojdanić's responsibility, and it should be noted that Ojdanić sent Vasiljević/Gajić to Kosovo, the Chamber pointed to certain limitations of Vasiljević's knowledge, stating that "The Chamber notes that, while Vasiljević was generally a reliable witness, he was only brought back into the Security Administration on 27 April 1999 and only reported on what he was told by VJ members in Kosovo during his mission."[152] This is yet another proof that the Chamber applied double standards and abused its discretion.

118. Furthermore, it is not true that Vasiljević, Gajić and Farkaš jointly toured the area of Kosovo. In III/572 it is correctly noted that Farkaš was in Kosovo on 5-6 May 1999. Vasiljević and Gajić stated that they were in Kosovo from 1-7 June 1999,[153] which implies that the Chamber wrongly presented the facts when it concluded that Farkaš, Vasiljević and Gajić were on a joint mission in Kosovo.

119. In the statement referred to by the Chamber Stoparić stated that Arkan's Tigers were dissolved in 1995 and that the group did not exist in 1999.[154] Vasiljević's was retired and arrested in 1992, and he was a military pensioner until 27 April 1999. Also, even if the Chamber relied on Vasiljević's statement that Legija was a member of Arkan's Tigers, he could have been a member of this group only until 1995, when this group was dissolved.

120. In contrast, Stojanović, the top VJ Security officer in Kosovo-Metohia, did not confirm the above claims and stated that he had never heard that Arkan's Tigers operated in Kosovo.[155]

[150] Stojanović-(T.19833/20-T.19834/11).
[151] I/738
[152] III/572
[153] P2594/para.75;Gajic-T.15319/19
[154] P2224/Paragraph.10
[155] Stojanović-(T.19833/8-12)

121. The presence of the Tigers in Kosovo was also contested by Mihajlović, who lived in Kosovo Polje before and during the Indictment period.[156] Mihajlović explained that Kosovo Polje was only six kilometers away from Priština, and that at least some of the two thousand journalists who were based in Priština would have known of the existence of such a group. However, none of these journalists ever reported anything about the existence of this group.[157]

122. Contrary to Gajić,[158] Farkaš testified that he had never heard about any report on Wolves of the Drina. In particular, Farkaš stated that he first learned of this group from Vasiljević.[159]

123. Lazarević, also testified that he had no information about the Wolves of the Drina.[160]

124. Stojanović, the top person in the military security of the Priština Corps, also testified that he had no information about the Wolves of the Drina.[161]

125. Joksić, deputy RDB coordinator for Kosovo, testified that it was the members of the SAJ that were present in Kosovo Polje, rather than the Wolves of the Drina.[162]

126. Filić, testified that in a small town such as Kosovo Polje, it was not possible to conceal the arrival and presence of a group named the Wolves of the Drina. He confirmed that this unit was not present in Kosovo Polje and that, in fact, members of the SAJ were present there.[163]

127. Ilić also denied that the Wolves of the Drina were present in Kosovo. He stated that he knew the alleged Commander of this unit, Milan Jolović, known by the nickname "Legenda". This person was his room-mate from the Military Academy. Milan Jolović was a member of the VJ, rather than the MUP.[164]

128. It is clear that the information provided by Gajić is incorrect and unreliable, and thus should not have been relied upon by the Chamber.

129. The Defense already addressed I/741 and the reliability of information provided by Vasiljević and Gajić, when it discussed I/737 through I/740. The Appellant once again emphasizes that their testimony is unreliable and that it cannot be used as evidence in this case. The only

[156] Mihajlović-(T.24056/9-10)
[157] Mihajlović-(T.24056/18-T.24057/4)
[158] I/740
[159] Farkaš-(T.16345/11-18).
[160] Lazarević-(T.18189/4-12)
[161] Stojanović-(T.19832/14-22)
[162] Joksić-(T.21954/6-21)
[163] Filić-(T.23861/1-14)
[164] Ilic-(T.24334/13-T.24336/4

information provided by Vasiljević that could be checked was the alleged report by Perović, which turned out to be completely different from the information Vasiljević presented about it.[165] This is yet another reason the Chamber should have rejected Vasiljević and Gajić.

130. The Chamber noted that upon Farkaš's return from Kosovo, "he reported that there were serious problems with paramilitaries in Kosovo, including rapes, looting, and theft." The Chamber failed to note that Farkaš did not mention any murders when he listed the crimes, which clearly shows that Farkaš did not speak of the Scorpions or Arkan's Tigers, since it was these two groups that had been associated with murders.[166] Farkaš did not speak about the Scorpions[167] which clearly shows that the VJ found out about Medić's group upon Farkaš's return from Kosovo.

131. Vasiljević did not speak the truth when he stated that the paramilitary unit named "Scorpions" was discussed at a meeting with Milošević. Farkaš, who was superior to both Vasiljević and Gajić, stated that the term "Scorpions" meant nothing in 1999.[168] Likewise, the diary kept by Vasiljević indicates that the group of Slobodan Medić-Boca was discussed at the meeting held with Milošević on 17 May 1999, without referring to this group as "Scorpions".[169]

132. The documentary evidence prepared by the VJ Security Administration has the following title: "Information on the activities of the paramilitary group of Slobodan Medić-Boca".[170] Therefore, there was no unit named "Scorpions" during the war in Kosovo. Based on the above, the only reasonable conclusion the Chamber could have reached was that certain SAJ reservists happened also to be former "Scorpions."

133. The Chamber noted that Ojdanić invited Pavković and other members of the Supreme Command Staff to a meeting with Milošević on 16 May 1999.[171] The Chamber also noted that after the meeting with Milošević, which was not attended by Lukić, Ojdanić ordered Farkaš to set up a team to inspect the basic VJ units and the security organs within Kosovo, which Farkaš did and sent Vasiljević and Gajić to Kosovo on 1 June 1999.[172]

[165] Perovic-(T.21083/4-T.21084/7)
[166] Farkaš-(T.16292-T.16293;T.16303-T.16304).
[167] 3D1055
[168] Farkas-(T.16342/25-T16343/9)
[169] P2592
[170] 3D1055
[171] III/575
[172] III/577

134. The crime committed in Podujevo SAJ reservists, took place at the end of March 1999, and was immediately processed (criminal report was filed by the MUP, all members of the reserve forces were withdrawn etc.), which leads to a logical conclusion that there was no reason to discuss this incident at the meeting with Milošević 50 days after the incident had happened.

135. It is precisely because of this fact that Minister Stojiljković or any other RJB official did not attend this meeting with Milošević, and not because Milošević had *de facto* control over RJB, as the Chamber erroneously concluded.[173]

136. The Chamber misquoted Vasiljević,[174] which discusses the meeting held with Milošević on 17 May 1999. Vasiljević testified that at the meeting at Ojdanić's office,[175] not Milošević's office, Pavković reported the number of unidentified bodies in Kosovo. The Chamber confirmed that Vasiljević stated this in relation to the meeting held on 16 May 1999.[176] Appellant was not present on this meeting, but only military personnel.

137. Likewise, in establishing Pavković's individual responsibility,[177] and discussing the meeting held on 17 May 1999, the Chamber referred to Vasiljević's testimony and noted that "Vasiljević further testified that Ojdanić and Pavković proposed to establish a 'joint state commission' to examine what was occurring in Kosovo, but that Milošević was not interested in creating this commission". Therefore, it was Milošević who did not accept the forming of this commission, not Lukić. The fact that the Chamber abused the facts and tailored Vasiljević's testimony to the detriment of Appellant is of great concern. This is an obvious example of the Chamber's infringement on the Appellant's rights.

138. The Chamber misquoted the contents of the 17 February 1999 meeting, concerning volunteers.[178] The evidence clearly shows that Stojiljković said that volunteers could be engaged in the above specified manner, only when he and his colleagues from Belgrade who attended this meeting (Marković/Đorđević/Stevanović) assessed that it was necessary. [179]

[173] III/350,III/1132
[174] III/576
[175] P2600;Vasiljevic-(T.8783)
[176] III/349
[177] III/741,
[178] I/742
[179] P1990

139. Dispatch from 18 February 1999,[180] with the instructions to carry out the "necessary checks, compile lists, and establish complete control over volunteer and paramilitary units" was sent, to all Serbian SUPs (1-33), rather than only to those in Kosovo, as incorrectly presented by the Chamber.

140. Furthermore, the Chamber should have concluded based on this dispatch that its main goal was to to be on lookout and police potential volunteer/paramilitary groups, which means that they were to be prevented from operating in war circumstances.

141. It was established that there were no paramilitaries/volunteers within the MUP. Even Cvetić himself testified[181] that there were no paramilitaries within the police. Cvetić explained that he referred a volunteer who approached him to the military department.[182] Cvetić also denied their existence in the territory of his SUP, except for one case when they were expelled from Kosovo.[183] There was one recorded case of a paramilitary unit that showed up in the part of Kosovo adjacent to Serbia-proper, but it fled the area when the police headed towards them.[184]

142. The Chamber noted that Lukić attended the meeting where he "raised the issue of volunteers", which it based on the testimony by Cvetić,[185] completely ignoring the testimony of the other two SUP heads, Vojnović/Gavranić, who stated that there was no meeting on that day and that they never heard Lukić mention volunteers. The issue of volunteers was already defined/elaborated by Minister Stojiljković on 17 February 1999 in Priština,[186] by RJB Chief in his dispatch of 18 February 1999,[187] and finally again by Stojilkovic in his dispatch of 24 March 1999,[188] which emphasized that all the Serbian SUPs were obliged to be on lookout and police potential volunteer/paramilitary groups.

143. Cvetić's testimony was also undermined by Miroslav Mijatović.[189] There is no evidence on the record of a meeting of the MUP Staff in Kosovo/Metohija held on 17 March 1999. All volunteers were included in the VJ and there is no evidence any volunteer was ever a member of the

[180] 6D269
[181] Cvetic-(T.8065)
[182] Cvetić-(T.8062/3-T.8063/5)
[183] Cvetic-(T8063/21-T.8065/21)
[184] Cvetic-(T8063/21-T.8065/21)
[185] I/743,I/744
[186] P1990
[187] 6D269
[188] 6D238
[189] Mijatovic-(T.22725/6-18)

MUP. Many witnesses testified to that effect.[190] The Prosecution did not challenge this evidence through these witnesses. This is yet another indicator Cvetić was an unreliable witness and that his testimony should not have been used as a basis of the Judgment.

144. The Chamber failed to take into account the fact that the Defense managed to make Cvetić change his testimony during the trial and adapt it to the presented evidence.[191]

145. When the Chamber noted in I/745 that Lukić instructed those in attendance to "take rigorous measures towards paramilitary units," the Chamber should have drawn the logical conclusion that Appellant made efforts to prevent and suppress any paramilitary engagement, and to take rigorous measures in case paramilitaries appeared.

4. FOREIGNER OBSERVERS

146. The Defense contests I/844, and submits that the Prosecution failed to prove the crimes committed in 1998, which cannot be properly charged against any Accused. As an example, the Chamber noted the alleged crimes in Gornje Obrinje, concluding that the crimes were committed by Serbian forces, and that Appellant was aware of them. Appellant respectfully submits that the area in which the alleged crimes were committed was held by the KLA and that it was impossible to carry out any investigation because the terrorists controlled it.[192] Moreover, the material evidence in relation to the alleged crimes has never been found or presented. Marinković and Kickert, testified about these crimes, and they confirmed that they tried to investigate the alleged crimes in this area, but were prevented by the KLA, although all of this was happening at the time when the KVM and thousands of journalists were present in Kosovo. This area was also controlled by the KLA in 1999.[193]

[190] Joksić-(T.21952/6-16);Mijatović-(T.22275/8-11);Milenković-(T.22945/11-T.22946/4);Damjanac-(T.23760/23-25); Filić-(T.23947/18-20);Vojnović-(T.24154/3-7)Ilić-(T.24327/15-21)
[191] I/744
[192] Maissoneuve-(T.11227/1-2);Kickert-(T.11279/10-16);Zivanović-(T.20468/23-25;T.20492/2-9);Mijatović-(T22455/10-24);Marinković-(T.23525/15–T.23528/12);Clark-(6D106/page.7/Paragraph.4);6D197
[193] 6D1256/3.Paragraph.5;6D1257/2;6D1635/7;6D1650;6D1669

147. It was established during the trial that the Chamber would not accept witness statements/testimony not given pursuant to Rules 92 *bis* and 92 *ter* of the Tribunal. For this reason, significant evidence tendered by both the Prosecution and the Defense was rejected. The Chamber rejected the documents of HRW and OSCE for the same reason.[194] Therefore, Appellant submits that the Chamber erroneously relied on evidence given by Abrahams, as it did in I/852, since the defense was in no position to verify credibility of the witnesses he interviewed in the field.

148. At any rate, the evidence on which the Chamber based its findings in I/865,I/892 and I/894 should also be rejected, bearing in mind that the testimony by Crosland and Drewienkiewicz is self-contradictory in many aspects. These two witnesses were not experts and they could not testify as to the cause of burned houses and the manner in which they were burned. Likewise, Crosland testified that the Junik was razed,[195] while the video recording shown during trial indicated only minor damage caused by rifle bullets on the facades of the buildings.[196] It is clear from the foregoing that the Chamber based its conclusions on unreliable/unacceptable evidence.

149. The Chamber accepted the testimony by Abrahams with regard to the individuals who were sent his findings.[197] The evidence is clear Appellant was not named as a recipient.

150. The Chamber referred to a report published by HRW on the events that took place in the last week of September 1998,[198] and further referred to the testimony by Abrahams showing that he was at Gornje Obrinje[199]. The Chamber also referred to a report on those events made by Abrahams on 1 February 1999, which was allegedly sent to the FRY officials and the Presidency of Serbia. Abrahams never gathered any information from the VJ/MUP forces that he identified as perpetrators of the alleged crimes.

151. Abrahams did not contact any of the MUP officials in Kosovo, which clearly confirms the assertion Appellant had no confirmation of the allegations relayed by the media with regard to Gornje Obrinje.

[194] Decision on Evidence Tendered Through Sandra Mitchell and Frederick Abrahams,1 September 2006
[195] Crosland-(T9807/20-23)
[196] 5D1239
[197] I/900
[198] I/900
[199] I/901

152. The Chamber took into account the statements of witnesses allegedly interviewed by Abrahams and based its conclusions thereon.[200] Such evidence had to be rejected because the defense was not able to meaningfully confront the evidence.

153. Paragraph I/902 deals with Abrahams's personal observations as to the death of certain individuals in Gornje Obrinje. These allegations are not corroborated by any evidence.

154. Paragraph I/903 refers to Abrahams refuting the possibility of KLA responsibility for those killings. This not supportable by the evidence and the law on permissible inferences.

155. The Chamber accepts the fact that there were fierce combat activities between the KLA and Serbian forces in this area.[201] Therefore, Abrahams denial of KLA responsibility is irrelevant.

156. In I/910, the Chamber incorrectly quoted witness Kickert, linking his testimony regarding the attempts made in December with earlier attempts of the state authorities to perform an on-site investigation and exhumation in Gornje Obrinje. Namely, Kickert testified that he was aware of the fact that the competent bodies tried on several occasions to perform on-site investigation and other investigative activities in Gornje Obrinje, but that they were prevented from doing so by the KLA that controlled the area.[202]

157. I/907 and I/909 show that the authorities of Yugoslavia/Serbia reacted to the letters by Abrahams, but that they were unable to verify the allegations. The inability to verify these allegations is also confirmed in I/908 dealing with the testimony by Damjanac, namely that the area in question was under KLA control and therefore impossible to enter. This was further confirmed by Kickert, as noted in I/910, and by Marinković, as noted in I/911. It is obvious the KLA presence prevented investigation of the allegations.

158. The facts not having been established by investigation, it was improper to treat Abrahams testimony as evidence of notice a crime had been proven in Gornje Obrinje in 1998.

159. The Chamber incorrectly interpreted Ciaglinski's "impression" regarding the role of Mijatović as Appellant's deputy, finding that Mijatović was in the chain of command of the

[200] I/901
[201] I/904;;I/905;;I/906
[202] Kickert-(T.11226/13-T.11227/6)

MUP.[203] It is respectfully submitted an "impression" is not proper proof in a criminal case. The Chamber committed this error multiple times with witnesses who had no knowledge of the MUP structure and its functioning. None of the members of the KVM were ever police officers in their own countries, let alone in Serbia. [204] Members of the KVM mostly had military training. [205] None of these foreign representatives were trained specifically for this mission, so they are unsuitable as witnesses on the structure and functioning of police.[206] These military witnesses and those of the VJ testified from the military point of view, which is not applicable to the MUP.

160. The Chamber focused on Appellant's purported defensiveness concerning the complaints of the use of excessive force.[207] However, the testimony by Phillips evidently shows that he often confused Lončar with Lukić, which the witness confirmed himself.[208] The Chamber failed to note this and selectively presented the testimony of Phillips, who, when further asked to explain the "defensive attitude", named Šainović and Lončar as the representatives of the authorities, not Appellant.[209]

161. The Chamber accepted Phillips where he spoke about his impressions.[210] This testimony does not satisfy the test of evidence on which a judgment can be based. Phillips testimony is tainted with speculation and conjecture, which affected I/944, I/946, I/948 and I/949.

162. Characteristically, the witnesses who were members of the KVM came to Serbia to control the number of members of the VJ and MUP in Kosovo, and yet they did not know what was the exact baseline of VJ/MUP that was stipulated by the agreement.[211]

163. All of such testimony by witnesses who spoke about MUP structures they did not comprehend, or about the agreements pursuant to which they verified unknown to them must be excluded and dismissed as incredible and unreliable. Any different treatment of such evidence denies the accused of their right to a fair trial.

[203] I/926
[204] Byrnes-(Tr.2202/25-12203/11); Dz (Tr.7965/20-7965/2)
[205] Dz-(Tr.7990/9-7921/22)
[206] Ciaglinski-(T.6932/7-T.6933/7)
[207] I/944
[208] Phillips-(T.11981)
[209] Phillips-(T.11846/6-11)
[210] I/945
[211] Ciaglinski-(T.6942/14-6954/11)

5. JOINT COMMAND

164. Prosecution witness testimony was given more weight than evidence given by defense witnesses. This wholesale approach of the Chamber is reflected in I/1071, where it relied on the testimony by Cvetić who spoke about the establishment of the Joint Command, although he did not participate in the establishment or work thereof, and about the meeting at which the information on the establishment of the Joint Command was passed.

165. The Chamber critically relied on the testimony of a witness who was not a member of the body he testified about, Vasiljevic.[212] Vasiljević obviously did not know what kind of meeting he attended on 1 June 1999; yet, it did not prevent the Chamber from concluding, that the meeting in question was a meeting of the Joint Command, or a meeting of a body similar to the Joint Command. There is no evidence in this case that would confirm that such body existed in 1999.

166. The Chamber made conclusions to Appellant's detriment solely on the presumptions offered by Vasiljević,[213] and contrary to the other evidence. In addition to being contradictory to other evidence, Vasiljević's testimony is internally inconsistent/contradictory, as well as to the testimony by Stojanović and Anđelković, who also attended this meeting. Vasiljević, in his statement of 25 July 2007, did not say that he was present at a Joint Command meeting, as put by the Chamber, but at a meeting held at the Priština Corps Command,[214] which he also wrote in his diary.[215]

167. The Chamber referred to Vasiljević's evidence[216] and again, as is the case in other parts of the Judgment, fails to note that Vasiljević described Appellant as "the last hole on the flute".[217] The actual role of Appellant is reflected in III/356, wherein Vasiljević explained that Lukić's role was to give a briefing. Appellant had a role of briefing those present on an overview of facts, not any command role. Vasiljević further emphasized that no orders were issued.[218] What kind of command would that be if it did not issue any orders?

[212] I/1145,I/1149
[213] I/1145,I/1146
[214] 2D387;para.1
[215] P2862
[216] III/355
[217] Vasiljevic-(T.9066/8-16)
[218] Vasiljevic-(P2600/para.81)

6. THE NATO BOMBING AND CONFLICTS IN KOSOVO

168. Klaus Naumann testified that Serbian forces violated the agreement on force reduction in Kosovo and the Chamber this.[219] Contrary to witness Naumann, numerous witnesses and documents confirmed the fact that this agreement was observed.[220]

169. The Chamber acknowledged one of the most serious shortcomings of these proceedings when it conceded that they dealt only partially with the role of NATO in the war to which this military alliance was a party.[221] These proceedings were deprived of the NATO documentation, which was unavailable during this trial.

170. The Chamber concluded that it was established beyond reasonable doubt that an armed conflict existed in the territory of Kosovo at all times relevant to the Indictment period.[222] This is true, though not conflict with the KLA, which was a terrorist organization, but of NATO, whose role could not even be examined at this trial.

171. The Chamber deemed unreliable the testimony given by defense witnesses, who presented their direct knowledge based on conversations with Albanians, and who were told by the Albanians that they were leaving because of the NATO bombing and the KLA.[223] According to the Chamber, this testimony is unreliable since the military and police officers wore uniforms while speaking to those individuals. Instead, the Chamber relied on the testimony given by the Albanians who claimed that they left because of the Serbian/ Yugoslav forces, without taking into account that these witnesses denied the existence of the KLA, who now wear the uniform of Kosovo Protection Corps. Only this can explain why they stubbornly refused to admit that a human being could be afraid of bombs, or that one would leave home due to close fights between the terrorists and Serbian forces. This is the only connection between the Albanian witnesses, not their victimization, as put by the Chamber.

[219] I/1206.
[220] 6D1650;P683;6D780;Byrnes-(T.12202/13-23);Maissoneuve-(Tr.11166/6-11167/10);Mijatovic-(T.22278/7)
[221] I/1214
[222] I/1217
[223] II/1175

172. Moreover, on the basis of testimony by Smiljanić that people did not leave Belgrade and other parts of Yugoslavia in the massive numbers which fled Kosovo, the Chamber unacceptably found in II/1176 that the NATO bombing was not the primary reason for the mass displacement of civilians form Kosovo. The Chamber failed to consider the fact that in other parts of Serbia/Yugoslavia there were no KLA present that would force the civilians to leave the country in order to cause artificial humanitarian catastrophe.

7. CVETIC

173. The Chamber failed to accept the evidence of the witnesses who testified that Ljubinko Cvetić was removed from his position due to his inability to properly carry out his duties as the head of Kosovska Mitrovica SUP.[224] Nevertheless, the Chamber regarded Cvetić's evidence as reliable and accepted his testimony in the part where he said that he did not "know of any case when a police officer was accused of murder, arson, or persecution of Kosovo Albanians while he was the head of Kosovska Mitrovica SUP". This witness was removed from his position precisely due to the fact that he sat in a basement and did not perform his job, i.e. he did not fight crime. Contrary to the finding of the Chamber, the circumstances of Cvetić's removal from the position he held in March and April 1999 do undermine his testimony, since it is not applicable to other SUPs in Kosovo. It is evident from the minutes of the MUP Staff meeting held on 4 April 1999, several days before Cvetić's removal from his position, that Cvetić was the only one who did not report that he discovered any crimes.[225] Therefore, he himself should be blamed for this omission. Thera is evidence that police officers were prosecuted for crimes in Kosovska Mitrovica municipality.[226] Nebojša Bogunović testified to this effect as well.[227] The above clearly shows that witnesses Vojnović and Bogunović spoke the whole truth, whereas Cvetić was not a reliable witness.

174. Chamber didn't accept Vojnovic's evidence, since he stated that he heard about the Berisha killings years later, although he was the Chief of Prizren SUP.[228] To be fair the Chamber had to

[224] II/1178
[225] P1989
[226] 6D614/11/26-(four murders);;6D614/12/31-(double murder);;6D139-(double murder);;6D298-(felony);;6D301(theft)
[227] 6D1614/Paragraphs,54,94
[228] III/960

reject Cvetic's credibility as it rejected Vojnovic as Cvetic also stated that he heard of Izbica many years later, although he was the Chief of SUP with territorial jurisdiction over Izbica.[229]

E. BARE FINDINGS/CONCLUSIONS IN THE JUDGMENT

175. It is respectfully submitted that the Judgment demonstrates discernible error on its face in the manner that the Chamber analyzed the evidence in reaching its findings. Better put, there is no analysis and weighing of the evidence evident under the appropriate standard for the bare findings/conclusion asserted. A Chamber must make clear in its judgment that it has considered crucial, exculpatory evidence and explain the weight which it has given to each evidence and its reasons. If it does not do so, it can only be presumed that it did not consider the evidence and arguments made with respect to that issue and that it has erred. As a US Court has stated, the failure of a Court to give reasons for its Judgment "is a hallmark of injustice."[230]

176. The Appeals Chamber has likewise stated"the right of an accused under Article 23 of the Statute to a reasoned opinion is an aspect of the fair trial requirement embodied in Articles 20 and 21 of the Statute."[231] Further, a Chamber must "indicate its view on all of those relevant factors which a reasonable Trial Chamber would have expected to take into account before coming to a decision."[232] And also in finding error and vacating a conviction that "neither the parties nor the Appeals Chamber can be required to engage in this sort of speculative exercise to discern findings from vague statements by the Chamber."[233]

177. Appellant will first deal with individual Paragraphs that are being contested, and subsequently a detailed analysis of the type required.

F. APPELLANT'S INTERVIEW

[229] Cvetic-(8110/25-T.8111/7
[230] US v. Snow,157 US.App.D.C.331(D.C.Civ.1973)
[231] OTP v. Furundzija Appeals Judgment, para.69.
[232] "Decision Refusing Milutinovic Leave to Appeal" 03.07.2003, para.22.
[233] OTP v. Oric Appeals Judgment, para.56.

1. TRANSCRIPT WAS LATE DISCLOSED, REPLETE WITH GROSS ERRORS

183. P948 is the transcribed interview of Appellant with the Prosecution, taken in 2002, before an indictment was issued, and in the absence of any counsel assisting Appellant. Although 3 days worth of videotape was disclosed, a transcript was not provided until February 2008, just as Appellant was undertaking a very detailed case-in-chief. At that time it was discovered that the initial OTP translator at the interview had made serious errors in translation, which would not have been evident until a merged(BCS-English) transcript was provided.

184. OTP advised Appellant he would receive a transcript at the conclusion so as to review the same before adopting it as his own, including the ability to clarify matters said during it (pages/4;68;157), no such transcript was ever provided, and no feasible means existed to review the video-transcript in advance of the next session so as to correct any deficiencies.

185. Having deprived Appellant of the rights they promised to him, the Prosecution has made it impossible for any meaningful clarifications to be made for what was in the mind of Appellant at the time of the faulty translations.

186. With no English knowledge, Appellant could not be alerted to the flawed translations solely upon the video-tape. The transcript was only produced as Appellant was beginning the defense case, insufficient time and resources were available to both review the same AND conduct the case with the diligence/efficiency required by the Chamber's scheduling.

187. Despite being apprised of the foregoing flawed process, and specific errors of translation, the Chamber nevertheless admitted P948 into evidence.[234]

2. OUT OF CONTEXT

[234] "Decision on Lukic request for reconsideration of the Trial Chamber admission into evidence of his interview P948" 22 May 2008; "Order on admission into evidence of revised version of Lukic interview P948" 22 May 2008; "Second decision on Lukic request for reconsideration of the Trial Chamber's admission into evidence of his interview-(ExhibitP948)" 2 June 2008.

183. P948 is erroneously relied upon throughout the Judgment. The following analysis demonstrates that the Chamber erred in weighing the evidence to establish guilt "beyond reasonable doubt" as is its burden, as set forth in the Celebici Judgment.[235]

184. According to the prevailing legal jurisprudence, the Chamber must be satisfied so that the conclusion reached is the only one which reasonably can be and that it cannot be called into question by another **rational** conclusion.[236] Accordingly, if a countervailing interpretation or inference under the evidence is available, consistent with the presumption of innocence, the Chamber cannot adopt the conclusion assessing criminal responsibility.

185. One such error is in regard to conclusions as to the position/role of Appellant as head of Staff. In III/941 the Chamber only partially sets forth the evidence presented by the Defense which shows that during 1998/1999 several higher-ranked MUP officers superior to Appellant in position were present in Kosovo-Metohia. In 1998 from July to October both the Assistant Minister/RJB Chief Djordjevic and Asst. Minister/PJP Commander Stevanovic were non-stop on Kosovo-Metohia.[237]. Likewise even Minister Stojilkovic would arrive on occassion.

- From November 1998 through 20.3.1999 the aformentioned officials were in Kosovo-Metohia frequently, including the minister. After 20.3.1999, General Obrad Stevanovic (Assistant Minister/Chief of the Police Administration/Commander of PJP) was constantly at the location of the MUP Staff, as an official of the highest authority in the MUP.[238]

186. In P948/p228[239] Appellant, on the questioning relating to Obrad Stevanovic:

> KC: The role he had as commander of the special units. Is that what brought him down to Kosovo?
> SL: Both the position of assistant interior minister and this other position.
> KC: So it was basically an issue of having a more senior MUP officer in Kosovo duringthat period than had been before?
> SL: That is so.

187. Had the Chamber properly viewed the evidence in this manner, it would have properly concluded that Appellant was not the highest ranked MUP officer nor one of the highest authority on the territory of Kosovo-Metohia during the NATO war.

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[235] Prosecutor vs.Delalic,et.al.,IT-96-21-T,TJ,(paras.600,603)
[236] Prosecutor vs.Delalic,et.al.,IT-96-21-A,AJ,(para.458)
[237] Intervju P948/str.53,;6D1499/para 20;Mijatović-(T.22328/20-24;22202/9-16;22202/18-23);;Vučurević-(T.23064/1-13);;Adamović-(T.25069/12-22;25081/1823;6D 80014-25
[238] Mijatović-(22240/13-17;22428/15-20);,P1989;P1996;P1993;;;Bogunović-(T.25150/8-15;2515114-19) Ilić(T.24405/16–24406/13)
[239] P948/p228

188. At III/961 when the Chamber relies upon the Appellant's interview, it states:

> [...]Lukić explained that the "task of the Staff was to coordinate the work of [the police] units, and in this part … the special police units, had practically dual responsibility: to the commander and, at the same time, to … the Staff itself."[240] When subsequently asked who gave instructions to the PJP units, Lukić answered that "from mid July until the end of September or beginning of October [1998], the Chief of the Department, Mr Đorđević and Obrad Stevanović, the Assistant Minister and commander of special units, were with [him] constantly in Priština."[241] He stressed that Đorđević and Stevanović were "by all means above the head of the Staff".[242]

189. With such a response Appellant explicitly and concisely amended his prior answer such that there could be no reasonable inferrence of Dual authority. It should also be taken into account that the questions/answers relate to 1998 as is evident from the text itself. At that time the PJP relations in regard to the Staff was only in reference to informing of police casualties, problems in food or lodging, health issues, lack of technical supplies and similar logistical type concerns, consistent with the other evidence. In any event, Appellant in the interview even requests to go into detail to explain the precise position and role of the Staff, but OTP investigators (although promising such an opportunity) did not effectuate that opportunity[243] nor did they provide a copy of the transcript of the inteview as promised, so as to permit him to make corrections.[244]

190. At another point, although the Chamber concludes that Appellant did not have a key role in formulation of plans at the highest level, but nonetheless assumes criminal knowledge and liability because he was present/included at the meeting(21.07.1998) where the plan was adopted, it neglects to analyse Appellant's interview where he even states there was no discussion of the plan which was presented as a fait accompli.[245] Insofar as Milutinovic was also present at that meeting, and the Chamber cleared him of responsibility in part due to his lack of a significant role at that meeting[246] it would have been proper for the same analysis to be applied to Appellant's role, vis-a-vis the interview, as to the same meeting. Particularly since alongside Appellant at the same were 3

[240]P948/p.41.
[241]P948/p.41
[242]P948/p42
[243]P948/para.149/154
[244]P948/p153
[245]P948/p68-73
[246]III/143

superior officers of the MUP, including the top of the same, Minister Stojilkovic, Djordjevic, and Stevanovic.

191. With regard to conclusions about the joint command the Chamber also mis-interprets Appellant's interview, contrary to logic, and the principles recited above.

192. As elsewhere in the Judgment, when giving an overview of defense evidence, the Chamber does so selectively in III/1023, such that the same gains a incorrect meaning/inferrence. In that way the Chamber relies on the Interview in part, out of context, and not under a totality of its contents as to the joint command.

193. At the very beginning where Appellant is asked about the Joint Command :

KC: So let's move on to the joint headquarters now, joint command. It's been called both.

SL: As far as the so-called joint command is concerned, and I refer to it as the so-called joint command, because as far as I know it has not been enacted by any law as such. It was called the joint command more for the reasons of joining, amalgamating police and army duties, and the engagement of other people, politicians, who mostly dealt with other issues in Kosovo and the economy and other[247]".

SL: The people who were there were deputy federal minister Nikola Sainovic, and chairman of the chairman citizens Mr. Minic. There was also Djoko Matkovic, who was either deputy prime minister of the Serbian government or just minister. Zoran Andelkovic. So we are talking about the people who in 1998, at some point in 1998 stayed in Pristina. They carried out, as far as I know, various tasks in the economy. Contacts with various delegations, committees, boards, but I must say that these people mentioned before would sometimes meet with military and ministry members and officials with the commander of the Pristina Corp., etcetera, and they would have joint meetings, which is why it was referred to sometimes as the joint command. [248]

KC: So where would the task units be decided? In what forum? Would it be at the joint command meetings that the task units would be decided?

SL: The planning of the tasks as in creating maps, drafting papers, issuing, writing or formulating orders, etcetera, was conducted by the Pristina Corps. command, and the tasks were carried out jointly by the army and the police.

KC: This is anti-terrorism tasks that you are talking about?

SL: Yes. As we refer to them as anti-terrorist actions, operations. Bearing in mind that the terrorist cores were reinforced, fortified. There were road blocks on two thirds or let's not say two thirds, but 50 percent of the roads. [249]

KC: I would like to go back now to the joint command in -- I think you said it was

[247] P948/p48
[248] P948/p49
[249] P948/p54

formed in July 1998. We covered the composition of that joint command yesterday I believe, but can you explain to us what the role of the joint command was, and why it was formed?

SL: Yesterday we concluded that there was no -- that the joint command was not formed through particular decree. Yesterday, we also mentioned this period of time when several of these people whom we mentioned yesterday came to Pristina to carry out various tasks, and that these politicians, VJ representatives, MUP representatives, that at these joint meetings, they reviewed the overall situation, and all of this was basically a coordination of measures and activities. In other words, this was the system. How everything functioned. [250]

KC: How often did you have meetings of the joint command after July 20th?

SL: There were meetings practically almost every evening where there would be an exchange of information and an overview of the situation would be presented. [251]

KC: So how would decisions be made based on that information with regards to actions?

SL: When I said that the plan was already made when we met, there were no new decisions to be passed. The decision and the plan of actions already existed. The purpose of our meetings was just to review the situation, get fresh insight into the situation to discuss new terrorist stronghold at various locations, etcetera

KC: So presumably when new terrorism strongholds were discovered, then a decision had to be made as to what to do about that?

SL: In effect, the months of July, August, and September were the months when the plan, the general plan that had already been made was being carried out in phases -- in stages. Everything had already been planned and envisaged. There could be only a negligible changes as to the original plans. . [252]“

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SL: When I said that the plan was already made when we met, there were no new decisions to be passed. The decision and the plan of actions already existed. The purpose of our meetings was just to review the situation, get fresh insight into the situation to discuss new terrorist stronghold at various locations, etcetera.

194. The foregoing are merely the most illustrative of problems prevalant in the Chamber's analysis of the Interview.

G. PREJUDGMENT BIAS

[250] P948/p84
[251] P94/p100
[252] P948/p101

195. During several instances the Chamber exhibited a personal bias directed against Appellant, which calls into question the propriety of the Judgment. Such partiality or prejudgment is improper.

196. The European Convention on Human Rights provision that everyone is entitled to a hearing by "an independent and impartial tribunal established by law", has been interpreted by the ECHR as requiring disqualification where there is either a lack of subjective impartiality (the existence of actual bias) or a lack of objective impartiality (the existence of a fear of bias). In the latter case, it is said, the determinant is whether the fear of bias can be held to be objectively justified, or whether the judge has offered guarantees sufficient to exclude any legitimate doubt in the matter.[253] Article 6 and the ECHR's decisions in relation to it appear to have widely affected the attitude of the domestic courts in Europe in relation to judicial impartiality.[254]

197. Rule 15(A) in the ICTY deals with the same topic. As was noted by Judge Hunt:

> "In some domestic jurisdictions it is considered a Judge is to step down if in all the circumstances, the parties or the public might entertain a reasonable apprehension that he or she might not bring an impartial and unprejudiced mind to the resolution of the question involved in that case. What is to be considered is not the actual reaction of the particular complainant but the hypothetical reaction of the fair-minded observer with sufficient knowledge of the actual circumstances to make a reasonable judgment."[255]

198. It should be recalled that Judge Bonomy previously sat on the Milosevic proceedings, which shared many witnesses and subject-matter with this case. Prior to that, Judge Bonomy was known in Scotland for his work in advocating the speeding of the trial process.[256]The basis of the apparent bias is unknown and immaterial but the prejudgment bias is evident from certain comments recorded in the record. Judge Bonomy at various times acted in a very disparaging manner toward the Lukic defense, including, but not limited to(quotations at Annex"D"):

a) Tr.2090/ln.1-2 [Essentially curtailing vigorous cross-examination by co-counsel for Appellant]

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[253] Prosecutor vs. Brdjanin, "DECISION ON APPLICATION BY MOMIR TALIC FOR THE DISQUALIFICATION AND WITHDRAWAL OF A JUDGE",18.5.2000,(para.13)-citing:*Piersac v Belgium*,ECHR,(1.10.1982),Series A,No.53,(para.30);*Hauschildt v Denmark*,(1990)12.EHRR.266,(para.48);*Bulut v Austria*,ECHR,(22.2.1996),Reports of Judgments and Decisions,1996-II 347,356(paras.31-33).
[254] Id.
[255] Id.,Para.10.
[256] See,Bonomy,Lord Iain,"Improving Practice:2002 REVIEW OF THE PRACTICES AND PROCEDURE OF THE HIGH COURT OF JUSTICIARY"(2002)

b) T.21925/ln.11-13 [Essentially curtailing consultations between counsel and Appellant and making a disparaging remark about both during a critical point of the proceedings when the Chamber was considering admission of witness Joksic's statement as to the KLA prior to 1998][257]
c) T.27372/ln.1-7 [Essentially rejecting without consideration the glaring mis-statements/misrepresentations of evidence in the Prosecution Final Brief that were too numerous to be unintentional, as if unintentional misrepresentation is not an appropriate matter to bring to the attention of the Court]
d) T.23630/ln.23–Tr.23631/ln.5 [Essentially preventing Appellant's counsel from attempting to make a record and be heard.]
e) T.22393/ln.6-7 (*JUDGE BONOMY: Mr. Lukic, sit down, please. Mr. Mijatovic can answer questions*) [Essentially preventing Appellant's counsel from attempting to make a record and be heard.]
f) [Seeking counsel to withdraw a validly raised argument for a motion premised upon the legal rights of the accused afforded under the statute and Rules – thus attempting to prevent a record as to the serious complaints raised about the rush of the trial.]

199. The foregoing comments make a clear record of the disparaging treatment of the Appellant by the Presiding Judge. Added to this we have the Chamber in a Decision disparaging the "unsatisfactory manner in which the Lukic Defense has chosen to litigate this matter."[258]

200. We have previously highlighted the apparent pre-occupation of the Chamber with the speed of the trial, and the efforts undertaken to deduct time from the defense improperly.[259] An impartial observer could believe such action, in conjunction with the foregoing, demonstrate a certain animosity towards a defense that diligently and steadfastly asserted the rights of their client, even in the face of mounting pressure to finish the case speedily. When faced with the pressures of the ICTY completion strategy and Judge Bonomy's prior life work in advocating speeding-up trials in Scotland, it is understandable that a prejudgment/bias might exist against the team that mounted a proper defense which was at odds with the completion strategy.

201. The harm caused by the aforementioned is apparent in certain findings, including a disparate treatment of Appellant. For instance, in its analysis on sentencing the Judgment finds mitigating circumstances were established for Ojdanic[260], Lazarevic[261], and Lukic[262], yet whereas the first 2 received sentences of 15 years, Lukic received 22 years along with other accused who had **NO** mitigating factors accepted. Similarly, Lazarevic's voluntary surrender was given weight as a

[257] Judge Bonomy conceded the error of his conduct(T.22014/5-15)
[258] "Decision on Lukic Motion for Reconsideration of Denial of Extension of Time and Leave to File Replies",10.6.2008/para 7
[259] *See,*section A
[260] III/1186,1188
[261] III/1196,1198,1199
[262] III/1202

mitigating factor[263] whereas for Lukic the voluntary surrender was not regarded as a mitigating factor[264] despite the fact these accused surrendered within months of one another.

202. Milutinovic was acquitted of criminal responsibility despite attendance at same meetings where criminal knowledge/liability was asserted against Appellant.[265] Milutinovic was acquitted of criminal responsibility despite notice of crimes from Yugoslav/Serb officials who advised him they were being investigated/prosecuted[266], whereas Appellant with similar level of knowledge of investigation and prosecution is convicted.[267] The disparate treatment was most evidenced in the denial of bar table motions, when the Chamber refused to admit 6D614(demonstrating the cases brought against perpetrators of crimes) because it was not an original record, and then refusing also into evidence the underlying original records on which the overview is based.[268]

203. Defense witnesses were disregarded almost in totality in the Judgment, making Appellant question whether its defense was even considered.

H. "WIDESPREAD" AND "SYSTEMATIC" ATTACK DIRECTED AGAINST A "CIVILIAN POPULATION"

204. Appellant incorporates by reference the objections raised in Section D[269], and E[270].

1. DELIBERATION STANDARD

212. Appellant contests the Chamber's reliance upon the standard from *Brđanin* discussed in I/99 where it held "in order to hold a member of a joint criminal enterprise responsible for crimes or underlying offences committed by non-members of the enterprise, it has to be shown (a) that the crime or underlying offence can be imputed to one member of the joint criminal enterprise (not necessarily the accused) and (b) that this member—when using a physical perpetrator or

[263] III/1200
[264] III/1204
[265] III/132-143,284
[266] III/141;148;255;265
[267] III/1095;1097
[268] "Decision on Lukic defence motions for admission of documents from bar table,11.06.2008"; "Decision on Lukic motion for reconsideration of trial chamber's decision on motion for admission of documents from bar table and decision on defence request for extension of time for filing of final trial briefs,02.07.2008"
[269] I/64,I/892,I/894,I/900,I/901,I/902,I/903,I/904,I/905,I/906,I/907,I/908,I/909,I/910,I/911
[270] I/146,I/147,I/148,I/820,I/878

intermediary perpetrator—acted in accordance with the common plan." The application of the above led to the conclusion that the police members were responsible for actions of the army even though they did not have any control over them, nor did they know and could have known what was happening in the army. The application of such a standard unjustifiably lowered the threshold for criminal responsibility of the Appellant in this case. The Chamber itself found that Lazarević and Ojdanić were not guilty of the acts committed by the police officers since they did not have effective control over the police units[271].

213. Concerning the requirement of proof that there was a joint criminal enterprise, which is discussed in I/101, the Prosecution called witnesses who confirmed that there was no plan to persecute civilians, which is essential for establishing the existence of such a plan[272].

214. Immediately before the NATO bombings, the Serbian Parliament discussed the obligation to meet the requirements of the Dayton Accords, which meant providing assistance to civilians to return to their homes in other former Yugoslav Republics, including civilians of all nationalities[273]. Thus, there was nothing that was unknown in this respect. All these points were the subject of long-term negotiations, agreements/implementation. Before the war broke out in Serbia, the majority of refugees from Bosnia and Herzegovina who wanted to return to their homes, had already returned.

215. It should be emphasized in 1999, the Dayton Accords were an everyday topic in the media of Serbia. It was a common issue of many of those who fled to Serbia from Bosnia and who intended to return or had already returned to Bosnia. Dayton was a regular political topic in Serbia. However, according to the misconstrued logic of the Judgment, someone then came up with a brilliant idea to expel Albanians by first provoking NATO to bomb Yugoslavia and then proceeding with persecution. Such a theory does not have any credibility under the given circumstances. Certainly, in such circumstances no one would make arrangements to expel civilians or negotiate a JCE. Everything that was happening in Yugoslavia/Serbia was closely observed by the international community and if such a plan had existed, it would have been known.

216. The Defense contests the theory of the JCE discussed I/102. This suggests Appellant need not be aware of the common purpose, but that the Prosecution may, ten years after the events, allege that there was a common purpose, which the Chamber accepts and introduces thus a thinly veiled

[271] III/632;III/932
[272] Cvetić T:8179/21-8180/3
[273] Dayton Accords,Annex7,*see*.Book of Authorities;1D32;

mode of strict liability that becomes part of one people's history although they were not aware of its existence at the time of the events.

217. As the Chamber explained,[274] "the Accused's acts or omissions 'must form a link in the chain of causation'." Appellant respectfully submits that he was not part of any "chain of causation" since not part of any chain of command. No person from the MUP Staff was authorized to make any decision of executive nature, and thereby did not have the power to request execution of decisions or punish anyone who failed to act in accord. It is evident that this necessary element is missing on the part of Appellant in order to prove his knowledge/participation in the JCE, or to prove the existence of such JCE.

218. Appellant had no command status, and was not in a position to silently approve/significantly contribute to any occurrence. As it was established, and at one point concluded by Judge Bonomy, the MUP Staff was just a post box for communications[275]. Appellant was not an irreplaceable figure, rather he was virtually unimportant since the MUP Staff was included only as a parallel-link in the chain of reporting[276], which concurrently went outside the MUP Staff, from the Kosovo SUPs directly to the MUP Headquarters in Belgrade[277]. Besides, among the important factors in evaluating the level of an accused's of participation in JCE the Chamber listed "any efforts made by the accused to impede the efficient functioning of the joint criminal enterprise". Although Appellant maintains that such an enterprise did not exist, he stresses he was only authorized to issue instructions that emphasized the need to abide the law and providing assistance to civilians in the course of police work.[278].

2. DEFINITION OF "ARMED FORCE"

[274] I/105
[275] T.22545/18-21
[276] P1044;6D-2(Tr.25491/13-20);Mijatovic(Tr.22329/2-9),Tr.25526/4-16
[277] Mijatovic-(Tr.22224/25-22225/3;22651/7-13);Gavranic-(Tr.22654/4-12)
[278] 6D666;6D768;6D773; 6D778

212. The Chamber noted[279] "an armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State", and it further found that "In the present case the relevant 'governmental authorities' are those of the FRY/Serbia, and the forces under their control were engaged in Kosovo against the KLA." The Chamber erred when it found the KLA was an armed force. Regardless of its size, the KLA was still a terrorist organization, due to the methods it applied, including murders and abductions of civilians, torture, looting, etc. Moreover, members of the KLA did not wear KLA markings and insignia, but civilian clothes[280]; they would throw down their arms and mix with civilians in order to avoid being arrested[281];they would move civilians from their homes in order to reach Albania/Macedonia hidden in civilian columns[282].

213. Throughout the Judgment, the Chamber attempted to show that the only reason for departure of civilians from Kosovo was the existence of a widespread and systematic attack carried out by the FRY/Serbian security forces. The Chamber erred when it drew such conclusion, and failed to consider the evidence in its totality.

214. Appellant's Final brief contested the inferences that would be drawn to the detriment of the Appellant, especially in a situation where there were several reasonable explanations for one event[283]. The principle of *in dubio pro reo* is sacrosanct. Inferences should always be drawn in favor of the accused. It is obvious that the Chamber did not observe this principle, particularly with regard to one of its crucial issues, namely the reason(s) for civilian departure. According to the Chamber, Yugoslavia/Serbia first provoked NATO and the bombings as a cover behind which they carried out the displacement of civilians. Such a masochistic act on the part of the Yugoslav/Serbian authorities was not corroborated by any evidence presented in this case. Even the Chamber itself accepted that Yugoslavia was not the only party responsible for the failure in negotiations, after which the NATO bombing campaign ensued[284]. Appellant asserts that the evidence shows that Yugoslavia was not responsible for the failure of negotiations, but was eager to avoid the bombing and did everything to prevent that scenario.

[279] I/791;I/792
[280] *See*. Book of authorities-Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field. Geneva, 12 August 1949,art.13
[281] Paunovic(Tr.21868/9-19)
[282] Gerxhaliu(Tr.2508/9-23)
[283] FTB,para.9
[284] I/412

215. According to the Chamber, the civilians were not afraid of the bombs or clashes between the terrorists and the security forces. According to the Chamber, the KLA was not engaged in mass movement of civilians to such an extent that it comprised a significant factor in the departure of civilians. The evidence presented in this case and the logic itself contradict such a conclusion.

216. The evidence shows that there were several reasons for departure of civilians in 1999 not an attack against civilians by the Yugoslav/Serbian forces. All of these reasons were powerful factors that made civilians leave.

217. It should be noted that even some of the Prosecution witnesses, Albanians, testified that they left their homes for reasons other than being evicted by the security forces.[285]

218. Other witnesses changed their statements obviously under the pressure of the KLA.[286] They had to return to Kosovo, and if they had stated something that was favorable for the Defense, it could have jeopardized not only their lives, but the lives of their families, too[287].

219. Obviously, there were several reasons for the departure of civilians, none of them being the one found by the Chamber.

220. The first reason for the departure of civilians was the obvious threat posed by NATO bombings[288]. Bearing in mind the extent and nature of the NATO bombings, it is very unusual that this fact was completely ignored by the Chamber as one of the principal reasons for the departure of civilians. The fear of bombing was manifest, as the NATO aircraft bombed civilian targets, which led to civilian casualties.[289] This was recognized by the Chamber.[290] All of these events were covered by the media, and the evidence shows that the method applied by NATO led to devastation that forced civilians to leave their homes.[291] Civilians of all ethnicities left their homes because of the NATO bombing.[292] In this respect, it should be noted that Bedri Hyseni testified that his father-

[285] K14(T.10991/14-17);Sadiku(T.1952/17-20);Xhafa(T.2455/15-22);Gerxhaliu(T.2508/17-23);Bucaliu(T.3024/18-3025/7);Krasniqi(T.3082/25);Mazrekaj(T.5836/7-14)
[286] Hyseni T.3110/13-18;
[287] Fazliji-Tr.25227/1-25228/5
[288] Tr.12379/4-7;22701/6-16;22702/16-21;22807/11-22808/4;22865/21-22866/2;22882/14-25;22965/12-23;6D1603,para46;6D1629,para.17
[289] 4D90;5D1394,para.23-24;6D1251;5D1401,para.60;6D1257;5D1394,para.23-24;5D1401,para.60;6D604;6D171;6D172;6D174; 6D175; 6D176; 6D177; 6D1532,para.44;6D1631,para.50;6D604;6D604;6D1492,para.42;6D1238;6D1329;6D1243;6D1257;6D1240;6D998;6D1627,para.30,33,38;5D1394,para.14
[290] I/1214
[291] Smiljanić(Tr. 15751/1-15752/10);5D692;Lazarević(Tr. 17947/20-17949/5;5D1219; Tr.18129/10-19;18130/25-19;3D524,42338/22-423339/19)
[292] 6D1614,para.49-50;Stojanović(T.19731/12-17);Joksić(T.21958/5-15);Vuković(T.21334/22;21335/12);Bogunović(T.22869/7-

in-law and brother-in-law were wounded when their house was hit during the NATO bombing, so they had to leave it and seek medical assistance.[293]

221. Accordingly, there was a justified fear among the population that they might be a target of NATO, be it on purpose or inadvertently. Civilians knew that NATO was constantly targeting military/MUP facilities/positions. Due to the size of Kosovo, every settlement had a military or police facility close to it, so it is clear that civilians were aware of the danger they were in. It should be recalled that the NATO bombing forced the army and the police to relocate frequently.[294] This relocation was necessary to avoid being destroyed by NATO attacks, but the relocation process covered a large portion of the territory. To accept the orchestrated testimony of Albanians that they did not fear the NATO bombs would thus be illogical and contrary to the facts of this case.

222. The second reason for the departure of civilians was the fear of the legitimate fight between the KLA and the state forces.[295] Civilians were leaving the areas held by the KLA. The Defense reiterates that it is not probable or logical that there was a plan to displace civilians designed so that the security forces would lose their lives in order to evict civilians, when they could easily evict them from the areas with no KLA.

223. The third reason for the departure of civilians were orders/threats/suggestions by the KLA and its collaborators[296]. Whenever the state forces would perform a maneuver, the KLA would send false messages to the village population that an operation was being launched against them.[297] The evidence also shows that the KLA issued leaflets urging the population to flee in order to create an artificial humanitarian catastrophe that served its propaganda aims.[298] Likewise, the evidence corroborates the fact that the KLA instructed the population to flee.[299] Exhibit P929 also shows that the KLA caused the movement of civilians[300].

224. Non-Serbian/non-Yugoslav media also contributed to the movement and departure of civilians. NATO used propaganda to frighten the population by saying that Serbian forces were

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12);6D1603,para.56;6D1530,para.36;6D1627,para.38;6D1614,para.47,49-50,6D770;6D323;6D1603,para.67;6D1604,para.28
[293] P2270,p.3,11;T.3102/9-18
[294] 6D1606,para.33;Gavranić(T.22675/1-25)
[295] 6D1604,para.42;
[296] Tr.7635/20-25;Tr.5993/25-5994/10;Tr.24345/5-16;6D1603,para39
[297] 6D1603,para.51
[298] 5D1364;Filipović(T.19183/14-19185/25);6D1614,para.65
[299] 6D1629,para.16;6D1532,para.40
[300] P929,pp.8-9

planning a "Horseshoe" operation, whereby civilians were scared into abandoning their homes and leaving the country.[301]

225. There is abundant evidence showing that KLA caused movement of civilians in order to hide among them and escape from the encirclement of the security forces.[302] In order to avoid being arrested, the KLA members would move the civilians and force them to go as far as Albania or Macedonia.

226. The KLA forces were also aware that the movement of civilians would be used against Yugoslavia and Serbia (P929, Minutes of the Collegium of the General Staff of the VJ for 9 April 1999, p. 10). Thus, it is clear that the KLA largely took advantage of this practice and that the security forces were in no manner responsible for the departure of civilians.

227. The fourth reason for the departure of civilians is reflected in the intention to avoid being mobilized by the KLA.[303] It was established in these proceedings that in 1999 the KLA gave up the voluntary principle of manning their ranks and turned to forced mobilization. This certainly influenced a number of civilians to leave their areas in order to avoid being mobilized into the illegal and terrorist KLA. Civilians were aware of its illegitimacy and the methods used by the KLA, and it is indubitable that not all of them were willing to join its ranks.

228. The fifth reason for the departure of civilians was the fear of retaliation for not being willing to joint the struggle of the KLA and being loyal citizens. The evidence clearly shows that the KLA controlled a large part of Kosovo and that it committed crimes against the Albanians it considered "traitors"/Serbian collaborators. An overwhelming amount of evidence shows this, and just for illustration we point to 6D1603(para.21,38);Krga(Tr.16824/14-21). It should be noted in this regard that the activities of the KLA, including attacks, mistreatment, abductions, extortion, etc., were carried out in all the areas affected by the KLA, and that these activities were also aimed against the Albanians, which gave rise to the population to flee.[304]

229. The sixth reason for the departure of civilians was the lack of basic necessities such as electric power and food.[305]

[301] 6D1530,para.36
[302] Gerxhaliu(Tr.2508/9-23)
[303] 6D1603,para.18,20;6D614-28/13;3D1052;Lazarević(T.17850/5-17851/9);P2068;
[304] Tr.30760;Tr.16824/14-21;6D1631,para.44,45,37;6D614,30/55
[305] 6D1532,para.32;6D1637

230. Rule 70 documents from America show that the fear of both Serbs and Albanians in Priština increased when NATO started bombing during daytime; due to the lack of job and resources and the destruction of the electric network by NATO, the town was abandoned by Serbs and Albanians alike.[306] Encouraged by power outages, criminals took advantage of the night to increase their illegal activities, which logically caused problems to the civilians and forced them to leave[307].

231. The evidence presented at trial shows that men felt safer knowing that their women and children were removed from this situation to safer places.[308]

232. The seventh reason for the departure of civilians was the creation of an artificial humanitarian catastrophe through an agreement by NATO and the KLA.

233. The Chamber failed to take into account that the evidence shows that the VJ/MUP officials tried to convince the population to stay or return to their homes.[309] Moreover, the security forces were ordered not to expose civilians to danger even when terrorists were among them.[310]

234. The above, especially when considered in their totality, certainly cannot be ignored as factors in the departure of civilians. When the situation on the ground is considered realistically, it is obvious that no reasonable trier of fact would have ignored these factors as the principal reason for the departure of civilians. Despite all of the above discussed evidence, the Chamber erroneously found that there was only one principal reason for the departure of civilians - alleged widespread and systematic attack by the Yugoslav and Serbian forces directed against the civilian population.

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[306] 6D1637
[307] 6D1533,para.42;6D459;6D1604,para.33,39;6D297;6D1614,para.55;6D1627,para.45;6D1631,para.88;6D307; 6D320;6D382;6D385;6D386;6D460;6D469;6D472;6D483;6D541;6D555;6D557;6D573;6D638;6D659;6D661;6D868; 6D891;6D893;6D896;6D903;6D915;6D991;6D992;6D614/317/804;6D614/332/881;6D614/387/1218;6D614/393/1253 ;6D949;6D614/329/866;6D614/345/953;6D614/347/963;6D614/363/1067;6D614/363/1068;6D924;6D614/39/102;6D8 68;6D614/36/88;6D61421/29;6D614/278/588;6D614/278/589;6D614/285/630;6D614/291/665;6D614/292/670;6D614/ 297/697;6D614/314/786;6D614/278/787;6D614/317/801;6D614/321/823;6D614/321/824;6D614/321/825;6D614/321/ 826;6D614/324/837;6D614/324/837;6D614332/880;6D1604,para.32;6D1614,para.60;6D1631,para.87,88;6D565;6D61 4/328/863;6D614/347/966;6D614/288/659;6D614/291/666;6D614/292/671;6D614/295/687;6D614/295/690;6D614/29 9/709;6D614/301/722;6D614/310/767;6D614/312/780;6D614/359/1036;6D614/363/1066;6D614/369/1107;6D614/376 /1147;6D614/355/1019;6D614/376/1147;6D614/27/7;6D614/31/62;6D614/10/23;6D614/34/80;6D614/38/96;6D614/33 /72;6D614/278/588;6D614/278/589;6D614/285/630;6D614/291/665;6D614/292/670;6D614/295/689;6D614/297/697;6 D614/314/786;6D614/278/787;6D614/317/801;6D614/318/808;6D614/321/826;6D614/321/824;6D614/321/825;6D614 /321/824;6D614/321/825;6D614/321/826;6D614/324/837;6D614/332/880;6D1604,para32,33;6D1614,para60;
[308] Odalović(T.14442/6-14444/7)
[309] 6D1631,para.50;6D1604,para.34,36;6D1606,para.39
[310] 6D1606,para.19,20,38;6D778;6D1492,para.43

I. ELEMENTS REQUIRED FOR THE CRIMES, *MENS REA/ACTUS REUS*

235. Respectfully *mens rea* and *actus reus* elements of the crimes charged were erroneously applied toward the evidence.

236. Respectfully the *actus reus* and *mens rea* elements cannot be satisfied if what is planned/ordered is a legal operation.

237. Likewise, the Appeals Chamber made clear in articulating the mens rea requirement that knowledge of a risk that a consequence will occur is not sufficient for the imposition of criminal responsibility for serious violations of IHL.[311] If that were so, then "any military commander who issues an order would be criminally responsible, because there is always a possibility that violations could occur."[312] Instead, Blaskic set a higher standard: to avoid the unacceptable result of too broad a criminal liability, insisting that "an awareness of a higher likelihood of risk and a volitional element must be incorporated in the legal standard."[313] In Kordic the Appeal Chamber extended this holding to liability for planning.[314]

1. KLA

260. The Chamber erred holding the KLA as an organized armed force that fought by legally acceptable means that complied with the laws or customs of war,[315] which occasioned a miscarriage of justice.

261. The KLA were terrorists, who did not employ acceptable methods. In the heart of the KLA General Staff there was a private prison for torturing and butchering civilians.[316] The Chamber's finding that the KLA instituted the use of a distinctive emblem is contradictory to an overwhelming amount of evidence that clearly shows that most of the KLA members had weapons and wore no

[311] Blaskic Appeal Judgment para. 34-42.
[312] Id,para.41.
[313] Id.
[314] Kordic Appeal Judgment para.29-32.
[315] I/812,813,814,815,819,821,827,840,841
[316] P3063-(T.9291/1-5;;3D168/page.107;;2D54/page.3;;

uniforms.[317] That was, indeed, one of the problems faced by the security forces, they often had to resort to gunpowder residue tests in order to determine which individuals recently used firearms.

262. In the present case the Chamber barely addressed the actual/perceived threat the KLA posed to the State/civilians, let alone found the risk of crimes being committed under the circumstances was unjustifiable or unreasonable.

263. The Chamber disregarded the fact that during 1998/1999, KLA were controlling 70% of Kosovo and that their terrorist tactics included constant abuse of civilians, with ample examples of:

a) "Two Villages[318], the terrorists would barricade themselves in a village that is farther from the security forces and would force the civilians to a second village as a shield and logistic support, between them and the security forces.[319] Then the terrorists would open fire at the security forces[320]. The army or the police would pass through the nearer village pursuing the terrorists, and all the witnesses who were brought to testify in the present case could then truthfully state that there were no terrorists in their village and that it was the army or the police that opened fire, but that would not reflect the true assessment[321].

b) Mis-using MUP uniforms and forcible eviction of civilians for propaganda purposes[322];

c) Shedding uniforms or wearing civilian clothing and blending with civilians or using civilians for purposes of smuggling, or to escape[323];

d) Putting civilians at risk of harm by utilizing them as "human shields" in the course of combat operations frequently throughout Kosovo-Metohia[324].

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[317] 3D182,p.132;P673,p.4;3D386,p.11;6D1606,para.19;P407,p.308;P2676,p.3;P3113,p.10;Tr.2070(Kabashi);Tr.4179(Hoti);Tr.4643(Dashi);Tr.5343(K72);Tr.6323(Zyrapi);Tr.7835(Drewienkiewicz);Tr.9602(K79)
[318] Tr.18290(Lazarevic);Tr.18916(Jelic);Tr.19280(Delic)
[319] Tr.18290(Lazarevic)
[320] Tr.19280(Delic)
[321] Lazarevic(Tr.17754/7-17);Delic(Tr.19279/16-19280/12);4D2;4D6;4D13/2005;4D25/3594;6D87/6708;P2234/8093;P2240/4584;P2247/7140;P2263/2;P2264/1527;P2269/2;P2270/11;P2271/2;P2281/7497;P2287/2062;P2324/3697;P2332/6445;P2337/3563;P2338/2;P2353/6540;P2378/2;P2382/3653;P2514/9;P2522/2;P2523/915;P2597/8148;P2649/2555;P2670/43
[322] 6D1629/para.17
[323] Paunovic-(T.21868/1-25;;T.21689/10-23);Loshi-(T.5374/4-11;5379/3-13);Simic-(T.15631/9-25);K25-(T.4745/8-13);Mitchel-(T.622/8-17);;DZ(T.7835/14-22);Byrnes-(T.12229/2-10)
[324] Delic-(T.19279/16-19280/3);Dikovic-(T.199983/12-19984/3);Mandic-(Tr.20897/24-25);5D973;6D1614/para.39;P641;P2448;Loncar-(T.7617/7-9);Marinkovic-(T.20329/1-18)Mandic-(T.20898/14-20);Stefanovic-(T.21775/2-14).

264. In light of the above-mentioned, "the presence of a large number of soldiers or combatants within that population may, under certain circumstances, deprive the population of its civilian character"[325].

265. The laws of war provide a presumption of civilian status so that a person shall not be made the object of attack when it is not reasonable to believe in the circumstances of the person contemplating the attack, including the information available to the latter, that a potential target is a combatant[326].

266. The burden of proof as to whether the alleged victims were civilians rests on the Prosecution and no such presumption may apply in that context[327].

267. The Defense challenges the position of the Chamber that it is not limited by the definition of "civilian" in IHL. The Defense believes that definitions such determining who has civilian status must be observed. Otherwise, it would lead to an improper expansion of the definition of a civilian and comprise an impermissible attempt to include therein the members of the KLA who engaged in combat wearing civilian clothes[328]. As the Chamber in Mrksic stated (relying on the Blaskic Appeal Judgment) "the term "civilian" in Article 5 of the Statute has to be interpreted in accordance with Article 50 of Additional Protocol I and therefore does not include combatants or fighters *hors de combat*."[329]

268. For the purposes of defining a civilian in the present case, it should be noted that the members of the KLA in most cases mixed with the civilians, retaining or dropping their arms,[330] and incited movement of civilians and formed civilian columns which they infiltrated in order to leave the encirclement of the security forces[331]. The terrorists frequently opened fire from the civilian columns[332]. Civilians were used for reconnaissance and relay of information[333]. Civilians

[325] *Blaskic,*AJ/Para-115
[326] Galic,TJ/para-50
[327] Blaskic Appeal Judgment/para 111
[328] Loshi(Tr.5374/4-11;5379/3-13);Simic(Tr.15631/9-25);K25(Tr.4745/8-13),Mitchel(Tr.622/8-17), Zyrapi(Tr.6232/16-20);K14(Tr.10969/8-13);Dashi(Tr.4642/25-4643/7);Zhuniqi(Tr.4179/6-17);Mitchel(Tr.662/2-8)
[329] OTP v. Mrksic,et al. Trial Judgment, para.461.
[330] T.3380/15-20;T.12229/2-10;18291/1-9;22958/17-25;23014/11-20;3D524;3D1116/196-197;3D524-41842; 3D1116 / 14;
[331] 3D1084;
[332] P641; Tr.6903/5-9;T.7618/7-9;Tr.18792/11-15;Tr.19280/1;Tr.19983/25-19984/1;Tr.20329/3-5;Tr.20897/24-25; T.21775/10-11
[333] Paunovic-Tr.21868/20-24

were laying mines and explosive devices on the roads, in buildings, at police stations, etc[334]. The entire logistic service of the KLA was comprised of civilians[335]. Members of their logistic service were in towns and villages alike, in the entire territory of Kosovo[336]. There were no conflicts with the KLA in the areas where there were no attacks against the security forces, nor were there civilians leaving and civilian casualties in such areas[337].

2. NATO BOMBING CAMPAIGN

260. In I/1214, the Chamber noted that it was not "charged with reaching conclusions about the responsibility of NATO." However, the Chamber should have considered the role of NATO in detail, as it was necessary for understanding the conflict that occurred and reaching an adequate decision.

261. It is impossible to reach adequate conclusions as to the departure of civilians from Kosovo without considering the manner and scope of the bombing campaign. The bombing campaign cannot be dealt with "in relation to the individual municipalities", as suggested by the Chamber in Paragraph I/1214 of the Judgment. Conversely, the bombing campaign should have been considered as a whole taking into account not only its scale, but duration as well. Bombing of a town can make civilians of a neighboring town leave their homes. It is not necessary that one's house is bombed before one decides to move away from the combat activities, and this is precisely what the Chamber is trying to suggest.

262. The position of the FRY/Serbian forces has to be considered in light of an enormous number of aircraft sorties and large scale bombing.

263. The fact that the Prosecution did not prosecute NATO was obviously a political decision. Thus, the Chamber's finding in I/1211 has no legal validity in determining the truth in this case.

[334] Gerxhalitu-Tr.2553;Kadriu-Tr.5098;Zyrapi-Tr.6193;Crosland-Tr.9898;3D168/p.10
[335] T.2553/24-25;T.5098;T.6193;T.9898; 3D168/page.10
[336] 3D168;3D375;3D386/page.4;P2466
[337] Tr.2276;Gavranic-Tr.22757

Moreover, the Chamber refused to establish the number of aircraft sorties and bombs dropped during the campaign even though Smiljanić testified about this and the Prosecution did not challenge his testimony or offered any evidence to that effect. This aspect of the conflicts is extremely important for understanding the conflicts that occurred in Kosovo at the time relevant for the Indictment. By applying such an approach, the Chamber invalidated its findings relating to the aggression of NATO and the entire course of the conflicts that occurred during the critical time in the territory of the entire former Yugoslavia, not only in Kosovo.[338]

264. Likewise, as a result of the improper consideration and assessment of the role of NATO bombing campaign, the Chamber erroneously found in II/1175-6 that the NATO bombing was not the main reason for the departure of civilians.

265. The explanation provided by the Chamber in II/1177 was that even though the conflict existed in 1998 as well, there was no "massive flood of people across the borders." The counter-argument would be that the security forces were present in Kosovo in 1998 as well, which brings us back to NATO. NATO is the only new actor that appeared in 1999. Thus, the conflict between the security forces and the KLA existed in both 1998 and 1999. There was no massive departure of civilians. Civilians started leaving in large numbers only when the bombing began, and the Chamber found that the KLA did not contribute to their departure even though the KLA was present in Kosovo during both 1998 and 1999. How come the security forces contributed to the departure of civilians, if they were present in Kosovo both at the time when civilians were not leaving Kosovo and at the time when they were leaving Kosovo in large numbers? No reasonable trier of fact would have drawn such a conclusion.

3. FORCIBLE TRANSFER/DEPORTATION

260. With respect to findings[339] of forcible transfer/deportation, the Chamber ignored/failed to take into account several alternative/legitimate/equally reasonable explanations for the migration of

[338] I/1209;I/212;3D800–3D875
[339] I/165

civilians from their homes, besides "shelling of civilian objects, the burning of civilian property, and the commission of or the threat to commit other crimes"[340].

261. The Chamber found those civilians were forced to leave by the forces of Yugoslavia/Serbia.[341] This finding is based on the testimony given by certain Albanian witnesses. No conclusions on this issue can be made based on the testimony of these witnesses, because they denied the existence of the KLA despite significant evidence, including that given by foreign observers, which proved otherwise. The Chamber found that such testimonies of Kosovo Albanian witnesses border upon the irrational.[342] The Chamber erroneously relied on the testimony by Albanian witnesses in establishing the reason for civilian departures, as these witnesses obviously lied that the civilian departures were not caused by the KLA. Despite the defense raising this issue during the trial, the Chamber disregarded the fact that the civilians left the areas in which the KLA was most active.

262. Prosecution witnesses testified that they voluntarily left for reasons other than being ordered/forced out by government forces, such as NATO/KLA.[343] Other witnesses kept changing their explanation, so prompting by the KLA to lie under oath cannot be excluded either.[344]

263. There was ample evidence ignored by the Chamber, that civilians were leaving their homes for several alternative, legitimate and equally reasonable reasons:

a) KLA ordered to civilians to vacate their homes and villages for a variety of purposes[345];

b) to avoid forced recruitment into the KLA.[346];

c) from fear of retribution by KLA for being considered to be "traitors" or Serb collaborators,[347] (also, the Chamber failed to take into account that terrorist activities, attacks, cruelty, kidnapping, extraction of mandatory tax payments, etc. continued throughout areas the KLA operated in, and

[340] I/165
[341] II/1178
[342] I/55
[343] K14-(T.10991/14-17);Sadiku-(T.1952/17-20);Xhafa-(T.2455/15-22);Gerxhaliu-(T.2508/17-23);Bucaliu-(T.3024/18-3025/7);Krasnici-(T.3082/25);Mazrekaj-(T.5836/7-14)
[344] Hyseni(T.3110/13-18;311/18).
[345] 6D76
[346] 6D1603,para.18,20;;6D614,28/13;3D1052;Lazarevic-(T.17850/5-17851/9);P2068
[347] 6D1603,para.21,38;;Krga-(T.16824/14-21);

with the targeting of ethnic Albanians this gave a reason for people to leave to try and remove themselves from this situation [348]);

d) to avoid clashes between KLA and Government forces[349];

e) terrorist tactics and propaganda - among other, terrorist have used every opportunity to reinforce people's fear of government forces, and if government forces made any maneuver, they would send messages to the people in villages saying it was the start of an operation against them,[350] distribution of leaflets/flyers urging people to leave, to create a humanitarian catastrophe that could be used as propaganda.[351] Likewise, there is evidence of KLA telling people to leave.[352] On the other hand, NATO propaganda repeatedly warned that the Serbs were preparing "Operation Horseshoe," which scared people into leaving.[353] It also cannot be ignored that NATO had warned Albanian leaders that a vicious bombing campaign was going to commence[354] and that if bombing dragged out longer than the few days forecast, the prospects of a bloody and protracted conflict with a ground invasion became more likely.

e) fear from NATO bombing campaign in general, given the extent and nature of the NATO bombing campaign (the fact is that NATO hit civilian targets and caused civilian casualties, with examples such as: Meja Refugee Convoy[355]; Maja Refugee Camp-Djakovica[356]; Korisa[357]; Nogovac[358]; Pristina Town Center-PTT Telecom II Building[359]; Nis-Express passenger bus[360]; and Djakovica Old City center[361], including others[362]) with such a manner that led to devastation and forced civilians to flee[363], without regard to their ethnicity.[364] There was evidence that men felt

[348] Krga-(T.16824/14-21);;6D1631,para.44,45,37;;6D614,30/55;;6D1606,para.38;;6D1603,para.65-66.
[349] 6D1604,para.42
[350] 6D1603,para.51
[351] 5D1364;;Filipovic-(T.19183/14-19185/25);;6D1614,para.65
[352] 6D1629,para.16;;6D1532,para.40
[353] 6D1530,para.36
[354] Merovci-(Tr.8524/9-8527/15);;P2588.
[355] 4D90;;5D1394,para.23-24;;6D1251;;5D1401,para.60.
[356] 6D1257;;5D1394,para.23-24;;5D1401,para.60.
[357] 6D604;;6D171;,6D172;;6D174;;6D175;;6D176;;6D177;;6D1532,para.44;;6D1631,para.50;;6D604; 6D1492,para.42.
[358] 6D1238;;6D1329.
[359] 6D1243;;6D1257;6D1240.
[360] 6D998
[361] 6D1627,para.30,33,38;;5D1394,para.14.
[362] 5D1158;;5D1374;;6D1603,para.68;;6D1532,para.36,38-39;;Delic-(Tr19321/13-17)
[363] Smiljavic-(T.15751/1-15752/10);;5D692;;Lazarevic-(Tr.17947/20-17949/5);;5D1219;Tr.18129/10-19;18130/25-19;;3D524,42338/22-423339/19).
[364] 6D1614,para.49-50;;Stojanovic-(T.19731/12-17);;Joksic-(T.21958/5-15);;Vukovic-(Tr.21334/22;21335 ln.12);;Bogunovic-(Tr.22869/7-12);;6D1603,para.56;6D1530,para.36;6D1627,para.38; 6D1614,para.47,49-50;;6D770;;6D323;;6D1603,para.67;;6D1604, para.28

more at ease knowing that their wives/children were removed from the situation to safety.[365] There is evidence that both Albanians and non-Albanians feared for their safety as a result of bombings and left areas they felt were at risk.[366] In this regard it ought to be noted that Bedri Hyseni confirmed that both his father-in-law and brother-in-law were injured when a NATO strike hit their house, and they had to leave to seek treatment.[367]

f) Fear from the NATO bombing campaign due to the knowledge that NATO was targeting Army/Police structures and units, such that it was reasonably resumed that any VJ/MUP equipment or personnel posed a potential, legitimate target for the NATO.[368] The bombing forced VJ/MUP to relocate frequently.[369]

g) Due to NATO bombings electricity, utilities and supplies were cut off, making normal life difficult for people, ergo leading to departures.[370] The Rule 70 documents from the United States show that Serbs/Albanians in Pristina were more afraid when NATO started bombing during the day, and due to lack of work/pay, and electricity being knocked out by NATO, both Serbs/Albanians were leaving the city.[371]

264. The Chamber further ignored the evidence that due to NATO bombings even VJ/MUP were deserting and trying to leave Kosovo.[372]

265. Additionally, the Chamber ignored evidence that VJ/MUP authorities tried to persuade people to stay/return to their homes,[373] as well as the fact Serb forces were ordered to take care not to cause harm to civilians, even if terrorists were mingled within them.[374]

266. Inferences consistent with the guilt of an accused can only be drawn where they are "the only reasonable inference available on the evidence."[375] If a reasonable inference consistent with innocence can be drawn, then innocence must be presumed.[376]

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[365] Odalovic-(T.14442/6-14444/7)
[366] 6D1530,para.36;;6D1627,para.38;;6D1614,para.47,49-50;;6D770;;6D323;;6D1603,para.67;;6D1604, para.28
[367] P2270,p.3,11;;Tr.3102/9-18.
[368] 6D1603,para.54;;6D1532,para.33;;6D1604,para.38
[369] 6D1606,para.33;Gavranic-(Tr.22675/1-25).
[370] 6D1532,para.32;;6D1637.
[371] 6D1637
[372] 3D180;3D496,para.50-52;;3D996;;3D1053;;4D123;;4D238;;6D1638
[373] 6D1631,para.50;;6D1604,para.34,36;;6D1606,para.39.
[374] 6D1606,para.19,20,38;;6D778;;6D1492,para.43.
[375] See, *Vasiljevic*, IT-98-32 (29 November 2002), para.69; *Kronjelac* Trial Judgment, para.83 (citing *Brdjanin and Tadic*, Decision on Form of Further Amended Indictment, para.26). (emphasis added). *See also* *Kronojelac* Appeal

4. DISCRIMINATORY INTENT

260. The Chamber reached[377] impermissible conclusions with respect to *mens rea* of persecution. According to it Appellant need not possess discriminatory intent to be held liable for persecution, so long as it is proved that physical perpetrator possessed discriminatory intent. This view cannot be acceptable. Persecutory *mens rea* is the distinctive feature of the crime of persecution[378], and such state of mind may never be presumed, not even where the acts take place in the context of discriminatory attack on a given civilian population. Appellant submits that the persecution can only be committed with proven intent, the same *mens rea* as the individual who is found guilty of that crime. One cannot plan/order/instigate the commission of the crime by the perpetrator without having discriminatory intent himself. In order to establish liability, the discriminatory intent of the accused must relate to his acts and conduct, not to the attack of which those acts are a part, and it is not sufficient for those acts and conduct to be part of discriminatory attack, where established, to infer that the accused possessed the requisite *mens rea*[379]. It is not sufficient for the accused to be "aware" that he is in fact acting in a discriminatory manner, nor would recklessness on his part suffice; he must consciously intend to do so[380].

261. The Chamber erred[381] finding that the influence of Milosevic over the organs/institutions was based exclusively on his charisma. The Chamber ignored the normative and legal system and drew erroneous inferences without any reliance on factual evidence presented.[382].

262. The Chamber misperceived[383] the powers of Milosevic and accorded him the competences as if he had been Serbian rather than Yugoslav President. In 1998/1999, Milosevic was not in the

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Judgment Summary, paras.45,52 (drawing inferences when it is the "only reasonable inference" to be drawn from the factual findings entered by the Trial Chamber).
[376] Statute. Art.21(3)
[377] I/181
[378] *Kordic and Cerkez* TJ, 212; *Naletilic and Martinovic* TJ, 638;
[379] *Krnojelac*, TJ 436; *Vasiljevic,*TJ, 249, *Krnojelac,* AJ, 235
[380] *Krnojelac,* AJ, 435, *Vasiljevic,* TJ 248; *Kordic and Cerkez* TJ, 217
[381] I/284,I/285,I/286
[382] 3D1067/para.37;P1623/Article222;P2594,para.15;P985,Article8;1D139
[383] I/284;I/285;I/286.

position to promote MUP officers; such promotions were effected by Milutinovic, for whom the conclusions contained in these paragraphs should refer to[384]. There is no evidence in this case that would suggest Milosevic had such power over the MUP. Even Professor Markovic referred to the Serbian National Assembly as opposed to the Yugoslav Parliament.[385] The Chamber failed to comprehend the evidence and organizational structure referred to by Markovic.

263. The Chamber erred[386] on the competencies of the Federal/Republican MUPs. The fact that the Serbian MUP had more powers is a consequence of the constitutional/legal provisions.[387] The same powers were vested in the Montenegrin MUP.[388]

264. The Chamber analyzed evidence[389] on disciplinary/criminal proceedings against members of the MUP. The Chamber ignored the plethora of evidence which clearly proved that Appellant/MUP Staff had no role/authority in initiating disciplinary/criminal proceedings against MUP members. A superior/commander may be held criminally responsible for the acts of others if, *inter alia*, "failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof", and the "effective control" means "the material liability to prevent offences or punish the principal offenders"[390]. The *effective control* test applies to all superiors, weather *de jure* or *de facto*, military or civilian[391]. Considering previously stated, no reasonable Chamber would reach conclusions on Appellant's authority over MUP units.

265. In any event the MUP did initiate proceedings and undertook measures to punish all offences that were known of, irrespective of the identity of the perpetrators. The evidence demonstrates that crimes against life/property in 1998-1999 in Kosovo-Metohija committed by persons who were policeman against Albanians/non-Albanians that were known of/reported to the MUP were documented, processed and punished in accord with the applicable law.[392]

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[384] 1D680
[385] Tr.12942;Tr.12944;Tr.12902
[386] I/294
[387] 1D139;P1021
[388] 1D139;P1829
[389] I/719,I/720,I/723,
[390] *Krnojelac*TJ,93;*Celebici* AJ,196-198, 256;*Blaskic,*TJ,300-302
[391] *Aleksovski*, AJ,76
[392] 6D140;6D467;6D905;6D942;6D943;6D946;6D947;6D949;6D1614,para.54,55;6D298;6D139;6D301; 6D1325;6D1533,para.35,40,55;6D950;6D1604,para.29-30;6D928;6D-2 Tr.25497-25498/8; 6D614/11/26;6D614/12/31;6D614/54/73;6D614/141/61;6D614/145/83;6D614/10/23;6D614/10/24; 6D614/13/32;6D614/142/65;6D614/142/66;6D614/143/73;6D614/148/99;6D880;6D881;6D882; 6D882;6D883;6D884;6D885;6D886;6D355;6D890;6D897;6D898;6D899;6D901;6D902;6D904;6D906; 6D907;6D908;6D909;6D910;6D914;6D916;6D918;6D919;6D921;6D922;6D923;6D928;6D929;6D930; 6D934;6D935;6D937;6D938;6D948;6D951;6D952;6D953;6D957;6D958;6D614/146/89;6D614/137/45;

266. The Chamber accepted the conjectured testimony of Cvetic, where he asserted that "he knew of no police officers being charged" for murder/arson/expulsion of Kosovo Albanians. He was the only Chief of SUP in Kosovo who was not fulfilling his legal duties. From the minutes dated 4th April 1999, it could be easily established that Cvetic is the only Chief who took no measures with respect to any criminal offences[393], and the evidence of Bogunovic(Cvetic's deputy) and Vojnovic(Chief of SUP Prizren) who testified show that Cvetic was removed due to his inability to carry out his duties. Ilic testified that 8,75% of members of 122nd Intervention PJP Brigade faced disciplinary/criminal proceedings in the course of 1998-1999 for offences committed against civilians. The fact that Ilic could not recollect that any of the Brigade members was not charged for maltreatment of civilians does not affect the arguments above mentioned, since *there obviously was no discriminatory manner in performing the police duties and punishing offenders.* Police disciplinary organs functioned properly.

267. The Chamber made several errors with respect SAJ.[394] In I/730, the Chamber cited a document from the 3rd Army, not any document by the MUP Staff, simply because despite 4,000 exhibits and testimony there is no such evidence that the MUP Staff had anything whatsoever with deployment/engagement/operations conducted by SAJ.

268. The Chamber erroneously concluded[395] that the group known as the "Scorpions", was incorporated into SAJ and sent to Kosovo. This is not supported by evidence and represents absolutely incorrect interpretation of Stoparic's testimony. Stoparic testified that the former "Scorpions" that were sent to Kosovo were police reservists within SAJ.[396] The record is clear that Stoparic was in fact, a reserve policeman[397]. Stoparic also confirmed the "Scorpions" were no longer in existence in 1998/1999, having been disbanded previously[398].

269. The crucial facts ignored by the Chamber, are:

6D614/138/46;6D614/138/49;6D614/140/55;6D614/140/58;6D614/140/59;6D614/141/63;
6D614/146/89;6D614/143/72;6D614/144/78;6D614/143/70;6D614/143/71;6D614/147/92;
6D614/5/1-6D614/13/33

[393] P1989

[394] I/730;I/731

[395] I/731

[396] Stoparic-(T.705/14 – 17)

[397] Stoparic-(T.726/19-23) (Tr.771/4-22)

[398] Stoparic-(T.698/1-10)

a) the perpetrators of the Podojevo killing, albeit SAJ reservists, decided on their own, absent any orders from superiors, to carry out said crime. Stoparic further confirmed that the tragic crime in Podujevo was not ordered by police superiors, whom he said never ordered anything of that nature[399], and never ordered him to kill civilians[400];

b) Stoparic testified that police superiors were very irate at the Podujevo shooting, and immediately sent the "Scorpions" out of Kosovo-Metohija and prevented any future killings[401];

c) MUP personnel offered assistance, and saved individuals who had been wounded at Podujevo; The OUP and nearby PJP operated to assist victims, an on-site investigation performed[402] and the MUP did all it could under the Law;

d) The perpetrators of the Podujevo shooting, these former "Scorpions" having been arrested and tried for this crime, some even with a confirmed sentence[403];

e) There is no evidence of any crimes being committed by this SAJ reserve component made up of former "Scorpions" after they were deployed a second time to Kosovo-Metohija, from Stoparic or otherwise[404].

270. What the Chamber failed to take into account is what was or could reasonably been known about "Scorpions" in 1999. Instead the Chamber wants to impute knowledge/intent from what is known know 10 years later, after the Srebrenica killing video was shown at the Milosevic trial, and after the "Scorpions" have been written about in newspapers. Chief of VJ Security Intelligence Farkas confirmed "Scorprions" negative image/reputation only became known after 2000[405]. Mijatovic, testified the first time he ever heard about "Scorpions" was in TV, during their Trial (i.e. after the Kosovo war)[406].

[399] Stoparic-(T.744/24-745/7)
[400] Stoparic-(T.727/3-6)
[401] Stoparic-(Tr.724/23-725/8;Tr.749/15-21;750/1-752/4);;6D7
[402] 6D1606,para.37;;Mijatovic-(Tr.22495/1-11);;Gajic(Tr.15347/19-15348/2);;Kostic(Tr.24102/9-24103/14)
[403] P951;;6D5;;6D7;;Mijatovic-(Tr.22495/1-11)
[404] Vasiljevic-(Tr.9005/6-12)
[405] Farkas-(Tr.16342/25-16343/9)
[406] Mijatovic-(Tr.22258/14-16;22495/3-4)

271. With respect to para I/892, the Chamber relied upon the testimony of John Crosland while describing the activity of MUP and VJ units in Drenica to establish knowledge/notice from 1998 to be imputed to Appellant.

272. In assessing Crosland's evidence, the Chamber overlooked gross exaggeration during his testimony, particularly with respect to events in mid-1998, in Junik/Prilep/Rznic/Glodjane, where anti-terrorist operations were conducted. Crosland remained firm in claiming that Junik and most of the villages in this region were "razed" in spring 1998[407]. On the other hand, material evidence showed completely different picture. Video footage[408] presented to several witnesses(Milosavljevic[409]/Odalovic/Filic), and their testimony totally disproved Crosland's assertions. Considering this, no reasonable Chamber would have accepted testimony of Crosland without any reserve.

273. In addition, the Judgment does not offer not a single reason to what test the *mens rea* of the Appellant was submitted. There is no evidence that Appellant issued any orders, drafted any plans or maps with respect to anti-terrorist actions mentioned[410], nor that it has been conducted with any notice, knowledge and approval of Appellant. Furthermore, the attack is directed against the civilian population only if the objective of the accused is to attack civilians. If it is a military operation with the aim to attack soldiers and/or military installations then the motive or intent is different and not forbidden by the international law.

274. The Chamber erred in respect to Gornje Obrinje.[411] This does not fulfill notice/intent. From the evidence adduced it has not been shown a crime occurred that ought have been punished. What has been established and was known at the time is that area of Gornje Obrinje had been under control of KLA, that fighting against KLA occurred there, and that there has been efforts to conduct an on/site investigation and assistance had been given by MUP in order to perform an on/site investigation. From Pavkovic's/Appellant's statements on meeting held on 26th September 1998 it only can be seen that there had been clashes between legitimate forces/terrorists, but with no information on any crime against civilians. It has not been established that the Appellant in his mind has picture that any action which has been undertaken is an attack on the civilian population. His actions can in no case be interpreted as a part of a systematic attack on civilians

[407] Crosland-(T.9920/16–21
[408] 5D1239
[409] Milosavljevic-(T.14314/18–T.14315/1;;Odalovic-(T.14431/14–T.14432/13;;Filic-(T.23906/17–23907/12
[410] I/892
[411] I/900–I/912

275. In order to convict Appellant for a crime committed with intent and with the aim to bring about a particular consequence, one must produce evidence, which, beyond a reasonable doubt, will prove the existence of a *mens rea* at the time when the crime was committed. Which the chamber failed to analyze. In other words, the Prosecutor had to establish:

(i) that Appellant had influence on these crimes and

(ii) that he could have prevented them, and

(iii) that he either knew or had reason to know of them.[412]

276. Therefore, the existence of a state of mind and knowledge of an act must be proved in every particular case. Presumption of guilt is not allowed in a Criminal Law.

277. Nothing Appellant could have done would have prevented the consequences, this primarily because Appellant had no knowledge of any crimes that were about to be committed. Even if he knew for the alleged crimes, he had no power as the Head of MUP Staff to issue orders preventing the committing of crimes or punishing the perpetrators who were not under his command. All evidence, if carefully analyzed, leads to only reasonable conclusion that Appellant or the MUP Staff, either conveyed instructions and orders previously issued by HQ in Belgrade (or from the MUP officials on senior positions), or advised and reminded MUP organs in Kosovo on their duties already prescribed by Law, without any effective control over the MUP units on the ground.

278. The Chamber erred in conclusions as to Appellant's *mens rea* as in III/1117, namely, that "Lukić shared the intent to ensure continued control by the FRY and Serbian authorities over Kosovo through the crimes of forcible displacement of the Kosovo Albanian population". It must be noted that the Chamber ignored a bulk of evidence against the existence of any criminal plan, even those presented by Prosecution, which goes in clear favor of the Appellant, such as:

a) General DZ said no plan existed among the Yugoslav/Serbian forces at any time to expel the Albanian citizenry[413], refuting the claims of his deputy Ciaglinski had said the plan

[412] Cerkez Appelants Brief pp.31
[413] P2508/para.174

was called "Horseshoe"[414] for which he had been allegedly advised by Kotur[415]. Kotur himself refuted these allegations[416].

b) NATO General Naumann said that NATO did not feel the existence of a "Horseshoe" plan was corroborated[417].

c) Fred Abrahams conceded that there was credence to the claims "Operation Horseshoe" was a fake, a hoax cooked up by German Intelligence to try and bolster positive support for the air strikes[418].

d) VJ insider Vasiljevic emphatically stated that there absolutely never was any such plan in existence[419];

e) Cvetic, crucial "insider" from MUP, testified that no such plan existed[420];

f) K25, also a police "insider" testified not only that no such orders to commit crimes were issued by MUP superiors, but that Police were tasked with defending the civilian population from the KLA[421];

g) Loncar not only denied the existence of such a plan, he excluded even the possibility of such a plan[422];

279. Defense witnesses at all levels/structures dismissed the existence of such a plan to evict Albanians[423]. The Chamber also ignored evidence that the Serb authorities were trying to assist Albanians and urge them back to their homes rather than forcing them out of the country[424].

[414] T.6994/11-20
[415] T.6831/7-6835/2;P248
[416] T.2078/8-2079/13.
[417] P2561
[418] T.2078/8-2079/13
[419] T.8840/5-21
[420] T.8179/21-8180/3
[421] T.4733/4-4738/8
[422] T.7687/9-16
[423] 6D1213,para.48;;6D1631,para.49;;6D1533,para.45;;Bulatovic-(T.13856/24-13857/4); Cucak-(T.14857/3-8;14898/18-25);;Gajic-(Tr.15318/4-12;15329/2-10);;Smiljanic-(T.15760/23-25);;Andjelkovic-(T.16404/12-18;;16435/13-16436/2);;Krga-(T.16940/12-18);;Curcin-(T.16975/12-17);;Obradovic-(T.15145/11-25);P2166;;Vintar-(T.21044/8-15);;Vucurevic-(Tr.23129/18-21);;Dujkovic-(T.23311/23-23312/12);;Djakovic-(T.26497/2-13)
[424] Andjelkovic-(T.14675/17-25;;6D778;;Adamovic-(T.24958/18-24959/12);;6D269; Vucurevic-(Tr.23076/2-21);;Milenkovic-(Tr.23101;5-11)

280. The Chamber erred in law and fact[425] by reaching several impermissible conclusions with respect to *mens rea.* From the context it could be erroneously concluded that the motive of this meeting held on 4 May 1999 was the letter from Arbour[426] dated 26 March 1999, (more than a month before the meeting) which is completely irrational and unfounded in any evidence. There is clear contradiction to findings in III/140 and III/1005 which don't mention this letter at all, but find that "the security situation in Kosovo" and "the current situation and plans for the defence of the country, and the "fight against terrorism", were discussed on this meeting. It should also be mentioned that besides Milosevic/Milutinovic/Sainovic/Ojdanic, Lukic was not a recipient of this letter in the first place, which was not considered by the Chamber.

281. Further, in III/141 the Chamber is satisfied that "mention was made of structures put in place to help "all citizens to return to their homes" once the hostilities ceased" and "while engaged in fierce fighting with the KLA, the security forces of the VJ had also dealt with numerous cases of violence/murder/looting, and other crimes, and had arrested several hundred perpetrators whose crimes were a great danger to the civilian population. It was concluded at the meeting that the work of the military courts had made the future occurrences of such crime "impossible". Therefore, this kind of conclusion does not indicate that any of the requirement for the Appellant's *mens rea* were satisfied, quite the opposite.

282. Furthermore, while in III/1201 the Chamber erroneously concludes that Lukic "after the Tribunal Prosecutor Arbour sent a letter of warning to Milošević, Milutinović, Šainović, and Ojdanić continued to instruct the MUP to engage in joint operations with the VJ in Kosovo, despite his knowledge of crimes being committed against Kosovo Albanians during previous joint operations" it does not offer even a single reason as to what test the *mens rea* of the Appellant was submitted. The position of Lukic with respect to this meeting was no different from Milutinovic, but nevertheless, the Chamber finds[427] that it was presented with no evidence that Milutinović knew this information to be incorrect. The Chamber cited no evidence that Lukic knew, or could have known differently than Milutinovic, namely, that information with respect to military courts cited in III/142 could have been incorrect.

K. POLICE EXPERT WITNESS

[425] III/1201
[426] III/270
[427] III/142

283. The Chamber rejected[428] the findings of the only police expert who testified, namely Professor Simonović, who teaches at the Faculty of Law and the Police Academy in Zemun, Belgrade. The Prosecution and Chamber focused on whether Simonović ever dealt with police in Kosovo.[429] The MUP in Serbia was systematized normatively across the whole state, and thus it is not a matter of focusing on only one part of this system, which Simonović himself explained.[430] Simonović is the more familiar with the work of the police than any other witness who testified. Instead the Chamber permitted lay witnesses to opine about the work of the Serbian MUP, even though they neither had any expert knowledge nor formal training, and were speculating as to how it functioned. This primarily refers to foreign witnesses[431], none of whom had any police experience in their own countries or training as to the MUP, as well as to the witnesses who were members of the VJ,[432] who speculated the MUP worked like the Army.

284. The testimony of this expert was rejected as it contradicted the Chamber's improper, untrained preconceptions of the functioning of the MUP, found throughout the judgment. It is inconceivable where the functioning of the MUP and Appellant's place within the same is of central importance that conclusions of guilt are made without the support of an expert. Without the assistance of a police expert the Chamber cannot understand how the MUP functions in Serbia. By rejecting the testimony of the Simonovic, the Chamber infringed upon the rights of Appellant, abused its discretion and erred in law in all segments of the Judgment dealing with the organizational aspects and functioning of the Serbian MUP. The experts opinions are essential for determining whether Appellant can be a command-superior of the MUP. It should be recalled that material ability to punish or control subordinates is the threshold/minimum requirement in establishing such a relationship.[433] The expert was the only qualified witness to opine on this topic, and established Appellant had no ability to punish or control.[434] The importance of avoiding misconceptions about the Police is evident from the jurisprudence, which even states "a police officer may be able to 'prevent and punish' crimes under his jurisdiction, but this would not as such make him a superior (in the sense of Article 7(3) of the Statute) vis-à-vis any perpetrator within that

[428] I/658
[429] T.25597/8-T.25598/16
[430] Simonovic-(25597/8-20
[431] Drewienkiewicz-(T.7963/21-23);; Maissoneuve-(1116510-14);;Abrahams-(T.996/1-4);;Ciaglinski-(T6932/7-T.6933/7) Byrnes-(T12203/1-11)
[432] Djakovic-(T.26514/7-16)
[433] Halilovic, AJ para.59.
[434] Simonovic-(T.25588/5-T.25590/18)

jurisdiction."[435] Respectfully that is squarely the instant circumstance, and the only evidence assisting the Chamber to analyze Appellant's true role was ignored out of hand when Simonovic was dismissed without cause.

285. The Chamber did not have any conflicting Expert on this topic. Simonovic was unrebutted despite his conclusions being subjected to a fair adversarial proceeding and since he is not from within the MUP his impartiality and independence are established.

286. Moreover, the Chamber itself gave credibility to this expert by relying on his expertise and findings in the Judgment.[436] It is thus without proper basis that the conclusions of Simonovic as to the functioning of the MUP were ignored by the Chamber, who insisted on supplanting his work with their own, misguided and speculative assessments of the functioning of the MUP.

N. JOINT COMMAND

287. In the Judgment,[437] the Chamber constantly used the term "Joint Command," which leaves one with the impression that there, indeed, was a body that commanded both the army and police units. This is contrary to other findings made by the Chamber[438].

288. The Chamber referred to orders by the Joint Command[439], although it accepted elsewhere[440] that the source of all the 16 orders from 1999, which bore the heading of the Joint Command, was in fact the PrK. Likewise, Trial Chamber found that the combat operations of VJ/MUP were not commanded by any Joint Command, but that their respective chains of command remained separate and intact.[441] However, the Chamber presented the facts in an ambiguous manner and implied that the Joint Command issued orders,[442] which is not true.

289. It is obvious that such meetings amounted to exchange of information.[443]

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[435] Halilovic, AJ para.59.
[436] III/166;III/172;III/924;III/952
[437] I/909,
[438] I/1135,I/1144
[439] I/785
[440] I/1135
[441] I/1144
[442] I/1135,
[443] I/889, I/905, I/1003,

290. The Chamber noted that no one who attended the meetings referred to it as the "Joint Command"[444], He explained that the term was used internally between him and Pavković, and that other persons present at those meetings were not aware of that term[445]. As the meetings in question served for exchange of information, they cannot be characterized as having any "significant influence" having in mind that the information exchanged thereat concerned the events that had already occurred, rather than having anything to do with planning and ordering the actions to be carried out in the future. It should be emphasized in this regard that the participants in those meetings in 1998 did not convene at all in 1999, i.e. in the period covered by the Indictment.

291. With regard to the notes of the "Joint Command" meetings,[446] The Chamber itself accepted that these notes were selective and did not represent a complete picture of the meetings.[447] The Chamber drew a series of conclusions that have no support in this document. The Chamber failed to adequately assess the importance of these notes, bearing in mind the manner in which the author recorded what was stated by others. The Chamber heard Đaković state the following:

- I tended to translate it into military-speak[448]

- I was rather selective except when it came to the data that was obtained from the state security. [when] I tried to get as much information as I could […];[449]

- I already got a kind of a picture as to what I should jot down, what I should record, and what would be of interest to me.[450]

- Djakovic's accepted that he was unfamiliar with the MUP and that he was incompetent to make adequate notes beyond the scope of the army[451].

[444] I/1057
[445] P2943,para33,Tr.26380/25-26381/21,26444/24-26445/5
[446] P1468
[447] I/1062
[448] Djakovic-(T.26374/22-26375/5)
[449] T.26375/6-14
[450] (T.26374/1-11).
[451] Tr.26514/4-16

292. These Notes were not official minutes and the contents thereof were not verified by participants to which words were ascribed, nor were the Notes adopted by the attendants at the meeting.

293. The Chamber noted that Appellant was often "the only representative from the MUP, showing that he had a senior and central role in co-ordinating the actions of the MUP and the VJ".[452] The Chamber assumed the above, without asking Đaković to describe the manner in which he recorded the presence of participants at meetings. The Chamber erred in fact if it drew conclusions about the presence of individuals based on their participation in the discussion at a meeting.

294. A telling example of unreliability/inaccuracy of the Notes is 10 September 1998, wherein it was noted that Stevanović was absent, while at the same time his discussion was recorded. Đaković himself testified that the MUP personnel who attended the meetings of the Joint Command were Đorđević/Stevanović/Mijatović, "Say, five or six people […] from the Ministry of Interior."[453]

295. The Chamber erroneously listed Stevanović as an occasional attendant. Stevanović was present at 42 meetings of 69 total. Lukić was not the only MUP representative at any single such meeting.[454] Besides Lukić, Đorđević was present at virtually all meetings(55).

296. According to the evidence given by Đaković, no one outside the Army ever saw the notes prepared by him at such meetings in 1998[455].

297. Trial Chamber noted that little documentary evidence was presented at trial showing that the MUP organs issued orders for the execution of the various actions to be implemented during joint operations.[456] The Chamber further considered that the MUP also issued orders in some form. In fact the trial record contains no evidence whatsoever that the MUP planned any actions and issued any orders, because the MUP, indeed, did not do so. The conclusion drawn that the MUP issued orders in some form is impermissible. The Judgment further dealt with this hypothesis as if it were an established fact. Đaković testified to the contrary of this hypothesis when presented with the maps that the army delivered to the police units in the field.[457]

[452] III/1032
[453] T.26386/15-21
[454] P1468
[455] Tr.26377/17-22
[456] I/1042
[457] Djakovic,Tr.26523/26524;6D1618;6D1619;6D1620;6D1621;

298. The most significant part of Djakovic's testimony with regard to the meetings is when he described the nature of these meetings. The Chamber referred to his explanation of the character/purpose of these meetings as follows: "Đaković's explanation of these meetings was that they were primarily for the exchange of information, with a view to co-ordinating activities of the MUP and the VJ".[458] This description of the character of the meetings, is in line with all the relevant evidence presented in this case. Hence, the finding that these notes were records of meetings of a body called the Joint Command, whose role was to coordinate the actions carried out by the MUP and VJ is utterly incorrect. Đaković's description corresponds to the testimony by Adamović and Mijatović[459],whereas it is contradictory to Cvetic's testimony from this same Paragraph.

299. Nowhere in these notes is it implied that anyone issued orders during those meetings. The fact that there were suggestions made does not allow the Chamber to conclude that "there is no doubt that […] participating politicians stated what was to be done by the VJ and MUP". Such a conclusion contradicts the finding that "However, some evidence indicates that the proposals discussed at Joint Command meetings were contingent upon prior approval from VJ organs, and that requests made during Joint Command meetings were to be authorised by the VJ afterwards"[460]. It is hard to comprehend that one who has the power to issue orders would have to seek approval to do so. This Paragraph clearly shows that meetings of a group the army referred to as the Joint Command were not meetings at which decisions were made.[461]

300. All of the above is confirmed by Chamber[462]. The Chamber correctly noted that "a significant amount of evidence suggests that the formal command structures, as well as the reporting systems, of the VJ and MUP remained intact during the period of operation of the Joint Command". Therefore, it is clear that no decisions were made at those meetings, as they convened for the purpose exchanging information not issuing orders.

301. This position is enforced by the Chamber's discussion contained wherein it accepted the testimony by Đaković that "[...] no decisions were taken regarding the use of forces during combat operations at the Joint Command meetings. [...] the decisions referred to during these meetings 'had

[458] I/1067
[459] I/1071
[460] I/1080
[461] Mladenovic-(T.17602-17620)
[462] I/1881

already been made at General Samardžić's [level]'".[463] Therefore, the meetings of the so-called Joint Command dealt with the issues that had already been decided/ordered on other levels. The Chamber considered that Đaković minimized the role of the so-called Joint Command[464]. Such a position of the Chamber is unacceptable as there is no evidence presented in this case that would indicate that Đaković did not speak the truth.

302. The Chamber resorted to amazing intellectual gymnastics in order to justify and accept the testimony by Cvetić.[465] It should be noted he himself testified that he never attended any of the meetings in question christened by Djakovic. No one present at these meetings was aware Djakovic's term, nor did they believe that it was a command of any sort. Had this group been a command, witness Đaković, being a soldier, would certainly have recognized that fact and entered orders into his notes, or he would have referred to any coordination documents or any other matters that would show that this body had command prerogatives. There is nothing in his notes that would imply any command features, not because Đaković omitted or attempted to hide such things, but because there were no command matters addressed at these meetings.

303. The Chamber shifted the burden of proof upon the Defense, where it noted that witnesses Stojanović or Đaković failed to address or explain certain issues.[466]

304. It is obvious from I/1077 that the term Joint Command was also used when a document was issued on behalf of the army without any participation of the MUP. As even the Chamber noted the issuance of a military document was filed in the military logbook, under a military log number and without any reference to the police.[467]

305. Command over the units is also described elsewhere[468], and the Chamber correctly accepted that "the VJ command structure continued to operate during the operations conducted in 1998 and that regular combat reports were sent from subordinate units to the PrK, and not the Joint Command".[469] The Chamber also correctly found that: "The Chamber accepts that the VJ command structure continued to operate during the operations conducted in 1998 and that regular combat reports were sent from subordinate units to the PrK, and not the Joint Command".[470] This

[463] I/1087
[464] I/1087
[465] I/1071
[466] I/1076
[467] I/1077
[468] I/1091,I/1093
[469] I/1095
[470] I/1096

conclusion by the Chamber clearly indicates that it accepted that the units reported to their commands, which further indicates that the so-called Joint Command had no influence over the execution of actions or coordination thereof, as otherwise it would have received reports on such actions.

1. "JOINT COMMAND"-- 1998

322. Although, the Chamber stated in that "Rather than solving the KLA problem through the democratic and effective use of the police and the judicial system […]"[471] it completely ignored the following evidence showing that the MUP was obliged to engage in Kosovo without any special decisions, much less a decision by Federal President Milošević:
The Law on Ministries;[472]
The Law on Internal Affairs;[473]
The Law on Criminal Procedure;[474]
The Criminal Code;[475]
The Rules on Internal Organization of the MUP;[476]
Evidence given by General Naumann, who testified that NATO treated the KLA as a terrorist organization,[477] confirming that the police was obliged to react
Expert Report;[478]

323. MUP as an organ of state administration was obliged to cooperate with other state organs[479]

324. Moreover, the Chamber was in the position to learn that the obligation of the MUP organizational units to cooperate/coordinate their measures with the VJ stemmed from and was requested in certain orders sent from the MUP seat in Belgrade. For instance, Deputy Minister Stevanović, issued specific orders on 1 July 1998, and requested that "In performing these tasks, a better and direct cooperation and coordination shall be established with the relevant state organs

[471] III/92
[472] P1821(Art.7)
[473] P1737(Art.1)
[474] P1824(Art.151)
[475] P1736(Art.125,137)
[476] 6D1305(Art.2)
[477] Naumann,Tr.8264/20-25;8265;8270/25-8271/10
[478] 6D668(p.87,88)
[479] P1823(Art.64,para.2;Art.65).

(VJ, market inspection, financial police, customs, etc.)[480] This exhibit clearly shows that it was specifically addressed and sent to all the SUPs in Kosovo-Metohija, whereby it is clear that each of them was obliged to secure such cooperation/coordination in its territory. Therefore, it is obvious that such horizontal coordination/cooperation was secured at all organizational levels of the MUP. Similar orders were sent from the MUP seat in 1999.

325. The Chamber did not in any manner indicate or conclude that the command and control system in the MUP was disturbed, or that the regular chain of command was somehow bypassed, or, for that matter, that the MUP failed to abide by the provisions of the Law on Internal Affairs, the Rules of Internal Organization of the RDB[481], the Rules of Internal Organization of the RJB[482], or the Decision on the Establishment of Separate Police Units[483], the Decision on Establishing the 124th PJP Brigade,[484] the provisions of the Rules on Establishing the SAJ[485], the Decision on Establishing the SAJ[486], and the Rules on Internal Organization, Systematization of Employment Posts and Salaries of the Personnel Employed in the SAJ.[487]

326. In light of the above, the Chamber should logically conclude that the MUP was directed solely by the Minister in accordance with the Law on the Ministries.[488]

327. Cvetić testified that the system of command and control remained unchanged when the Joint Command had been created.[489] The above was corroborated by the evidence given by witness Mijatović, the then Deputy Head of the MUP Staff[490]; witness Adamović, Assistant to the Head of the MUP Staff[491], Vučurević[492]; and Bogunović.[493]

328. When drawing numerous conclusions with regard to an entity called the Joint Command in combined engagement of the VJ/MUP in suppressing terrorism in Kosovo in the latter half of 1998, the Chamber failed to consider the facts related to the chronology of passing individual decisions and to precisely establish which documents provided the basis for execution of anti-terrorist actions

[480] 6D266
[481] 6D1320
[482] P1192
[483] P1507
[484] 6D5667
[485] 6D1355
[486] 6D1355
[487] 6D1421
[488] P1821(Art.28)
[489] T.8118/12-18;.8119/8-12;T.8123/6-12
[490] T.22235/11-19
[491] Tr.25061/24-25062/16
[492] Tr.23209/14-24;Tr.23131/13-17
[493] T.25118/24-T.25119/11

("ATA"). Specifically, ample documentary and testimonial evidence clearly shows that the Decision on engagement of the VJ in suppressing terrorism was passed by the SDC on 9 June 1998,stating: "if the terrorist actions of Albanian separatists escalate, the VJ will intervene adequately"[494]. This fact is corroborated by other evidence.[495] Witness Đaković stated on the record that "after the Decision by SDC, I was given the task of making preparations for the production of the Plan."[496] He also testified that the PrK was tasked by the 3rd Army to prepare the Plan[497], and that the Plan for Combating Terrorism, with accompanying maps, was delivered 15 July 1998 to Smiljanić of the General Staff.[498] In addition to the VJ, the Plan included the police units, as confirmed by Đaković.[499] The fact that the Plan included MUP units is also reflected elsewhere.[500] No one from the Serbian MUP, took any part in the preparation/conceptual design of the Plan, in defining the tasks to be carried out by the VJ/MUP, in designating the units which would take part in the joint anti-terrorist actions, or in defining individual stages and tasks within these stages for the VJ/MUP. Moreover, no individuals from the MUP Staff or the seat of the MUP in Belgrade were informed that such a plan is being prepared, regardless of the fact that the duties of police units were defined by that plan. This was confirmed by witnesses Adamović,[501] Mijatovic,[502] and accepted by the Chamber[503]-"The Chamber accepts that Lukić was not involved in the actual formulation of the Plan […]".[504]

329. The Chamber noted[505] that on 21 July 1998 a meeting called by Milošević was held in his office and was attended by Milutinović, Šainović, Dimitrijević, Matković, Samardžić, Perišić, Pavković. At this meeting Pavković presented a Plan for to combat terrorism in several stages. On that occasion Milošević stated that the Plan was adopted and did not ask the participants to vote on it.[506] Among the MUP officials present were Minister Stojiljković, Đorđević, Stevanović, and Lukić.[507] Thus, the meeting at which the five-stage Plan for Suppression of Terrorism that envisaged combined actions of the VJ/MUP in executing anti-terrorist actions was adopted[508] was attended by Minister Stojiljković as the Head the MUP, the Head of RJB (Đorđević), and the Head

[494] P1547;1D760,(p.10)
[495] P2166(29.10.1998); Dimitrijevic-(T.26600)
[496] T.26543/7-9
[497] T. 26409/4-24
[498] 4D101
[499] T. 26523/19-23
[500] 4D100;4D101;T. 26524/7-9(Djakovic)
[501] 6D1613/para17
[502] Mijatovic,Tr.22184
[503] III/1021
[504] Id
[505] I/995
[506] T.14637(Matković)
[507] P948,page 68
[508] Djakovic-Tr.26446/7-23

of Police Administration and the Commander of all PJP (Stevanović). Notwithstanding that the meeting was attended by Lukic, Đorđević and Stevanović arrived in Priština on 22 July 1998 and held a meeting with the heads of the SUPs, PJP commanders and the members of the Staff, whereat the tasks on the realization of the Plan were defined.[509] This fact caused the Chamber to erroneously conclude[510] that the Joint Command allowed the MUP commanders to "'save face'. Stojiljković authorized the VJ to plan the combined anti-terrorist actions of the VJ/MUP in implementing separate stages of the Plan and carrying out individual actions. This Plan defined combined activities of the VJ/MUP through stages, and the individual anti-terrorist actions were precisely defined in orders and decisions of the PrK and entrusted to brigade commanders and combat group commanders of the VJ.[511]

330. The Chamber concluded[512] that the Joint Command had influence in the implementation of the various stages of the Plan.[513] The Chamber noted[514] that the decision to proceed with the third stage of the Plan for Combating Terrorism was not made at the meeting of the Joint Command held on 31 July 1998, although Pavković referred to a decision made at that meeting in the document he sent to the 3rd Army's Forward Command Post (IKM)[515]. Nevertheless the Chamber in Paragraph I/891 referred to this document, The Chamber also noted Pavković's request was rejected by Samardžić that same day, with the explanation Samardžić did not allow the use of the forces until the Plan was approved at the meeting with the FRY President, scheduled for 3 August 1998.[516]

331. The document addressed to Samardžić,[517] wherein Pavković stated, "as stipulated by the plan to smash the DTS, when the DTS was smashed by MUP and VJ forces, rapid intervention forces were to be formed…as ordered by the President". This document clearly shows that the decision to form such forces was passed along with the Plan on 21 July 1998. The record reflects that there was no mention of these forces at the meeting of the Joint Command held on 19 September 1998, the next day Šainović recalled that the rapid intervention units should be prepared and trained, demonstrating the decision on forming these forces was adopted earlier[518].

[509] 6D798
[510] I/1111
[511] P1429,P1431,P1101,6D696,6D697,6D700,6D701,6D731,P1434
[512] I/1110
[513] I/1085-1086.
[514] I/1086
[515] P1419
[516] 4D125
[517] P1439/item2,(5.10.1998)
[518] P1468/pages121-123

332. The Chamber noted[519] that during the period between 25.7-29.10.1998, joint operations were conducted in Kosovo pursuant to the Plan. It further noted that the orders during this period contained references to the "Joint Command". The Chamber primarily relied on the evidence related to the Slup and Vokša actions. Specifically, the Chamber analyzed two orders, (14 August 1998/ 18 August 1998). The Chamber failed to note that at least eight other orders contained no reference to the Joint Command.

333. The Chamber noted[520] that some evidence suggested a significant role for the Joint Command during implementation of joint operations on the ground, and as the basis for this statement it referred to orders/decisions of the PrK of 10 August 1998[521] and 14 August 1998.[522] However, for the Decision of 14 August[523]the Chamber concluded[524]that the "Slup and Vokša operation was under the control of the PrK Command from the Forward Command Post and that the function of the Joint Command order in relation to the operation was that of coordination". The Decision ordering the Slup and Vokša operation was signed by Lazarević, and in assessing his criminal responsibility the Chamber noted that it "has already established that this operation was discussed during a Joint Command meeting on 13 August 1998 and that its plan was prepared by the PrK Command in advance of this Joint Command meeting".[525] This finding confirms that the operation was prepared before it was discussed at the Joint Command meeting of 13 August 1998; that the decision was prepared by the PrK Command; and the above conclusion[526] confirms that the operation was under the control of the PrK Command. Thus, the question is what kind of role the Joint Command had. According to the Chamber this role would imply that the Joint Command for KiM was supposed to go in the field and coordinate execution of each individual anti-terrorist action. Obviously, the conclusion drawn by the Chamber that the function of the Joint Command was that of coordination is illogical and unreasonable. Such a conclusion is contradictory to I/1091, wherein the Chamber noted that the role of the Joint Command was significant. The Chamber's conclusion that the Joint Command's function was to coordinate was not supported by any documentary or testimonial evidence. Quite the contrary, the evidence presented in this case indicates that the role of the Joint Command was not even that of coordination. Thus, for instance Decision of 15th Armored Brigade Commander[527] made pursuant do the Decision of Chief of Staff

[519] I/1004
[520] I/1091
[521] P1427
[522] P1428
[523] P1428
[524] I/1092
[525] III/802
[526] I/1092
[527] 6D731

of the PrK Lazarević with regard to the Slup and Vokša operation) reads in item 7 that the Commander of 15th Armored Brigade ordered the following: "All the forces carrying out the combat activities are under the command and direction of the PrK IKM". Lazarević himself confirmed in his testimony that he monitored this action from the IKM.[528]

334. The Chamber found[529] that the combat operations were to be "commanded by the Joint Command for Kosovo and Metohija". However, the Chamber quoted only a segment of this clause, which in its entirety reads: "the combat operations are to be commanded by the Joint Command for KiM from the PrK Forward Command Post in Đakovica."[530] Despite these entries with regard to the Joint Command, and the clause specifying that this Command would command combat activities, the Chamber concluded[531] that the Slup and Vokša action was under the control of the PrK Command from the IKM and that the role of the Joint Command was to coordinate.

335. The above addressed error regarding the coordination role of the Joint Command after the PrK issued the Order on implementing the joint anti-terrorist action of the VJ and MUP, which was based on the two previously discussed decisions containing the clause related to the Joint Command, is best demonstrated false by a series of Decisions of the PrK Command, which contain no references to the Joint Command whatsoever. Appellant hereby points to 8 such orders of the PrK Command ("PrK") admitted as evidence in these proceedings, which were simply ignored by the Chamber:

1. Lipovica, 29 August 1998;[532]
2. deblocking the road communication, 30 August 1998;[533]
3. Ratiš, 5 September 1998;[534]
4. Lug, 9 September 1998;[535]
5. Bajgora, 13 September 1998,[536]
6. Kosmač, 24 September 1998;[537]
7. Jezerce, 25 September 1998;[538]

[528] T.18297
[529] I/1032
[530] P1427;P1428(item.6)
[531] I/1092
[532] 6D697
[533] 6D696
[534] P1101
[535] P1429
[536] P1431
[537] 6D700
[538] 6D701

8. Ćićavica, 19 September 1998.[539]

336. Had the Chamber thoroughly and consistently analyzed this relevant evidence, it would have drawn the only reasonable conclusion available on the facts, namely that "the entity referred to as the Joint Command for Kosovo and Metohija had neither command nor coordination role in the implementation of the anti-terrorist actions of the VJ and the MUP." This is substantiated by the finding of the Chamber which reads in its relevant part that "although the order of the 125th Motorised Brigade referred to 'the approval of the Joint Command', in reality it required that the Priština Corps and the MUP Commands approve the operations, not the Joint Command." [540]

337. Had the Chamber thoroughly and consistently analyzed and assessed all the evidence available in this case, it would have concluded as follows:

1) Production of the Plan for Combating Terrorism (the five-stage plan) ensued after the SDC session on on 9 June 1998, and this task was entrusted solely to the VJ, without participation of any MUP representatives, although the Plan envisaged combined engagement of VJ/MUP units;

2) The Plan, was adopted on 21 July 1998 in Belgrade, by the FRY President who was the only person authorized by the Constitution and law to command the VJ in peacetime and war. By way of his presence at the above session, MUP Minister Stojiljković agreed with such engagement of the MUP, whereby he legitimized the VJ to continue with planning individual anti-terrorist actions stemming from the Plan for both the VJ/MUP;

3) Implementation of joint anti-terrorist actions was carried out exclusively on the orders and decisions of the PrK, in accordance with the individual stages of the Plan for Combating Terrorism (the five-stage plan);

4) Commanding of the VJ/police units in carrying out joint anti-terrorist actions was carried out through their regular chains of command.

5) The intensity of the KLA terrorist activities and the measures taken by the state in establishing peace and order in the territory of Kosovo-Metohija required daily exchange of

[539] P1434
[540] I/1096

information between all relevant structures, which was realized through joint meetings of the representatives of VJ, MUP (RJB and RDB), and civilian authorities at the state and federal levels;

6) The above mentioned meetings at which information was exchanged in no manner derogated the regular chains of command of the VJ and the organizational units of the MUP and its police units, regardless of the fact that they were referred to as meetings of the Joint Command.

7) In analyzing the actions carried out by the VJ and MUP in suppressing terrorism in Kosovo in 1998, the Chamber never found that the measures implemented any of the stages were aimed at committing crimes.

2. JOINT COMMAND IN 1999

322. The Chamber noted[541] that "even though the Priština Corps Command was the source of the 16 orders issued in 1999, a heading 'Joint Command' was added to them. In the view of the Chamber, the references to the 'Joint Command' constituted an important factor during the planning and implementation of joint operations between the VJ and the MUP, as they evoked the authority of the entity referred to in 1998 as the 'Joint Command.'"

323. Concerning the Chamber's reference that adding "Joint Command" as a heading of the orders in order to ensure their acceptance by the MUP chain of command[542], there is no evidence presented in this case, more specifically no order for joint operations, that shows that such a heading existed in 1998.[543]

324. Conversely, all the orders for joint operations, in 1998, were issued by the PrK with the heading indicating "PrK Command". Besides the above referred series of orders, there is one specific Order of 27 August 1998, with the MUP heading, which however indicated at the end

[541] I/1151
[542] I/1028
[543] P1427,P1428,P1101,P1329,P1431,P1434,6D696,6D697,6D700,6D701.

"Commander, Lieutenant General Nebojša Pavković", along with his personal signature and stamp of the PrK.[544] Taking account that the joint operations were carried out according to the orders containing the PrK heading,[545] including the specific order, Appellant respectfully submits the Chamber drew an erroneous conclusion based on Đaković's false testimony. Namely, the above evidence clearly shows that the orders for joint antiterrorist operations of the VJ and MUP did not contain the heading indicating "Joint Command", but the PrK Command heading.

325. Likewise, the Chamber drew an erroneous conclusion[546] by noting that "While little documentary evidence has been presented at trial showing that MUP organs issued orders for the execution of the various actions to be implemented during joint operations, the Chamber considers that, as in 1998, the MUP also issued orders in some form. There is not a single piece of documentary evidence presented at trial whose author was the MUP Staff or any other part of the MUP, which contained orders "for the execution of the various joint actions."

326. Taking into account that the orders with the Joint Command heading contained only tasks for the VJ units, it is clear that these orders were sent to the VJ units, rather than the MUP units.[547] Several map excerpts were presented during trial, which were prepared/provided by the PrK, based on which the senior police officers would carry out actions on the ground together with the VJ commander, as previously organized/prepared by the respective VJ unit commander.[548]

327. To substantiate its finding in I/1042, the Chamber referred to 5D1418. However, this document in no way reflects any order, but rather provides assistance to a senior police officer who requested it in relation to taking care of civilians. Therefore, this in no way relates to combat operations. Furthermore, the Chamber failed to which was also confirmed by Adamović[549] note that the joint operation of the VJ and MUP[550] was carried out based on the order of the PrK Command, which clearly and imperatively specified the tasks for both the VJ and MUP units, ordering in item 14 that "[t]he 211th Armoured Brigade command, which [was] responsible for planning, organizing and conducting the combat activities, [was to] organise combined action between the elements of combat disposition during the planning, organisation, preparation and conduct of combat operations in the Palatna village sector."[551]. This operation was not carried out based on the order of the Joint

[544] P1613
[545] 3D697
[546] I/1042
[547] Mijatovic,Tr.22290;Adamovic,Tr.25062; 6D1606,para41;Gavranic,Tr.22723;Vojnovic,Tr.24189;
[548] 6D1618,6D1610, 6D1620,6D1621
[549] Adamovic-(T.25037/4-6); 6D1613,para18
[550] I/1198
[551] 6D709(item.5/14,22.05.1999)

Command, but based on the order of the PrK Command signed by Lazarević, that was sent to the MUP in that form, which can be seen from its title.

328. Likewise, all the orders for carrying out joint actions issued after 20 April 1999, i.e. after the Resubordination Order, had the PrK Command heading and were signed by the PrK Commander Lazarević.[552] This further invalidates the Chamber's finding.[553]

329. The first such order was issued on 24 April 1999[554] under the title "Seal", whose implementation was confirmed in the Combat Report of the 7th Infantry Brigade of 29 April 1999[555]). The orders that followed were: 6D704;6D705;6D709;6D710;6D712; P2011;P2014;P1503. The order of 24 April 1999 issued by the PrK Commander, as well as other orders that were subsequently issued, clearly show that after the resubordination the PrK Command, by way of its orders, issued orders to the MUP units also.

330. The Chamber found the following[556]:

a) "In 1999 the co-ordination system continued to function. It had become standard practice for MUP and VJ representatives to hold co-ordination meetings before finalising plans for and conducting joint operations."

   Conversely, the orders containing the Joint Command heading clearly show that there were no such coordination meetings, as in that case, the orders would have also contained complete information about the MUP units. Importantly, the Chamber itself did not identify any role of the Joint Command.

b) "The Chamber […] finds that […] the Priština Corps Command was the source of the 16 orders issued in 1999" with the Joint Command heading.

   Therefore, these orders were not issued by the Joint Command, but by the PrK Command.

c) The Chamber found[557] that Lazarević took responsibility for the issuance of these orders. The Chamber further found in this same Paragraph that the VJ planned joint operations in cooperation with the MUP. However, these two conclusions do not indicate any role of the Joint Command. (The extent the MUP participated in the planning will be discussed later.)

[552] 6D136(24.04.1999);6D704(4.051999);6D705(7.05.1999);6D709(22.05.1999);6D710(24.05.1999); 6D712(28.05.1999);;P2011(20.05.1999);P2014(25.05.1999);P1503(27.051999).
[553] I/1042
[554] 6D136
[555] 5D796
[556] I/1151
[557] III/827

d) The Chamber concluded the following in the same Paragraph: "Once the co-ordination phase was completed, the actions remained to be planned at the tactical level."
Likewise, the Chamber did not mention any role of the Joint Command in this.

e) Further the Chamber noted [558]that "the VJ and MUP chains of command remained separate and intact and the VJ and MUP units were commanded by their respective commands. At most their separate commands might have been based in a common command post."
The Chamber also did not identify any role of the Joint Command in this very important segment that relates to the commanding of units in joint operations.

f) In its analysis[559] concerning a specific operation carried out pursuant to an order issued with the Joint Command heading (P3049) and the evidence relating to the preparation of that operation, the Chamber noted that "It explained that the planning process had been conducted 'in accordance with [the 3rd Army Command's] general idea and particular plans.'"
The Chamber noted that the Corps Command "had organized 'a specific coordinated action' with the MUP for this joint operation." The Chamber did not identify any role of the Joint Command in this analysis either.

g) As to the Bajgora action[560] (P1975), the Chamber noted that "That evidence demonstrates that, before the Joint Command orders were issued in mid-April 1999, the VJ and the MUP co-ordinated the actions that were to be carried out by their units during the joint operation."
The Chamber did not identify any role of the Joint Command. However, the Chamber erroneously concluded that the VJ and MUP coordinated actions. Namely, if they did coordinate the actions, the above referred order would have indicated specific MUP units in the same manner as it specified the VJ units.

h) In regard to P1990, and pointing to "a template order" prepared by Đaković of the VJ, which had a MUP Command heading, but contained no number/signature/stamp, the Chamber noted[561] that this evidence (probably referring to the "template order") suggested

[558] I/1144
[559] I/1037
[560] I/1040
[561] I/1039

that "plans for actions involving VJ and MUP units were prepared within the VJ and MUP." The Chamber also noted the following: "Before specific joint operations were carried out, the VJ and the MUP met during co-ordination meetings to ensure co-ordination between their respective plans."

Such conclusion clearly shows that the Chamber did not identify any role of the Joint Command. Furthermore, the Chamber erroneously noted that the "template order"[562] had a MUP Staff heading, even though it contained the MUP Command heading. Certainly, the author of this "template order", Đaković, did not refer to the MUP Staff when he prepared this order. The Chamber drew an erroneous conclusion when it referred to the "template order" as the MUP plan.

The Chamber was able to examine one such order from 1998 with identical heading, which was in contrast signed by the PrK Commander(Pavkovic) and stamped. Having this in mind, it can be concluded that the template order of 19 February 1999 was a preparatory order of the PrK Command which would be finalized at a later stage (signed and stamped by the PrK Command) in the same manner as the order from 1998.[563]

331. The Chamber erred by identifying "combined action" with the term "coordination". Namely item 13 of the 16 orders with the Joint Command heading reads as follows: "Organize combined action with the MUP forces concerning the preparation of combat operations before and during execution of combat operations." In particular, the Chamber heard from military expert Radinović[564], that the term *sadejstvo* (synergy, collaboration, combined or correlated action) implied a relationship in which the entity that implemented it was its main protagonist, ie. that VJ was the agent of the preparations before and during combat activities.

332. In such a complex situation of a state of war, the VJ and the MUP, as well as all other state organs were obliged to secure intense and uninterrupted cooperation and coordination of their respective measures in defending the country against the external aggression and the terrorist forces, which, without any doubt, represented an element that acted in a combined manner with the NATO forces. Each form of combined activities of the VJ and the MUP was connected by the Chamber with the entity referred to as the Joint Command, although it had at its disposal sources that regulated the relationship between VJ and MUP in a state of war, before all the Law on Defense.[565]

[562] 6D716
[563] P1613
[564] Radinovic-(T.17036;17141/17142)
[565] P985/Art.16

333. Regardless of the Chamber itself having found that there is no sufficient evidence to prove the existence of Joint Command in 1999[566], the Chamber endeavored to categorize any form of coordination between the VJ and the MUP as the work of the Joint Command.

334. Its analysis of individual orders[567], stating, *inter alia*, the following:

- "The Chamber notes that each of the 16 Joint Command orders in evidence, in setting out the assigned tasks of the relevant units, uses the phrase 'I have decided as follows', rather than a reference to a joint decision."[568]

- "… the Chamber finds that, although the 16 orders contained a clause stipulating that the combat operations were to "be commanded by the Joint Command", the VJ and MUP chains of command remained separate and intact and the VJ and MUP units were commanded by their respective commands. At most their separate commands might have been based in a common command post."[569]

358. The above shows that the Chamber established no role of the Joint Command whatsoever.

359. Analyzing the meeting of 1 June 1999, the Chamber concluded as follows: "The Chamber finds that this meeting held on 1 June 1999 attended by, *inter alios*, Stojanović, Anđelković, Đorđević, Stevanović, Lukić, Pavković, Lazarević, and Šainović was a meeting similar to the Joint Command meetings held in 1998."[570]

360. The Chamber impermissibly relied on Vasiljević's statement that he had the "impression that the meetings were a daily occurrence". To enter a conviction on, *inter alia*, the findings such as "similar" and "had the impression" is below any standard of proof in criminal proceedings[571].

361. Finally, the Chamber in no manner implied that what was said or concluded at this meeting comprised or caused a crime of any kind. Was the Chamber's intention to imply that every meeting held in 1998, including this one from 1999, was criminal in nature and that all the attendants bear criminal responsibility? Nevertheless, the Chamber applied selective approach with regard to

[566] I/1112
[567] I/1123,I/1144
[568] I/1132
[569] I/1144
[570] I/1149
[571] P2594,para.81

participation at this meeting, and found in Paragraph III/843 that Lazarević was apparently surprised and not as culpable as others. But found in Paragraph III/356, Lukić was also surprised as much as Lazarević with regard to the withdrawal of units, but simply ignored that fact and did not ascribe it the same weight to as it did in Lazarević's case; thus, the mere presence of Lukić at the meeting made him guilty in the eyes of the Chamber, and it used this fact as proof that Lukić was a member of the Joint Command in 1999.

3. COORDINATION IN 1998

362. The finding by the Chamber at I/1026, that Adamović took part in the drafting of plans for joint operations, is incorrect. All that Adamović submitted to Đaković was information about the strength and location of the MUP forces, nothing else[572].

363. The Chamber noted "Adamović's testimony that, before operations were conducted, meetings were held at the MUP Staff during which the VJ and the MUP discussed the plan for carrying out 'anti-terrorist' actions. Quite the contrary, Adamović explicitly explained that no joint actions of the army and police were planned at the MUP Staff, and that the MUP Staff did not participate in any manner in the preparation of the relevant plans[573].

364. The Chamber further noted that Obrad Stevanović took part in planning activities[574]. Stevanović was the Commander of the PJP and was located on the ground in Kosovo. He was not a member of the MUP Staff.

365. The fact that all further planning for both the VJ and the MUP units was carried out by the VJ commanders is reflected in the Order by the 15th Armored Brigade Commander, who made all additional planning for the tasks to be carried out by his 15/3 Combat Group and the 8th PJP Detachment, which included the PJP Company from Đakovica[575]. This Order stemmed from the

[572] Adamovic-6D1613,paras.17,18,Tr.24968/21-24969/9,24981/10-22;Mijatovic-Tr.22190/25-22191/7; Zivaljevic-6D 1606,para 24,Tr. 24820/7-24821/15
[573] 6D1613,para18
[574] I/1027
[575] 6D731

Priština Corps Decision/Order of 14 August 1998,[576] whereby the 15/3 Combat Group was ordered to provide support to the 8th PJP detachment and the Đakovica PJP Company.

366. As stated in exhibit 6D731, the 15th Armored Brigade Commander prepared details and the manner in which this joint action was to be carried out, and ordered the 15/3 Combat Group Commander to organize joint activities with the 8th PJP Detachment organs during the preparation and execution of combat actions. 6D731 explicitly stated that "All units carrying out the combat activities shall be commanded and directed by the Priština Corps Command IKM."

367. The Chamber accepted[577] that the MUP Staff did not plan these MUP actions, but that it was done by the PJP Command.[578] This should have been taken into consideration in determining the role of the MUP Staff and Appellant as its Head. Since Appellant was not a part of the PJP Command, he was not able to participate in the planning of PJP actions.

4. COORDINATION IN 1999

368. A soldier is not competent to testify as to the work and structure of the police. This is reflected in I/1035, where the Chamber referred to the testimony by witness Stefanović and his description of the manner in which the MUP acted upon receiving maps from the army. He explained the process from his military point of view, and stated with regard to the MUP that "they should…" Thus, he was not familiar with the functioning of the MUP. The witness did not testify about something he knew, but something he presumed. At this point in Judgment, the Chamber again accepted presumptions as evidence, instead of relying on witnesses who knew what they were talking about and who explicitly testified about the facts related to these issues as individuals who possessed direct knowledge thereon.[579].

369. The Chamber fully accepted Stefanović's conjectures as facts, as reflected in I/1041. The Chamber added something that was not even stated by Stefanoovć, or anyone. It found that,

[576] P1428
[577] I/1032
[578] P1427
[579] 6D1613,para.17,32;6D1614,para12., Mijatovic(Tr22240/19-22); Adamovic(Tr.24968/21-24969/1)

"depending on the operation, either the MUP plan or the VJ plan prevailed". Instead of making this unsubstantiated finding, the Chamber should have relied on the statement given by Adamović, who was a member of the MUP Staff until 29 March 1999. In his written statement[580],in Paragraphs 28, 31, 32, 33 and 34, Adamović clearly explained the role of MUP representatives in the planning of joint actions with the VJ.

370. Stefanović's evidence is illogical. He stated that he had contacts with Arsenijević, (Arsenijević came to the MUP Staff on 1 April 1999[581]). He further stated that he had contacts with Obrad Stevanović, and towards the end, with Braković.[582] Stefanović did not mention Adamović as a person with whom he had contacts. If this is viewed in connection with the statement by Adamović that he was in Kosovo until 29 March 1999, then it is clear that all orders issued from January through 29 March 1999[583], were in fact issued without prior coordination with any MUP representative.

371. The Chamber noted in Paragraph I/1037 that "The Chamber received into evidence 16 orders headed 'Joint Command'. One of these orders […][584]demonstrates that this operation was planned by the Priština Corps Command in accordance with the orders from the 3rd Army Command. It also demonstrates that the planning process of this operation included co-ordination with the MUP. […] the Priština Corps Command suggested to the 3rd Army Commander its 'idea for conducting an operation […]' It explained that the planning process had been conducted 'in accordance with the 3rd Army Command's general idea and particular plans' and indicated that the Priština Corps Command had organized a 'specific co-ordinated action' with the MUP […]".

372. However, the 3rd Army Order[585] doesn't indicate that cooperation with the MUP was established before the planning process. Had a MUP representative participated in the planning, the MUP units would have been listed in accordance with the formation structure to which they belonged, rather than in the general manner presented in this document. Unlike the MUP units, the VJ units were listed precisely, along with concrete tasks related to them.

373. In I/1039, the Chamber relied on the testimony by Lazarević, who claimed that the PrK Command documents of 18 and 19 March 1999 "indicate that the MUP conducted its own planning

[580] 6D1613
[581] P1888
[582] T.21684-21689(Stefanović)
[583] P1966,P1967,P3049,P1968, P1969,P2015,P2031,6D1416,5D273,5D276
[584] P3049
[585] 6D1416

for the operations that were to be conducted at the end of March 1999 and that, before orders for the execution of these operations were issued, the VJ and the MUP conducted 'specific co-ordination'". This part of Lazarević's testimony is in contradiction with the above-mentioned Order,[586] in which Lazarević, addressing Pavković, stated that "At the Corps Command, the planning and preparation of the commands and units and the MUP forces for executing the action … was conducted"

374. Here the Chamber again misquoted the original minutes of the meeting held on 17 February 1999, by transforming it to read "the MUP Staff plan[ned]…". Besides, the Chamber quoted Lazarević's testimony wherein he implied that the "MUP planned [actions] in parallel [and] independently from the 3rd Army Command and the Corps Command". At the meeting of 17 February 1999, Lukić informed the Minister about future actions that the Priština Corps Commander had planned in his Order of 16 February 1999, in which Lazarević precisely listed the MUP units and defined their tasks.

375. The Chamber erred in fact when it failed to note that Stefanović stated that orders were prepared first, then the decision would be entered on a map, upon which excerpts of such a map would be submitted to individual units[587]. Đaković confirmed that excerpts of decisions entered on maps were submitted to MUP units both in 1998 and 1999.[588] These documents show that the first contact between the MUP and VJ representatives regarding the planning of joint anti-terrorist actions occurred in the final stage of entering the decision on the map. Adamović himself stated that decisions had already been entered on maps when he was required to provide information about the units.

5. PREPARATION OF PLANS IN 1999

376. In Paragraph I/1012 of the Judgment, the Chamber erroneously analysed, the *Grom 3* and *Grom 4* plans, prepared within the VJ, to show "the VJ 'enemy' at that time was NATO rather than

[586] 6D1416
[587] Stefanović T.21646/19-21647/14
[588] 6D1618;6D1619;6D1620;6D1621

the 'terrorist' forces". Specifically, paragraph 3 of *Grom 3* directive,[589] to which the Chamber referred[590] reads that the objectives of the first stage were to "close the routes used for bringing in the terrorist from Albania, to protect the forces and facilities form the terrorists, and, together with the MUP forces, block the terrorists and prevent them from acting in unison with NATO. Stage two envisages prevention of terrorist engagement from the territory of Albania and destruction of the terrorist forces in the area of Kosovo." Thus, the Chamber once again misquoted the evidence.

377. Pursuant to this order of the 3rd Army Commander, Lazarević issued a decision and order on preventing insertion of terrorists, and breaking and destroying the NATO and KLA brigades in Kosovo (5D249, Lazarević T. 17905, 8 November 2007), which ordered the implementation of the same activities[591].

378. Pursuant to the Order of 1 February 1999,[592] Lazarević issued an Order for the elimination of Albanian terrorist forces in the sectors of Malo Kosovo, Drenica and Mališevo, dated 16 February 1999.[593] The Chamber erred in fact when it identified this Order as the *Grom 3* Order, since the latter was issued on 7 February 1999.[594]

379. With regard to the PrK Order of 16 February 1999, the Chamber referred to the testimony by Lazarević and noted that "… when the 16 February order was prepared within the Priština Corps Command, the operative organs of the Corps Command achieved co-ordination with the people dealing with planning in the MUP in order to have co-ordination and co-ordinated action'". However, Lazarević confirmed that the Priština Corps Command organs had first prepared this Order and only then did they coordinate with the MUP.[595] Likewise, Stefanović of the Priština Corps stated in his testimony that "I prepared this Order"[596]. Stefanović further emphasized that[597] this Order came as the result of the 3rd Army Order[598], which read in Item 5 that the Priština Corps was designated as the main agent of production of this Plan.

[589] 3D690
[590] I/1012,
[591] Tr.17901/5-20
[592] 5D249;;I/1014
[593] I/1015
[594] T.17905(Lazarevic)
[595] Tr.17905/9-17907/18
[596] Tr.21654/19-21655/10
[597] Tr.21654/19-21655/10
[598] 5D249

380. The Chamber failed to consider that, in Item 2 of this Order, which contained the tasks for the Priština Corps Command issued by the higher command, the following was determined in advance:

- conceptual base of the plan;
- locations at which the actions would be carried out;
- the main agent of the activities ;
- the structures that were to participate in the implementation of the task;
- relationship between the forces;
- readiness to execute the actions;
- the sector of the command post.

358. Thus, no MUP representatives participated in key elements of planning. The only thing a MUP representative did was provide information on the availability of MUP units.

359. From this example of the manner in which the orders were prepared, the Chamber was able to establish the real possibilities and role of the MUP in planning combined actions. The role of the MUP was that of providing information to the Priština Corps Command about the availability of the MUP units. Hence, this role was exactly as described by Adamović in his written statement and testimony[599]. Such role of the MUP was to a significant extent confirmed by Đaković, too.[600]

360. On 17 February 1999, a meeting was held at the MUP Staff, which was attended by Minister Stojiljković and his three assistants(Đorđević/Stevanović/Marković), as well as by the Staff members and other officers[601]. Informing the MUP officials about the security situation in Kosovo, Lukić notified them about the measures that would be taken against terrorists at a later stage, when ordered. The notes produced at that meeting were not a result of official shorthand minutes, or an audio/video recording; rather, they represent a personal account of their author. The Chamber erroneously/inconsistently quoted these notes. The Chamber quite blatantly misquoted a passage form the notes when it noted that Lukić announced "that the MUP Staff 'plan[ned]' … to carry out three mopping up operations in the Podujevo, Dragobilja and Drenica areas".

361. The notes, in fact, read that "the MUP Staff planned, when ordered to do so, to carry out three action of clearing the terrain from the terrorists …" Everything that Lukić said with regard to the future three actions was based on the facts contained in the orders by the Priština Corps.

[599] 6D1613,para27;Tr.25070/7-25071/16
[600] Djakovic-Tr.26397/3-14
[601] P1990

362. The Chamber failed to differentiate between the joint anti-terrorist actions carried out by the VJ and MUP units, the plans for which were prepared by the Priština Corps, and the MUP police law-enforcement activities. Thus, the Chamber referred[602] to a meeting held on 21 December 1998, whereat Obrad Stevanović, stated that the MUP Staff should plan "broader actions towards terrorist bases". The Chamber further noted that "He stressed, however, that the initiative was to be with the SUPs, who were to 'make preparations and compile recommendations of the Activity Plan'". It was stated at this meeting that "All these plans are to be based on the principles of police action". Therefore, it is clear that the actions in question were not joint actions of the VJ and the MUP.

363. The Chamber incorrectly quoted the minutes of the MUP Staff meeting of 17 February 1999, noting that "'tasks and activities' relating to anti-terrorist actions had been determined at the 'annual meetings'". In fact, the minutes read that such annual meetings "dealt with the work and engagement in the previous year, and established further tasks and activities of the service". The above misquotation led to an erroneous conclusion that the MUP also prepared the plans of "anti-terrorist" activities in early 1999.

364. The Chamber noted[603] that the period between January and the beginning of March 1999 was devoted to planning the major joint VJ/MUP operations that were conducted from the latter part of March 1999, substantiating this by referring to VJ orders, none of which date from the period before March 1999, the earliest one being dated 9 March 1999.[604]

365. There is no evidence that proves that the period from January to the beginning of March 1999 was the period devoted to planning. All of the orders were made by the army[605], and each of them issued tasks to police units, too.

366. There is no evidence in this case that shows that the MUP Staff participated in any manner in the planning and carrying out of the above joint actions[606].

367. In I/1012-I/1022, the Chamber was able to see that engagement of the VJ/MUP units in 1999 was based on and envisaged by the directives of the Chief of the VJ General Staff, and

[602] I/1016
[603] I/1017
[604] P2067
[605] P2067,P2808,4D147,4D332,5D243,5D245
[606] P2808

realized through orders of 3rd Army Commander(Lazarević) and VJ brigade commanders. This is particularly reflected in various orders.[607]

368. Moreover, the Chamber failed to note that the PrK Commander ordered his brigade commanders to establish contact with heads of the SUPs and carry out the planning and implementation of actions upon approval of PrK Command.[608]

369. Following this order, the PrK Command issued nine orders on carrying out joint actions in exactly those locations.[609]

370. The Chamber found the following with respect to these orders[610]: "These joint operations appear to have been conducted in furtherance of the plans elaborated by the MUP and the VJ at the beginning of April 1999". The use of term "appear" in this Paragraph shows that the Chamber had no evidence to substantiate this finding. It does not come as a surprise, as the trial record contains no plan prepared by the MUP.

371. The Chamber accepted[611] the fact that orders within the police were issued by Stevanović, rather than Appellant. This is a correct conclusion, bearing in mind that orders to the PJP units could only be issued by their commander in the field. In this line is testimony of Djakovic, who says that non-member of PJP could not command PJP,[612] which is logical. Sreten Lukic was not a member of PJP.[613] The SUP plans in question were the plans discussed earlier in Paragraph _____ of this Appeal Brief, which dealt with the activities of arresting and detaining terrorists. These plans were not combat activity plans. This Paragraph of the Judgment shows that the MUP Staff did not engage in any planning[614]. Likewise, Paragraph I/1022 indicates that the MUP Staff did not engage in planning any actions.

[607] 3D690;4D332;5D249;P2808;P2072;6D1465;6D1465;P1483;5D175; P1966;P2031;P1967;P2015;P1968;P3049;P1969;P2003;P19970;P1971;P1972;P1973;P1974;P1975;P1976;P1977; 6D136;6D704;6D705;6D709;6D710;6D712;P2011;P2014;P1503;T.17905(Lazarevic)
[608] 5D476
[609] Bajgora,(P1970);Žegovac,(P1971);Drenica,(P1972);Orlane-Zlaš,(P1973);Ćićavica,(P1974);Jezerce,(P1976);Rugovo,(P1878);Bajgora-Bare,(P1975);Zatrić(P1977).
[610] I/1022
[611] I/1021
[612] Djakovic-(T.26522/21-24)
[613] 6D1647;
[614] Mijatovic-(Tr.22204/13-22205/3);Gavranic-(Tr.22654/5-12);Vucurevic-(Tr.23052/2-6);Filic-(Tr.23923/9-14)

O. EXISTENCE OF A J.C.E.

372. The Chamber noted[615] that "[…] the requirement of proof that there was a common plan, design, or purpose to commit a crime or underlying offence is fulfilled where the Prosecution proves that the accused and at least one other person, who may or may not be the physical perpetrator or intermediary perpetrator, came to an express or implied agreement that a particular crime or underlying offence would be committed". Appellant asserts that the above must be proven beyond reasonable doubt. No insider witnesses confirmed anysuch plan, nor did any document prove the existence of such plan. Conversely, insider witnesses testified that there was no such plan, as was the case with Cvetić, whom the Chamber found to be credible and whose testimony was frequently cited.[616]

373. Likewise, there is ample documentary evidence that shows that there was no such plan, and that return of refugees was discussed at the relevant time.[617]

374. With regard to the mental elements referred to above, it is clear Appellant did not voluntarily agree to any common purpose. Quite the contrary, the totality of the evidence shows that Appellant did everything in his power to prevent commission of crimes, bearing in mind that, due to his position, he did not have power to discipline/issue orders to any policeman. Appellant did not share any intent to commit crimes.

375. In stating the elements of forcible displacement as an underlying offence, the Chamber committed an error from the outset, as it started from the premise that there was no other factor in the departure of civilians other than the acts of the FRY/Serbian security forces.

376. Contrary to this position of the Chamber, there is abundant evidence as to the existence of various other significant reasons for departure of civilians. As discussed in more detail in Section H, these reasons include the following:

377. NATO bombing

378. fear of combat activities between the KLA and the state forces

[615] I/101
[616] III/317
[617] 1D32,2D16,2D182,2D217

379. orders/threats/suggestion of the KLA and its allies
380. persons fleeing to escape mobilization by the KLA
381. fear of retribution from the KLA
382. lack of basic necessities like electricity/food
383. artificial humanitarian catastrophe by NATO/KLA.

384. The prosecution witnesses did not truthfully explain their departures, in that all of them stated that they were not afraid of bombs or clashes between forces, and that the KLA was not present in their areas. While the first two could be described as a natural psychological reaction of any person in such circumstances, the last one is of objective nature, and in I/55 the Chamber found that these witnesses did not speak the truth in that regard.

385. The Chamber found[618] that an essential element was the departure of civilians from a territory "with no hope of return". This could not have been the objective of Serbian/FRY forces taking into account actions of these forces were actually aimed at the return of civilians during the conflict.[619]

386. Civilians also left their homes in 1998 due to combat, but almost all of them returned to their homes. Why would anyone assume that they would not return in 1999 too? Taking into account all the circumstances on the ground at that time and considering the evidence as a whole, it can be concluded that there was no intention to make the civilian population leave "with no hope of return".

387. The Chamber erroneously accepted the Prosecution's argument that Appellant implemented the objectives of the JCE through members of the forces of the FRY/Serbia, whom they controlled.[620] It is thus obvious that Appellant must be shown to have exercised authority/control over members of the forces. One of the basic requirements of control over a subordinate person is that his superior is able to issue him an order or instruction, or to punish/discipline him. The record clearly shows that Appellant was neither able to order, nor discipline/punish any MUP/Army personnel.

[618] I/165
[619] 6D770
[620] III/11

388. Appellant emphasizes that based on the above standard, it is unreasonable to hold a policeman responsible for the acts committed by soldiers.[621]

389. Prosecution evidence contradicts the Chamber's finding that there was a JCE designed to permanently expel the Albanians from the territory of Kosovo.

390. General DZ confirmed that such general plan of the FRY/Serbian forces to expel Kosovo Albanians never existed.[622]

391. Prosecution witness Lončar also denied any possibility of the existence of such a plan.[623]

392. Vasiljević, whose testimony was referred to by the Chamber throughout the Judgment, explicitly stated that such a plan never existed.[624]

393. Likewise, Cvetić, quoted favorably throughout the Judgment as a reliable witness, confirmed that there was no such plan.[625]

394. Insider K25 testified that there were no orders issued by the MUP senior officers to commit crimes, and that the police was tasked with protecting civilians from the KLA.[626]

395. Numerous Defense witnesses from various levels/structures denied any possibility of the existence of such plan.[627]

396. Likewise, documentary evidence adduced invalidates the Chamber's finding as to the existence of such a criminal plan.[628]

397. To the contrary of a JCE, there is plenty of evidence which shows that Serbian authorities were trying to help the Albanians and called on them to return to their homes, rather than expelling them from the country.[629]

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[621] III/132
[622] P2508(Para.174)
[623] Loncar-(T.7687/9-16)
[624] Vasiljevic-(T.8840/5-21)
[625] Cvetic-(T.8179/21-8180/3)
[626] K25-(T.4733/4-4738/8)
[627] 6D1213,para.48;6D1631,para.49;6D1533,para.45;T.13856/24(Bulatović)
[628] 6D90;P2561

398. There is evidence that clearly shows that the Albanians left Kosovo-Metohija voluntarily and in accordance with KLA plans. Šaban Fazliu confirmed this when he stated that families of the KLA members were the first to leave.[630] At the beginning of the NATO bombing, KLA issued an order instructing Albanian civilians to leave.[631]

399. Joksić presented lists of Serbian/Albanian villages abandoned under pressure exerted by the KLA.[632]

400. Despite stating the requisite "intent that the victims be displaced permanently"[633] the Chamber applied a lesser standard that Serbs intended to establish continued control over Kosovo.[634] Thus the Chamber erred.

1. INTENT / SIGNIFICANT CONTRIBUTION TOWARDS COMMON PURPOSE.

401. The Chamber found[635] that the common purpose of the JCE was to ensure continued control by the FRY/Serbian authorities over Kosovo, to be achieved by criminal means. The Chamber made the same finding in addressing the mental element, concluding Lukić shared the intent to ensure continued control over Kosovo through the crimes of forcible displacement of the Kosovo Albanian population.[636]

402. Why would FRY/Serbian organs try to do such a thing if the territorial integrity of Serbia has been guaranteed all relevant legal documents, principally by the Constitution of 1974[637], as well as the present Constitution?[638]

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[629] (Anđelković)T.4675/17-25;6D778;(Adamović)T.24958/18-24959/12;6D269;(Vučurević)T.23076/2-21;(Milenković)T.23101/5-11
[630] 6D1629/Para.16-17
[631] 6D76;;Gerxhaliu-(T.2508/9-23);;Kadriu-(T.5125/19-22);;Zyrapi-(T.6245/2-14);;Loncar-(T.7635/20-25);;K14-(T.10975/16-18);;Ciaglinski-(T.6965/13-22);;P680;;Deretic-(T.22751/10-T.22752/25)
[632] 6D1491/Para. 52-53;6D775;6D776
[633] I/167
[634] III/95
[635] III/95
[636] III/1117;III/1130,
[637] P1848(Art.1);P1623

403. Likewise, all the resolutions of the Security Council dealing with the issue of Kosovo guaranteed the territorial integrity of the FRY and Serbia[639] as well as other international groups as follows: Contact Group;[640]Principles of the Contact Group;[641]Milošević–Yeltsin Agreement;[642]Gelbard's statement;[643]Holbrooke–Milošević Agreement;[644]Jovanović–Geremek Agreement;[645]Perišić–Clark Agreement;[646]Kumanovo Agreement.[647]

404. All the above guaranteed the territorial integrity of the FRY/Serbia inclusive of Kosovo-in 1998/1999. Therefore, there is no basis for the Chamber's finding working to ensure territorial integrity was part of a JCE.

405. Based on the foregoing, Appellant could only logically understand, in line with his official duties, that his actions, and those of others, were aimed at enforcing law/order and the Constitutional obligation to defend his country in the state of war. Appellant carried out his professional duties as envisaged by the Law on Criminal Procedure, Law on Ministries[648] and the Law on Internal Affairs of 1991[649].

406. In finding[650] that "the members of the JCE were aware that it was unrealistic to expect to be able to displace each and every Kosovo Albanian from Kosovo, so the common purpose was to displace a number of them sufficient to tip the demographic balance more toward ethnic equality", the Chamber did not indicate that number which would be "sufficient to tip the demographic balance". Moreover, the Chamber failed to note the number of Albanians that were allegedly forcibly displaced by the FRY and Serbian forces, and who actually left because of the KLA combat activities and NATO bombs. The Chamber noted that these were also the reasons for the departure of civilians from Kosovo. The Chamber disregarded its finding that Albanians constituted more than 90% of the population,[651] as well as Mitchell's testimony of 2,000,000 Albanians and

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[638] P855(Art.5);P856
[639] I/318;P456;P433
[640] I/314
[641] I/354
[642] 2D371
[643] 6D1491
[644] 1D204
[645] I/334;P432
[646] I/334;P454
[647] I/192;6D611
[648] 1D456
[649] P1737
[650] III/95
[651] III/92

about 300,000 non-Albanians in Kosovo, and that the departure of about 700,000 Albanians meant that there were still 4.3 times more Albanians populationwise.

407. Numerous witnesses confirmed that non-Albanians also left Kosovo.[652] OSCE Witness Mitchell confirmed that half of the Serbs left Kosovo.[653] According to the Chamber, 1/3 of the Albanians left Kosovo, which ultimately means that the demographic balance was actually tipped to the detriment of Serbs, invalidating the Chamber's finding as to the existence of the common purpose to achieve "ethnic equality".

408. There were both Serbs and Albanians who left Kosovo and went to Central Serbia, which can be seen from the example of the "Niš express" bus that was bombed on its way from Priština to Niš on in May 1999.[654]

a. FORCIBLE DISPLACEMENT

438. The Chamber incorrectly found[655] that the FRY/Serbian delegation, "along with the other interlocutors," contributed to the failure of negotiations. Namely, these negotiations failed after the American representative, without consulting the other members of the Contact Group, changed the terms, which were unacceptable to the Serbian delegation, as well as a Contact Group member.[656]

439. Here the Chamber once again insisted on its theory that the Serbs were actually waiting for the NATO bombing in order to implement their criminal plan. No reasonable trier of fact would have made such an inference.

440. By finding[657] that "some orders may have been issued directing the police to prevent the departure of civilians from Kosovo […] these orders do not create doubt as to the existence of the common purpose", the Chamber disregarded the evidence which showed that such orders were

[652] Mihajlović-(T.24048/25;T.24049/1-14);Odalović-(T.14441/25;T.14442/1-14);Mitchell-(T.565/24-25;T.566/1-7)
[653] T.566/8-20
[654] P2888/pg.132
[655] III/92
[656] T.12368/14-20
[657] III/92

implemented in practice. Both Prosecution[658] and Defense[659] witnesses testified about the return of civilians and the care that was provided for them.

441. The Chamber did not show in any manner that the MUP Staff/Appellant were informed that the police forces were forcibly displacing Albanian civilians.

442. At III/1054 the Chamber erroneously states the the Daily Overviews from 2.4.1999 onward give the data as to persons leaving Kosovo through official border crossings, that is not true, as a review of the same shows that data on the departure of citizens from FRY was present in the February/March overviews.[660]. This data also rebuts the conclusion that departures were due to attacks launched by Serb against civilians after NATO attacked, as these departures predate the NATO attack. The only inferrence proper is that persons left out of fear of impending NATO strikes or KLA.

443. Had it properly assessed testimony by Zyrapi, of the KLA Main Staff, the Chamber would have concluded that the Albanians were displaced by the KLA itself.

444. The Chamber noted[661] "that witnesses who testified that there was no plan (a) had a motive to lie […] were not in a position to know about it; or (c) were merely speculating based upon inadequate information," without referring to any document or other evidence that would support its finding. Specifically, the Chamber failed to consider all the available evidence in the same manner it did in III/110, where the Chamber considered the decisions of the SDC as to "whether there was anything criminal or sinister in them."

445. In contrast to III/92 where the Chamber concluded that the "orders" directing the police to prevent the departure of Albanians from Kosovo were systematically violated, in III/173 dealing with Milutinović's individual responsibility, the Chamber put these instructions into a positive context. Such reasoning shows a double standard.

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[658] Malaj–(T.1352/13-25;T.1353/21-25;T1354/13-25);Sadiku-(P2252/p.4/Para.4)
[659] Živaljević–(6D1606/Paras.38,5D1418),(T.24863/15-17;24864/10-13);Joksić-(6D666),(T.22051/15-25;T.22052/11-14);Ilić-(T.2431/17-25;2432/20-25;2433/1-14);Mihajlović-(6D1530/Paras.36,37);Vojnović(6D1532/Paras.40,43,44,45;6D604),Debeljković-(6D1533/Paras.44,45,46);Paponjak–(6D1603/Paras.54,55,56,88,90,91);Pantić–(6D1604/Paras.35,36,37,38);Adamović–(6D1613/Paras.47,48);Bogunović–(6D1614/Paras.68,69,70,85,86,87);Zlatković–(6D1627/Paras.38,46);Fazliju–(6D1629/Paras.16,17,18,21);6D2–(6D1631/Paras.49,55,56,58,63);Filić–(T.24012/17-25);Bogosavljević–(T.23935/1-15);Damjanac-(T.23755/12-20;23756/1-14;23757/1-2)
[660] 6D1208(24.2.1999)6D1211(3.3.1999),6D1232(24.3.1999),P1099(28.3.1999).
[661] III/93

b. DOUBLE STANDARDS

438. The Chamber's assessment[662] Lazarević's order issued to prevent the departure of civilians, represents a clear example of the double standards in this Judgment. The Chamber correctly found[663] that it was not proven that Lazarević "shared the intent of the joint criminal enterprise members to maintain control over Kosovo through the forcible displacement of Kosovo Albanians." In contrast, in reaching conclusions as to Appellant[664] the Chamber did not apply the same reasoning it applied to Lazarević and drew improper conclusions to the detriment of Appellant.

439. In establishing Lazarević's responsibility, the Chamber found that "In 1999, he did not participate in the meetings held in Belgrade on 4, 16, or 17 May between inter alia Milošević, Milutinović, Pavković, Ojdanić, and Lukić." [665]

440. In the relevant footnote, the Chamber noted that Lazarević did not attend the meetings of 16-17 May 1999, but that he attended the meeting of 4 May 1999.

441. Such inconsistencies of the Chamber represent a miscarriage of justice.

442. The Chamber thus concluded that Lazarevic was distanced from the policy-makers in Belgrade and that thus he was not part of any JCE.

443. The Chamber would have reached the same conclusion with respect to Appellant if it had not erroneously noted his participation in two important meetings with Milošević. The Appeals Chamber should therefore note this error, and based on the same principle applied to Lazarević, establish that the Appellant was not a member of the JCE.

[662] III/918
[663] III/918
[664] III/936–1140
[665] III/918

c. CLEAR PATTERN OF FORCIBLE DISPLACEMENT

438. The Chamber's finding[666] that the direct testimony of witnesses "demonstrates that the Kosovo Albanian population was fleeing from the actions of the forces of the FRY/Serbia, rather than the NATO bombing" is evidently based on the testimony of witnesses who denied that the KLA was present where they resided. Thus, those witnesses could not admit that they left due to clashes between the KLA and the security forces. This inconsistency in the testimony of Albanian witnesses is noted by the Chamber in Paragraph 55of the Judgment. Therefore, the Trial Chamber erred in law in all instances in which it based its findings on such testimony.

439. The Chamber itself noted in II/74 that K90 changed his evidence by stating that they were never ordered to expel civilians[667], which is contradictory to III/43. The situation in Đakovica should also be taken into account, where there were constant clashes during the entire time and where the KLA was attacking from Albania, managed to seize a part of the territory and kept it under control until the end of the war, continuously trying to penetrate deeper into the Yugoslav territory. Therefore, it was reasonable to temporarily remove civilians from such territories.

440. In III/44, the Chamber accepted the testimony of an ordinary soldier who testified about the matters that were allegedly decided at the command level. K90 could only speculate about the decisions made at the command level.

441. The Chamber reaffirmed its finding[668] that "the NATO bombing and the activities of the KLA were factors in the complicated situation on the ground." No reasonable trier of fact could thus conclude they had no effect on population movements.

[666] III/42
[667] T.9273/6-21
[668] III/45,III/46

d. CONTEXT OF EVENTS IN 1998 AND 1999

438. The Chamber noted[669] that the security forces fought against the terrorist in a ruthless manner, which isn't true. On the contrary, terrorists were arrested/processed through regular court procedures.[670] Displaced people returned to their homes as soon as the clashes between the KLA and the security forces ceased.

439. The Chamber based its finding[671] as to the modus operandi of the VJ/MUP on an army document which was never seen by any members of the police, let alone drafted by the MUP. Nothing contained in this document could be "[…] indicative of the approach of the […] MUP" towards the problem of either armed or unarmed Albanians.

440. In discussing Ojdanić's knowledge of the alleged crimes committed by MUP members and paramilitaries, the Chamber found[672] that "[…] Ojdanić received information indicating criminal activities by MUP forces in Kosovo in 1999. […] Gajić reported to the Supreme Command Staff that there had been problems with paramilitary groups operating with the MUP in Kosovo." The Chamber referred to two Briefings.[673]

441. The Chamber misquoted these documents/Gajic. Neither shows "that there had been problems with paramilitary groups operating with the MUP in Kosovo".

442. In 3D721, Gajić reported that "there are problems with paramilitary formation with regard to that territory" and went on to state that "there is information as to the presence of volunteers that arrived in Kosovo without knowledge of the VJ, which is the reserve formation of the MUP".

443. In 3D587, Gajić reported on the situation in Montenegro and problems in the relations between the VJ/(Montenegrin)MUP.

444. The Chamber incorrectly found that there were paramilitary groups within the MUP in Kosovo. The above-mentioned evidence contains no data on criminal activities of the Serbian MUP.

[669] III/90
[670] 6D2035;6D20648;6D2586
[671] III/570,III/542,III/543,III/544,III/557,III/575,III/576,III/579,III/581,III/582,III/583,III/585,III/591, III/592,III/593,III/594
[672] III/579,III/580,III/581
[673] 3D721;3D587

445. The Chamber found[674] that "Six days after Gajić's first report, the issue of paramilitaries re-arose at the briefing of 22 April 1999, where he stated that data was being collected regarding adherence to the laws of war by VJ members, and that paramilitary groups were becoming more active in Kosovo."

446. This finding is utterly wrong. 3D592, to which the Chamber referred, reads that Gajić reported that the "Security situation in the territory of Montenegro is becoming more complex […]". Therefore, the above finding of the Chamber does not correspond with the contents of Gajić's briefing.

447. The Chamber noted[675] that "Upon receiving further reports of criminal activity by paramilitaries in Kosovo […], Ojdanić issued another order, requiring that the commanders of the armies ensure that paramilitaries operating in Kosovo were disarmed and legal measures take against them." None of the documents referenced in support show that they referred to criminal activities by paramilitaries in Kosovo.

448. The same objection applies to Paragraphs[676] contained in Volume III. The issues discussed in these Paragraphs of the Judgment were discussed elsewhere in this Brief.

e. Conclusions on responsibility of Appellant

438. In III/1115 before reaching conclusions on individual responsibility in subsequent Paragraphs, the Chamber stated as follows: "For Lukić's liability to arise pursuant to the first category of the JCE, the evidence must show that he participated in at least one aspect of the common purpose to ensure continued control by the FRY and Serbian authorities over Kosovo, through crimes of forcible displacement, which the Chamber has already found existed." This

[674] 3D721;3D587
[675] III/581
[676] III/609,III/611,III/615,III/616,III/623,III/624,III/625,III/626,(Ojdanić).;II/718,III/719,III/735,III/765,III/766,III/772,III/773,III/774,III/775,III/778,III/779,III/780,III/781,III/782,III/783,III/784,III/785,III/786,III/788,(Pavković);III/808,III/815,III/838,III/848,III/853,III/854,III/855,III/856,III/859,III/885,III/922,III/923,III/924,III/925,III/928,III/932,(Lazarevic

formulation shows that in establishing criminal responsibility of Appellent the Chamber started from erroneous postulates, which inevitably led to erroneous conclusions.

439. The Chamber further noted that "As for the necessary mental element, it must be proved that Lukić participated voluntarily […] and that he shared the intent with other members […] to commit the crime or underlying offence […]" In this regard, the Trial Chamber has not established which act or conduct of Appellant proves that he voluntarily:

- went to Kosovo;
- identified and/or accepted the authority and tasks that clearly comprised a common criminal purpose to forcibly displace Albanians.

440. Appelant was obliged by law to comply with the decision of the RJB Chief/Minister and go to Kosovo in the capacity as the Head of Staff. The decision deploying Appellant to Kosovo, as other such decisions contains the clause that he deployment was pursuant to Article 72 of the Law on Internal Affairs, whichprovided for deployment of a MUP employee without his/her consent.

441. With regard to the appointment of high-level officials in Kosovo, the Chamber concluded that there was evidence that high-level officials were carefully positioned as the crisis in Kosovo escalated, though it further found that Appellant did not fit that pattern[677]. The Chamber erred when it concluded that Lukić had participated in the JCE.

442. Moreover, the Chamber has not found that the decisions contained any elements of preparation or commission of criminal offences. Therefore, there was nothing illegal in his deployment to Kosovo.

443. The Chamber erred when it transformed Appellant's engagement in the capacity as the Head of MUP Staff into his participation in a JCE. The Chamber was able to learn that the acts and activities of the KLA were of a terrorist nature, and that the KLA was considered a terrorist organization by NATO.[678] Furthermore, the activities of the KLA comprised criminal conduct under law. Thus, it was legitimate for a professional policeman to be so deployed.

[677] III/85
[678] Naumann-(T.6996/14-22)

444. The Chamber stated[679] that it provided specific references in relation to issues addressed and noted that it based its findings on all the relevant evidence. Conversely, all the evidence presented in this case, if properly assessed, shows that Appellant in no manner participated in any criminal plan.

445. The Chamber's conclusion that "Lukić worked closely with the leadership of the VJ, in particular with the Commander of the Priština Corps, and then of the 3rd Army, Nebojša Pavković, co-ordinating various joint VJ and MUP 'anti-terrorist' actions" does not correspond with the facts of this case, and is contradictory to the evidence presented in this case, and even to the conclusions made by this same Chamber.

446. Firstly, the above conclusion is inconsistent with the Chamber's conclusion regarding Pavkovic's responsibility,[680] where it, *inter alia*, stated that Pavković, "[a]s a member of the Joint Command in 1998, […] worked closely with the MUP leadership, in particular Sreten Lukić." In this conclusion the Chamber clearly limited the relevant period to 1998, when Pavković was the PrK Commander. This shows that the contact with Appellantwas established at the level of PrK Commander, rather than the level of 3rd Army Commander, as otherwise, as suggested by the conclusion of the Chamber, Appellant would also have closely cooperated with Samardžić in 1998, since Samardžić was the 3rd Army Commander at that time.

447. Moreover, the Chamber found that Lazarević was the PrK Commander in 1999, and that communication between the MUP and the VJ, was carried out with the PrK organs, not the 3rd Army organs, which means that Appellant's communication with the VJ, if any, was directly with Lazarević.

448. The Chamber's finding that Appellant coordinated various joint anti-terrorist actions with Pavković in 1999 is contradictory to its numerous findings that this coordination was carried out between the PrK Command and the MUP Staff.

449. Thus, in determining Lazarević's responsibility[681] with respect to the issue of planning/carrying out joint anti-terrorist actions in 1999, the Chamber concluded:

– the PrK Command was the source of Joint Command Orders;

[679] III/1116
[680] III/773
[681] III/825,III/826,III827,III/828

- Lazarević took responsibility for the issuance of these orders;
- Lazarević and the PrK Command significantly participated in planning/execution of the joint operations conducted from March-June 1999;
- the PrK Command coordinated these operations with the MUP.

450. As seen from the above, the Chamber itself considered the PrK Command the principal agent of these activities, including Lazarević's responsibility for the issuance of orders bearing the heading of "Joint Command", which clearly negates the conclusion that in 1999 Appellant closely cooperated with Pavković.

451. When discussing Appellant's participation in his official capacity at several high-level meetings with FRY/Serbian authorities, whereat the Plan for Combating Terrorism was addressed, the Chamber ignored its own conclusions that he was not involved in the actual formulation of the Plan based on which anti-terrorist actions were conducted in 1998[682], as well as that at the meeting during which the results of this Plan were analyzed[683], following Pavković's presentation about the successful execution of the Plan, "Lukić briefed the participants about the positioning of MUP forces in Kosovo, in light of the Holbrooke-Milošević Agreement". The Chamber itself denied that Lukic's role at this meeting was significant.[684]

452. The above clearly shows that Appellant played no role in preparation and production of the Plan.

453. The Chamber was presented with ample evidence showing that Appellant did not have either *de jure* or *de facto* authority over the MUP units in Kosovo. Briefly put, Appellant:

- was not in the position to decide which unit would come to Kosovo, and where/when;
- was not in the position to appoint anyone;
- was not in the position to relieve anyone of duty, or punish any MUP member;
- was not in the position to order that a criminal/disciplinary action be instituted.

454. The Chamber concluded: "The information received by Lukić before and during the NATO air campaign is vital evidence for the determination of his responsibility, because knowledge of the commission of crimes by MUP subordinates and VJ members from mid-1998 until the end of the

[682] III/1021
[683] P2166
[684] III/1021

NATO campaign in 1999, combined with his continuing work to ensure co-operation of the joint MUP/VJ operations despite the knowledge of such crimes, is indicative of his intent that those crimes occur."[685]

455. This categorized all information received by Lukić as information on crimes, which does not correspond with the truth.

456. Moreover, the Chamber failed to consider that along with being informed on the occurrence of a registered crime, Appellant was informed about the measures taken by the competent law-enforcement authorities; measures were clearly defined by the laws/regulations and implementation thereof was entrusted to the competent bodies (prosecutor's offices, investigative judges, etc.). Appellant was also informed on the measures taken to verify alleged crimes reported by journalists/representatives of various organizations. An example of the above is Gornje Obrinje.[686]

457. Notwithstanding his limited authority, Lukić urged police to energetically fight all forms of crime no matter perpetrator identity.[687] The record reflects evidence indicating that the information received was often unreliable/unverified, and that quite often such information was propaganda.

458. The Chamber applied double standards when drawing conclusions on responsibility of different accused.

459. Thus, discussing Milutinović,"In addition, the evidence outlined above relating to Milutinović having notice of crimes, while at the same time being told by those with official responsibilities therefor that the allegations were either propaganda or were being dealt with, does not […] convince the Chamber to infer that he had the intent to displace Kosovo Albanians from Kosovo."[688]

460. The Chamber failed to apply the same approach in assessing Appellant's responsibility ignoring he was informed that all legally required measures had been undertaken by the competent authorities, or that certain incidents were not deemed criminal offences by prosecutors/judges, or that adequate criminal actions had been instituted against perpetrators, or that incidents were identified as propaganda.

[685] III/1119
[686] P1468(pg.134)
[687] 6D765;6D769
[688] III/276

461. Instead, the Chamber concluded Appellant was criminally responsible and intended crimes to occur, Despite finding Appellant issued orders demanding that crimes be prevented and perpetrators punished.[689]

462. It concluded[690] that "Lukić, despite his knowledge of the events on the ground, nevertheless continued to order the MUP to engage in joint operations with the VJ shows that his orders were not genuine, and thus do not create any doubt as to his intent to further the objectives of the joint criminal enterprise."

463. However, on the same topic it concluded "Lazarević also took a number of steps in relation to the criminal offences of members of the VJ/MUP in Kosovo, including in some cases issuing written orders to prevent the civilian population from being displaced and requiring that misconduct towards civilians be severely punished. These orders suggest that, although he knew that the VJ was involved in the widespread movement of the Kosovo Albanian population, he took some steps to ameliorate the circumstances in which this occurred".[691] This disparate treatment depending on the accused, is improper.

464. Finding[692] that "Lukić was aware that crimes were committed in 1998 by various forces, including the PJP and the SAJ, which were under his control while deployed in Kosovo", the Chamber referred to the following evidence: Adamović's statement[693]; Minutes of the MUP Staff meeting held on 4 April 1999[694]; and memorandum by the MUP Staff.[695] Although this finding related to 1998, the Chamber referenced evidence dating from 1999 that does not substantiate the conclusions.

465. Moreover, the Chamber itself noted[696] that 6D874 was signed by Dragan Ilić, rather than Appellant. The Chamber's position is untenable, as it would require that Appellant was able to control dispatches that were by any MUP officer from a building he was not based in.

[689] 6D765;6D769
[690] III/1129
[691] III/918
[692] III/1120
[693] 6D1613,para.50
[694] P1989,p.4
[695] 6D874
[696] III/1005

466. As regards the Chamber's reference to the meeting held on 4 April 1999,[697] neither this document nor Appellant's words recorded therein mention/imply any crimes committed in 1998.

467. Finally, the paragraph of Adamović's statement referenced by the Chamber makes no mention of crimes committed in 1998.

468. The Chamber further concluded that Appellant continued to fulfill his tasks as the MUP Staff Head, which included, planning "anti-terrorist" actions in cooperation with the VJ and issuing corresponding instructions and orders to the SUPs/PJP/SAJ. In support of this conclusion the minutes of meetings held at the MUP Staff are referenced.[698]

469. This is yet another instance of misquotation of evidence. None of the above minutes show that the MUP Staff planned any anti-terrorist actions.

470. The Chamber concluded[699] that in 1998 Appellant was actively involved in the secret process of arming of the non-Albanian population, under the auspices of the RPOs, and the disarming of the Kosovo Albanians despite his awareness of the commission of crimes. In support of this conclusion, the Chamber referenced the minutes of the MUP Staff meeting[700] and document P2804.

471. Neither of the referenced indicates any crime committed by the RPOs. Furthermore, neither shows that Lukić participated in the secret process of arming of the non-Albanian population. It should be noted that the Chamber did not conclude that such arming was illegal.[701]

472. As to disarming of Albanians, this process involved "voluntary" surrender of weapons illegally possessed by Albanians forced by the KLA to keep them. Such voluntary surrender of weapons entailed amnesty from criminal prosecution. This process was monitored and approved of by the international community at the time it was undertaken, and by way of example, Sean Byrnes, Head of USKDOM sought a list of villages that had surrendered weapons.[702]

[697] P1989
[698] P3130,P3122,P1991
[699] III/1121
[700] P1989,p.3
[701] III/56
[702] P1468/p.43

473. The Chamber misrepresented facts when it noted the secret arming of the non-Albanian population was conducted under the auspices of the RPOs. The Chamber was presented with ample evidence showing that RPOs were "formed" by the reserve formation of VJ, military territorial detachments and the reserves of the Ministry of Defense, as well as of the reserves of the MUP that were issued weapons as per their wartime posting within the MUP units.

474. Likewise, there is no evidence that Appellant took part in any secret process of arming of the reserve police. The issuance of weapons was conducted by SUPs in accordance with regular procedures and pursuant to the Instruction issued by Minister Stojilkovic.[703]

475. The Chamber's conclusion[704] that "[…]Lukić directed the participants at a meeting in the MUP Staff to retain volunteers, is based only on Cvetić. This error is discussed in section D herein.

476. When concluding[705] "[…]Lukić continued to receive information that crimes were being committed by the MUP and VJ members against Kosovo Albanian civilians in Kosovo", the Chamber failed to note that Appellant was also being informed about the measures taken by competent authorities with regard to such crimes, and none were crimes alleged in the Indictment.

477. Noting that "these reports" contained information on criminal offences, the Chamber misrepresented the facts, as the summaries reflected the measures taken by the police/judiciary in accordance with relevant laws. Again, Milutinovic was acquitted based under the same extent of knowledge standard.

478. Police took measures against persons of all ethniticies for whome there was reasonable suspicion that they committed crimes. As regards VJ/MUP members against whom police measures were taken, the only conclusion available to Lukić based on the above-mentioned summaries/overviews was that the police was apprehending every individual suspected of committing a crime, regardless of whether the individual was policeman/soldier/civilian, and regardless of ethnicity.

[703] Cvetić–(T.8169/21-8170/4)
[704] III/1122
[705] III/1123

479. Through such summaries/overviews, Appellantwas informed that the police in Kosovo apprehended a large number of individuals who committed criminal offences against Kosovo Albanians, i.e. that the police was acting as required by law. [706]

480. Moreover, the Chamber noted that members of RPOs were among perpetrators, which is not reflected in the evidence referred to in support.

481. The Chamber abused the fact Appellant was aware of the discovery of bodies in Izbica/Pusto Selo, as it implied those had at that time been qualified as a crime by the prosecutor/investigative judge. This is particularly relevant to Pusto Selo, where the competent authorities concluded that the the persons been killed in combat. Thus this could not be considered knowledge of a crime.

482. As regards Izbica, Appellant was informed that all legally prescribed measures had also been taken in this case upon the order of the investigative judge. Appellant was informed that the VJ had undertaken all necessary measures to discover the perpetrators related to the incident in Izbica. Due to his limited authority Appellant was not in the position to take any further steps with regard to Izbica, especially since the matter was within the competence of military/civil investigative judges/prosecutors.

483. The Chamber concluded[707] that "Lukić knew that large numbers of civilians were leaving Kosovo in 1999, and that some PJP commanders were 'tolerating massive-scale departures of civilian population'". In support of this conclusion, the Chamber referenced 10 summaries/. None of these reflect that civilians were leaving Kosovo because the PJP commanders tolerated massive-scale departures. As these summaries/overviews do not provide the reason for massive-scale departures of civilian population, the above conclusion of the Chamber is incorrect and does not correspond with the evidence.

484. When concluding that the PJP commanders were "tolerating" massive-scale departures, the Chamber misinterpreted 6D778. This dispatch does not indicate that PJP commanders "were tolerating" anything, nor does it reflect that there was "forcible displacement of civilians". The document stressed the need to prevent massive-scale departures of civilian population regardless of

[706] 6D1631/84;;6D614/10/23;;6D614/10/24;;6D614/143/73;;6D1542;;
[707] III/1124

the reasons behind such departures. It further reflects that the measure included all civilians, not only Kosovo Albanians. The Chamber heard the evidence that Serbs were also departing.[708]

485. The Chamber noted[709] the issue of serious crimes being committed by VJ/MUP members was also discussed at a meeting with the FRY/Serbian leadership on 4 May 1999, which Lukić attended. This is discussed more in Section P.

486. It is incorrect that the exhibit[710] reads "information was presented that the security forces of the MUP and the VJ had dealt with numerous cases […]", as MUP is not mentioned in this context. This is yet another example of error.

487. With regard to the measures taken by the military judicial organs, Appellant was informed at this meeting that these organs undertook all necessary measures against the perpetrators of crimes. Appellant was not in position to verify this information. Again the Chamber did not impose upon Milutinovic any such duty to verify, acquitting him under the same circumstances.

488. The Chamber incorrectly noted[711] that a meeting held on 7 May 1999 was the meeting of the MUP Staff. P1996 only shows that "the meeting was held at the MUP Staff". The fact that it was not a MUP Staff meeting, but a meeting held at the premises of the Staff is also reflected by the attendants, which included Assistant Minister, Stevanović; the Chief of Criminalistic Police Administration, Dragan Ilić; Vladimir Aleksić; Siniša Španović. None of these officials were members of the Staff.

489. The Chamber erroneously concluded that "[…] measures for the prevention of crimes and means to protect the civilian population were addressed once again" at this meeting. The minutes of this meeting reflect that several issues were addressed thereat, including defense of the country against aggression/anti-terrorist activities/establishing general security, etc., but not the above measures mentioned by the Chamber.

490. Šainović's exposé was a political speech. Once the senior officers addressed by Šainović discovered crimes and undertook measures against perpetrators, they were supposed to notify

[708] Mitchel-(T.566/8-20)
[709] III/1125
[710] P1696
[711] III/1126

Appellant of such measures. The Chamber could clearly see from the above that Appellant's role was only to receive information and nothing else.

491. Regarding the Chamber's finding that "Lukić demonstrated knowledge of the situation on the ground, by stating that the number of 27 murder investigations was 'not realistic' and that there was information available that a greater number of criminal investigations had been conducted and that the number of criminal reports was greater", it should be noted that Appellant had heard about the number of 27 murder investigations from the discussions by the SUP Chiefs, including the number of criminal investigations/reports, which why he pointed out the statistical discrepancies.

492. At this meeting, Chief of Criminalistic Police Ilić notified the heads of the SUPs about further tasks within the competence of the criminalistic police (criminal investigations/terrain restoration/criminal reports). Ilic stated he had prepared a plan for terrain restoration, which was distributed to all criminalistic police departments of the Kosovo SUPs.[712]

493. The above clearly shows Appellant did not represent any "bridge" between the SUP Chiefs in Kosovo and the policy/plans set in Belgrade, because only three days earlier Appellant had been at a meeting in Belgrade. If it had been the case that he was the "bridge", he would have relayed the above-mentioned tasks, rather then Ilic.

494. The Chamber noted[713] that "On 11 May 1999 an additional meeting was held at the MUP Staff, only this time the attendees were the commanders of the MUP forces in Kosovo." However, fails to note that the meeting was also attended by Lieutenant-General Obrad Stevanović. The tasks concerning a number of issues were issues by Stevanović himself, including the order that "Departures of civilians should be prevented to the greatest extent possible"[714]Lukić only repeated what the Assistant Minister ordered.

495. Besides Stefanović, testified others, not Appellant were involved in coordinating and planning of actions, i.e. determining which MUP units would take part in a joint action.[715]

496. Police units which took part in joint operations with the VJ were tasked by RJB Chief Đorđević, or, on his behalf, by Stevanović.

[712] P1996(p.18-19)
[713] III/1127
[714] P1993(p.6.item3)
[715] T.21803/10-14

497. Even the Chamber[716] concedes Appellant was not a person in charge of approving the engagement of MUP forces.

498. The Chamber has not referred to any evidence proving"Lukić had the intent to forcibly displace the Kosovo Albanian population", as inferred by it[717]. This inference is not substantiated by any evidence presented.

499. Furthermore, the Chamber concluded that Appellant shared intent with Milošević/Pavković/Šainović. However, it did not refer to any evidence that would confirm, or even "suggest" that Appellant had knowledge that Milošević/Pavković/Šainović shared such intent, if any. This generalized conclusion was readily used by the Chamber for drawing additional conclusion in the following paragraph.

500. The Chamber concluded[718] that "[…] it is plain from the preceding paragraphs that he [Lukić] did contribute [to the joint criminal enterprise] and that that contribution was significant." This conclusion has no support in the evidence and should therefore be rejected as unsubstantiated.

501. The Chamber further concluded[719] "Lukić was the *de facto* commander over MUP forces deployed in Kosovo […]". This clearly shows the extent to which the Chamber failed to comprehend the organizational structure of the Serbian MUP. No evidence presented in this case implies the existence of a *de jure* or *de facto* "commander over MUP forces in Kosovo".

502. Nonetheless, the above is in contradiction with the conclusion[720] "As the Head of the MUP Staff for Kosovo, Lukić had *de jure* powers over the Kosovo SUPs, OUPs, regular police stations, as well as over the RJB units participating in combat activities, such as the PJP and the SAJ".

503. Thus, without referring to any additional evidence, the Chamber converted its conclusion regarding the powers of Appelant into a conclusion that he was a "commander".

504. Moreover, such a conclusion is clearly contradictory to the findings that "Lukić did not replace Stevanović, Đorđević, or Ilić, the heads of the SUPs, or the commanders of PJP or SAJ

[716] III/1051
[717] III/1130
[718] III/1131
[719] III/1131
[720] III/1118

units, […]"[721] and "At all times relevant to the Indictment the Head of the RJB was Lieutenant General Vlastimir Đorđević."[722] Further, that "Lieutenant General Obrad Stevanović served as the overall head of the PJP"[723], and "During the time relevant to the Indictment the SAJ commander was Živko Trajković, and the deputy commander was Zoran Simatović (a.k.a. Tutinac)". [724] Furthermore, "The Republic of Serbia, including Kosovo, was divided into geographical areas, each with its own Secretariat of the Interior ("SUP") managed by a "chief of secretariat".[725]

505. The Chamber has presented 3 contradictory theories of Appellant's role.

506. When concluding that Appellant was the bridge between individuals that prepared plans for the police, such as Milošević/Stojiljković/Đorđević, and the police in Kosovo, the Chamber ignored ample evidence showing that in 1998/1999 the police in Kosovo carried out anti-terrorist actions exclusively pursuant to the plans prepared by the PrK. Thus, there was no need for a "bridge" of any kind.

507. In 1999, there was no plan executing joint actions of the VJ/MUP that had been prepared and adopted in Belgrade. All joint actions were carried out pursuant to the Directive issued by Ojdanić; the role of the police in these actions was defined through the 3rd Army Commander and PrK Commander, the latter being the one who prepared specific orders for each joint anti-terrorist action of the VJ/MUP.

508. The Chamber concluded[726] that Appellant "[…] was directly involved in the planning process and in ensuring that day-to-day operations were conducted by the various MUP forces in accordance with those plans." This conclusion is not supported by evidence.

509. Neither Lazarević, nor Đaković(1998)/Stefanovic(1999) as the main PrK officer in charge of planning anti-terrorist actions, identified Appellant as a participant in the planning of actions.

510. None of the MUP witnesses named Appellant as a person who participated in approving operations carried out by various MUP forces.

[721] III/1051
[722] I/659
[723] I/666
[724] I/675
[725] I/660
[726] III/1131

511. Therefore, the conclusion that "Lukić was an important member of this JCE" is without basis.

512. The Chamber heard testimony that there were two Assistant Ministers in Kosovo, Đorđević and Stevanović, who were above Appellant in the MUP.[727]

513. Witness Mijatović testified that after the departure of KVM (20 March 1999), the Assistant Minister(PJP-Commander) Stevanović, arrived in Kosovo and stayed there until the end of war.[728] This fact was confirmed by Lukić in his interview with the Prosecution, as well as by Ilić.[729]

514. Again in III/1132, the Chamber concluded that "Lukić was Pavković's counterpart with respect to the VJ […]". This conclusion is absolutely incorrect, as discussed throughout this brief.

515. The extent to which it was inappropriate to equate the role of Pavković as the 3rd Army Commander and Appellant as the Head of the MUP Staff is reflected in the statement given by Đaković, who claimed with respect to Pavković that "He also travelled to other parts of the 3rd Army zone of responsibility, where there were 180,000 people under the command of Pavković".[730] On the other hand, Appellant was directly in charge of the MUP Staff that numbered 8 individuals, whereas the total number of the MUP personnel in Kosovo amounted to about 15,000, including administrative/clerical personnel.

516. The Chamber had more reason to compare Pavković with Stevanović or Đorđević, since it found[731] that "Pavković […] attended a meeting there with Stevanović and Đorđević from the MUP […]".

517. The fact that Appellant was not present at that meeting clearly speaks of his minimal authority and importance.

518. The Chamber found with respect to Appellant that he was not promoted as rapidly as individuals who were close to Milošević[732]. It was only after the fall of Milošević and the

[727] III/917
[728]
[729] T.2441/12-25
[730] P2943(para.3)
[731] III/775
[732] III/85

establishment of democratic government in January 2001 that Appellant was positioned as Assistant Minister and RJB Chief.

519. The Chamber did not explain how it came to the conclusion[733] crimes of both the VJ/MUP were imputable to Appellant(ie. no effective control for VJ personnel). What is more, there is no evidence showing that Appellant knew members of the VJ committed crimes from the Indictment. The conclusion by the Chamber that the murders committed by the VJ are imputable to Lukić is absurd, since the Chamber correctly found Lazarević as the Commander of the PrK was not responsible for these murders.[734]

520. The Chamber noted[735] that "[…] Lukić's detailed knowledge of events on the ground in Kosovo in 1998/1999 put him on notice that murders would be committed by the VJMUP as a result of the displacements taking place in 1999" and in support of this conclusion it referred to the incident at Gornje Obrinje in 1998 and a memorandum of 6 May 1999 sent by Mijatović, not Lukić, as a letter accompanying the *Politika* article dealing with the public announcement on the meeting with FRY President Milošević.

521. As regards the incident at Gornje Obrinje, Kickert confirmed that the competent authorities tried on several occasions to conduct an on-site investigation, but were prevented from doing so by the KLA. The above was also confirmed by Investigative Judge Marinković.[736]

522. As regards the memorandum of 6 May 1999, this can in no manner be associated with any count of the Indictment, as the *Politika* article does not imply that the killings were committed by members of the VJ participating in joint anti-terrorist actions with MUP units. This neither shows that Lukić was put on notice that any murders would occur, nor that he willingly took the risk that they would be committed.

523. Appellant certainly could not have known/willingly accepted the risk FRY/Serbian forces would destroy four of several thousand mosques in Kosovo.[737] Such incidents could not be foreseeable, especially if one takes into account the fact that during the war when Lukić received

[733] I/1132
[734] III/928
[735] III/1134
[736] Maissoneuve-(T.11227/1-2);Kickert-(T.11279/10-16);Zivanović-(T.20468/23-25;T.20492/2-9);Mijatović-(T22455/10-24);Marinković-(T.23525/15–T.23528/12);Clark-(6D106/page.7/Paragraph.4);6D197
[737] III/1136

information about destruction of any religious/cultural monuments, he was notified that such destruction was a result of the NATO bombing.[738]

524. Application of double standards on the part of the Chamber is reflected in the destruction of the mosque in Celina, which the Chamber concluded was foreseeable to Appellant, whereas it correctly found that Lazarević could not foresee this incident even though Lazarevic issued the order for conducting the relevant joint anti-terrorist action. The same is true of the mosque in Vlaštica, where there were no police at all.

2. IDENTITY DOCUMENTS

525. The Chamber concluded[739] that "the confiscation and destruction of identity documents is some of the strongest evidence in the case going to show that the events of spring 1999 in Kosovo were part of a common purpose." However, it did not point to any ultimate consequence for any Kosovo Albanian. Arguendo if the documents had been confiscated, Kosovo Albanians would not have suffered any consequences as a result. Indeed, the Chamber itself drew the same conclusion[740] "the Chamber is satisfied that the Kosovo Albanian citizens of the FRY whose identity documents were seized did not lose their citizenship as a result." And had no "evidence of Kosovo Albanians encountering problems on their return to Kosovo because of the loss of the identity documents."

526. The Chamber's conclusion that the majority of witnesses testified that identity documents were confiscated at the border[741] and that "this was a common practice, carried out primarily by members of police" [742] is not supportable.

[738] 6D1249(p.2)
[739] III/40
[740] III/172
[741] III/32
[742] III/38

527. An ID card is a document which proves the identity of a person within the state.[743] A lost/destroyed ID card could be easily re-issued.[744] Everyone were aware of this. Hence, the Chamber's conclusion that the confiscation of identity documents was part of a common criminal purpose is illogical.

528. The Chamber noted[745] that "twenty-six Kosovo Albanian witnesses gave evidence of identity document confiscation along the Kosovo-Albanian border or as part of a convoy to the border." The Appellant emphasized that a total of 62 Kosovo Albanians testified in this case, including three statements that were admitted into evidence. This clearly shows that even if the documents had been seized, it does not imply that there was a common criminal purpose.

529. One of the witnesses(Sadiku) stated that her documents were taken at the border. The evidence from the Government of Serbia[746] was that this witness was not registered as having been ever issued any passports, ID Cards or other identity documents, which implies that her documents could not have been seized in 1999.

530. It has been shown that, nine years after the state authorities had withdrawn from Kosovo, this person was still registered in the birth records, which means that the records kept by Serbian authorities about citizens of Serbia/Yugoslavia were properly updated. Furthermore, it clearly shows that the loss of documents did not in any way imply loss of the data about a citizen.

531. None of the witnesses at Đeneral Janković/Globočica border-crossings stated that his/her documents were confiscated. Nazlie Bala was the only witness who stated that, even though her documents were not seized, she allegedly saw that documents were taken from male Kosovo Albanians.

532. Appellant reiterates that evidence[747] shows that a total of 174,473 persons left the country through the above mentioned border-crossings. It is possible that the documents issued by the KLA were confiscated, as these documents were invalid.[748] This evidence shows that in 1998 the KLA destroyed documents issued by the state authorities, and issued its own/illegal documents.

[743] P1832(Art.1);6D668(p.74)
[744] 1D776
[745] III/32
[746] 6D1324;(T.23355/18-25;T.23356/1-12)
[747] P1693
[748] 6D665

533. The fact that none of the Albanian witnesses stated that they were searched by police members in cases when they said they did not have documents further confirms that confiscation/destruction of identity documents were not a part of any plan.[749]

534. ID cards are not used as documents for crossing the state border, and therefore their confiscation makes no sense. Passport[750] is the only document used for crossing the state border.[751] All citizens could return to the country even without having passports,[752] and certainly without ID card.[753]

535. The Chamber failed to consider the Law on Yugoslav Citizenship,[754] which in Article 3 stipulates that the Yugoslav citizenship ceases by release, renunciation and international agreements. Thus, any confiscation/destruction of documents would not result in the loss the status of a Yugoslav citizen.

536. In contrast, the Chamber noted[755] of the Judgment that "at the Vrbnica(Morina) border crossing, witnesses reported the burning of Kosovo Albanian identity documents after their confiscation by the forces of the FRY and Serbia," misinterpreting witness statement by Fondaj[756], in which she stated the following about how her group was treated by the police: "They felt sorry for us and said goodbye. Police officers asked if it was necessary to search us and if we had ID cards with us. The tractor driver Fondaj said that everything was all right, and a police officer said that he felt sorry for us and let us go." This quotation shows that the Chamber misinterpreted this witness by concluding that her documents were confiscated/burned.

537. The Chamber concluded[757] that the majority of witnesses testified that their identity documents were confiscated at the border by the FRY/Serbian forces. The Chamber further concluded[758] that the Appellant, had no control over border police stations. The question arises how Appellant could thus provide significant contribution to the JCE through the

[749] Hoxha-(T.1563/17-1564/9)
[750] P1833/Article-2;6D668/p.73
[751] Dujkovic-(T.23366/1-12);Vucurevic-(T.23110/7-19);Ognjenovic-(T.22896/10-20)
[752] P1833/Paragraph-3
[753] 6D808
[754] 1D226
[755] III/35
[756] P2283(p.5)
[757] III/32
[758] III/1075

confiscation/destruction of documents, which the Chamber found to be "some of the strongest evidence" of the existence of a common purpose.[759]

538. It should be noted that there is no evidence Appellant ever issued any order/instruction/recommendation or expressed support to the confiscation/destruction of documents.

539. On the contrary, as the Chief of the Administration for Border Crossing Affairs, in the period after July 1999, Appellant made efforts to ensure that all Kosovo Albanians were issued identity documents in Priština, as well as in other places in Serbia.[760]

3. ARMING/DISARMING OF THE KOSOVO POPULATION

540. The Chamber noted[761] that it was "unable to conclude whether such arming in general was illegal *per se*, but considers that the primary issue in relation to process of arming/disarming is whether it was done upon ethnic lines."

541. The KLA attacked/killed police officers/soldiers/civilians[762], but also Kosovo Albanians that were loyal to the state.[763] The Police was entitled to call upon its reserves to meet this threat. Likewise the State was entitled to call up its reserves to face the threat of war

542. Indeed, the KLA was increasing the intensity of its terrorist actions (murders,abductions,inflicting of physical injuries), at the time when the issuance of arms was conducted,(i.e.1.1.1998-7.7.1998). During this period there were 387 recorded attacks against civilians[764] and 255 attacks against police officers[765].

[759] III/40
[760] 6D1603/para.100;;Dujkovic-(T.23366/13-T.23368/4)
[761] III/56
[762] 3D588;3D345
[763] 3D102;3D586
[764] 1D726
[765] 1D725

543. As a result of these attacks, 52 civilians were killed, 30 of them being Albanians – loyal citizens of the Republic of Serbia.[766] Besides, 105 civilians were abducted – including 27 Albanians. There were 16 women and 5 minors among the abductees.[767]

544. In view of the threat by NATO, it was decided at the sessions of the SDC that the possible attack must be met with resistance[768]

545. The Ministry of Defense – the Priština Defense Administration took the necessary measures through the order of 21 May 1998[769], whereby it ordered the preparation of lists for arming the portion of population without existing wartime posting in the VJ, military territorial departments, MUP, and units of the Ministry of Defense "due to increased frequency of Šiptar terrorist attacks against local authorities, Serbs, Montenegrins and citizens of other ethnicities who are loyal to the RS and FRY."

546. The number of about 6,000 armed non-Albanians[770] without wartime assignments at the beginning of war in 1999 represented the local population referred to in Article 61 of P985, who were organized into guards/conducted patrols/secured facilities. They were commanded by the organ responsible for civil defense and protection, i.e. the organ of the Ministry of Defense("MoD").[771] In addition the civil defense and protection units, which comprised 6,000 members, were also subordinated to the MoD.[772]

547. VJ also took similar measures in June and organized the issuance of arms to military conscripts (reservists).[773]

548. Faced with an increasing KLA threat, the MUP additionally engaged members of the reserve force in accordance with the Law on Defense,[774] the Law on Internal Affairs,[775]instruction

[766] 1D721
[767] 1D708
[768] P1574;P1575/p.1;P1575/p.9
[769] P1259/Items:1,2,3,4,5,6
[770] I/788
[771] P985(Art.63/para.1)
[772] I/763
[773] P 1415
[774] P985(Art.18/Para.1)
[775] P1737(Art.28)

of Minister Stojilkovic in June 1998.[776] The engagement of the reserve force was also done before 1998. The engagement of the reserve force is done pursuant to the order issued by the Minister.[777]

549. In assigning wartime posts to military conscripts within the MUP organs, the Priština Military District, which was in charge for keeping records of all military conscripts, would sometimes leave this task to the MUP organs.[778] This document makes no mention of the RPOs, nor does the Military District Commander refer to any transgression of powers on the part of Appellant. Based on this misinterpretation of facts, the Chamber drew an erroneous conclusion in I/779.

550. The MoD took measures with regard to organizing protection of civilian population[779] since 21 May 1998, while in late June, General Samardžić ordered the PrK Command to also organize defense of inhabited areas by engaging military conscripts.[780]

551. Both of the structures, including a certain number of MUP reservists engaged pursuant to the Plan for Combating Terrorism, were colloquially referred to as reserve police squads/detachments ("RPOs").[781]

552. Therefore, all members, whether engaged by the MoD/VJ/MUP were basically the residents of Kosovo and they were organized in order to protect themselves from the KLA attacks based on their residence. The Chamber erroneously identified all these structures as "armed Serbs", and found[782] that they numbered approximately 60,000. As reflected in P2803, there was no differentiation between the VJ and the MoD; this can also be seen from P1114, which refers only to MUP members and VJ reservists.

553. In 1998 and 1999, there were 1463 inhabited places in Kosovo and Metohija. The evidence shows that there were 255 RPO.[783] These facts explicitly undermine the Chamber's conclusion that the citizens who were organized to defend their places of residence were organized to commit crimes against Albanians.

[776] Cvetić– (.8169/21-8170/4)
[777] P1737/Article28
[778] 4D521
[779] P1259
[780] P1415;P931
[781] P2166;P1114;P2804
[782] I/764
[783] P2803

554. It should also be noted that a significant number of RPO comprised no more than five members[784]. There is no evidence that any RPO member committed any crime.[785]

555. By March 1999, members of the RPOs responded to the mobilization and ceased to exist. In the meeting held on 11 May 1999,[786] Appellant warned the attendants to prevent abuse of military/police uniforms by certain former RPOs mobilised in VJ/MUP units. Specifically, these former RPO were the 6,000 men who were without wartime assignments and who were under the responsibility of the MoD (Article 63 of the Law on Defense).

556. RPOs had never been a part of the MUP or under MUP command, which the Chamber confirmed.[787]

557. The Chamber noted[788] that it would approach the issue of arming non-Albanians and disarming Kosovo Albanians in three stages:
"(a) the process of the arming of the ethnic Serb and Montenegrin population;
(b) the legality of the arming of the ethnic Serb and Montenegrin population in their villages;
(c) the discriminatory nature of the arming and disarming of the population."

a. "Discriminatory" nature of the arming

565. The Kosovo Albanians willingly detached themselves from the state and its affairs and refused to go to the army under the pressure of a separatist movement since the beginning of the nineties.[789]

566. The Kosovo Albanians who continued working in the state services or organs were denounced by KLA.[790]

[784] P1114
[785] P2803
[786] P1993
[787] I/788
[788] III/51
[789] Joksić,(6D1491/Para.12);Mijatović,(6D1492/Para.3);
Debeljković,(6D1533/Para.7);Pantić,(6D1604/Para.4,5,6);Fazliu,(6D1629/Para.3,6);Mihajlović,(6D1530/Para.4)
[790] 6D1491/Para.32,6D1629/Para.6

567. The Albanians' attitude towards their fellow-citizens who continued working in the state bodies, as well as their attitude towards those who observed the laws of the state and acted in accordance with these laws, was beligerant, and meny such citizens were killed.[791]

568. The intensity of the KLA attacks against Kosovo Albanians can also be seen from 1D707 which shows that between 1.1.1998-1.2.1999, 110 Albanians were killed, 88 injured, 104 abducted. The KLA seized legally owned weapons from the Kosovo Albanians. 1D726 shows that in the period from 1.1.1998-7.7.1998, 97 rifles and 52 guns were forcibly taken from their owners.

569. Terrorist attacks against civilians and confiscation of weapons continued in 1999 as well.[792]

570. The above evidence shows that every Albanian who cooperated with the state,responded to conscription/call-up and took weapons, basically was condemne dy the KLA.

571. Local security was a genuine attempt to include Kosovo Albanians into security affairs. Local security was established in about 80 Albanian villages in Đakovica,[793] 10 Albanian villages in Kosovska Mitrovica/Kačanik[794] The implementation of this project was confirmed by Ambassador Petritsch.[795] However, KLA resumed targeting the local security even when the KVM was present.[796]

b. "Discriminatory" nature of the disarming Kosovo Albanians

565. The Chamber found that the process of disarming Kosovo Albanians was an illegal process even though the confiscation of illegal weapons is proper/legal for law enforcement authorities of any state.

566. SUP's regular tasks included measures against smuggling of weapons into the country, as well as seizing illegally owned weapons.[797]

[791] Zyrapi-(T.6050/24-T.6051/17;Naumann-(T.8294/19-21);Kickert-(T.11244/15-T.11245/1);Shabani-(T.2732/17-T.2733/7)
[792] 6D1221;6D1222,6D614/557/515,6D614/574/24);6D614/575/28;6D614/615/213;6D614/677/491;6D614/68/514
[793] 6D448
[794] 6D972,6D484,6D 1154/p.2/Para.1
[795] P557/Para.2/Item5
[796] 6D1154
[797] P1074/p.14,Para.3

567. SUPs would seize weapons irrespective of ethnicity, pursuant to Article 33 of the Law on Weapons and Ammunition, and file criminal reports with Posecutors. Weapons were also seized from the Serbs.[798]

568. There were instances in which the KLA would use threats or force Kosovo Albanian civilians to accept weapons the KLA acquired illegally.[799]

569. Individuals or entire villages would voluntarily surrender weapons through their representatives and were not held criminally responsible.[800]

570. The Chamber noted[801] that "the Joint Command operations reports do not mention that the weapons were being collected because they were illegally obtained and owned." Certainly, if the weapons were smuggled from another state, it is clear that such weapons were illegal. This was confirmed by witness Odalović[802], and it is stipulated by the Law.

571. Witness Fazliu stated that there were significant quantities of weapons in Kosovo [803], which implies that the Chamber improperly found that Kosovo Albanian population was unprotected except for 17,000 or 18,000 KLA members.

572. Likewise, the Chamber erroneously concluded[804] that "the large majority of Kosovo Albanians remained outside of the KLA throughout 1998 and 1999," which is contrary to P2453/p.5, showing that one of the officers present at the KLA meeting, whose pseudonym was "Smailj", stated as follows: "in order to help each other in the future we must arm all people who are over 16 years of age." Smailj was later appointed Commander of the KLA and his real name is Ramuš Haradinaj.

[798] 6D1151/Item4/Para.2,3;6D1153/Item4/Para3;6D1154/Item4/Para1,2;6D1154/Item/Para.6;6D1155/Item4/Para.4;;6D1156/Item4/Para2,3;6D1240/p.6/Para.3;6D1242/p.4/Para.4,6;6D1249/p.4/Para.4
[799] P88;P2091;3D181;6D618;6D1629/Para.14;6D770/Item3/Para.2
[800] 6D1156/p.4;6D1151/Item6/Para.5;P1203/ChapterIII;P1197/p.3;P2623/p.4/Para.2;6D770/Item3/Para2
[801] III/70
[802] 6D770/Item3/Para.2;6D755;6D12
[803] T.2016/13-18;T.2024/2-7
[804] III/72(d)

P. STRUCTURE AND FUNCTIONING OF THE MUP STAFF

1. AUTHORITY OVER UNITS OF THE RJB

573. The Chamber incorrectly interpreted information Appellant's career.[805] He was degraded to the Belgrade SUP after dismissal from Republican MUP, which proves that he was not among the privileged[806]. He was not "reassigned", but sent to Kosovo on 11.06.1998[807]. It was only after Milosevic's fall, that the new democratic Government appointed him as Assistant Minister and RJB Chief[808].

574. During the NATO bombing Obrad Stevanovic, was constantly present in Kosovo[809].

575. July-October 1998 in addition to Stevanovic, Vlastimir Djordjevic[810] also was in Kosovo. P1468 proves their presence unless their absence was specifically noted. Two of them were within the MUP hierarchy individuals right below the MUP Minister and thus were the highest ranking police officers in Kosovo. Lukic explained during interview that the PJP tasks were issued by Djordjevic/Stevanovic, hierarchically above him[811].

576. The fact that Lukić was not the most senior officer in Kosovo is also confirmed by Mijatović[812] and Adamović.[813] Asked by Judge Bonomy what was his understanding of the role of the MUP Staff, Đaković testified that "the Minister of Interior sent part of the officers from the MUP down there to reinforce the team […] and directly influence the overall situation in Kosovo in

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[805] III/936;;III/937

[806] P948/page.10,11;;6D1613/par.51
[807] P1252
[808] P948/page17
[809] Mijatovic-(Tr.22202/9-11);;P1989;;P1993;;P1996;;Lazarevic-(Tr.18260);;P948/page228
[810] P1468
[811] P948/page.41,42
[812] Mijatovic-(6D1492)
[813] Adamovic-(6D1613)

relation to the tasks and obligations of the police. […] I am referring to General Đorđević and General Obrad Stevanović."[814]

577. The same was confirmed by Lukić in his interview[815] and reflected in the minutes of the meeting held at the MUP Staff on 22 July 1998.[816]

578. The Chamber noted[817] that "Đaković identified Lukić as the person in command of the MUP forces in Kosovo". The Chamber incompletely and inaccurately quoted Đoković. He stated that Obrad Stevanović "[…] had specific authority to deploy and engage the PJP units".[818] Asked what was his understanding of the role of the Staff, Đaković confirmed that he was not familiar with its role, He further stated that he dealt with Stevanović with regard to the PJP.[819]

579. Chamber indicates[820] that the Prosecution supported its arguments regarding Staff's mandate with Decisions of 16.06.1998.[821], 31.05.1999.[822] and Cvetic's statement[823]. Prosecution never presented Cvetic with the actual Decision of 16.06.1998. Therefore, Cvetic's statement cannot refer to the period of 16.06.1998, or thereafter[824]. Further, Cvetic wasn't a Staff member and his knowledge is limited/incorrect. Cvetić was not a professional police officer, but a person trained and employed by the Ministry of Defense.[825]

580. The Chamber incompletely analyzed evidence regarding Staff's mandate,[826] especially those that Staff did not have the nature of a MUP organizational unit, due to which it couldn't administrate/command other MUP units, as explained in detail by the Expert[827].

581. The Staff didn't have authority on:

- PJP deployment to Kosovo(Djordjevic/Stevanovic did)[828];

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[814] Djakovic-(T.23534/4–23535/7)
[815] P948
[816] 6D798
[817] III/1024
[818] Djakovic-(T.26518/10-16)
[819] Djakovic-(T.26534/4–26535/7)

[820] ***III/949***

[821] P1505
[822] P1811
[823] III/950
[824] Cvetic-(T.8067),
[825] Cvetic-(T.8183/24-T.8184/9)

[826] **III/951-to-III/958**

[827] 6D668/page.150

- dismissal/appointment Chief of SUPs[829]
- allocation/promotion of policemen[830];
- disciplinary procedures against policemen[831];
- misdemeanor/criminal prosecution of policemen[832].

582. Chamber disregarded evidence[833] that Trajkovic,(SAJ Commander), wasn't a Staff member. This was confirmed by Vucurevic[834]/Adamovic[835], both members of the Staff.

583. Analyzing parts of Lukic's interview,[836] Chamber omits to point out that he was explaining the Staff's role in 1998, disregarding that Stevanovic, during the war, in 1999, was constantly present in Pristina[837] Chamber failed to consider that Zivaljevic, PJP Commander, confirmed no one was between him and Stevanovic, within chain-of-command[838].

584. While citing K25(traffic-policeman)[839], Chamber ignored[840] that witness dissociated from claims that "it was "common knowledge" that "[a]ll MUP units in Kosovo were commanded by the MUP HQ in Priština", and that Lukić was the commander of all the MUP forces in Kosovo"., by stating "I don't know how specifically I became aware of it[841]".

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[828] 6D683;6D684;6D685;6D686;6D687;6D291
[829] P1884;P1886;P11885
[830] 6D1344;6D1348
[831] 6D1340;6D1613/para.41
[832] 6D464;6D1339;6D1613/para.42,43

[833] III/960

[834] Vucurevic-(T.23056/16-18)
[835] 6D1613/par.6,7
[836] III/961

[837] Vucurevic-(T.23064/10-13;T.23074/17-21);Mijatovic-(T.22202/9-23);Filic-(Tr.24011/18-23)
[838] Zivaljevic-(T.24930)
[839] P2439/p.20

[840] III/962

[841] P2439/page.20

2. The role of the Staff in planning

585. Based on Cvetic's conjecture, rebutted by Djakovic/Mijatovic/Adamovic, Chamber concluded that Staff had "a central role in planning how particular MUP units were to be deployed in Kosovo in the implementation of the overall "anti-terrorism" plan, once decisions were taken in Belgrade".[842]

586. However, the Chamber ignores the contradictory evidence also according to Cvetic, that such plans were made by Joint Command both for VJ/MUP[843]. This demonstrates Cvetic is just wrongly speculating

587. However, the 5-phase anti-terrorism plan(existing only in 1998) was solely contemplated/elaborated in PrK Command, without MUP members participation[844].

588. The Reliance on Djakovic's assertions of planning by the MUP Staff [845]is erroneously placed, since the Chamber fails to take into account admissions on cross-examination, namely: a) that PrK organs prepared/drafted maps for MUP units [846];b)The military commander had had to approve plans[847];c)he never saw a single MUP Staff order[848];d)his admission he really did not know the function of the Staff at all[849]; e) his disclaimer that all his testimony was according to military rules and he had not idea about the MUP rules[850];and f)he never reviewed a single MUP rule/regulation[851].

589. The Chamber presented parts of Adamovic's testimony out of its context.[852] Adamovic never testified that meetings were held before each ATA. In-fact, what he testified about was that there were one/two meetings in July 1998[853] when Djordjevic/Stevanovic, together with military

[842] III/970
[843] Cvetic-(T.8075/23-24)
[844] Đakovic-(T.26536/18-26538/11)
[845] III/973-974.
[846] T.26523/15-25528/23
[847] T.26518/10-16.
[848] T.26522/14-16
[849] T.26527/4-6
[850] T.26526/22-26527/1
[851] T.26514/7-16

[852] **III/975**
[853] 6D1613/para.17

officers, presented the plan in whole for the first time, before operations began.[854] Indeed this is corroborated 100% by Mijatovic.[855] The Chamber impermissibly extends the role of the Staff beyond the evidence. Adamovic clearly stated the maps received from Prk would be handed over to the Commander or courier without any cover-letters or additional explanation[856].

3. MUP Staff reporting

590. The Chamber erroneously took evidence out of context.[857] All witnesses cited by the chamber actually testified that SUPS regularly reported to the MUP in Belgrade, and copied the Staff, pursuant to the order of RJB Chief[858] and compliant with Rulebook on reporting. It should be recalled when Mijatovic was named Liason with the KVM, he sent out an additional methodology to fulfill requirements of daily contact with KVM, not an „order" as mis-characterized by the Chamber.[859].

591. Chamber incorrectly interprets Appellant's interview and wrongly promotes Cvetic's untrained conjecture.[860] Lukic's description of PJP sending reports to the Staff must be read alongside evidence that PJP Commander Stevanovic was present at/used the Staff premises in 1999[861] Not a single of the reports speculated by Cvetic was introduced/exists. The Chamber forgot to analyze Zivaljevic's testimony, that he composed an overall report on activity performed, and submitted the same to MUP Police Administration in Belgrade directly[862]. Zivaljevic further testified that he did not report to anyone except in cases of medical assistance or killed policemen[863]. Rather than listen to Zivaljevic(Commander of 122 PJP Brigade), the Chamber inexplicably relied on Cvetic, who had no knowledge/experience of PJP

592. Adamovic likewise confirmed the security-related events reporting method (death or policeman wounding etc.) used in the MUP– not on "combat reporting" as suggested by the

[854] T.24976-24977
[855] T.22197-22198
[856] 6D1613/par.31,32,33,34
[857] III.976
[858] P1044
[859] P2528
[860] III/981
[861] 6D1499/20;6D1122;6D475;P1989;P1991;P1993;P1996
[862] Zivaljevic-(T.24843)
[863] Zivaljevic-(T.24877-24878)

Chamber[864]. This is another example of the "military perception" of police adopted by the Chamber.

4. Documentary evidence

(A) 1998

593. The Chamber erroneously concluded the Staff's role was to plan/organize/manage RJB units.[865] However in the same paragraph is the opposite conclusion that chains of reporting and command remained intact. No evidence exists that the Staff made Plans or performed "command-control" over MUP units.

594. In discussing the 22 July 1998 meeting,[866] the Chamber ignored the fact that Djordjevic/Stevanovic were considerably higher positioned than Appellant, and that although P1505[867] listed them as deputies of Lukic, Gajic (RDB), Lukovic (JSO Commander), Trajkovic (SAJ Commander) are not present.[868] Their absence is more indicative bearing in mind the importance of subject – "[d]efin[e] tasks in the implementation of the Global Plan", an apparent reference to the Plan on Combating Terrorism. This demonstrates the Staff was not functioning in accordance to P1505, neither in terms of tasks, nor personnel. The Chamber ignored minutes from the next day's meeting, from which it could be seen that Mijatovic was Lukic's Deputy, not Gajic, and that neither Trajkovic nor Lukovic were present, which depicts Staff's real role – providing logistical support[869].

595. Chamber erroneously interprets[870] the 28 July meeting-it's not true that Lukic "chaired a meeting". Markovic was not RDB Chief at the time. It's not true that all 7 SUP Chiefs in Kosovo were present- only 3 were(Pristina/Mitrovica/Urosevac). None of the PJP, SAJ or JSO Commanders were present. These errors call into question the Chamber's appreciation of the evidence.

[864] Adamovic-(T25078)
[865] III/983
[866] III/985
[867] P1505
[868] 6D798/page.1
[869] P3120
[870] III/986

596. Chamber incorrectly concludes the Staff issued an "order".[871] Dispatch 6D768, shows Staff has only passed along the opinion from MUP HQ. Staff's only activity was to acquaint MUP members with conclusions from Belgrade. Chamber further erroneously concluded that Lukic "directed" the heads of Kosovo SUPs, to *inter alia* interview Kosovo Albanians. Staff only passed along information that "a number of people of Albanian ethnic minority" have destroyed official state ids and are, using false ones issued by the KLA, and that interviews need to be conducted only with these persons considering their possible participation in KLA activities.

597. At III/989 the Chamber ignored[872] that measures in regard to armored vehicles/large-caliber weapons were envisaged in a)Byrnes-Djordjevic agreement[873]; b)conclusions from meeting held by Stevanovic[874]; c)measures in reporting from RJB instruction[875] and d)Mijatovic's note[876]. All conclusions related to the consistent implementation of October agreement. Further, Lukic reminded about Stevanovic's instructions from meeting, at which Lukic wasn't even present[877], and instructions from RJB Chief[878], and did not "chair" the meeting as suggested.

598. The Chamber made errors with respect to meeting from 2.12.1998.[879] From the minutes of that meeting[880] purpose of this meeting was to acquaint those who were present with obligations formulated by Minister at the meeting in Belgrade on 27.11.1998(as stated in par. III/990). The Chamber ignored the full context of these meetings, which is police activity and compliance of October agreement. When Lukic asked for submission of Plan for combating terrorism[881], Chamber ignored the essence of this plan which is classically preventive, and not any offensive operation Plan, which could be seen from minutes.

599. Chamber ignored the presence of Minister, Stevanovic and Ilic at meeting in the Staff[882] on 21.12.1998[883]. The Chamber failed to give significance to Stojilkovic's words: "Today General Obrad Stevanovic will conway to you my orders regarding the methods of how to act in the future

[871] III/987
[872] III/989
[873] P394
[874] 6D800
[875] 6D267
[876] P2528
[877] 6D800
[878] 6D267
[879] III/990
[880] P3122
[881] P3122/ p.8
[882] III/994
[883] P1991

considering new circumstances", nor that Stevanovic's instructions match to measures Lukic mentioned on 2.12.1998. From Stevanovic's instructions: "All plans should be based on the principles of a police operation." Chamber failed to establish that Stevanovic was issuing tasks to SUP Chiefs and PJP Commander, directly, without Lukic's presence.

600. Chamber's conclusion that Staff had a role in information exchange between RJB-RDB is wrong. Cvetic's complaint[884] that RDB Chief in Mitrovica doesn't submit information, clearly shows exchange of information on level SUP-CRDB.

(B)1999

601. Lukic hasn't "directed" the SUPs and PJP to "ensure" correct behavior towards KVM, as described in III/996, but reminded of measures already determined by MUP in Belgrade[885]. Chamber itself states that on 23.2.1999 Lukic repeated/reterated this instruction. Chamber failed to consider that NRJB Djordjevic attended meeting on 17.2.1999. Lukic stated: "A plan of the RJB has been worked out..." - the plan obviously drafted by RJB, not Staff or Lukic. Chamber interprets Lukic in impermissible manner: "The Staff plans, when it is ordered, to carry out three mopping up operations...", since minutes containing phrase "cleaning the territory from terrorists".

602. Although Chamber was quoting Lazarevic's testimony, it has indicated[886] that that Stefanovic testifies that "he personally did not see an order from the MUP Staff[887]" allegedly issued to SUPs. The Chamber failed to consider that Stefanovic himself was a Chief of Staff at PrK, on which Lazarevic called upon as a "main operational man"[888].

603. This is more contradictory since SUPs haven't planned specific ATA, as Chamber concludes in par. III/972.

[884] P3122,p.4
[885] 6D267
[886] III/1002;;III/1003
[887] Stefanovic-(T.21770)
[888] Lazarevic-(T.18215)

604. It wasn't Lukic who sent a copy of "Politika" article on 6.5.1999, as found in.III/1005, but Mijatovic.[889] Lukic didn't direct the SUP chiefs and PJP and SAJ commanders to take "all the measures in the forthcoming period to prevent paramilitary formations and individuals from committing acts of violence", since it has been written in original document "and" in the future period undertake...". The essence of word and is that these measures were already undertaken, and need to be continued with. To be fair the Chamber relied on a false translation by CLSS in it error.

605. Chamber didn't cited evidence 6D874 correctly. Correct interpretation would be: "Secretariat chiefs are responsible for the realization of the envisaged activities and OKP are tasked with their direct realization", not Staff or Lukic, and their "overall directions" as Chamber incorrectly presents.

606. In relations to Stevanovic's discussion that "the plan must be approved by the Staff", Chamber totally disregarded Mijatovic's statement that Stevanovic was person who would approve the plan, with an address of the Staff[890].

607. The Chamber misquoted Zivaljevic's telegram dated 26.5.1999. in order to report on "achieved lines". The essence of this dispatch is informing about unit losses and seeking help in treatment of civilians, in which there are about 150 "fighters". Furthermore, answer sent from Staff[891] wasn't sent by Lukic.[892]

5. Lukic's authority as a "rukovodilac"/manager of MUP Staff

608. Conclusions regarding the Staff's role[893] are incorrect and a product of erroneous/incomplete/incorrect/selective analysis of documents/evidence. The Chamber ignored practice upon which, some documents under the Staff'heading or Lukic's typed name, were drafted

[889] 5D1289
[890] Mijatovic-(T.22303)
[891] 5D1418
[892] III/1011
[893] III/1012

and sent by other MUP officials who weren't Staff's members[894]. Stevanovic also sent a report under the Staff's firm[895].

609. The Chamber erred by finding that "the precise title of Lukić's position, and its translation into English, is immaterial".[896] It reached improper conclusions based on numerous military witnesses, especially foreigners/VJ and others without even the basic knowledge of MUP functioning/organization. All organizational units (which status gives managing powers) are managed by Chief (RJB, Administration, SUP) or Commanders and commandeers (PJP, PS), and working body (MUP Staff) was managed by manager, since Staff was not an organizational unit. Many witnesses, who had military education or were from VJ, due to this the name, had a perception on Staff Manager as the Commander or Chief, incorrectly identifying him with "Military Commander". Chamber improperly applied "military terms" onto police, using terminology such as "order", "command", "commanding", "subordinate", "report".

6. Lukic's attendance high-level meetings

610. Lukic didn't attend a meeting with Milosevic's on 30.5.1998. It should be recalled that P1252 shows he was not appointed to staff until June.

611. It's not true that "a plan for fighting terrorism" was discussed on 30.5.1998. The Chamber concluded that a "plan for combating terrorism" has been approved on 21.7.1998.[897] Dimitrijevic testified that the meetings were held in July and August, without mentioning 30.05.1998. Chamber doesn't rely upon first-hand witness Dimitrijevic, but incorrectly upon Djakovic, who allegedly heard second-hand from Pavkovic.

612. The Chamber's error is evident in that it accepted that Lukic wasn't involved in the formulation on Plan for combating terrorism, adopted on 21.71998. but found liability becuse "Lukic

[894] III/1005
[895] 6D1122
[896] III/1018
[897] III/1021

was involved in the meeting at which it was adopted...".[898] In regards to Milutinovic's attendance in this and other meetings, Chamber concluded: "However, the above mentioned evidence do not indicate that Milutinovic had an important role in those meetings[899]". This disparate treatment by the Chamber is error.

613. Its not true that Lukic's Defense claims that "Joint Command represented legitimate effort of MUP and VJ to exchange information",[900] but that the meetings of representatives of VJ, MUP and representatives of federal and republican governments were an effort to exchange information and at that time no one called this Joint Command. Lukic in his interview, never explicitly called those meetings "Joint Command"[901].

614. Adamovic never "confirmed" Lukic's role as the key member of Joint Command, involved in ensuring implementation of its directives in a co-ordinated manner between VJ/MUP forces…'[902] in his testimony. Adamovic testified that Lukic assigned him to submit maps to the units regarding joint MUP/VJ operations, and this has no relation to Joint Command. Conclusions based on Djakovic's testimony for planning ATA in 1999, should be disregarded as he was replaced by Stefanovic. Adamovic was no longer in Kosovo after 28/29.3.1999, having been by injured by NATO's bombing.[903]

615. The Chamber failed to give appropriate weight to attendance and participation of Stoiljkovic, Djordjevic, Stevanovic and Markovic in a meeting on 29.10.1998, as officials in front of MUP, with higher positions than Lukic.[904] Lukic only briefed in light of of the Holbrooke-Milošević Agreement[905].

616. Chamber made incorrect findings that the meeting in Belgrade on 27.11.1998,[906]: "examined the situation in Kosovo and discussed the further engagement of MUP forces in "anti-terrorist actions". From the minutes[907], the meeting was dedicated to modus implementing the October agreement and increased terrorist activity, which brought Sainovic to the meeting, being head of the

[898] III/1021
[899] III/143
[900] III/1023
[901] P948/page-34;;V000-3910ET
[902] III/1033
[903] Adamovic-(T.25015/24-25016/10)
[904] III/1035
[905] III/1035
[906] III/1037
[907] P3122

Commission for implementation of the Agreement. The meeting was called/led by Stoiljkovic, also a Commission member.

617. The Chamber misinterpreted and abused what Lukic said in his interview, deliberately interpreting that Lukic was at multiple meetings with Milosevic. Lukic clearly stated "I think there was only this one meeting at which I was present[908]".

618. There's no valid evidence, contrary to the Chambers finding,[909] that meeting of "JC" was held on 1.6.1999. Vasiljevic has written in his notes that he attended a meeting of the Pristina Corps.[910] The Chamber does not give appropriate weight to the fact that Djordjevic and Stevanovic were on behalf of the MUP.

7. ASSESSMENT OF LUKIC'S AUTHORITY AND ROLE

Sreten Lukić's role in reporting to the MUP

619. The conclusion of the Chamber that "Much of the evidence […] in relation to the powers and functions of the MUP Staff also reveals the extent of Lukić's involvement […]"[911] is incorrect. The Chamber often based its conclusion on errors, particularly the documentary evidence. As the most important evidence of Lukić's authority the Chamber noted that he "chaired" most of the meetings held at the MUP Staff in the presence of Milutinović, Stojiljković and the Chiefs of RJB/RDB, referring, *inter alia*, to exhibits 6D789 and P3121. This evidence itself shows the untenability of such a conclusion. Nowhere in the referenced evidence is it mentioned that Appellant "chaired" the meetings. At the meeting of 22 July 1998, which was attended by Đorđević, and Stevanović, Lukić "proposed" the agenda, whereas he would have "communicated" the agenda if he had been the "chairman". The meeting attended by Milutinović[912] most

[908] P948/p.142-143
[909] III/1040
[910] 2D387
[911] III/1050
[912] P2805

realistically reflects the role of "chairing", since Lukić had a protocol role and the aim of the meeting was Milutinović's address.

620. The Chamber's conclusion that Lukić issued "numerous" dispatches containing tasks for SUPs/PJP/SAJ units,[913] does not correspond with the facts. The Chamber based this conclusion on incorrect interpretation of the dispatches in question. Contrary to the facts, the Chamber erroneously ascribed certain documents to Appellant even though they were neither "dispatches" nor signed by him. This is obvious from each such "dispatch".[914]

621. Certain exhibits were "promoted" by the Chamber into orders/commands/tasks/instructions, etc. In fact, the documents in question were merely reminders prompting and emphasizing the need for compliance with the law.

622. The Chamber's conclusion of central role of the MUP Staff in planning/organizing/controlling/directing the work of MUP units was unsuppotable. There is no evidence that would corroborate the conclusion that the MUP played a central role in coordinating/planning joint operations with the VJ.

623. The Chamber's conclusion is solely based on Lukic's position as Head of Staff. But it is untenable to call him "*de facto* commander of the MUP forces". This finding further proves the Chamber's lack of knowledge of the police organization and its inability escape a "military perception" of the police.

624. The Chamber ought to have accepted the report and testimony by the police-expert, Professor Simonović, as well as the testimony by the witnesses who were long-time professional policemen.

625. The Chamber's conclusion of a command-role is directly contradictory to where the Chamber stated that "Lukić did not replace Stevanović, Đorđević or Ilić, the heads of the SUPs, or the commanders of PJP or SAJ units […]".

[913] III/1051
[914] III/1005;5D1289;6D690;P2528;6D237;6D874;6D876;5D1418

626. Such conclusions of the Chambers are even more illogical in light of the fact that it concluded as follows:

- Minister of Interior was Stojiljković[915]
- RJB Chief was Đorđević;[916]
- Assistant Minister/Police Administration/Chief and PJP Commander was Stevanović[917]
- Crime Police Administration Chief was Ilić[918]
- SAJ Commander was Trajković[919] and
- Each of 33 SUPs had their respective Chiefs.[920]

636. The conclusion Appellant was *de facto* commander is further invalidated by the Chamber's finding he "[…] was the bridge between those commanders and the policy and plans set in Belgrade, […]". Thus, the Chamber gave up the "*de facto* commander" and assigned a role of a "bridge". When viewed together with the Chamber's conclusion that "The MUP Staff did not replace the day-to-day command structure within the MUP."[921] The finding of a *de facto* commander is neither logical nor legally founded on proper facts/evidence.

637. The conclusion of the Chamber[922] that the difference between the organization/structure of the MUP and of the VJ is the reason why "there are no combat orders in evidence giving specific deployment tasking to MUP units" is an unprecedented legal conclusion. The only reason why there are no police orders in evidence is that no such orders were ever issued.

638. The evidence concerning a promotion letter Stojiljković sent to Milutinović[923], proposing a "regular" promotion of Lukić showed this was pro-forma rather than substantive, and that authors of such documents were clerks who adhered to pre-established formulaic language.[924] Thus, it is not justified to take this letter as evidence of "Lukić's central role" or his being "a *de facto* commander over MUP forces".

639. The conclusion that Appellant was the "bridge" between the commanders and Belgrade is factually untenable. Each order/directive/instruction coming form the MUP was individually

[915] I/658
[916] I/659
[917] I/666
[918] I/700
[919] I/675
[920] I/660
[921] III/1012
[922] III/1051
[923] 1D680
[924] I/159;T.22471/22472;T.25591/25592

addressed to the SUPs(PJP being attached thereto), and then copied to the Staff. Besides the direct "top-to-bottom" relationship in place, the "bottom-to-top" relationship functioned on the same principles. Why would Lukić than be that "bridge" between the commanders and the policy of Belgrade when the Minister had sent two Assistant Ministers(Đorđević/Stevanović) to Kosovo?

640. Appellant was not at any Belgrade meetings that weren't also attended by Stojiljković/Đorđević/Stevanović. The same is true of the meetings with Milošević. Thus, it is clear that Lukić was not the "bridge" between the Belgrade policy and the PJP commanders because the foregoing meetings were attended by PJP Commander Stevanović.

641. The fact Appellant's role at Belgrade meetings was neither central nor a "bridge" is indicated by the finding that "[…] Lukić was not involved in the actual formulation of the Plan at the highest level […]".[925] This finding relates to the Plan for Combating Terrorism of 1998, and the meeting in question was attended by Stojiljković, Đorđević and Stevanović.[926] The next day, Đorđević/Stevanović came to Priština and held a meeting with the SUP heads/PJP commanders, whereat the implementation of the Plan was discussed.[927]

642. During 1999, no plans were prepared/adopted in Belgrade. A meeting held on 4 May did not involve preparation of plans. The Chamber itself denied that Lukić's role at meetings in Belgrade was central when it analyzed his role in the meeting held on 29 October 1998[928] and found that "Lukić briefed the participants about the positioning of MUP forces in Kosovo, in light of the Holbrooke-Milošević Agreement."[929]

643. Appellant was not "directly involved in the planning process". The Chamber had no evidence to substantiate such a conclusion. Witnesses from PrK who were involved in the planning of operations of the VJ/MUP (Đaković/Stefanović) expressly stated that Lukić did not participate in the planning of actions. [930]

644. The Chamber misquoted the Decision to establish the MUP Staff(P1505). This does not correspond with the contents of the Decision, which reads that: "For his work, the work of the Staff

[925] III/1021
[926] III/1021
[927] 6D798
[928] P2166
[929] III/1035
[930] T.21803/10-14;T.21804/14-18;26380/1-10

and the aspects of the security situation under the remit of the Staff, the Head of Staff is responsible to the Minister and shall inform him about the following:

- security-related developments,
- measures taken and the effects of those measures."[931]

636. The above quoted Item clearly shows the duties for which the Appellant was responsible to the Minister.

637. The Chamber drew incorrect conclusions on Lukić's role in the reporting process within the MUP. The reporting was conducted according to a uniformly prescribed procedure which Lukić could not change.

638. Reporting within the Serbian MUP was conducted pursuant to the Instruction on Reporting and Informing, adopted by the MUP Minister in 1994 and effective during the relevant period. The Chamber should have acknowledged the essence of reporting process reflected in the Expert Report.[932] The same area was regulated by the MUP Minister's Circular,[933] which envisaged that the SUPs in Kosovo "shall send dispatches concurrently to the Ministry and the MUP Staff in Priština."

639. The above Instruction and the Circular were the backbone and the only basis for the reporting process.[934]

640. The Chamber did not analyze the evidence properly, particularly the Expert Report, which shows that the above-mentioned Instruction regulated the obligation of the MUP organizational units to ensure urgent/daily/periodical reporting and informing on security-related developments and events.

641. The Instruction observed the hierarchy of organizational units reflected in the Rules of Internal Organization, so the OUP Commanders("bottom-to-top") reported to and informed the SUPs, and the SUPs Chiefs reported to the Ministry. Additionally, the heads of the Kosovo SUPs were, according to P1044, obliged to inform the MUP Staff. This included daily reporting/informing, but not periodical reporting/informing (monthly informing and annual reporting).

[931] P1505/Item-III
[932] 6D668, p.86,87
[933] P1044/p.3.Item.5
[934] Mijatovic-(6D1492/para.57;;T.22223/5–22227/7;;Adamović-(6D1613/para.22,38,37,39;; Petrović-(6D1631/para.12,20,27;;Vojnović-(6D1532/para.14,15,16,17,18;;Gavranić-(T.22636/18–22637/2)

642. The Chamber received ample evidence showing that SUPs acted in compliance with the Instruction on Reporting and Informing when they informed the MUP Ministry and, at the same time, the MUP Staff on the developments envisaged by the Instruction.[935] Ignoring the totality of evidence, the Chamber drew superficial conclusions based on assumptions, as was the case in III/1057, where the Chamber noted that "normally the reports were prepared based on the information obtained from the various SUPs".

643. The Ministry in Belgrade was the principal addressee of the information. The Kosovo SUPs sent their dispatches to the Ministry in Belgrade, stating concrete organizational units such as the Crime Police Administration, the Police Administration, the Analytics Administration, and at all times, the MUP Operations Center. Below the headings of dispatches, the SUPs included the MUP Staff.[936]

644. The MUP Staff merely compiled the information received from the SUPs, based on which the MUP Staff analytics officer prepared an "Overview of important security-related events, phenomena, and insights".

645. The MUP Staff did not produce reports, as incorrectly noted by the Chamber, but overviews. Such overviews contained only summarized information received form the SUPs, and the MUP Staff could not alter the data thus received. The overviews did not contain any information on concrete events authored by the MUP Staff members. Bearing in mind the above evidence and the established MUP procedures, it is clear that the SUPs first submitted their information to the Ministry, and then, or concurrently, to the MUP Staff. There could be no situation that the MUP Staff received information which had not been first, or concurrently, submitted to the Ministry.[937]

646. A report is a document of authorship, containing the ideas of and results of the actions of the author. An overview does not contain anything that is a result of the actions of the individual preparing it; it is merely a compilation of received reports.

647. The MUP Staff didn't prepare periodical (monthly/annual) information/reports.[938]

[935] T.22635/21-22636/4;T.22639/21-22641/16;6D1532,par.14,15,16,17,18
[936] 6D44;;6D197;;6D323;;6D401;;6D409;;6D128;;6D661;;6D663
[937] Adamovic-(6D1613/para.22,37,38,39,50
[938] 6D1492/para.57

648. The Chamber incorrectly noted that all "reports" contained Lukić's typewritten name and signature.[939] None of the numerous Overviews were signed by Lukić.[940]

649. The Chamber noted that from 2 April 1999 the "reports" "began addressing the numbers of 'persons from the Albanian and other national communities who fled' Kosovo", which followed a 1 April 1999 "order" by Lukić to the SUPs "that the number of Albanians leaving Kosovo through their border crossings should be tracked".[941] Thus, the Chamber misquoted the evidence, as other overviews show that the information on the departure of Albanians from FRY were also recorded in February and March and submitted to the Minister and the MUP Staff.[942]

650. The Priština MUP Building, was bombed 28/29 March 1999.[943] Four members of the Staff were injured(including the analytics officer).[944] This is the reason why the Overview of 29 March 1999 was incomplete and did not contain the number of individuals who had left FRY, while the Overviews of 30, 31 March and 1 April 1999 were not prepared at all. All of this evidence directly disproves the Chamber's finding that the information on the numbers of Albanians who left FRY "followed a 1 April 1999 order by Lukić".[945]

651. Mijatović explained that the memorandum in question further regulated the manner and form of submitting information, in order to facilitate analytical processing thereof and ensure a uniform layout of the overviews.[946]

652. The Chamber failed to thoroughly analyze 6D1238/6D1239,/6D1240.[947] All of the examples referred to by the Chamber in this Paragraph were the events qualified as terrorism, and were as such supposed to be reported in accordance with the Instruction, as explained by Expert Report.[948]

[939] III/1053
[940] P1228(Adamović);P1093(Zdravković);P1100,P1099(Blagojević)
[941] III/1054
[942] 6D1208/7;6D1211/6;6D1232/7; P1099/7
[943] T.8148/17-19;T.24158/4-16
[944] T.23119/19-23120/7
[945] 6D808
[946] 6D1492/para.50
[947] III/1055
[948] 6D668/pp.151,152,153

653. The Chamber erroneously found that "Most of the reports [Overviews] do not indicate on what basis the MUP Staff prepared them."[949] The Appellant respectfully stresses that these overviews were prepared exclusively on the basis of relevant SUP reports.[950]

654. In interpreting the contents of the meeting held on 28 July 1998.[951] and concluding that Lukić "had an instrumental position in co-ordinating information exchange between the MUP forces in Kosovo and the MUP headquarters in Belgrade", the Chamber mis-identified the manner of presenting information at this meeting, which was held in Priština rather than in Belgrade, with the overviews sent to different addressees within the MUP headquarters in Belgrade. If Stojiljković had not arrived in Priština, the information regarding the Plan for Combating Terrorism would not have been sent as part of the Staff's daily reporting to the MUP headquarters(Belgrade).

655. The Chamber ignored that the SUP Chiefs at this meeting shared their information/evaluations/conclusions on equal footing with Lukić. SUP Chiefs directly reported to the Minister, and Appellant's role in this process was not to mediate/coordinate.

656. The information Lukić presented before the Minister, on 27 July 1998, was comprised of the data which he had previously learned from Đorđević/Pavković.[952]

657. All of the above-mentioned evidence, including the evidence showing that the informing and reporting process was performed pursuant to the Instruction on Reporting and Informing adopted by the Minister as early as in 1994, indicates that the MUP Staff did not have and could not have a role of mediator/coordinator in the exchange of information. The existence of the Staff did not affect the process of reporting, since the reporting process functioned uniformly in the entire territory of Serbia.

[949] III/1057
[950] Adamovic-(6D1613/para.37)
[951] P3121
[952] P1468

8. DE-FACTO AUTHORITY AS TO INVESTIGATION/DISCIPLINARY PROCEEDINGS

658. The Chamber accepted that Appellant wasn't able to initiate disciplinary proceedings, and concluded "that disciplinary proceedings were generally initiated by a person's immediate supervisor and were dealt with by the relevant SUPs."[953]

659. Before initiating criminal/other proceedings, the SUPs would request an approval from the MUP headquarters(Belgrade), without having any obligation to copy the Staff/Lukić in any manner.[954]

660. During the wartime, when the provisions concerning disciplinary responsibility were changed, the Staff/Lukić were not even informed by either Djordjevic or Zeković, who issued the appropriate instructions directly to all SUPs,.[955]

661. Decisions concerning replacement/appointment of SUP Chiefs were made exclusively by the RJB Chief, without any involvement of the Staff/Lukić.[956]

662. Notwithstanding the foregoing, the Chamber concluded that Lukić had *de facto* authority to require the SUP Chiefs to conduct investigations into crimes, even if not the person who actually initiated proceedings. The Chamber referred to 6D768 and 6D872. Firstly, the dispatches referred to in III/987&III/996 were "information" about the assessment made by the leadership in Belgrade concerning the engagement of the police in Kosovo[957] and the "reminder" of the measures envisaged by law. These were certainly not orders, as can be seen from the text..

[953] III/1049
[954] 6D464;;6D1339;;6D1613/Para.42,43;;6D1340;;6D1613/Para.41;;6D1344;;6D1348,;Cvetić-(T.8152-8153)
[955] 6D133;6D1342
[956] P1884;P1886;P1885
[957] 6D768

9. DETAILED INFORMATION ABOUT ACTIVITIES/CRIMES OF THE MUP

a. Knowledge of crimes in 1998 and 1999

663. The Chamber improperly interpreted Lukić's presence at the so-called"Joint Command" meetings by concluding that all these meetings dealt with joint VJ/MUP operations, the refugee crisis, and the need to discipline the FRY/Serbian forces.[958]

664. The Chamber based its generalized/improper conclusion on a total of six Joint Command meetings referred in III/1080-III/1081, which it used to show Lukić's knowledge of the existence of crimes. All the information discussed in these meetings were actually unverified information from various sources whose accuracy was to be confirmed and, based on that, a legal qualification thereof was to be established in consultation with the competent Prosecutor. Even this unverified information was followed up.[959]

665. The Chamber disregarded the legal system of the country and ignored its regulations and the authority granted to various organs (Prosecution/courts/police/military police). The Chamber *a priori* attributed all the crimes to the FRY/Serbian forces, ignoring criminals/terrorists.[960]

666. The Chamber noted that Lukić regularly met with representatives of international organizations "who provided him with information about potential criminal activity by the MUP." Although the Chamber itself noted that the information provided was unverified, it treated it as such in determining guilt.

667. According to the Chamber, "the Notes […] indicated that acts of arson committed by forces of the FRY and Serbia were often discussed," referring to the meetings of 7,12 August, and 1,7 September 1998.[961] A closer analysis of these notes, taking into account the contents of the meeting as a whole, as well as the contents of previous/subsequent meetings, shows that the notes did not state explicitly that the FRY/Serbian forces committed the acts of arson, but that these acts were

[958] III/1079
[959] P948,p.159;6D612;6D613;6D1631,par.27,28,29,30,31,60,93
[960] I/801,I/802,III/1029;III/1031;III/1086;III/1091;III/1092;III/1097
[961] III/1080

committed by other perpetrators. Đorđević's remark at the meeting of 7 August 1998 that measures must be taken "against persons who subsequently set houses on fire" supports the above argumentation.

668. The entire knowledge about the alleged crime in Gornje Obrinje was based solely on articles published in Albanian newspapers, until a more reliable piece of information was provided by the American diplomats, according to which this crime was committed by the Albanians.[962] The Chamber failed to properly take into account Kickert's testimony who stated that the competent authorities(primarily an investigative judge) tried to go to the crime scene and verify this information, but were prevented by the KLA.[963]

669. The Chamber failed to note[964] that when asked whether the VJ participated in the actions with the police, Byrnes gave a negative answer. Therefore, Byrnes either had no information about the situation he was monitoring or he failed to tell the truth.

670. The Chamber failed to identify serious inconsistencies in Byrnes's testimony. Namely, Byrnes claimed that Lukić was in charge of Serbian police in Kosovo,[965] while he at the same time asserted that Lukić reported to Stevanović and that Đorđević was Stevanović's and Lukić's superior.[966] Furthermore, Byrnes testified that Lukić replaced Stevanović, for which there is simply no evidence whatsoever.

671. The Chamber noted Byrnes's testimony about a village south of Kijevo he saw in flames and the PJP members he saw leaving the village. However, the Chamber failed to note that when asked if he knew who set the houses on fire, Byrnes's stated as follows: "I did not see a single PJP officer pull a trigger. I did not see a PJP officer light a house on fire by whatever means."[967]

672. The Chamber noted the following: "However, the evidence that PJP units stood by while homes in deserted villages burned was not undermined by cross examination." Byrnes did not state that the PJP units had stood by, but that he saw them leaving the village. Criminal responsibility cannot be based on the presence of units in the area of the village without knowing who and under what circumstance caused the fire in the village. The Chamber heard the testimony of Paunović, a

[962] P1468,p.135,para.3
[963] Kickert-(T.11279/10-11280/21;6D197;Damjanac-(T.23813/5-23816/20)
[964] III/1082
[965] T.12151/10-20
[966] T.12145/25-12146/9
[967] Byrnes-(T.12148/6-24)

participant in anti-terrorist actions in 1998, who stated that the KLA members themselves caused fires, burned harvests, etc., on numerous occasions, in order to prevent the advancement of the state forces.[968]

673. The Chamber noted that Byrnes photographed the event near Peć.[969] However, Byrnes stated that he was not present himself, but that he was informed by his teams.[970] Concerning Byrnes's testimony, the Chamber disregarded significant evidence which shows that a joint anti-terrorist action took place in that area. In fact, the Chamber itself concluded in I/881 that this area "was the site of significant combat operations" and that the terrorists, not civilians, were the only target.

674. Based on the above and other evidence, the Chamber had sufficient basis to dismiss Byrnes's testimony about the persecution of Kosovo Albanians and setting their houses on fire by the police, who would afterwards allegedly force them to return to their burned villages. The evidence referred to in I/874 of the Judgment, P1101, clearly contradicts Byrnes's claims.

675. Pursuant to P1429, the PrK Command planned a joint anti-terrorist action in the general area of Lug. The Chamber could see that the anti-terrorist action was carried out pursuant to the PrK Decision from the so-called "Joint Command Notes" of 10 September 1998, where Pavković is recorded to have informed the attendants about the action. At this same meeting, Stevanović reported that an ICRC member prevented the civilians from returning to their homes. The Chamber ignored this evidence.

676. The measures taken for the civilian population to return to their homes show that these activities did not ensue because of the international media reports, as incorrectly claimed by Byrnes.

677. The notes of the meeting of 10 September 1998 reflect that Lukić was able to relay to Byrnes only the information he gathered from the reporting by Stevanović, who was in charge of the activities related to return of civilians.

678. The Chamber noted that Drewienkiewicz informed Lukić about "unconfirmed" reports that MUP was using excessive force in the area of Kosovo Polje.[971] The Chamber did not analyze the

[968] Paunović-(T.21872/22-21873/3)
[969] III/1083
[970] T.12228/4-10
[971] III/1084

issue of excessive force in this concrete instance, i.e. it did not establish the limits of an adequate use of force. The Chamber relied on Drewienkiewicz's notes reading that he called upon Lukić to take the appropriate steps with regard to a breach of the cease-fire in Podujevo and that Lukić allegedly took no steps to that effect. In I/931 to I/936, the Chamber did not in any manner establish that the side breaching the cease-fire was the MUP, so it unjustifiably interpreted the above breach, and particularly its finding on the breaches of the agreements by the VJ, against Appellant.

679. The Chamber ignored all the evidence showing that Lukić was not in the position to decide on or potentially recall the joint activities of the VJ and the MUP, even if he had knowledge of the alleged crimes. Moreover, the Chamber failed to discuss the reliability of information that was presented even before the UN Security Council.

680. The Chamber's finding that "Lukić was aware that there were serious allegations of criminal activity by MUP forces in Kosovo in mid- to late 1998, directed against the Kosovo Albanian civilian population,"[972] does not correspond with the established facts. The Chamber failed to assess the totality of evidence and drew arbitrary conclusions based, *inter alia*, on unverified newspaper articles published in the *Koha Ditore*.

681. The Chamber did not ask Đaković to explain certain entries. The Chamber failed to clarify the essence of the entries that it subsequently used as evidence in support of convictions entered against Appellant. For instance, in III/1931, the Chamber noted that at the meeting of 1 October 1998 Lukić mentioned, "Allegedly, there is a mass grave in the region of Jablanica." What the Appellant meant by this entry is that in Jablanica, one of the largest strongholds of the KLA,[973] there was a mass grave containing individuals killed by the KLA.[974] This would certainly have been confirmed by Đaković, too. Therefore, the Appellant did not feel the need to cross examine the witness regarding this fact. However, without putting the Appellant on notice, the Chamber associated the above entry with the Appellant's criminal responsibility by suggesting that the mass grave was a site where individuals had been killed by the security forces.

[972] III/1086
[973] I/801;I/802
[974] 4D140;;5D1307

b. Knowledge of crimes in 1999

682. When referring to Cvetić's testimony that the MUP Staff received information form the SUPs and various MUP combat units, the Chamber did not note that Cvetić had no knowledge of the incident in Izbica, which was in the area of his SUP. Clearly, Cvetić did not inform the MUP Staff about this incident.

683. None of the crimes charged in the Indictment was known to Lukić at the relevant time, nor was it then reasonably suspected that crimes such as Izbica were committed by MUP. When there were indicia on the existence of a mass grave, the competent authorities took the measures envisaged by the law, the PrK initiated an investigation, as did the competent Prosecutor and judge of the Kosovska Mitrovica District Court.

684. When noting that the arguments advanced by the Lukić Defense are contrary to the testimony of Adamović and Cvetić, the Chamber did not differentiate between the "combat reports" which, as established earlier in the Judgment, were not submitted to the MUP Staff, and reports on the security-related events that fall into the category of the knowledge of crimes. The Chamber created this confusion by incorrectly identifying the way in which MUP functioned with that of the VJ. This is a result of both the Chamber's lack of understanding of the laws regulating the functioning of these two entities and its non-acceptance of the Expert.

685. The Rules of Internal Organization, as amended in 1996[975] were incorrectly found to be a "reporting alternative". These Rules were not any kind of alternative, but they represented the only basis of reporting on events and phenomena that needed to be communicated through dispatches. The basic document pursuant to which the process of reporting and informing was carried out was the Instruction on Reporting and Informing.[976]

686. The Chamber further noted that Lukić instructed the chiefs of the Kosovo SUPs to send urgent daily reports, containing information about 'terrorist actions'.[977] This was a lawful instruction. Concerning the document referenced by the Chamber in this regard, Mijatović said "this

[975] P1044
[976] Adamović-(6D1613/para.38);6D2-(6D1631/para.12,27);Vojnović-(6D1532/para.14);Gavranić-(T.22645/14-22646/9)
[977] P2528;6D808

document was produced in accordance with the obligation of the MUP to inform the KVM on incidents and potential actions and movement of the police."[978] This obligation stemmed from the signed agreements.[979]

687. With regard to P1092, the Chamber committed a series of factual errors, as shown below:

- This was not an "order" but "information", as reflected in the document;
- this information was not sent to shift leaders at police stations throughout Kosovo, but only to those of the Priština SUP;

The Chamber misrepresented the essence of this evidence–the shift leaders at the police stations subordinate to the Priština SUP were supposed to inform the shift leader of the Priština SUP so that he would report to the MUP in Belgrade in accordance to the Instruction on Reporting and Informing. 6D-2 sent this information to his subordinates in order to ensure a more effective daily reporting process.

688. The principal user of the information thus conveyed was the MUP headquarters(Belgrade), not the Staff.

689. The Chamber misquoted the Minister's dispatch[980] by noting that the MUP Staff was to be informed first, and then the MUP in Belgrade. Item 9 of this document reads as follows: "IMMEDIATELY report to the Operations Center and the Work Lines at the MUP headquarters, and the organizational units from Kosovo and Metohija are also to report to the MUP Staff in Priština." The Minister differentiated between the organizational units and the Staff, since the latter was not one. Therefore, the MUP Staff was the last to be reported to.

690. According to the Chamber, on 10 April 1999 the MUP Staff sent a "report" signed by Lukić to the Ministry of Interior. The document in question was not a "report" but an overview. Moreover, this document was not signed by Lukić.[981]

691. Daily overviews were not <u>normally</u> compiled based on the information sent from the SUPs from the MUP Staff. Rather, they were <u>exclusively</u> compiled based on the information sent from the SUPs to the Staff.[982] These daily overviews did not relate to any incidents alleged in the Indictment.

[978] 6D1492/para.11
[979] P395/item 8;P492;Byrnes-(T.12206/4-13)
[980] 6D238
[981] 6D1246

692. The Chamber failed to establish in what manner Lukić was informed about incidents, and did not reference any evidence showing that Lukić was aware of any indicted crimes. As regards certain incidents registered in the daily overviews, the Chamber could not draw any conclusions as to whether they occurred as a result of crimes.

693. The Chamber noted that Lukić sent a report to the MUP in Belgrade on 3 April 1999, referring primarily to the items related to the discovery of bodies at three locations.[983] This document was not a report but an overview, which confirms that it only contained a summary of reports written elsewhere.

694. There is no evidence showing that the bodies were related to crimes and there is no evidence as to who was responsible for the deaths. Lukić's obligation ended upon reporting on the incident, and the incident came into the remit of the competent prosecutor and judge. The bodies were found in the zone of terrorist activities, which indicates that the victims were either killed by the terrorist or were terrorists themselves.

695. When analyzing certain parts of Lukić's interview, the Chamber ascribed to Lukić something he did not say.[984] Thus, the part of the interview pertaining to Pusto Selo was interpreted to relate to Izbica. When asked by the Prosecutor about, "the Investigation in both of these cases, in Pusto Selo and Izbica...," Lukić replied: "When we speak about Pusto Selo…," which clearly implies that Lukić spoke about Pusto Selo. As regards Izbica, Lukić was not even able to talk about the types of injuries, as the post-mortem report was submitted to the investigative judge only in 2003.[985]

696. Concerning the dispatch of 28 May 1999, as Gagić explained, the MUP Staff was used as an address to which he sent the dispatch on behalf of the Crime Police Administration to Crime Police Departments (OKPs) on the ground.[986] The Chamber's reference to the indictment of Milošević/Stojiljković is not clear as this fact is not mentioned in this dispatch and its attachment.

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[982] Adamović-(6D1613, para.25,37)
[983] III/1091; III/1056
[984] III/1092
[985] Tomašević-(T.7034/21-7036/2)
[986] T.24477-24478/4; 24526/17-24527/6

697. The Chamber misinterpreted document 6D666 of 3 April 1999, by noting that Lukić "instructed" heads of Kosovo SUPs and commanders of PJP detachments "to prevent any forcible eviction of the Kosovo Albanian population." The exhibit itself and 6D-2 testimony[987] clearly show that Lukić actually prepared an official note of the "order relayed" to the SUPs, but not to the commanders of PJP detachments, as erroneously noted by the Chamber.

698. Lukić prepared this note in order to show that he relayed the above-mentioned order. The order was transmitted on 5 April 1999 and not on 3 April 1999, as indicated in the document admitted into evidence. This is confirmed by the dispatch of 15 April 1999,[988] which actually refers to the order relayed on 5 April 1999. Furthermore, 6D-2 confirmed that Lukic conveyed order from MUP on 3.4.1999[989]. Joksic also confirmed that he received such an order from Head of RDB[990].

699. The Chamber concluded that the mass departure continued even after 5 April, noting that "from 5 April to 30 April 1999, a total number of 101,628 more" citizens had left Kosovo. It is a period of twenty-five days, while in the first eleven days of the bombing about 600,000 citizens had left Kosovo. This proves that the relayed order actually produced appropriate results, and that it was mostly obeyed. This is also confirmed by the fact indicated in the dispatch of 15 April 1999 that "certain senior officers tolerate mass departure of civilian population." Certain, but not the majority senior officers did tolerate the departure, but attempts were made to prevent it. The above statistical data also show that the greatest mass departure of civilians was a consequence of a shock that ensued after the bombing had started.

700. In I/541 the Chamber did not associate this meeting with the letter sent by Arbour. Likewise, in Paragraphs III/140 and III/141, in analyzing Milutinović's responsibility, the Chamber did not note that Arbour's letter was the reason for calling this meeting. Although the Chamber referred to the interview with Lukić in order to corroborate its conclusion that the meeting was indeed held,[991] the Chamber failed to note that Lukić did not mention that the letter from the Prosecutor was the reason for calling this meeting, but rather that it was a routine reporting exercise under bombing conditions.[992] Arbour sent her letter on 26 March 1999, i.e. 39 days before this meeting, and therefore, the Chamber improperly concluded that this letter was the reason for this meeting.

[987] T.25347/1-18
[988] 6D778
[989] 6D2-(T.25347)
[990] Joksic-(T.22052)
[991] III/1095
[992] P948,p.142,143,144

701. The Chamber could have learned based on the original press release published in the *Politika* newspaper[993] that the purpose of this meeting was to discuss "the tasks in the defense of the country, anti-terrorist combat […]."

702. The Chamber itself noted that "the security forces of the VJ had dealt with numerous cases of violence," while there is no mention of any crimes committed by members of the MUP. Specifically, if there had been any crimes committed by members of the MUP, the VJ security organs would have reported them as well and they would have been discussed at this meeting.

703. The Chamber's conclusion in III/141 of the Judgment is contrary to the Chamber's conclusion here: "The Chamber is satisfied that during the […] meeting the security situation in Kosovo was discussed, a mention was made of structures put in place to help 'all citizens to return to their homes' once the hostilities ceased, […] the security forces of the VJ had also dealt with numerous cases of violence, murder, looting, and other crimes, and had arrested several hundred perpetrators […]"

704. Although Lukić heard of the cases of crimes at this meeting, he also heard that competent organs(VJ security organs) took all measures envisaged by the law against their perpetrators. The Chamber itself drew the same conclusion in III/141: "The Chamber was presented with no evidence that Milutinović knew this information to be incorrect." The Chamber had to draw the same conclusion with regard to Lukić as well. No evidence was presented that Lukić knew that this information was incorrect. The Chamber assessed the same fact differently with regard to different Accused.

705. In discussing Lukić's statement at the meeting of 11 May 1999,[994] the Chamber failed to note the key sentence,[995] namely that "the mass departure of civilians must be prevented immediately," and that, in such context, measures and treatment of civilians should be foreseen in the zone of operations. It is clear that civilians were to be protected/secured in order to remain in their places of residence.

[993] 5D1289
[994] P1993
[995] III/1096

c. Lazarević's report of 24 May 1999 (P1458)

706. Concerning Lazarević's report of 24 May 1999, the Chamber failed to consider[996] the evidence that calls into question when this document was prepared. The PrK Operational Logbook[997], kept track of all written documents prepared by the Priština Corps under number "455". However, the Operational Logbook does not contain any reference to the above mentioned report.[998] None of the VJ witnesses provided any explanation as to how it was possible that only this report was not registered in the Logbook.

707. The Chamber noted that "it appears from Stefanović's testimony that Lazarević's report was based on a report that the former had previously sent to the Priština Corps Command."[999] No such report was presented at trial.

d. Pavković's report of 25 May 1999 (P1459)

708. Concerning Pavković's report, Appellant emphasizes that all VJ witnesses confirmed that they never saw the above mentioned report, or had any knowledge about the alleged crimes of members of the MUP indicated in Pavković's report. Đaković confirmed that the 3rd Army Log Book(which would shed light on P1459 was sent in 1999), was kept in the archives of the 3rd Army, as it was under his control, and that it was not clear to him how it disappeared[1000]. Serbian authorities provided evidence that this Log Book had disappeared.[1001]

709. In Pavković's response to the allegations made by Arbour, which he sent to Ojdanić,[1002] Pavković did not mention the issue of alleged crimes committed by police members, even though this was an excellent opportunity to mention these crimes bearing in mind the topic of the report.[1003]

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[996] I/1182;III/847
[997] 6D1486
[998] Id.
[999] III/848
[1000] Tr.26532/8-26533/16
[1001] 6D1665
[1002] 3D790
[1003] III/757

710. The Chamber relied[1004] on P1459 and P1458, though other evidence adduced showed that these exhibits cannot be considered trustworthy. The evidence questions the authenticity of these two documents to such an extent that the Chamber couldn't have based any inferences on them. Specifically, the Chamber failed to adequately consider the following:

a) Based on the PrK Operational Log Book, it can be concluded that the documents bearing number "455" were not sent during the war.[1005]

b) General Simić who assumed his function in Priština immediately after the date on which these documents were allegedly sent had no information that would confirm the existence/accuracy of the allegations contained in these letters.[1006]

c) Several witnesses from the VJ/MUP structures testified that they had never seen the above letters and denied the contents thereof.[1007]

d) In performing his function of the Chief of the VJ General Staff, Pavković ordered in 2001 that the original documents kept in the VJ archives be replaced with "authentic" and "legible" copies thereof, and that the originals be kept in Pavković's office. [1008]

e) General Ojdanić never received P1459 (also, the document does not have a stamp indicating that it was received by the Supreme Command Staff).[1009] The Chamber was presented with evidence that this document had never been in the VJ archives.[1010]

f) Both documents contain initials "BB", which indicates that these documents were typed/sent by the same staff-person. Moreover, witness Mladenovski,[1011] as well as graphology expert Aleksić, provided sufficient arguments for any reasonable trier of fact to conclude that these documents were recorded "subsequently", and that, taking into account

[1004] I/1182,I/1183
[1005] 6D1486
[1006] Simić(Tr.15760/22-15761/22;15673,/21-15676/4;15717/19-22)
[1007] 6D1614,para.90;6D1631,para.86;Stojanović(Tr.19815/12-20);Stefanović(Tr. 21715/9-24); Živaljević(Tr.24837/17-24838/19)
[1008] Jevtović, Tr. 20379/8 – 20380/8
[1009] Gajić(Tr.15428/3-15431/2);Curcin(Tr.16964/19-16965/2;17020/17-17021/8);Vlajkovic(Tr. 16072/22-16703/6)
[1010] 3D1077;3D1078;Radoičić(Tr.16127/9-16130/4)
[1011] 3D1130;3D1135,para.7-13;Tr.25762/12-24;25768/11-25775/15

the foregoing, they cannot be considered reliable evidence on which any inferences can be made.

711. Simić/Terzić of the Supreme Command Staff, who performed the inspection of the PrK, both stated that neither Lazarević, nor Pavković informed them about the problems/contents of the reports during the meeting of 26 May 1999, which was organized as the final meeting following the inspection and control of the work of the PrK Command and its units, and nothing like that is contained in the Report after this inspection.[1012] This meeting was an opportunity to inform the members of the Supreme Command Staff about the problems/information concerning the alleged crimes committed by police members, so that they could proceed with investigation of those crimes in Belgrade. Both confirmed that after the inspection had been completed, Pavković did not inform them about this.

712. Based on the foregoing, and taking into account other evidence, the Chamber could have reasonably concluded that the above mentioned reports were not prepared during the relevant time, but at a later stage, most probably at the time when Lukic established a working group to investigate mass graves in Serbia.

e. Pavković's report of 4 June 1999

713. The Chamber erroneously and without any factual basis associated Pavković's report of 4 June 1999 with document P1725 of 4 June 1999, since this report refers to the report of the Supreme Command Staff in relation to the inspection of the PrK [1013] The contents of this report is not even remotely as detailed as Lazarević's and Pavković's reports of 24 and 25 May 1999, which indicate murders at check points, killing of civilians in convoys, etc. The information contained in the report of 4 June 1999 is taken over from the report prepared by a team of the Supreme Command Staff based on the inspection of a brigade in Podujevo[1014] If Lazarević's and Pavković's reports of 24 and 25 May 1999 had been prepared at that time, Pavković would have certainly referred to these reports as they contain far more serious problems than the ones indicated in the report of 4 June 1999.

[1012] 3D692
[1013] 3D692
[1014] 5D436

Q. CONSOLIDATED CRIME BASE

1. IMPERMISSIBLE INFERENCES AS TO CRIME BASE LOCATIONS

714. The discovery of mortal remains of persons from the Djakovica (as an example) or any does not in and of itself provide automatic affirmation that a crime has occurred, or that Appellant had knowledge of the same, so as to be found criminally liable for these deaths.

715. Again, with respect to a majority of the 287 deaths in the Djakovica surroundings, the Chamber's reasoning is more conjecture than solid evidence.

716. The Chamber found "it is established that this process of exhuming and moving bodies was carried out in order to cover up the results of a joint VJ and MUP operation, and the fact the MUP was responsible for the cover up provides strong evidence of its forces' involvement in the commission of crimes."[1015]

717. However, strong evidence does not mean only evidence, and considerable evidence was given of combat having taken place and Police organs, including witness Radovan Zlatkovic, engaging in the legitimate and legal police function of investigating and documenting the bodies.[1016] This evidence of dead persons being terrorists/combatants resulting from legitimate combat was confirmed in VJ combat reports of the area.[1017]

718. The equally reasonable inference that some of these combatant bodies were transported to Serbia and part of the "deaths" now being asserted in the 287 cannot be rebutted, but was not even considered by the Chamber.

719. The Chamber erred in that it found the KLA presence in the Djakovica area (Reka/Caragojs) was not significant on 27 and 28 April 1999, and thus the Reka operation was primarily directed against the civilian population.

720. This is unsupported by the evidence, and the lack of any meaningful analysis of the evidence speaks to the discernible error. The Chamber had access to Rule 70 documents admitted

[1015] II/ 237.
[1016] 6D1627,paras.39-42;Zlatkovic-Tr.25281/25-25285/14
[1017] 6D1468

into evidence that demonstrated intel/factual reports received from the Kosovo Albanian side by the United States that indeed the entire region surrounding Djakovica(including the Reka/Carragoj valley) was in the hands of strong KLA forces that held even a significant portion of Djakovica Town.[1018]

721. This evidence was corroborated by various witnesses,[1019] including OTP witnesses[1020] who affirmed the presence of the KLA precisely in this area.

722. The totality of the evidence before the Chamber demonstrates precisely what type of information was available to Appellant. There was no evidence adduced that he was present in Djakovica 27 or 28 April 1999 so as to know personally of the deaths being now charged against him, and no first-hand reason to know of any such deaths "concealed" as deaths of terrorists when in fact civilian.

723. What was adduced at trial was the method by which daily reports were sent to the Staff, which Appellant then re-submitted to the MUP headquarters in Belgrade.[1021]

724. Albeit translation capacity concerns denied the defense from presenting all Daily overviews prepared by the Staff, a significant number were admitted into evidence, and in particular, relating to dates after the alleged deaths, are devoid of any information of these deaths having occurred.[1022]

725. Zlatkovic testified that the on-site investigations that were conducted by the MUP after the operation were destroyed in the SUP when NATO bombed the same.[1023] The VJ reports speak of dead terrorists.[1024] Thus it is perfectly legitimate/reasonable for someone based on that information to have the impression that terrorists perished in combat, and that investigative steps were being taken by the law enforcement authorities to investigate and document each death before taking any action against unjustified homicides in Djakovica municipality. In essence, Appellant had no knowledge of any unjustifiable homicides that had been reported after investigation, and at most could have had knowledge of homicides being investigated legitimately and properly by the local authorities. This is precisely the same circumstances under which the Chamber acquitted

[1018] 6D1637;6D1638;6D1639
[1019] Zivanovic(Tr.20440/13-18,20495/15-20496/10);Zlatkovic-Tr.25274/7-16
[1020] Zyrapi-Tr.6264/23-6265/7;K73-Tr.3395/25-3396/4
[1021] Mijatovic-Tr.22222/13-22223/4;Vucurevic-Tr.23052/20-23053/12
[1022] 6D1232-6D1252,6D1254-6D1257,6D1259-6D1261,P1693
[1023] Zlatkovic-Tr.25304/24-25305/12
[1024] 6D1468

Milutinovic, in finding "even when put on notice regarding the displacement and possible crimes, mostly by international representatives, he was the same time told by the FRY/Serbian authorities with official responsibilities therefore that they were being dealt with or that they were caused by KLA and NATO. Thus the Chamber cannot be satisfied beyond reasonable doubt that the only inference to be drawn from the evidence relating to notice is that Milutinovic knew of the physical or intermediary perpetrators' intent to commit crimes of displacement."[1025]

726. Moreover, the Chamber's linkage of the exhumation/reburial process to criminal participation and liability of MUP forces cannot be properly inferred to Appellant. On the basis of ALL the evidence before it, the Chamber has acquitted Appellant of involvement in the exhumation/reburial of these bodies.[1026]

727. Having already acquitted Appellant of involvement in "concealment" of bodies (the same bodies that constitute a vast majority of the 287 victims alleged for Djakovica), it is improper/illogical to hold Appellant criminally responsible and satisfying his knowledge/participation in the crime by using the very same "concealment".

728. Respectfully, the findings of the Chamber are in direct contradiction to one another. Having already acquitted President Milutinovic for having even more knowledge than that of Appellant, an acquittal of Appellant is warranted.

729. Due to the restrictions imposed on the length of the Appeals brief, we have presented Djakovica as the leading example of this specific ground of error which applies to all municipalities. We will also highlight Prizren to demonstrate the same errors at play. We will treat Gnjilane separately because of its unique position in the trial.

730. As to NATO air-strikes significant evidence was adduced as to the municipalities of Pec,[1027]Decane,[1028]Orahovac,[1029]Suva Reka,[1030]Srbica,[1031]Kosovska Mitrovica[1032],Pristina,[1033]

[1025] III/281
[1026] III/1113.
[1027] 6D323,6D1557,6D1558,6D1559
[1028] P2616
[1029] 6D1631 para.103;6D1401,para.30
[1030] 5D885
[1031] 5D1023;5D1033
[1032] 6D1614,para95
[1033] Anđelković,T.14673-14676,14678;Marinković,T.23457,23462–23463;P2443,para.22;Kabashi,P2250,p.6,P2251,T.4016–4017;Bogosavljević,T.23856;6D1606,para.33; Bogosavljević,T.23856;Filić,T.23970,24035–24036;Mijatović,T.22176–22177;Deretić,T.22577–22578,22585;Filipović,T.19174–19176,19192–19193;5D1242.

Urosevac,[1034]Kacanik,[1035] that simply was not considered by the Chamber, who in each instance had to find beyond reasonable doubt that flight from NATO air-strikes was not an alternative reason available under the evidence.

731. Likewise, there was considerable evidence presented that was omitted from the Chamber's findings, relative to the presence/activity of the KLA in Pec,[1036]Decane,[1037]Orahovac,[1038]Suva Reka,[1039]Srbica,[1040]Kosovska Mitrovica[1041],Pristina,[1042] Urosevac,[1043]Kacanik,[1044] where either deaths were alleged or the displacement of the civilian population

732. Just as in Djakovica, the Daily Bulletins introduced into evidence do not indicate that Appellant had knowledge of any crimes relative to the Indictment sites, nor any crimes that were condoned by or failed to be investigated by the relevant authorities for all the above municipalities.[1045]

733. If the Appellant had no notice of these events in such a manner so as to put him on notice of a criminal plan in which he could be considered a participant, then he could not have the intent necessary to be convicted of direct/indirect participation in the crimes themselves or the aftermath. Accordingly the convictions arising out of the crime base must be vacated.

2. IMPROPER RELIANCE UPON OMPF LIST OF MISSING PERSONS TO DETERMINE THE DATES AND LOCATION OF DEATH

[1034] Jelić,T.18945;
[1035] P3115,T.37904
[1036] 6D1603,paras.16,34,35;Paponjak-T.24539,24547–24548; Nikčević-T.23242–23243; 6D1606,paras.11,14, ; Joksić-T.21977–21978;Crosland-T.9919,3D510,para. 63,Annex B; ;4D141;6D698
[1037] 6D96;6D490;6D491; 6D1014
[1038] Zyrapi- T.5967,T.5991,T.6258–6259,T.6264/23-6265/7;P2447;P2469;P2808;3D1048;6D1013;Delić-T.19438;IC152
[1039] Zyrapi-Tr.6264/23-6265/7;K83,T.3978–3979;Vojnović,T.24172;6D1532,paras.27–28;6D787; ZyrapiT.5934,5967,6258;P2469;P2465;P2447;P2468;P2459;Maisonneuve,-T.11133;P2772,para.15, attachment MM2/B;6D1008,p.1;Joksić,6D1491,para.62; 6D1010;6D1635e-court-p.8.
[1040] Damjanac-T.23738;Zyrapi,T.5934,5967,5991,6242-6244,6258;P2469;P2447;IC105
[1041] 6D1614,paras.25-35,37-39,43
[1042] Zyrapi-T.5934,5967,6018,6258;P2469;Gërxhaliu-T.2529–2530;Byrnes,T.12232;6D1016; Filipović,T.19165;Kabashi,T.2083,2086–2087,2114;P2251,T.4048, Kabashi,T.2084–2085;6D1017;Phillips,T.12016–12017;Filić,T.23951–23953;Filipović,T.19164;6D1495,paras.28–30;6D1523;6D1524;6D1525;P407,p.820
[1043] Zyrapi,T.5932,5934,5967,5987–5989,6209,6259;P2469;P2453,p.2;Kotur,T.20647;6D1,T.25671–25672,(closed session);Debeljković,6D1533,paras.57,66;6D412;6D614,p.667,para.448., Hyseni,T.3131–3132.
[1044] Zyrapi,T.5967,6046–6047,6259;P2469;Drewienkiewicz,P2508,para.191;P2469;Loku,T.3185,P2296,p.2; Dashi,T.4628–4629;5D8,p.2,P680,p.4.,Jelić,T.18839–18840,18845,Lazarević,T.17869–17870;5D253,p.1.
[1045] 6D1232-6D1252,6D1254-6D1257,6D1259-6D1261,P1693

734. The Chamber erred in its reliance upon Prosecution Evidence that lacks indicia of credibility and fails to meet standards expected under fairness/justice for asserting murder.

735. The Judgment does not, as a preliminary matter, establish the elements necessary for the deaths alleged to be considered part of a widespread/systematic campaign directed against a civilian population, as detailed hereinabove.

736. For a vast majority of the 287 named murder victims in Djakovica that are attributed to the MUP/VJ forces, very little or no direct OTP witness testimony was adduced at trial.

737. Respectfully, as to a vast majority of the named victims, the sole evidence relied upon by the Judgment in reaching its guilty verdict is the list of missing persons prepared by the OMPF ("Office of Missing Persons and Forensics"[1046])

738. The OMPF list(P2454), respectfully, is insufficient to meet the burden of proof of death that can be relied upon for a criminal conviction.

739. The OMPF list does not identify the basis of the assertion, which is erroneously relied upon by the Chamber, that the victim was part of a group of people last seen in Meja on 27 April 1999.

740. Specifically, P2454 does not provide ANY indication of where and when the deceased met their demise, and does not differentiate as to wounds received in combat or otherwise. As such, this evidence cannot meet the burden of proof necessary to establish the death of an individual that may be attributed to Appellant.

741. P2798, is merely a spreadsheet from OMPF, with a unexplained entry "date event" and "location event" upon which the Judgment is relying in concluding that these fatalities occurred during the Reka operation in the Carragojs valley of Djakovica. There is no further information, most importantly there is not any explanation of the source of this hearsay information. There is no correlation of this information to any evidence that was led at trial to conclude that the deaths are chargeable against the Appellant.

742. Indeed, the source for any such assertion was not subjected to cross-examination before the Tribunal, and thus the Defense was deprived of an essential right to confront the evidence, that,

[1046] IV/Annex C

unbeknownst to the defense, was to become the crux/lynchpin of the Chamber's judgment condemningAppellant and imposing a serious sentence.

743. These findings violate the principle of *in dubio pro reo*, as well as Rules 92bis and 92ter that relate to written statements and when they can be admitted without the declarant being subjected to cross-examination. The Chamber also violated its own ruling in regards to "AS SEEN AS TOLD" and "UNDER ORDERS" where such type of evidence was barred.[1047]

744. These assertions as to names of individuals whose remains were transferred to OMPF from Batajnica or other secondary graves by no means can be reasonably considered to establish that in addition to being seen the in Meja 27 April 1999 (although as stated even that cannot be taken as proven under the appropriate standard) these individuals met their mortal end at that location as a direct/proximate result of criminal acts by the VJ/MUP that Appellant had reason to know of.

745. Indeed, the mere recovery of mortal remains from a secondary grave does not determine the precise manner/location of their demise, and does not establish whether their death was as a combatant or as a civilian, so as to cause criminal liability to attach thereto.

746. Indeed, as unreliable as they were, the Prosecution brought witness testimony to explain the demise of only a handful of the alleged victims.[1048]

747. As a true indication of the unreliable nature of the testimony of these same OTP witnesses, the Chamber concluded it had "unconvincing" evidence as to the killing of Kole Dushmani, and was not satisfied that his death was proven to be done by the forces of the FRY and Serbia on 27 or 28 April 1999.[1049] Likewise, despite OTP testimony that Skender Pjetri was also killed at the Markaj compound, the Judgment rightly declines to find criminal responsibility due to the lack of any forensic evidence of a body.[1050]

748. For a large number of "victims" from Srbica/Izbica the OMPF list and another list compiled by KLA Commander/OTP Witness Liri Loshi are the sole evidence of a person having been killed in Izbica by Serb MUP on 28 March 1999,[1051] even though many of the OMPF "victims"(50-

[1047] 1.Sept.2006.
[1048] II/233
[1049] II/235
[1050] II/233
[1051] IV/649,651,652,654,655,656,657,758,659,660,661,662,663,665,666,668,669,670,671,679,680,681,682,683,684,686,687,688,689,691,691,692,693,694,695,696,697,698,699,700,701,702,703,704,705,706,707,708,709,710,711,712,713,7

42,3%) have a different date for disappearance AFTER 28 March 1999.[1052] It is discernible error to assert persons who disappeared days later perished days earlier, as this is illogical. The eyewitness testimony brought by the Prosecution does not link these deaths to the incident that is asserted against Appellant. Accordingly, the imposition of criminal liability is not proper, because the standard of proof has not been met. In at least one instance, the OMPF information does not even record the person as having gone missing in Izbica.[1053] The error is compounded by the fact that the Chamber does not specify for which individuals it is finding liability, stating "while the chamber has found that approximately 93 people were killed, it is unable to state exactly which of the remaining victims named in Schedule F were part of that number although obviously most were" then referring to volume IV where the questioned lists are the sole evidence.[1054] For all we know, the questionable Loshi list may be the basis of the OMPF list, thus we cannot rely solely on a list and reported date to determine the burden of proof has been met for murder.

749. The OMPF list again plays a significant role in Suva Reka. However in that instance, OMPF was only relied upon to determine when/where death occurred in the cases when accompanied with direct testimony of OTP witnesses as to the circumstances of the death.[1055] It is critical to note that, where OMPF listed an individual as missing and there was no direct eye-witness to their death, "The Chamber is not satisfied beyond reasonable doubt that these two persons were killed in Suva Reka on 26 March 1999."[1056] This is proper application of the standard of proof, and the same reasoning and rationale ought to have been employed in the case of Djakovica/Izbica.

3. DEATH FORENSICALLY UNASCERTAINED

750. It is difficult to discern if the proper forensic conclusions have been made as to time, method and manner of death, and relied upon correctly by the Chamber. The Indictment listed only names, and only an approximate age.

14,715,716,717,718,720,721,722,723,724,725,726,727,729,733,734,735,736,737,738,739,742,746,748,750,751,752,753,754,755,756,757,759,760,762,763,765.

[1052] IV/649-767

[1053] IV/680

[1054] II/250

[1055] II/537-543

[1056] II/544;IV/633

751. Nonetheless, the conclusions presented in the Judgment set forth some clearlyerroneous findings which call into question and invalidate the Judgment as to Djakovica/Srbica(Izbica).

752. The Chamber erred in its reasoning that discrepancies between names of charged victims and mortal remains that were identified was minor and did not affect the ability to identify "victims".[1057]

753. As was demonstrated throughout trial, many Kosovo Albanians had similar/same names. Without proper biographical information, as to the father's name, precise date of birth, JMBG, it becomes impossible for the defense to have actual knowledge of victims for whom criminal liability is asserted, and to challenge the same in the trial.

754. Likewise, it is respectfully submitted that by lowering the standard so drastically, where not a single live/documentary witness was called to testify as to the existence, identity and demise of the stated victim outs the credibility of the Tribunal in serious jeopardy. This is especially true where lists generated for purposes other than trial of names are the sole basis of determining identity of victims and liability of Appellant.

755. In regards to mortal remains alleged to be evidence of victims relative to Djakovica Municipality on 27/28 April 1999, there are several forensic discrepancies which call into question the factual allegations of the indictment, which were largely unsupported by any evidence that was led or. Among these are the following.

756. PJETER ABAZI – where the Chamber noted the autopsy findings on the remains demonstrate a conclusion "which is not consistent with the approximate age of the indictment.[1058] It should be noted that the concern of the Chamber over a critical inconsistency did lead the Chamber to refrain from adjudicating that Mr. Abazi from the indictment died as a result of a crime and that Appellant is responsible.[1059] The multiple other persons for whom the Chamber did not find the death proved to have been criminally caused should best illustrate the flaws apparent in the method of relying on OTP OMPF lists as your sole evidence.[1060]

[1057] IV/22;IV/649;IV/934
[1058] IV/26.
[1059] II/329
[1060] id

757. A significant number of remains are said to have the cause of death unascertained, upon review by Serbian/UNMIK forensic personnel.[1061] Shockingly, of 287 victims with remains for whom criminal liability is adjudged, no fewer than 84 are remains where no forensics were noted or where both Serbian/UNMIK forensics agree that the cause/manner of death cannot be ascertained. It is shocking that almost 30% of the victims for whom liability is adjudged do not have any evidence that their death was unnatural or criminally caused. Where no direct evidence was led as to the nature of the death by the Prosecution at trial for a vast preponderance of these "victims", this is insufficient to establish death for which someone is criminally liable.

758. In regards to several of the mortal remains alleged to be victims arising out of Srbica(Izbica) on 28 March 1999, there are several forensic discrepancies which call into question the findings, which were largely unsupported by any evidence that was led.

a) a significant number of victims (100/116;86.2%)have no proof of death or violent mode of death ascertained by a forensic professional so as to allow it to be attributed to a war crime chargeable against Appellant.[1062] Where no direct evidence was led as to the nature of the death by the Prosecution at trial for a vast preponderance of these "victims", this is insufficient to establish death for which someone is criminally liable.
b) The person at IV/658 – the only OTP evidence confirms NOT killed at Izbica;
c) The persons at IV/676/685/728/749 have no evidence submitted whatsoever.
d) IV/686 has no evidence linking to Izbica.
e) IV/683 the Chamber is unsure how the OTP linked the name to a victim.

[1061] IV/27,IV/29,IV/34,IV/35,IV/41,IV/42,IV/43,IV/48,IV/55,IV/58,IV/59IV/64,IV/65,IV/71,IV/72,IV/73,IV/75,IV/76,IV/77,IV/78,IV/79,IV/86,IV/87,IV/90,IV/96,IV/97,IV/126,IV/132,IV/140,IV/145,IV/157,IV/175,IV/178,IV/180,IV/183,IV/184,IV/186,IV/189,IV/206,IV/109,IV/210,IV/211,IV/218,IV/219,IV/220,IV/221,IV/227,IV/238,IV/247,IV/248,IV/250,IV/251,IV/264,IV/277,IV/280,IV/282,IV/283,IV/285,IV/301,IV/304,IV/305,IV/306,IV/308,IV/309,IV/312,IV/322,IV/330,IV/331,IV/333,IV/338,IV/345,IV/349,IV/351,IV/352,IV/371,IV/373,IV/375,IV/379,IV/387,IV/396,IV/399,IV/401,IV/404.

[1062] IV/649/650/651/652/654/656/657/660/662/666/669/670/671/673/675/679/691/695/697/699/701/702/703/708/709/710/711/716/717/720/722/724/726/727/729/731/733/734/735/736/739/743/744/745/746/750/751/752/754/755/759/760/766

758. The Chamber's free disposition to conjecture the cause of death where it is not able to be done so by forensic professionals ought to cause concern for the manner in which the other evidence was viewed as to Djakovica/Srbica(Izbica).

4. NO FORENSIC EVIDENCE OF A BODY

759. It is respectfully submitted that the Chamber erred, in finding that deaths occurred in Mala Krusa and/or Srbica for which Appellant bears criminal responsibility.

760. The Judgment erroneously found that 111 individuals named in schedule C of the Indictment were killed by MUP forces on 26 March 1999 in Mala Krusa[1063], 59 persons were killed by MUP forces in Bela Crkva[1064]and 93 individuals from Schedule F were killed by MUP/PJP in Srbica/Izbica.[1065]

761. In reaching these conclusions the Judgment based its findings in whole on faulty Prosecution evidence and testimony that suffered defects in credibility, lacked sufficient qualities to meet the standard of burden, and that were rebutted by reasonable defense evidence as to alternative causes that was led at the trial and which must be given priority under the principle of *in dubio pro reo*.

762. It should be noted that, so far as the charges of murder are concerned, under both Article 3 and 5, the Prosecution's evidentiary burden to be met for criminal responsibility to attach include proof beyond any reasonable doubt that:

a) the victim is dead;

b) the death was caused by an act or omission of the perpetrator; and

c) the act or omission was done with intention to kill, or to inflict grievous bodily harm, or to inflict serious injury, in the reasonable knowledge that such act or omission was likely to cause death.[1066]

[1063] II/433
[1064] II/381-382
[1065] II/679-687
[1066] *Prosecutor v. Vasiljević*, IT-98-32,(Trial Judgment)29.11.2002,para.205("*Vasiljević* TJ")

763. The *actus reus* consists in the action or omission of the accused resulting in the death of the victim, and therefore the Prosecution must prove beyond reasonable doubt that the accused's conduct contributed substantially to the death of the victim.[1067]

764. In the Stakic case the Chamber concluded the Prosecution has only met its burden to prove beyond a reasonable doubt an individual is deceased when the victim is either:

> *(i) exhumed and identified, (ii) identified by an eye-witness as being killed or by a witness as still missing or dead, or (iii) named in a death certificate issued by a local court,*[1068]

765. Where the Prosecution intends or seeks to discharge its burden of proof by way of circumstantial evidence rather then production of a body, the ONLY reasonable inference under the evidence must be that the victim is dead as a result of the acts or omissions of the accused. [1069] A review of the findings and evidence does not support this inference.

766. With regard to Mala Krusa not a single one of the 111 named victims had a body recovered and yet criminal responsibility for Murder was entered. It should be noted that even the Chamber acknowledged that there was no forensic evidence for Mala Krusa.[1070] Respectfully, with no forensic evidence it is simply impossible for there ONLY to be an inference of a murder, as it is equally available under the evidence that the event never happened. Indeed, the 2 Prosecution witnesses were found to be unreliable and contradictory to several other persons for whom the Chamber declined to assert liability.[1071] Thus their evidence cannot dispel reasonable doubt required by the presumption of innocence.

767. In Bela Crkva, the Chamber relied on two Prosecution witnesses- but for 7 out of the 59(12%)victims [1072] Forensic teams did not identify any remains belonging to the persons stated to have been killed with the others whose remains were found. Such a discrepancy calls into account whether the witnesses can be relied upon for their description of how the deaths occurred and who was involved. As such a conviction was improperly entered.

[1067] *Prosecutor v. Brdjanin* IT-99-36 (Trial Judgment) 4.1.2004,para.382("Brdjanin TJ"),
[1068] *Prosecutor v. Stakic,*IT-97-24-T(Trial Judgment),31.7.2003,para.939
[1069] Brdjanin TJ,para.385 ("Brdjanin TJ"),*citing Prosecutor vs. Krnojelac* IT- 97-25,(Trial Judgment) 15.3.2002,para 326-327.
[1070] II/430-431
[1071] II/434
[1072] IV/412,415,418,423,427,467,477.

768. With regard to Srbica/Izbica, of a total of 116 scheduled victims, 48 total(41.38%)[1073]of the victims never had a body recovered/offered as proof of the death. Instead, unreliable/no evidence. The *Actus Reus* is thus not satisfied.

769. The Chamber's approach to other municipalities, rightly could not deem a chargeable death occurred and did not assert liability where there was no body recovered.[1074] The only explanation for this disparate treatment by the Chamber of the standards for determining death is that they committed error as to these three sites(Mala Krusa/Bela Crkva/Izbica).

770. Respectfully, the Judgment does not offer an analysis under this prevailing jurisprudence of the Tribunal to satisfy this burden in the findings that 111 persons from Mala Krusa and 59 persons from Bela Crkva and 93 from Srbica/Izbica were killed by the MUP, nor that criminal liability properly attaches to Appellant as a result of his actions/omissions, and therefore these findings[1075] should be vacated, and the entire sentence reconsidered, or a new trial ordered.

[1073] 649 650 653 655 658 659 661 663 664 668 672 674 676 677 680 681 685 686 687 690 693 694 696 698 700 704 705 706 715 719 721 723 728 730 737 738 740 741 742 747 748 749 756 757 758 761 764 765.

[1074] e.g.II/239;IV/99(Djakovica)

[1075]II/15,II/18,II/19,II/20,II/21,II/23,II/24,II/25,II/26,II/27,II/28,II/29,II/30,II/32,II/33,II/34,II/35,II/36,II/38,II/39,II/48,II/52,II/53,II/57,II/58,II/59,II/60,II/61,II/62,II/63,II/64,II/65,II/66,II/67,II/68,II/69, II/74, II/75, II/76,II/77,II/78,II/79,II/80,II/81,II/82,II/83,II/84,II/85,II/86,II/87,II/88,II/89,II/90,II/91,II/92,II/139,II/140,II/141,II/144, II/145,II/147,II/148,II/149,II/238,II/244,II/298,II/304,II/310,II/311,II/312,II/313,II/315,II/320,II/321,II/322,II/323,II/324,II/325,II/326,II/327,II/328,II/329,II/330,II/331,II/332,II/333,II/334,II/335,II/340,II/341,II/342,II/343,II/344,II/345,II/346,II/347,II/348,II/349,II/350,II/351,II/352,II/353,II/354,II/355,II/356,II/357,II/358,II/359,II/360,II/367,II/368,II/369,II/370,II/371,II/372,II/373,II/374,II/375,II/380,II/381,II/382,II/383,II/384,II/385,II/397,II/400,II/402,II/403,II/404,II/405,II/406,II/407,II/408,II/409,II/410,II/411,II/412,II/413,II/414,II/415,II/416,II/417,II/418,II/419,II/420,II/421,II/422,II/423, II/424,II/425,II/426,II/427,II/432,II/433,II/460,II/611,II/612,II/616,II/616,II/619,II/621,II/735,II/742,II/743,II/746,II/759,II/760,II/761,II/762,II/764,II/768,II/769,II/770,II/771,II/774,II/775,II/777,II/778,II/779,II/781,II/782,II/783,II/784,II/785,II/790,II/794,II/795,II/796,II/799,II/800,II/805,II/806,II/808,II/811,II/812,II/814,II/816,II/817,II/818,II/820,II/822,II/823,II/825,II/826,II/827,II/828,II/829,II/830,II/831,II/832,II/833,II/836,II/837,II/839,II/840,II/841,II/842,II/843,II/844,II/845,II/846,II/848,II/849,II/850,II/851,II/852,II/853,II/854,II/855,II/856,II/857,II/858,II/859,II/860,II/861,II/863,II/869, II/873,II/874,II/875,II/876,II/877,II/878,II/880,II/881,II/885,II/886,II/887,II/888,II/894,II/897,II/912,II/915,II/918,II/921,II/926,II/927,II/928,II/929,II/931,II/934,II/936,II/937,II/942,II/944,II/946,II/948,II/955,II/960,II/965,II/968,II/973,II/974,II/975,II/983,II/990,II/997,II/998,II/999,II/1003,II/1009,II/1010,II/1011,II/1024,II/1025,II/1026,II/1067,II/1089,II/1091,II/1095,II/1099,II/1103,II/1104,II/1140,II/1141,II/1142,II/1143,II/1144,II/1148,II/1149,II/1151,II/1156,II/1157,II/99, II/897,II/1175,II/1176,II/1177,II/1178,II/1180,II/1181,II/1182,II/1182,II/1183,II/1184,II/1185,II/1186,II/1187,II/1188,II/1189,II/1190,II/1191,II/1192,II/1193,II/1194,II/1195,II/1196,II/1197,II/1198,II/1199,II/1200,II/1201,II/1202,II/1203,II/1206,II/1207,II/1208,II/1209,II/1210,II/1211,II/1212,II/1213,II/1214,II/1215,II/1216,II/1217,II/1218,II/1219,II/1220,II/1221,II/1222,II/1223,II/1224,II/1225,II/1226,II/1227,II/1228,II/1229,II/1230,II/1231,II/1232,II/1233,II/1234,II/1235,II/1237,II/1238,II/1239,II/1240,II/1241,II/1242,II/1243,II/1244,II/1246,II/1247,II/1248,II/1249,II/1250,II/1251,II/1252,II/1253,II/1254,II/1255,II/1256,II/1257,II/1259,II/1260,II/1261,II/1262,IV/95,IV/97,IV/100,IV/175,IV/177,IV/179,IV/212,IV/214,IV/224,IV/226,IV/233,IV/235,IV/237,IV/285,IV/221,IV/23,IV/25,IV/27,IV/28,IV/29,IV/30,IV/31,IV/32,IV/33,IV/34,IV/35,IV/37,IV/38,IV/39,IV/40,IV/41,IV/42,IV/43,IV/45,IV/46,IV/48,IV/49,IV/51,IV/53,IV/55,IV/56,IV/57,IV/58,IV/59,IV/60,IV/61,IV/62,IV/63,IV/64,IV/65,IV/66,IV/67,IV/68,IV/69,IV/70,IV/71,IV/72,IV/73,IV/75,IV/76,IV/77,IV/78,IV/79,IV/80,IV/81,IV/82,IV/83,IV/85,IV/86,IV/87,IV/89,IV/90,IV/91,IV/92,IV/96,IV/98,IV/101,IV/102,IV/103,IV/104,IV/105,IV/106,IV/107,IV/108,IV/109,IV/110,IV/111,IV/112,IV/113,IV/114,IV/115,IV/116,IV/117,IV/118,IV/119,IV/120,IV/121,IV/122,IV/123,IV/124,IV/126,IV/128,IV/129,IV/131,IV/132,IV/133,IV/134,IV/135,IV/136,IV/137,IV/138,IV/139,IV/140,IV/141,IV/142,IV/143,IV/145,IV/146,IV/149,IV/150,IV/152,IV/153,IV/154,IV/155,IV/156,IV/157,IV/158,IV/159,IV/161,IV/162,IV/163,IV/164,IV/165,IV/166,IV/168,IV/170,IV/171,IV/172,IV/173,IV/174,IV/176, IV/178,IV/180,IV/183,IV/184,IV/185,IV/186,IV/187,IV/188,IV/189,IV/190,IV/191,IV/192,IV/193,IV/194,IV/195,IV/196,IV/198,IV/199,IV/200,IV/201,IV/202,IV/204,IV/205,IV/206,IV/207,IV/209,IV/210,IV/211,IV/213,IV/215,IV/217,I

5. VICTIMS NOT NAMED IN SCHEDULES OF INDICTMENT

771. Another error of the Trial Chamber is in asserting the criminal liability of the Appellant for victims who were not previously on the Schedule of victims from the Indictment. This is true for the judicial findings in regards to Suva Reka/Vucitrn/Srbica.[1076] The error is of such a magnitude, that a significant number of deaths in Izbica fall in this category.

772. The Appeals Chamber has held that the Prosecution must particularize the criminal episodes it seeks to prove at trial in a manner which is consistent with the Defense's right to be informed promptly of the nature and cause of the charges against them.[1077]

V/218,IV/219,IV/220,IV/221,IV/223,IV/225,IV/227,IV/228,IV/229,IV/230,IV/232,IV/234,IV/236,IV/238,IV/239,IV/240,IV/241,IV/242,IV/243,IV/244,IV/246,IV/247,IV/248,IV/249,IV/250,IV/251,IV/252,IV/253,IV/254,IV/255,IV/256,IV/257,IV/259,IV/260,IV/263,IV/264,IV/265,IV/266,IV/268,IV/270,IV/272,IV/274,IV/275,IV/276,IV/277,IV/278,IV/279,IV/280,IV/282,IV/283,IV/284,IV/286,IV/287,IV/288,IV/289,IV/290,IV/291,IV/292,IV/293,IV/300,IV/301,IV/303,IV/304,IV/305,IV/306,IV/307,IV/308,IV/309,IV/310,IV/311,IV/312,IV/313,IV/314,IV/315,IV/316,IV/317,IV/318,IV/319,IV/320,IV/321,IV/322,IV/324,IV/325,IV/326,IV/327,IV/328,IV/329,IV/330,IV/331,IV/332,IV/333,IV/334,IV/335,IV/338,IV/339,IV/341,IV/342,IV/343,IV/344,IV/345,IV/346,IV/349,IV/350,IV/351,IV/352,IV/353,IV/354,IV/355,IV/356,IV/357,IV/358,IV/359,IV/360,IV/361,IV/364,IV/365,IV/367,IV/368,IV/369,IV/370,IV/371,IV/372,IV/373,IV/374,IV/375,IV/376,IV/377,IV/378,IV/379,380,IV/381,IV/382,IV/385,IV/387,IV/388,IV/390,IV/392,IV/393,IV/394,IV/396,IV/397,IV/398,IV/399,IV/400,IV/401,IV/402,IV/403,IV/404,IV/405,IV/406,IV/407,IV/408,IV/412,IV/413,IV/414,IV/415,IV/416,IV/417,IV/418,IV/423,IV/427,IV/467,IV/477,IV/480-574,IV/576-599,IV/417,IV/418,IV/419,IV/420,IV/421,IV/422,IV/423,IV/424,
IV/425,IV/426,IV/427,IV/428,IV/429,IV/430,IV/431,IV/432,IV/433,IV/434,IV/435,IV/436,IV/437,IV/438,IV/439,IV/440,IV/441,IV/442,IV/443,IV/444,IV/445,IV/446,IV/447,IV/448,IV/449,IV/450,IV/451,IV/452,IV/453,IV/454,IV/455,IV/456,IV/457,IV/458,IV/459,IV/460,IV/461,IV/462,IV/473,IV/464,IV/465,IV/466,IV/467,IV/468,IV/469,IV/470,IV/471,IV/472,IV/473,IV/474,IV/475,IV/476,IV/477,IV/ 601-632,IV/634, IV/635,IV/636,IV/638-647,IV/649,IV/651,IV/652,IV/654,IV/655,IV/656,IV/657,IV/658,IV/659,IV/660,
IV/661,IV/662,IV/663,IV/666,IV/667,IV/668,IV/669,IV/670,IV/671,IV/672,IV/673,IV/674,IV/675,IV/677,IV/678,IV/679,IV/680,IV/681,IV/682,IV/683,IV/684,IV/686,IV/687,IV/688,IV/689,IV/691,IV/692,IV/693,IV/694,IV/695,IV/696,IV/697,IV/698,IV/699,IV/700,IV/701,IV/702,IV/703,IV/704,IV/705,IV/706,IV/707,IV/708,IV/709,IV/710,IV/711,IV/712,IV/713,IV/714,IV/715,IV/716,IV/717,IV/718,IV/720,IV/721,IV/722,IV/723,IV/724,IV/725,IV/726,IV/727,IV/729,IV/730,IV/731,IV/732,IV/733,IV/734,IV/735,IV/736,IV/737,IV/739,IV/740,IV/741,IV/742,IV/743,IV/744,IV/745,IV/746,IV/748,IV/750,IV/751,IV/752,IV/753,IV/754,IV/755,IV/756,IV/757,IV/758,IV/759,IV/760,IV/762,IV/763,IV/765,IV/766,IV/767

[1076] IV/646-647(SuvaReka);II,799,IV/872(Vucitrn);II/611,II/612,II/616,II/616,II/619,II/621,IV/649,IV/651,
IV/652,IV/654,IV/655,IV/656,IV/657,IV/658,IV/659,IV/660,IV/661,IV/662,IV/663,IV/666,IV/667,IV/668,IV/669,IV/670,IV/671,IV/672,IV/673,IV/674,IV/675,IV/677,IV/678,IV/679,IV/680,IV/681,IV/682,IV/683,IV/684,IV/686,IV/687,IV/688,IV/689,IV/691,IV/692,IV/693,IV/694,IV/695,IV/696,IV/697,IV/698,IV/699,IV/700,IV/701,IV/702,IV/703,IV/704,IV/705,IV/706,IV/707,IV/708,IV/709,IV/710,IV/711,IV/712,IV/713,IV/714,IV/715,IV/716,IV/717,IV/718,IV/720,IV/721,IV/722,IV/723,IV/724
725,IV/726,IV/727,IV/729,IV/730,IV/731,IV/732,IV/733,IV/734,IV/735,IV/736,IV/737,IV/739,IV/740,IV/741,IV/742,
IV/743,IV/744,IV/745,IV/746,IV/748,IV/750,IV/751,IV/752,IV/753,IV/754,IV/755,IV/756,IV/757,IV/758,IV/759,IV/760,IV/762,IV/763,IV/765,IV/766,IV/767(Izbica).

[1077] *Prosecutor v. Ntakirutimana* ICTR-96-10-A /ICTR-96-17-A,AJ,(13.12.2004),paras.77-79

773. Surely the right to be informed cannot arise at the time of Judgment being rendered as in the instant matter, particularly where for other municipalities, the failure of the prosecution to link a body to a schedule was determinative in excluding criminal responsibility.

774. In the instant case there has been ample time for the Prosecution to Apply to amend the indictment and they have not done so. With the serious restrictions and limitations in terms of time for cross-examining OTP witnesses and presenting the defense case, it would be unjust and wrong to allow liability to attach for non-indicted deaths, particularly when logic would dictate those deaths would not be crossed or rebutted to save time and resources for the indicted charges.

775. In asserting liability for non-indicted, non-scheduled murders the Chamber has committed discernible error that has caused prejudice and harm to the Appellant.

U. ERRORS RELATING TO PRIZREN MUNICIPALITY

776. It is respectfully submitted that the Chamber erred as to the findings of criminal conduct/responsibility as to Prizren.

777. This error includes making impermissible inferences of guilt when equally reasonable/valid inferences of innocence were available under the evidence.

778. Prosecution witnesses who were of questionable credibility and whose evidence had been rebutted were the basis of the Judgment.

1. IMPROPER RELIANCE UPON PROSECUTION EVIDENCE

779. The Chamber erred in its analysis/findings that there was no satisfactory alternative reasons for persons to leave their homes and displace towards the border.

780. Specifically, the Chamber stated that the "assertion that these people departed Kosovo due to the NATO bombings and conflicts between the FRY/Serbian forces and the KLA is not

supported by the testimony of those who themselves left the town, the evidence relating to the targets hit by NATO in the area, or the lack of evidence of KLA activity."[1078]

a. As to KLA

781. The Prosecution witnesses that were presented at trial almost uniformly denied the presence/existence of the KLA. Even the Chamber correctly adduced and found that these Prosecution witnesses as a whole denied the existence of the KLA which was viewed with great skepticism.[1079]

782. The Chamber interestingly found with regard specifically to Prizren that one of the key OTP witnesses, Rahim Latifi, was unreliable as to his evidence regarding the KLA presence in the area.[1080]

783. Having already found Latifi unreliable it is astonishing/erroneous, for the Chamber to proceed to make findings that the KLA was not active/present, or to rely further on Latifi in regards to his other testimony.

784. In doing so, the Chamber had to overlook a multitude of evidence that demonstrated the widespread presence of the KLA in Prizren, inclusive of Dusanovo.

785. Witnesses Nebojsa Ognjenovic, Bozidar Delic and Franjo Gloncak, testified as to the KLA in Prizren.[1081] Notably, KLA Commander Bislim Zyrapi confirmed the KLA presence Prizren.[1082] The Chamber's findings are contradictory and cannot be harmonized with prior reliance on Zyrapi over Latifi, in finding that indeed there was a KLA presence in and around Pirane at the commencement of the NATO bombings 24 March 1999.[1083] KVM Section-Chief Masonneuve testified as to the presence/activities of the KLA during even the cease fire period.[1084]

786. Further, there was no mention of Prizren SUP Chief, Milos Vojnovic, who testified as follows:

[1078] II/285
[1079] I/55
[1080] II/244
[1081] 3D97;3D98;3D100;T.24223/2-16;T.24254/10-21
[1082] Tr.19373;Tr.5934;Tr.5967;T.r6285;Tr.21107-21139
[1083] II/250.
[1084] T.11180/17-24

a) Dragobilje and a number of settlements in that area of Prizren had a "great many of Siptar terrorists were there, and of course they didn't stay put, they committed crimes."[1085]
b) About a Kosovo Albanian camp for training terrorists existed in Jeskovo, that was also moving residents out of Albanian villages.[1086]
c) The tense security situation in Dragas, Suva Reka, Orahovac and Prizren with many terrorist attacks against the army, police, and civilians.[1087]
d) In 1999 the KLA took over territory including the main roadways and frequently attacked civilians traveling there.[1088]

787. The testimony relating to KLA at Jeskovo was confirmed by Delic.[1089]

788.

In the face of such significant evidence of KLA activity in Prizren on the one hand, and with the discredited denials of Latifi and Kryzlieu on the other hand, no reasonable chamber could conclude that the KLA was inactive and thus discount its influence upon the movement of civilians from Prizren in 1999.

789. Kryzlieu's credibility was directly called into question when Ognjenovic revealed that his neighbor, Haki Cuni from Dusanovo, was in fact alive, and not dead as Kryzlieu had claimed.[1090]

790. As to Dusanovo, contrary to the assertion in the Judgment that no such evidence was led, there was evidence of fighting undertaken by the KLA in May of 1999, including members of Krylieu's own family.[1091]

791. Lastly as to the KLA, the Judgment is in contradiction with itself, for despite finding no KLA activity, the Chamber also stated it "heard evidence that in 1998 and early 1999 the boarder area between Prizren and Albania was the site of **significant** KLA movement and activity and combat actions undertaken by MUP/VJ forces in response.[1092] The Chamber cites to a multitude of

[1085] TR.24155/22-24156/2.
[1086] Tr.24175/2-12.
[1087] 6D1532(para.27);6D787
[1088] 6D1532(para. 31).
[1089] Tr.19336/17-22;Tr.19337/16-19;P2067.
[1090] Tr.22875/21-22880/15.
[1091] Tr.22881/3-20.[private session]
[1092] II/245

evidence that it relied on in making such a finding of significant activity.[1093] The Chamber erred in concluding that such activity could be discounted as a cause for movement of civilians.

b. As to NATO

792.

As to the Chamber's conclusion that no targeting of civilians was shown such as to warrant consideration of the possibility Albanians were fleeing NATO, this ignores the substantial evidence that was presented as to the horrific NATO bombing of Albanian civilians at Korisa.[1094]

793. Likewise there was significant other evidence of NATO attacks that would have been known to the civilian Albanian population in Prizren and influenced their decision to leave the municipality in 1999.

794. Vojnovic, testified that NATO bombed Prizren town every day.[1095] Most importantly, on 25 March 1999, the NATO forces bombed the very center of Prizren town itself.[1096] Likewise Vojnovic testified as to his personal knowledge of Albanians in buses having been struck by NATO[1097] and also attacks on refugee convoys by NATO.[1098]

795. The incident at Korisa does not even figure in the Judgment, but is huge in terms of an alternate reason for people to leave, NATO mistakenly bombing civilians and causing loss of life. The Korisa incident is significant because Albanian civilians were struck by NATO, civilians in the process of being convinced to return to their homes by the Serbian Police. Such would be a reasonably compelling reason for persons to leave their homes in Prizren municipality.

796. It is apparent that in reaching its conclusions the Chamber did not adequately consider the foregoing, and thus wrongly concluded that there was no other reasonable alternative conclusion for the civilians leaving Prizren Municipality.

[1093] P2772(paras.12–13);3D134-/para.163);3D136(p.1);3D137;3D138;T.10008;T.19275-19276,19558-19561;Mitić-(5D1390**,**paras.50–51);Vojnović-(T.24172);6D1013;3D179;Zyrapi-(T.6043);
;4D87;3D139;P2071;P2072;P1999;3D1051;P1998
[1094] 6D604
[1095] Tr.24184/9-20.
[1096] 6D1532/para.36
[1097] 6D1532/para.37
[1098] 6D1532/para.38

2. NO EVIDENCE CRIMES KNOWN/FORESEEABLE

797. Thus the Chamber erred in reaching conclusions as to the lack of KLA activity/NATO bombings as a possible reasonable cause of the displacement of civilians, in violation of the principle of *in dubio pro reo.* The same is true with respect to the aspect of knowledge of Appellant as to crimes.

798. Specifically there was ample evidence that the MUP Staff in Pristina did not have the ability during the war to communicate with the field.[1099]

799. The evidence showed that the method of reporting involved the SUPs sending information to the MUP HQ in Belgrade, and also to the MUP Staff, which during the time of war took place by courier.[1100]

800. A review of the Daily Bulletins prepared by Appellant based upon information received from the Prizren SUP indicates no reporting nor knowledge of any of the criminal acts in Prizren for which responsibility is asserted.

801. The Prizren SUP Chief, when asked about the indictment crimes alleged for Prizren, expressly denied having had any knowledge of the same during 1999.[1101] As such, Appellant could only have had the same/less knowledge, insofar as his knowledge would have come from the SUP in the first place.

802. Among the crimes alleged in Prizren is that of the Vrbnica border crossing, where it is alleged that mistreatment and taking of identity documents took place.

803. Ognjenovic, commander of the Border Police station at the Vrbnica crossing soundly contradicted and rejected those claims.[1102]

[1099] Deretic-(T.22582/7-22586/7)
[1100] Deretic-(T.22585/13-24)
[1101] Tr.24182/12-24184/5.
[1102] Tr.22917/15-22;Tr.22918/1-5

804. In any event, As Ognjenovic stated[1103] and as the Chamber concluded,[1104] the Border Police stations did not come under the purview and jurisdiction of Appellant as head of the MUP Staff, and thus they did not report to him. Having found so, it is illogical for the chamber to attribute to Appellant any knowledge of the situation at the Border Police Station Vrbnica, irrespective of the rebuttal testimony offered by Ognjenovic.

805. No reasonable trier of fact could conclude on the base of foregoing that Appellant could have had actual/constructive knowledge of the crimes alleged.

GG. ERRORS AS TO GNJILANE MUNICIPALITY

806. The Chamber erred in fact/law with regard to Gnjilane, to such an extent as to be shocking.

807. The Chamber completely ignored evidence which rebutted the Indictment, and at the same time based its conclusions on unreliable/incredible/instructed testimony of OTP witnesses contrary to common-sense/logic.

808. The Chamber erred when it determined Appellant criminally liable for the departure of civilians from Gnjilane. This is particularly true given its finding as to Nosalje that insufficient evidence existed of forcible displacement.[1105]

809. The Chamber further erred when it found Appellant criminally liable for the burning of the Vlastica Mosque.

810. This error was compounded when the Chamber found Appellant liable for the taking of identity documents.

1. UNTRUSTWORTHY PROSECUTION WITNESSES AND EVIDENCE

811. The Prosecution evidence that was relied upon by the Chamber in making its findings was demonstrated to be unreliable/inaccurate in many respects.

[1103] Tr.22910/13-21
[1104] III/1073/1074/1075
[1105] II/947

812. The Chamber demonstrated in II/894 a complete bias and inappropriate standard in analysis of evidence. The Chamber's mis-characterization that there were difficulties in the way the Prosecution led K81 indicates a double-standard. The Chamber accepted Prosecution evidence *a priori* despite serious problems in consistency, while defense witnesses/evidence were simply disregarded totally with all inferences against Appellant.

813. The Chamber has misrepresented an order as being issued by the Joint Command, when it obviously originates from PrK, [1106] ignoring the testemony of Lazarevic who unambiguously identified this and others[1107] as orders of PrK[1108].

814. At II/912 the Chamber concludes the **border police Chief** 'forced the villagers to leave their vehicles at a field...'. Shaqiri actually, testified this was a member of the customs police[1109], unrelated to border police[1110]. Arguendo, even if the Border Police were at issue, said structure was found outside Appellant's authoritiy. Appellant had no way of recieving notice of anything happening at the border crossing, as the reporting went straight to Belgrade and bypassed the Staff. Thus Appellant cannot be found liable for said activities, even if they were proved, which in fact they were not.

815. The Chamber accepted the testimony of Shaqiri[1111] denying the Prilepnica locals were afraid of NATO bombing. This is illogical.

816. The Chamber, once again showed bias in finding a lack of evidence about NATO bombing of this area ignoring evidence and its own finding[1112] from which it is seen that the NATO bombing was frequent [1113]

817. When it interprets the testimony of Smiljanic[1114], the Chamber omits that he confirmed around 40% of NATO targets were civilian, that during the bombing cluster bombs were used, so-

[1106] II/897
[1107] P1977;P1974;P1972;P1973;P1878;P1975;P1976;P1970
[1108] Lazarević-(T.18638/8-22)
[1109] Shaqiri-(T.2955/10-15)
[1110] Shaqiri-(T.2821/6-9)
[1111] II/915
[1112] II/941
[1113] Gavranić-(T.22715);;4D123;Gavranić-(T.22680;T.22700–22702;22739–22740; 5D1100;5D1101;P1099
[1114] II/942

called carpet bombs and munitions with deplete uranium[1115]. Gnjilane Municipality was not exempt from NATO action.

818. Gavranic's testimony that civilians departed for fear of NATO bombings due to the proximity of the VJ[1116] is a) unrebutted;and b) supported by tangible evidence which the Chamber acknowledged. [1117] K81 decided to leave the country because there were nearby VJ forces[1118] consistent with Gavranic's testimony. The Chamber fails to analyze this evidence. The Chamber leaves out the evidence which shows that the police was told by the Prilepnica locals that they left when the NATO bombing intensified.[1119]

819. Gavranic's testimony stands unrebutted, and pursuant to *in dubio pro reo*, thus it must be given prevalence over any conclusion tending to show criminal liability.

820. The Chamber states that Shabani 'confirmed' the testimony of K81, that two- three weeks before the beginning of NATO attacks Serbian military/police came to Zegra.[1120] However K81 testified that VJ members and armed men in civilian clothingcame to Zegra, under the VJ command'[1121], therefore there is no grounds for this construction that the police also came.

821. The Chamber states that on March 29th 1999. additional troops arrived in Zegra, including the 'paramilitary' which 'acted together with the police'. [1122] Here again the Chamber incompletely analyses the evidence, in other words constructs the same and arbitrarily interprets it against Appellant. Shabani[1123] at no time mentioned the police in his statement. [1124]

822. It is important to note he first mentioned the police presence at trial, despite his written statement and Milosevic testimony to the contrary[1125]. The Chamber erroneously accepted his contradictory evidence that by 'military' he means regular military, regular police, reserve police

[1115] Smiljanić-(T.15749–15752
[1116] Gavranić-(T.22700/7-22701/16)
[1117] II/941
[1118] II/930
[1119] Gavranić-(T.22702/24-22705/21)
[1120] II/918
[1121] II/917
[1122] II/921
[1123] II/921
[1124] P 2263
[1125] P2264;T.1529

and the members of the reserve army.[1126] Rather than giving the witness instruction he was under oath to tell the truth the Chamber assisted his changed testimony.

823. The evidence shows the VJ came into Zegra and made a control point. All previous acts in regards to Zegra, which were explained by Shabani [1127] related to paramilitary members/VJ, and **not the police**. The Chamber itself states that the soldiers[1128] started to expel people whereas in II/925 'paramilitary forces' and 'Serbian military forces' are mentioned. The Chamber ignores in full the material evidence/testimony of Prosecution witness Vasiljevic that those members of the paramilitary were in fact VJ volunteers/reservists[1129].

824. Shabani describes the murder of the Uksini couple and of Miljazim Idrizij, Cazim Haziri and his wife Camila Haziri [1130]. As to these murders[1131] the Chamber completely ignores evidence exculpatory of Appellant. Namely, SUP Gnjilane members arrested seven VJ reservists/volunteers, who were led by Zmajevic Vlado for these crimes. The Gnjilane SUP detained the Zegra perpetrators in custody, submitted a criminal complaint to the investigating judge, who handed them over to the military investigators for further processing.[1132]

825. The foregoing illustrates the impropriety of the Chamber's mis-construction in regards to MUP activities. Perpetrators were arrested/detained, criminal complaints filed, all measures required by law followed, perpetrators delivered to appropriate military justice organs and a judgment issued.[1133] What is the basis for Appellant's liability or a finding of intent to deport therefrom?

826. The Chamber analyses Shabani in regards to his sojourn in Donja Stubla.[1134] Shabani points out that 30.03.1999, he went to Donja Stubina staying there five weeks [1135]. He stated neither VJ nor police entered the village, even though thought he saw the police coming towards Gornja Stubla [1136], which indicates the absence of any intent to deport.

[1126] II/921
[1127] II/918,II/920,II/921,II/925
[1128] II/922
[1129] 6D69;Vasiljevic-(T.9107/5-17
[1130] P2263;P2280/para.7,12,13
[1131] P228/para.16;6D334
[1132] 6D69;Gavranić-(T.22690-22691)
[1133] 6D1231;Gavranic-(T.22701/6-16;;22703/23-22704/4)
[1134] II/926;II/927
[1135] P2263
[1136] P2263

827. According to the Chamber, due 'to constant fear of being killed from Serbian forces', 'people organized into groups and left towards the Macedonian border' from Donja Stubla. However Shabani stated after 10 days 1500 persons returned to their villages of Ribnik and Djelekara.[11371138] The same witness explained that some persons due to lack of food, on their on initiative made way for Macedonia[1139] while the witness himself left by his own words ' because we have wasted food reserves and *we did not feel safe.*[1140] The Chamber disregards this voluntary leaving, which is much more rational an explanation than its mis-construction that this has been done due to 'the fear of Serbian forces'. K81 stated that after two weeks food was running short, and that he decided to go to Pristina,[1141] All of this demonstrates the magnitude of the improper conclusion made by the Chamber.

828. Shabani stated that 16 persons were killed in other villages and named five people[1142]. In regards to these people, the Gnjilane police upon hearing that in Donja Stubla 6 graves existed, took measures to confirm and informed the investigative judge, who ordered an exhumation. An identification of the exhumed bodies was done and, and on the basis of testimony of Sadiku Zuljfen, it was concluded that VJ perpetrators killed them. SUP Gnjilane upon authorization of the public prosecutor, handed over the complete file to the Military Prosecutor in Pristina for further actions in accordance with their jurisdiction.[1143] Again, what possible basis for Appellant's liability arises therefrom?

829. Shabani stated upon his return to Zegra all Albanian house were burned. K81 alleges the same.[1144] However, it is fully clear that Gnjilane SUP in ever known case, undertook all appropriate measures under the law against the perpetrators. Gavranic stated that in Prilepnica persons were arrested by the Gnjilane SUP that were caught looting.[1145] Again, what possible basis for Appellant's liability arises therefrom?

[1137] P2263
[1138] II/926
[1139] P2263
[1140] P2263
[1141] II/934
[1142] P2280/para.16
[1143] 6D334
[1144] II/929
[1145] Gavranić-(T.22795-22796)

830. As to Vladovo place[1146] the perpetrators were not described as MUP thus it is unclear how the Chamber can find Appellant guilty for the same.

831. The Chamber further found that police in Presevo searched the people and took all identification documents/passports. [1147] Presevo is not in Kosovo, to hold Appellant responsible for acts of police beyond Kosovo is illogical.

832. As to Vlastica/Zegra,[1148]again perpetrators were not identified as police. The Chamber failed to evaluate the evidence that the police acted on information of damage to the mosque in Vlastica, conducted an on-site investigation, and prepared a criminal complaint against unknown perpetrators, in accord with the law.[1149]Additionally, the proper and good-faith conduct of the police is demonstrated in that they engaged heavy digging machinery, based on the Albanian source's belief his parents were trapped in the rubble.[1150] In II/946 the Chamber finds it 'proven that the mosques in Vlastica were burned by VJ members and armed locals, from which some wore dark blue police uniforms.' The Chamber in regards to Zegra concludes 'that the VJ and MUP, together with the irregular forces expatriate the Kosovo Albanians from the village.'[1151]Respectfully, under the evidence set forth above, no reasonable trier of fact could reasonably infer of Police criminal responsibility for these events.

833. The Chamber on the bases of Shaqirij/Sabani concludes 'that the Kosovo Albanians from this municipally have been tortured by VJ members at control-points in front of the Macedonian border', and that 'on the Macedonian border the Serbian police search and take their personal documents and passports'. [1152] The Chamber ignores the evidence. Shaqiri, from Prilepnica, described the way in which they left the village 06.04.1999 toward Bujanovac., a city in the South of Serbia-proper. He testified this in no way was prompted by police.[1153] He testified the Serbian Police sent them back to their home village. [1154] He testified the police provided a sentry-watch at Prilepnica for the safety of the Albanian citizenry.[1155] Gavranic testified that as Gnjilane SUP Chief he undertook all possible measures to convince these locals to stay, that the police will provide protection, and even reached an agreement with them to establish security patrols near the approach

[1146] II/931;;II/934
[1147] II/936
[1148] II/937
[1149] Gavranić-(T.22795-22796)
[1150] Gavranić,(Tr. 22795-22796)
[1151] II/944
[1152] II/948
[1153] Shaqiri-(T.2774/11-2777/12)
[1154] Shaqiri-(T.2794/19-2796/17)
[1155] Shaqiri-(T.2798/14-2796/17)

to the village. [1156] Shaqiri testified to a second departure, again not related to any police orders/threat, and that he requested of the SUP a police escort, which was granted. [1157]

834. Village locals told SUP personnel that they must leave because NATO has began bombing VJ locations near the village.[1158] This is a logical position, and pursuant to in dubio pro reo must be considered. The instruction to the police patrol was to protect the column, and to provide them with a safe-way to their destination of choice.[1159] From the testimony of both Shaqiri, and Gavranic, the police patrol professionally fulfilled the request of the Albanian civilians all the way to the border. To mis-characterize the foregoing as police commission of deportation is an abuse of discretion/discernible error.

835. Likewise, as to Shabani's claims of theft at the border, the MUP arrested/jailed 4 VJ soldiers for robbing persons who were crossing the border and handed them over to VJ security bodies to the treatment of their competence for further prosecution and punishment. [1160]

836. At no time in did the Chamber confirm any conduct of the Police in Gnjilane that could be construed properly to support a finding of deportation which deprived 'the right of a victim to stay in his/hers home or community, or the right not to be disabled from their property by means of forceful movement to another place.[1161]"

2. IMPROPER CONCLUSIONS

837. It is important to note that the only negative findings with respect to Gnjilane were:

A) that members of the VJ ordered residents of Prelipnica to leave their homes and were escorted to the Border.[1162]
B) That the VJ/MUP reinforced by armed civilians drove Albanians from their homes in Zegra and left for Macedonia. [1163]
C) The Mosque in Vlastica was burned down by VJ solders.[1164]

[1156] Gavranić-(T.22703/1-22705/13)
[1157] Shaqiri-(T.2803/3-24)
[1158] Gavranić-(Tr.22704/3-22705/13)
[1159] Gavranić-(Tr.22702/24-22705/21)
[1160] 6D614/15/3;6D 1533,(para. 3)
[1161] *See, Simic,*TJ, para.130;*Krnojelac,*AJ,para.218
[1162] II/943
[1163] II944

D) Serbian Police took their identity documents at the border.[1165]

838. These findings are error, insofar as the evidence does not support the conclusion that Appellant would have had any notice that would impute criminal liability to him.

839. Appellant had no access to VJ reports. Multiple witnesses confirmed that any police official would have no ability to order VJ troops in any regard.[1166] As such he could not have had any notice of or ability to interfere as to Prelipnica, or that he would know about the Mosque in Vlastica.

840. Appellant only had the same knowledge known to the SUP Chief in Gnjilane. We had testimony from Gavranic, that in fact the reasons stated for the departure of the Prilepnica group was different, and involved their fear of being struck by NATO, and that a police escort was requested by these same Kosovo Albanians.[1167] As such, given the regular and accepted reporting practices of the MUP, the only information that would have been conveyed to Appellant would be innocuous and would not raise his knowledge or suspicion that criminal activity was underway.

841. With regard to Zegra, the information available was that criminal elements (VJ reservists) committed crimes, were arrested by the MUP, and turned over to VJ security organs to be prosecuted for their crimes.[1168] The Chamber earlier, when dealing with President Milutinovic, found that such knowledge was insufficient of determining guilt, and acquitted Milutinovic.[1169] Thus, a grave and discernible error was committed when the Chamber departed from its ruling as to Milutinovic, and instead issued a contrary ruling as to Appellant, finding him guilty.

842. There was no evidence led that Kosovo Albanians crossing the Djeneral Jankovic crossing had their own personal identity documents taken away.[1170] As such the conclusions of the chamber are without basis.

[1164] II946.
[1165] II/948
[1166] Radinovic,Tr.17105/7-17105/18; 5D1391,para44;
[1167] Gavranic,Tr.22703/22705
[1168] Gavranic,Tr.22689/22690;22729
[1169] Judgment,III/261;284
[1170] P2298pg.5,para.3

843. Respectfully, even IF such activity had been proved at the Border Crossing, it must be taken into account that these stations were not under Appellant's jurisdiction[1171]. Thus Appellant would not have had information, nor authority to intervene.

844. Having already found Appellant not responsible for the Border Police Stations, the Chamber made a discernible error by trying to assert responsibility upon him for their purported acts and conduct.

KK. SENTENCING

845. Rule 101 of the Rules sets out the factors which a Chamber is mandated to take into consideration when determining a sentence. The list of factors enumerated in this provision, however, is not exhaustive. One factor that is expressly provided for in the Rule as mitigation is substantial cooperation with the Prosecutor by the convicted person before/after conviction.[1172] The Chamber erred by failing to take into account the substantial cooperation of Appellant.

846. The decisional authority has developed other mitigating grounds. The Simic Chamber viewed, among other things, voluntary surrender, lack of prior criminal record, and comportment in the Detention Unit and as circumstances proven to be mitigating. The Chamber erred by failing to take into account the evidence led on these factors and others, as they relate to Appellant. As set forth hereinabove, in Plavsic mitigating factors were her voluntary surrender to the Tribunal, post-conflict conduct, and age.[1173] Other cases have looked at good character.[1174] The Chamber erred by failing to adequately assess evidence of the foregoing relating to Appellant.

847. The standard of proof to be applied for mitigating factors is that they need not be established beyond any reasonable doubt, but rather need only be established by the balance of the probabilities.[1175]

[1171] III/1075
[1172] RPE101(B)(ii)
[1173] Prosecutor vs. Plavsic, IT-00-39&40/1, SJ,27.222003,(para.110).
[1174] See, Prosecutor vs. Krnojelac IT-97-25, SJ,15.3.2002,(para.519);Prosecutor vs. Kupreskic,IT-95-16-A, AJ,23.10.2001,(para.459).
[1175] Prosecutor vs. Obrenovic,IT-02-60/2-S,SJ,10.12.2003,(para. 91).

1. MITIGATION

863. Appellant respectfully submits that the Chamber committed discernible error that resulted in a manifestly excessive sentence which does not reflect the mitigation evidence, especially in those circumstances that were acknowledged[1176]. It is submitted in light of the matters raised Appellant is entitled to a significant reduction in sentence, whether because relevant matters were ignored, or because those that were considered were given inadequate weight, especially in the particular context of the wider mandate of the International Tribunal to support peace/reconciliation.

864. The relevant provisions on sentencing are Articles 23/24 of the Statute and Rules 100-106. Both Article 24 of the Statute and Rule 101 contain general guidelines for a Chamber that amount to an obligation to take into account the following factors in sentencing: the gravity of the offense or totality of the culpable conduct, the individual circumstances of the convicted person, the general practice regarding prison sentences in the courts of former Yugoslavia, and aggravating/mitigating circumstances.[1177] The Appeals Chamber had further held that:

> Trial Chambers are vested with broad discretion, although not unlimited, in determining an appropriate sentence, due to their obligation to individualize penalties to fit the circumstances of the accused and the gravity of the crime. As a general rule, the Appeals Chamber will not revise a sentence unless the Trial Chamber has committed a "discernible error" in exercising its discretion or has failed to follow the applicable law. […] For instance, a Trial Chamber's decision may be disturbed on appeal if the Appellant shows that the Trial Chamber abused its discretion either by taking into account what it out not to have or by failing to take into account what it ought to have taken into account in the weighing process involved in the exercise of its discretion.[1178]

865. The Chamber was bound, as a matter of law, to take into account all matters and factors that were relevant to sentencing, including those properly regarded as mitigating in nature, and that the failure to do so invalidates the Judgment.

[1176] III/1202
[1177] Prosecutor v. Deronjic,IT-02-61,AJ(20/7/2005)para.6
[1178] Id.para.8

866. In the instant matter, the Chamber failed to consider/apply several sets of facts that properly constitute mitigation evidence, both individually and cumulatively, which it had in fact already acknowledged and treated as having been established by the evidence under the balance of probabilities test. These are summarized as follows:

a) The Chamber's acknowledgement that Lukic was acting in the midst of a complicated situation, including the defense of the country against NATO and combat operations as to the KLA.[1179]

b) The Chamber's acknowledgement that Lukic contributed to law and order in a number of cases connected to the crimes in the Indictment, and that they therefore would take this into account in mitigation when determining his sentence.

Having already applied the standard, that Appellant had proper mitigation evidence leading directly to crimes in the indictment, the Chamber erred and abused its discretion in failing to then utilize that evidence nor even weigh the same, solely because he was in a joint trial with 5 other accused and because he was categorized by the Chamber with 2 other accused "convicted on the basis of their participation in the joint criminal enterprise." Indeed there was significant evidence that Appellant undertook to spearhead efforts after the war to stamp out organized crime[1180]; reform the Serbian MUP[1181]; investigate crimes/war-crimes dating from the Kosovo war[1182] and promoted/facilitated cooperation between the Serbian MUP and ICTY as to ongoing investigations[1183]. Indeed multiple witnesses(Defense and Prosecution) talked of his integral part in post-conflict efforts to uncover events related to crimes in Kosovo and promote justice, including cooperation with the ICTY.[1184] The Chamber's negation of such demonstrated mitigating factors explicitly recognized in the Rules is improper. It also sends the wrong signal, which would stifle efforts of others contemplating personal sacrifice in the interests of justice/law and order.

867. Likewise, it must be recalled that the jurisprudence has recognized that that the "harsh environment" of the armed conflict as a whole must be considered as mitigation and weighed in the sentence.[1185] Such an approach recognizes that when considering an appropriate sentence for an individual there must be greater condemnation for the individual who with the luxury of peace and security and time for consideration sets a careful plot to initiate/execute rather than one who

[1179] III/1201.
[1180] FTB,para.1453-1457
[1181] FTB,para.1458-1463
[1182] FTB,para.1464-1485.
[1183] FTB,para.1486-1507.
[1184] K84,6D2,Zivkovic,Kostic,Furdulovic.
[1185] Prosecutor v. Delalic, et al.TJ,(para.1283)

acts/reacts in extreme circumstances, in a climate of fear and uncertainty. It is both artificial and unjust to exclude this entirely from consideration in arriving at an appropriate sentence.

2. HEALTH AND PERSONAL CIRCUMSTANCES

863. At III/1205 the Chamber erred in finding that it could not utilize personal circumstances(including mitigation evidence) to render differing sentences against the various accused from each of the 2 groups defined therein.

864. Respectfully that is a clear and explicit departure from the jurisprudence. The Appeals Chamber previously agreed that while "it is to be expected that two accused convicted of similar crimes in similar circumstances should not in practice receive very different sentences, often the differences are more significant than the similarities, and the **mitigating and aggravating factors dictate different results."**[1186] [emphasis added] Accordingly, it is the individual facts and circumstances pertaining to a particular Accused that must be given a fair analysis in arriving at a sentence.

865. Several matters of record established the state of health of Appellant, and accordingly are incorporated as Annex B(confidential) of the Appeal. For purposes of brevity and confidentiality they are not repeated herein.

866. The jurisprudence recognizes that the deteriorated health of an accused may be considered a factor in mitigation for purposes of sentencing.

867. The Judgment erroneously cites to two decisions as to provisional release from late 2008 as to Appellant, and fails to analyze his medical condition as a whole, including the original medical records filed when Appellant first surrendered. By overlooking the most detailed of accounts as to Appellant's health, the Chamber made a decision to exclude evidence from its consideration without having reviewed the lion's share of the same.

3. VOLUNTARY SURRENDER

[1186] *Celebici* AJ,(para. 19);*Furundzija* AJ,(para. 250);*Jelisic* AJ,(para.101).

863. At III/1204 the Chamber disregarded the voluntary surrender of Appellant from consideration as a mitigating factor. As support for this stance, the Chamber drew its only supporting reference from a decision on temporary provisional release from earlier in the case that it had made itself. We respectfully submit that in doing so the Chamber erred by ignoring the decisional authority that has developed recognizing voluntary surrender as a valid mitigating factor.

864. In the Milan Simic, Plavsic, and multiple other cases it has been recognized that the voluntary surrender of the Accused is a factor of mitigation to be taken into account at sentencing. The only remaining appraisal is the weight to be afforded to it.

865. The Chamber acknowledged the evidence established the voluntary surrender of Appellant. Accordingly, this factor should have been attributed some weight as a mitigating factor. Accordingly the sentence of Appellant should be lowered in line with his voluntary surrender to the Tribunal.

4. SENTENCING PRACTICES OF THE FORMER YUGOSLAVIA

863. An aspect of *nullem crimen sine lege* that was violated by the Judgment was the imposition of a Sentence that was not foreseeable to the Accused in 1999 when it is alleged that the criminal conduct took place. It should be noted that the record is replete with evidence led that the maximum sentence foreseeable under the law in 1999 was 20 years imprisonment.[1187]

864. The European Convention on Human Rights[1188] as well as the Rome Charter have enshrined the principle of *nullem crimen sine lege* and the prohibition against ex-post facto laws. While the Tribunal has not followed suit, it has enshrined that, as far as sentencing is concerned, that the sentencing practices of the Former Yugoslavia for the relevant crimes as in place are considered. Even taking into account that the Appeals Chamber has previously stated "…the International Tribunal may, if the interests of justice so merit, impose a greater or lesser sentence than would have been applicable under the relevant law in the former Yugoslavia,"[1189] it is respectfully submitted that the Chamber did not take into account the sentencing principles at all in setting a sentence of 22 years. The sentence imposed is in excess of the MAXIMUM sentence available at

[1187] Tr.21276/19-24;16743/10-15;16651/3-25
[1188] Art.7(1)
[1189] Prosecutor vs. Simic,IT-95-9-A,AJ(28/11/2006),para264, citing Blaskic and Krstic

the time for any crimes, it is unduly severe and Appellant couldn't have had notice of it at the time so as to have voluntarily undertaken exposure to it. For this reason the sentence should be dramatically reduced.

5. AGGRAVATING FACTORS

863. The Chamber also erred as finding certain factors it considered aggravating. The Chamber identifies as an aggravating factor that "This conduct, which was undertaken by Lukic in his official capacity as the Head of the MUP Staff, constitutes an abuse of his superior position and thus aggravates his sentence."[1190] This stance erroneously uses as an aggravating factor the very same determination for which the Appellant was found to have participated in the JCE, namely by way of his alleged superior position.

864. It is discussed earlier in this brief how the evidence clearly establishes that Appellant could not have been a command superior at the time of the indictment, as to either MUP or VJ forces, and thus under those same arguments the inclusion of his "superior position" as an aggravating factor is improper. Among other things, the Chamber acknowledged the evidence that was presented that Appellant did not have de jure powers to punish/discipline.[1191] This is an essential minimum requirement of Superior.[1192] Aggravating circumstances must be directly related to the commission of the offence,[1193] and must be established beyond a reasonable doubt.[1194] These standards were not properly met in determining this aggravating factor, insofar as a *de jure* superior position was not established under the evidence. Accordingly the sentence need be reduced.

CONCLUSION

For the foregoing reasons Appellant respectfully requests that the Appeals Chamber reverse the Judgment and quash the Appellant's conviction on all counts, entering a judgment of NOT GUILTY for the same.

[1190] III/1201.
[1191] III/1049
[1192] *Halilovic*,AJ,(para.59)
[1193] *Blaskic,*AJ,(par.686-696)
[1194] *Celebici,*AJ,(para.777;780);*Blaskic* AJ,(para.685).

Further and alternatively, if the Appeals Chamber considers that any of the convictions against Appellant should stand, the sentence should be reduced accordingly, and

Further and alternatively, Appellant respectfully requests a re-trial.

In The Hague, on the 23rd of September 2009

Branko Lukic
Lead Counsel for Mr. Sreten Lukic

Dragan Ivetic
Co-Counsel for Mr. Sreten Lukic

WORD COUNT: 65,956

THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA

Case No. IT-05-87-A

IN THE APPEALS CHAMBER

Before: Judge Liu Daqun
Judge Mehmet Güney
Judge Fausto Pocar
Judge Theodor Meron
Judge Andrésia Vaz

Registrar: Mr. John Hocking

Date: 23 September 2009

THE PROSECUTOR

V.

NIKOLA ŠAINOVIĆ
DRAGOLJUB OJDANIĆ
NEBOJŠA PAVKOVIĆ
VLADIMIR LAZAREVIĆ
SRETEN LUKIĆ

PUBLIC

ANNEX A OF THE DEFENSE APPELANT'S BRIEF

The Office of the Prosecutor:
Mr. Paul Rogers

Counsel for Accused Sreten Lukić:
Mr. Branko Lukić and Mr. Dragan Ivetić

Counsel for Co-Accused:

Mr. Toma Fila and Mr. Vladimir Petrović for Mr. Nikola Šainović
Mr. Tomislav Višnjić and Mr. Peter Robinson for Mr. Dragoljub Ojdanić
Mr. John Ackerman and Mr. Aleksandar Aleksić for Mr Nebojša Pavković
Mr. Mihajlo Bakrač and Mr. Đuro Čepić for Mr. Vladimir Lazarević

LIST OF EXTENDED SESSIONS IN MILUTINOVIC ET AL TRIAL		
Number	Date	Time
1.	10 July 2006	09:00-17:00
2.	7 August 2006	09:00-17:30
3.	8 August 2006	09:00-17:30
4.	9 August 2006	09:00-17:30
5.	10 August 2006	09:00-17:00
6.	11 August 2006	09:00-17:15
7.	25 September 2006	09:00-17:30
8.	26 September 2006	09:00-17:40
9.	27 September 2006	09:00-17:30
10.	28 September 2006	09:00-17:30
11.	29 September 2006	09:00-15:50
12.	27 November 2006	09:00-15:20
13.	29 November 2006	09:00-15:00
14.	30 November 2006	09:00-15:30
15.	4 December 2006	09:00-15:30
16.	22 January 2007	09:00-15:30
17.	23 January 2007	09:00-16:00
18.	24 January 2007	09:00-16:00
19.	25 January 2007	09:00-15:30
20.	7 February 2007	09:00-15:30
21.	8 February 2007	09:00-15:30
22.	9 February 2007	09:00-14:30
23.	19 February 2007	09:00-15:30
24.	20 February 2007	09:00-15:30
25.	21 February 2007	09:00-15:30
26.	22 February 2007	09:00-15:30
27.	2 March 2007	09:00-16:20
28.	6 March 2007	09:00-15:30
29.	7 March 2007	09:00-15:30
30.	8 March 2007	09:00-15:30
31.	9 March 2007	09:00-15:30
32.	12 March 2007	09:00-15:30
33.	13 March 2007	09:00-15:30
34.	19 March 2007	09:00-15:30
35.	1 May 2007	09:00-15:30
36.	3 May 2007	09:00-15:00
37.	4 May 2007	09:00-15:30
38.	6 August 2007	09:00-15:30
39.	7 August 2007	09:00-15:30
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91.	15 April 2008	09:00-15:30
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93.	17 April 2008	09:00-15:30
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95.	16 May 2008	09:00-15:30
96.	19 August 2008	09:00-15:30
97.	20 August 2008	09:00-15:30
98.	21 August 2008	09:00-15:30
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