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NATIONS**



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

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

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

Acting Registrar: Mr. John Hocking

Judgement of: 26 FEBRUARY 2009

PROSECUTOR

v.

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

PUBLIC

JUDGEMENT

Volume 2 of 4

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VII. CRIMES ALLEGED IN THE INDICTMENT

A. PEĆ/PEJA

1. Charges in Indictment

1. The Indictment charges the Accused with responsibility for two different categories of crimes against humanity allegedly committed in the town of Peć/Peja, in the municipality of the same name, on or about 27 and 28 March 1999: deportation and forcible transfer. The specific factual averments are set out in Paragraph of 72(e) of the Indictment, which states that:

On or about 27 and 28 March 1999, in the city of Peć/Pejë, forces of the FRY and Serbia went from house to house forcing Kosovo Albanians to leave. Some houses were set on fire and a number of people were shot. Soldiers and police were stationed along every street directing the Kosovo Albanians toward the town centre. Once the people reached the centre of town, those without cars or vehicles were forced to get on buses or trucks and were driven to the town of Prizren and then on towards the Albania [sic] border. Outside Prizren, the Kosovo Albanians were forced to get off the buses and trucks and walk approximately 15 kilometres to the Albanian border where, prior to crossing the border, they were ordered to turn their identification papers over to forces of the FRY and Serbia.¹

2. Background

2. Peć/Peja municipality is located in western Kosovo, on the border with Montenegro, with Dečani/Dečan municipality to the south and Istok/Istog municipality to the north-east. Radovan Paponjak, the chief of the Traffic Police Department in the Peć SUP during the time relevant to the Indictment, testified that there were between 50,000 and 70,000 people living in Peć/Peja town, the main town in the municipality, and that the ethnic ratio was 75 or 80 per cent of Kosovo Albanians to 20 or 25 per cent of other ethnicities.² He further stated that only one third of the non-Albanian population at that time was Serb.³

3. The principal evidence in relation to the specific events which are the basis for the allegations in paragraph 72(e) of the Indictment came from Edison Zatriqi and Ndrec Konaj, Kosovo Albanian residents of Peć/Peja town, led by the Prosecution, and from Paponjak, led by the Lukić Defence. There is a sharp clash between the Prosecution and Defence accounts, which the Chamber will discuss below to indicate how it has resolved this conflict.

¹ Indictment, para. 72(e).

² Radovan Paponjak, T. 24597 (19 March 2008).

³ Radovan Paponjak, T. 24579–24580 (19 March 2008).

4. As discussed in Section VI.B above, Bislim Zyrapi, who was Chief of the KLA General Staff from November 1998 to April 1999, testified that the KLA's Dukagjin zone, or operational zone three, encompassed the area of Peć/Peja municipality.⁴ However, the KLA controlled only small parts of each of the operational zones at any given time, usually being the mountainous and hilly regions. It was also present in the "lowlands" of certain municipalities, including those within the Dukagjin zone.⁵

5. According to Zyrapi, there was sporadic small scale fighting in June 1998 between the KLA and the forces of the FRY and Serbia in the Dukagjin zone. However, the situation changed in July to October 1998, during the summer offensive by the VJ and MUP discussed in Section VI.B above, when the fighting intensified.⁶ Radovan Paponjak, whose testimony on KLA activity in the area is consistent with other evidence, recounted that, although the KLA was defeated in late summer 1998, it reorganised and reinforced itself in late 1998 and early 1999, and continued with "terrorist attacks" against civilians, members of the army and the police, some of them in Peć/Peja municipality.⁷ Paponjak also testified that lists were kept by each SUP in Kosovo, on the security-related incidents that occurred; these lists were then linked to individual case files. He stated that this list was later called the "dossier of Kosovo and Metohija."⁸ The list included chapters on security-related events resulting in death pertaining to armed conflict, crimes against Albanians, crimes against Serbs, and security-related events pertaining to kidnappings and missing persons.⁹

6. The Chamber heard from various witnesses that the roads to and from Peć/Peja were under KLA control for much of 1998 and early 1999,¹⁰ and that Kosovo Albanian villages in the municipality were KLA strongholds or under KLA control.¹¹ Additionally, the Chamber heard evidence about several incidents which took place in the municipality and in Peć/Peja town itself during that time, some of which were attributed to the KLA. One of these incidents, mentioned by

⁴ Bislim Zyrapi, T. 5932, 5934, 5967 (6 November 2006), T. 6018 6021, 6049 (7 November 2006), T. 6258, 6267–6268 (10 November 2006); P2469 (map showing different KLA operational zones); *see also* P2453 (Minutes of KLA Operational Staff of Plain of Dukagjin Working Meeting), p. 2.

⁵ Bislim Zyrapi, T. 5967–5968 (6 November 2006).

⁶ Bislim Zyrapi, T. 5939–5940 (6 November 2006).

⁷ Radovan Paponjak, 6D1603 (witness statement dated 14 March 2008), para. 34, T. 24539, 24547–24548 (19 March 2008); Radojica Nikčević, T. 23242–23243 (26 February 2008); Dragan Živaljević, 6D1606 (witness statement dated 30 March 2008), para. 14.

⁸ Radovan Paponjak, T. 24543–24544 (19 March 2008).

⁹ Radovan Paponjak, T. 24544–24548 (19 March 2008).

¹⁰ Radovan Paponjak, 6D1603 (witness statement dated 14 March 2008), para. 16; Ljubivoje Joksić, T. 21977–21978 (8 February 2008); John Crosland, T. 9919 (8 February 2007), 3D510 (witness statement dated 30 June 2006), para. 63, Annex B; Dragan Živaljević, 6D1606 (witness statement dated 30 March 2008), para. 11. *See also* 4D141 (3rd Army Combat report, 9 August 1998), p. 3; 6D698 (Order of the PrK, 5 September 1998), p. 1, also admitted as P1101.

¹¹ Radovan Paponjak, 6D1603 (witness statement dated 14 March 2008), para. 35.

various witnesses, involved the killing of at least four Serb teenagers and the wounding of several others in the Panda Bar/Café in Peć/Peja town in December 1998.¹²

7. Zyrapi confirmed that at the end of March 1999 the KLA maintained several brigades in the Dukagjin zone.¹³ The Chamber is satisfied that there was, indeed, a strong KLA presence in Peć/Peja municipality in 1998 and in the period immediately prior to the commencement of the NATO bombing and the events alleged in the Indictment.

8. The area of Peć/Peja fell within the zone of responsibility of the 125th Motorised Brigade of the Priština Corps, commanded by Dragan Živanović.¹⁴ The Armoured Battalion of the 125th Motorised Brigade was stationed in the municipality and had its command post in the village of Raušić/Raushiq, to the south of Peć/Peja town, until 26–27 March 1999, when it was relocated to the Hotel Metohija in Peć/Peja town.¹⁵ The Brigade remained in the town until at least 11 April 1999.¹⁶ The war diary of the Armoured Battalion of the 125th Motorised Brigade also noted the presence of units of the Brigade in Peć/Peja town as of 27 March 1999.¹⁷ Živanović confirmed the presence of one of his units in the town on 27 and 28 March.¹⁸ He further stated that the 177th Military Territorial Detachment and one company from the 113th Military Territorial Detachment were also there.¹⁹ These units left the town around mid-April 1999.²⁰

¹² Radovan Paponjak, T. 24537–24542, 24549 (19 March 2008), Radojica Nikčević, T. 23231, 23237, 23240–23243, 23246–23258 (26 February 2008), T. 23284–23285 (27 February 2008); 5D980 (Combat Report of the Military District Command to the 3rd Army, 5 April 1999), p. 1; P636 (Examples of Non-Compliance of UNSCR 1199: Annex DZ-3 to Drewienkiewicz's statement), p. 6; 6D1537 (Summary of security incidents in Kosovo from 1 January 1998 to 1 June 2001 in the area of Peć SUP, 20 November 2003); 6D112 (OSCE/KVM background report on compliance by the parties in Kosovo, 12 March 1999), p. 2; P1100 (Report by the MUP Staff to the Serbian MUP, 27 March 1999), p. 5. *See also* 6D1637 (US-KDOM Report, 14 April 1999) pp. 2, 4; 6D1638 (US-KDOM Report, 13 April 1999), p. 3. Karol John Drewienkiewicz, P2508 (witness statement dated 23 June 2000), para. 89; P407 (OSCE/KVM Bluebook); *see also* P634 (Chronology of major events in Kosovo from 15 October to 18 April 1999); Michael Phillips, T. 11902–11903 (19 March 2007); Shaun Byrnes, T. 12241 (17 April 2007); Ljubivoje Joksić, T. 21983 (8 February 2008); Milivoje Mihajlović, 6D1530 (witness statement dated 6 March 2008), para. 29; Shaun Byrnes, T. 12267 (17 April 2007); Frederick Abrahams, T. 1020–1021 (7 August 2006).

¹³ Bislim Zyrapi, T. 6258–6259 (10 November 2006); P2447 (map showing KLA positions).

¹⁴ Dragan Živanović, T. 20439 (17 January 2008), T. 20532–20533 (18 January 2008) (He confirmed that one of the two battalions of his brigade had its peacetime location in Peć/Peja); Milan Kotur, T. 20801–20802 (22 January 2008); Zlatimir Pešić, T. 7272 (24 November 2006); *see also* P1246 (Order of the 125th Motorised Brigade, 4 April 1999), p. 2.

¹⁵ P2802 (War Diary of the Armoured Battalion of the 125th Motorised Brigade), pp. 1–2; *see also, e.g.*, 5D697 (Warning of the 125th Motorised Brigade, 22 March 1999), p. 1; 5D708 (Order of the 125th Motorised Brigade, 24 March 1999), p. 3; 5D699 (Order of the 125th Motorised Brigade, 26 March 1999). *See also* P1579 (Map of Kosovo).

¹⁶ P2802 (War Diary of the Armoured Battalion of the 125th Motorised Brigade), pp. 2–11; *see also* P2616 (War Diary of the 125th Motorised Brigade, 24–31 March 1999), p. 4; 6D1543 (Report on the forced deportation of Albanians, their persecution on racial grounds and seizing their personal identification documents, May 2002), pp. 2–3.

¹⁷ P2802 (War Diary of the Armoured Battalion of the 125th Motorised Brigade), pp. 2–11.

¹⁸ Dragan Živanović, T. 20471 (17 January 2008).

¹⁹ Dragan Živanović, T. 20496–20497 (17 January 2008); *see also* Radovan Paponjak, T. 24551 (19 March 2008).

9. A KVM report for the period of 20 and 21 February 1999 observed that the VJ had “called up a limited number of reservists for military service at the Peć Garrison” and that these people were identifiable “by their old-style uniforms”.²¹ Paponjak confirmed that VJ reserve forces in the Peć/Peja area were mobilised in late March 1999, but added that, due to the fact that the mobilisation process was slow, there was a large presence of VJ reservists in towns. The KVM recorded that some of these reservists “showed lack of discipline when it came to appearance and uniform, conduct, and carrying weapons and equipment”.²²

10. It is, therefore, clear that there was a VJ presence in Peć/Peja municipality in the period leading up to the NATO bombing campaign, and that from 27 March to mid-April 1999 there were VJ forces based in Peć/Peja town itself. These VJ forces included a number of reservists.

11. Radojica Nikčević, who was a member of the PJP in the Peć SUP, testified that there were five PJP platoons within the SUP at the time: two in Peć/Peja, one in Istok/Istog, one in Đakovica/Gjakova, and one in Klina. His PJP company amounted to approximately 80 men, divided among the five platoons.²³

12. According to Paponjak, after the commencement of the NATO bombing on 24 March 1999, organisational units of the SUP in Peć/Peja were moved to reserve locations, police reservists were mobilised, and the movement of people in uniform increased in Peć/Peja town.²⁴ The reserve forces of the police in Peć/Peja also included local Serbs.²⁵ Paponjak asserted that there was no apparent distinction between regular police officers and reservists because they wore the same uniform, carried the same weapons, and performed the same tasks.²⁶

13. Vladimir Ilić, a member of the 122nd Intervention Brigade of the PJP, gave further evidence of the reinforcement of the Peć SUP by his Brigade, which was sent from Belgrade.²⁷ It arrived in Kosovo in June 1998, and divided into two groups, each comprised of approximately 400 men, although these numbers were later reduced.²⁸ One of these, commanded by Dragan Živaljević, was sent to the area of Podujevo/Podujeva, while the other, which initially included Ilić, was sent to the

²⁰ Dragan Živanović, T. 20496–20497 (17 January 2008); *see also* 5D712 (Order of the 125th Motorised Brigade, 7 April 1999), p. 2, referring to the 113th Military Territorial Detachment as one of the units to perform tasks with the 125th Motorised Brigade.

²¹ P675 (OSCE/KVM report for the period covered 20 and 21 February 1999), p. 3.

²² Radovan Paponjak, 6D1603 (witness statement dated 14 March 2008), para. 71.

²³ Radojica Nikčević, T. 23232 (26 February 2008).

²⁴ Radovan Paponjak, 6D1603 (witness statement dated 14 March 2008), paras. 40, 50.

²⁵ Radovan Paponjak, T. 24568 (19 March 2008).

²⁶ Radovan Paponjak, T. 24569 (19 March 2008).

²⁷ Vladimir Ilić, T. 24319–24321 (17 March 2008).

²⁸ Vladimir Ilić, T. 24322, T. 24369–24370 (17 March 2008).

area of the Peć SUP, and was commanded by Boško Buha, Živaljević's deputy.²⁹ Dragan Živaljević confirmed this account, explaining that the 122nd Intervention PJP Brigade was later called the Belgrade detachment, or either the 21st or the 22nd PJP detachment.³⁰

14. Nikčević testified that police officers from the Peć SUP wore "regular uniforms," consisting of a navy blue jacket and trousers, light blue shirt, and black belt.³¹ As discussed in Section VI.A above in relation to the PJP in general, members of the PJP units in Peć/Peja wore blue camouflage uniforms until the beginning of September 1998, when they were replaced by green camouflage uniforms with police insignia on the sleeves.³² Nikčević and Ilić both emphasised that the wearing of non-standard uniforms was prohibited, but conceded that some people, particularly reservists, may have deviated from this rule, and that bandanas or kerchiefs were worn by PJP members in the summer due to the heat.³³

3. Events in Peć/Peja town on 27 and 28 March 1999

15. Edison Zatriqi, who in 1999 was the director/owner of a company named Flamingo Tours, which owned three passenger buses, testified that on the day before the NATO bombing began he was summoned by the police to the garage where he kept his buses. When he arrived there at around 11:30 a.m., two regular local policemen whom he knew ordered him to start the buses. When Zatriqi had done so, they told him that he was free to go. He requested a document to reflect that the buses were being taken from him. When the reaction of one of the policemen was to point an automatic weapon at him, Zatriqi naturally left. He did not report this incident to the local SUP, as the policemen involved were senior officers, which was likely to render any complaint futile.³⁴

16. Zatriqi further testified that on 26 and 27 March 1999 he stayed in the basement of his house in the neighbourhood of Sahat Kulla in Peć/Peja town. On the second of these days he saw armed civilians, whom he identified as his Serb neighbours, as well as people in blue and black camouflage uniforms, in his neighbourhood.³⁵ Around 6:30 a.m. he witnessed the "Serb military" located in the hospital yard and the secondary school start shelling the neighbourhood of

²⁹ Vladimir Ilić, T. 24322, 24383–24384 (17 March 2008); Dragan Živaljević, 6D1606 (witness statement dated 30 March 2008), para. 6.

³⁰ Dragan Živaljević, 6D1606 (witness statement dated 30 March 2008), para. 6.

³¹ Radojica Nikčević, T. 23235 (26 February 2008).

³² Dragan Živaljević, 6D1606 (witness statement dated 30 March 2008), para. 8; Radojica Nikčević, T. 23236 (26 February 2008); Vladimir Ilić, T. 24323–24324, 24377–24378 (17 March 2008); *see also* Radojica Nikčević, T. 23274 (27 February 2008).

³³ Radojica Nikčević, T. 23237–23282 (26 February 2008), T. 23275 (27 February 2008); P1596 (Photograph depicting activities of the armed organizations of the FRY and Serbia); Vladimir Ilić, T. 24326 (17 March 2008).

³⁴ Edison Zatriqi, P2347 (witness statement dated 20 June 2001), p. 2, T. 4422–4423 (29 September 2006).

³⁵ Edison Zatriqi, T. 4414–4415 (29 September 2006).

Kapešnica/Kapeshnica.³⁶ Although Dragan Živanović denied that units of the 125th Motorised Brigade ever used the hospital, the school, or any similar facility in Peć/Peja town “for military purposes and as a place to fire from”, he acknowledged that the VJ had a medical corps stationed there.³⁷ The Trial Chamber believes Zatriqi’s account of the shelling of Kapešnica/Kapeshnica from the vicinity of that location.

17. Zatriqi recalled that around 7:30 a.m. on the same day he and his family went to his aunt’s house in the neighbourhood of Jarina in the centre of the town. He saw people moving on the streets with their children, and carrying bags, but he did not know what was happening.³⁸ In the evening he saw a searchlight sweeping the town, and he heard shooting all night long.³⁹

18. The following morning Zatriqi was still with his family at his aunt’s house when a policeman dressed in a blue camouflage uniform walked along the road in the neighbourhood, directing the population to leave their homes within five minutes.⁴⁰ Zatriqi explained that the policeman was addressing the people collectively. Neither he nor anyone from the house where he was staying spoke directly with this policeman. There were two police cars stationed at each of the two entrances to the neighbourhood.⁴¹ Zatriqi decided to leave Peć/Peja town that morning, together with his family, because he was afraid for their lives.⁴²

19. They left in two cars and joined a long convoy of vehicles and people moving in the direction of Rožaje in Montenegro.⁴³ There were armed policemen and civilians at the various road junctions, and the police were directing the convoy to Montenegro and Albania. He did not see any members of the VJ doing the same.⁴⁴ He further testified that at the first crossroads, 100 or 200 metres away from where he joined the convoy in Peć/Peja, he saw one of his buses, filled with people from the town, being driven by a man wearing a blue camouflage uniform.⁴⁵ He saw other

³⁶ Edison Zatriqi, P2347 (witness statement dated 20 June 2001), p. 2. *See also* Ljubivoje Joksić, T. 21978 (8 February 2008).

³⁷ Dragan Živanović, T. 20471 (17 January 2008). The existence of a medical centre in Peć/Peja is also confirmed by the entry for 29 March 1999, of the 125th Motorised Brigade War Diary; P2616 (War Diary of the 125th Motorised Brigade), pp. 10–12.

³⁸ Edison Zatriqi, P2347 (witness statement dated 20 June 2001), p. 2.

³⁹ Edison Zatriqi, P2347 (witness statement dated 20 June 2001), p. 3.

⁴⁰ Edison Zatriqi, T. 4415–4417 (29 September 2006).

⁴¹ Edison Zatriqi, T. 4420 (29 September 2006).

⁴² Edison Zatriqi, P2347 (witness statement dated 20 June 2001), p. 3.

⁴³ Edison Zatriqi, P2347 (witness statement dated 20 June 2001), p. 3.

⁴⁴ Edison Zatriqi, T. 4424–4425 (29 September 2006).

⁴⁵ Edison Zatriqi, P2347 (addendum to witness statement dated 29 January 2002), p. 2, T. 4417 (29 September 2006).

buses which were also packed with people.⁴⁶ Except for some provocations along the way, they did not have any problems and drove straight to Rožaje in Montenegro.⁴⁷

20. The Chamber notes that in his initial witness statement, taken in 2001, Zatriqi did not mention seeing any of his buses at this time, but rather asserted that he did not see them from the moment they were confiscated by the police until his return to Kosovo in July 1999.⁴⁸ However, in an addendum to this statement, made in 2002, he corrected the earlier statement, adding that he saw the buses, full of people, before he left Peć/Peja, and he repeated this during his oral testimony. He was not cross-examined on this discrepancy, and the Chamber accepts that he did see at least one of his buses after they were taken by members of the MUP, as he departed Peć/Peja town.

21. Ndrec Konaj, also a Kosovo Albanian resident of the town, who was formerly a building inspector, gave a similar account of a large group of people being forced to leave Peć/Peja on 27 and 28 March 1999. On 27 March he was with his family and about 19 other people at his father's house located in the neighbourhood of Karagac. Around 2:00 p.m. at least 20 fully armed "Serbian paramilitary troops" came to the neighbourhood and about 15 of them entered his father's yard, shot at the door of the house, and ordered everyone inside to leave in the direction of Montenegro, giving them five minutes to depart. Konaj and his family did as instructed and started walking through the streets of the town with a group of about 25 people. They were stopped by "two military soldiers" dressed in camouflage uniforms, one of whom was armed. The soldiers separated the men from the women and children, and demanded 150 German Marks from Konaj. After taking the money, the soldiers told the group to "get out of here" as they were calling over another group that was walking behind them.⁴⁹

22. Konaj further testified that his group continued towards a petrol station, and that he saw a vehicle belonging to the VJ and another vehicle belonging to the MUP.⁵⁰ The group was then stopped by seven "police" who asked them where they were going, to which Konaj responded that they were going to the neighbourhood of Jarina. Two of the policemen were wearing camouflage uniforms.⁵¹ The policemen told the group that they could only walk on the side roads and not through the centre of town, and should go in the direction of Montenegro.⁵²

⁴⁶ Edison Zatriqi, T. 4414–4415 (29 September 2006).

⁴⁷ Edison Zatriqi, P2347 (witness statement dated 20 June 2001), p. 3, T. 4424 (29 September 2006).

⁴⁸ Edison Zatriqi, P2347 (witness statement dated 20 June 2001), p. 2.

⁴⁹ Ndrec Konaj, P2372 (witness statement dated 12 June 2001), p. 3.

⁵⁰ Ndrec Konaj, P2372 (witness statement dated 12 June 2001), p. 3, T. 4889, 4895–4900 (16 October 2006).

⁵¹ Ndrec Konaj, P2372 (witness statement dated 12 June 2001), p. 3, T. 4911 (16 October 2006).

⁵² Ndrec Konaj, *see* P2372 (witness statement dated 12 June 2001), p. 3, T. 4911 (16 October 2006).

23. The group continued walking, trying to reach the town's trading centre, until two cars stopped them and nine men got out. These men "did not appear to be regular army, they had painted faces but were in civilian clothes". The men "were abusive", and hit Konaj on the back with the butt of a gun and struck him in the face. Konaj's uncle was struck on the leg and fell on the ground. One of these men said, "You asked for NATO and you asked for Clinton, let them save you now".⁵³ Konaj testified that his group then continued walking on the side streets through the town, going towards Montenegro, and that, when they approached the police station which is close to the bus station, they were again stopped by "police" dressed in a different kind of camouflage uniform, who asked them where they were going.⁵⁴ In response to Konaj's explanation that they were going to the neighbourhood of Jarina, one of the policeman told the group that "there is no way for you to go other than to Montenegro".⁵⁵ As the group continued walking towards the bus station, Konaj saw three or four uniformed men on each side road between the petrol station and the bus station in Peć/Peja town, preventing them from entering any of the side roads.⁵⁶

24. At about 4:00 p.m. Konaj and a group of approximately 25 people made it to a house, closer to the bus station, belonging to one of his friends, and decided to spend the night there. About an hour later Konaj was watching from a window in the house as a group of approximately 14 "men in black uniforms with masks" knocked on the door of a house nearby. A local Serb civilian, who was with the group of masked men, went into the house together with them, and came out with a box. All of them then left. Konaj further testified that throughout the night he saw houses burning in the area of the high school, and heard shooting.⁵⁷

25. Konaj also recounted the events of the following day—28 March 1999—when he and his family were expelled from the town. He described how that morning he saw crowds of people in the streets who had been expelled from the area of the catholic church and who told him that they had been ordered to go to Montenegro. Konaj decided to leave the house where he had spent the night, together with his wife and two daughters. They then joined the crowds in the street and started walking on the road to Montenegro.⁵⁸ While walking he saw policemen, military forces, and other uniformed forces whom he described as "paramilitaries", located at the entrance of every street "to prevent [the convoy of people] from going back".⁵⁹ He further described how, near the school of economics, a group of about 30 police, military, and paramilitary troops stopped the

⁵³ Ndrec Konaj, P2372 (witness statement dated 12 June 2001), p. 3.

⁵⁴ Ndrec Konaj, T. 4912 (16 October 2006).

⁵⁵ Ndrec Konaj, P2372 (witness statement dated 12 June 2001), p. 3, T. 4911–4912 (16 October 2006).

⁵⁶ Ndrec Konaj, P2372 (witness statement dated 12 June 2001), p. 3, T. 4889–4890 (16 October 2006).

⁵⁷ Ndrec Konaj, P2372 (witness statement dated 12 June 2001), p. 4.

⁵⁸ Ndrec Konaj, P2372 (witness statement dated 12 June 2001), p. 4, T. 4912 (16 October 2006).

crowd, and one of the soldiers directed the people on foot back to the centre of town, only allowing the people travelling by car to carry on towards Montenegro.⁶⁰

26. As they were on foot, Konaj and his family made their way back to the square in the centre of Peć/Peja town at around 9:30 or 10:00 a.m. Many “police and military” forces were present there, as well as thousands of people who had arrived from different neighbourhoods in the town, and at least 20 trucks and buses. The “traffic control commander,” whom he knew but could not name, was standing in the centre of the square with a megaphone, ordering that the women and children separate from the men, and that the former get on to the buses that were there. However, due to the panic among the gathered people, the separation did not happen. Konaj saw whole families boarding the buses, which departed on three occasions in the direction of Prizren.⁶¹

27. At around 7:00 p.m. three army tanks entered the centre of town; two of them pointed their gun turrets towards the crowd of people gathered in the square, causing great fear. After about an hour the tanks left. Also at that time the lights in the town went out.⁶² Later that night the trucks and buses returned, empty, and were loaded with more people. Konaj, his family, and over 100 other people got on the last bus to depart from Peć/Peja that night. His cousin and a friend were initially not allowed to get on to the bus by the driver who, according to Konaj, was “an armed paramilitary”. However, the driver later allowed them to board after receiving money from Konaj’s friend. The atmosphere on the bus was “horrifying”, and the group did not know what their destination was going to be.⁶³

28. Konaj then described how the convoy of buses travelled south and stopped at a checkpoint opposite the police station in the town of Đakovica/Gjakova, where there was a large group of civilians, paramilitaries, and police, who were beating some men with the butts of their weapons. He also saw a mixed group of civilians, paramilitaries, and police beating the people in the vehicle in front of the one he was on. He heard the driver of the bus in which he was travelling arguing with one of the Serb civilians, saying that he had “orders to send these people to Prizren, no-one is to get off the vehicles.” The bus was then allowed to travel with the rest of the convoy on to Prizren. They arrived in Prizren between 1:00 and 1:30 a.m., and stopped at the junction that leads to the Vrbnica/Vërbnica (Morina) border crossing. The driver then told the people on the bus in which Konaj was travelling to disembark and instructed them to, “Go to Albania, this is not your

⁵⁹ Ndrec Konaj, P2372 (witness statement dated 12 June 2001), p. 4, T. 4890 (16 October 2006).

⁶⁰ Ndrec Konaj, P2372 (witness statement dated 12 June 2001), p. 4, *see also* T. 4894, 4910 (16 October 2006).

⁶¹ Ndrec Konaj, P2372 (witness statement dated 12 June 2001), p. 4.

⁶² Ndrec Konaj, P2372 (witness statement dated 12 June 2001), p. 4, T. 4894, 4912–4913 (16 October 2006).

⁶³ Ndrec Konaj, P2372 (witness statement dated 12 June 2001), pp. 4–5, T. 4914 (16 October 2006).

place, this is Great Serbia". Konaj saw "police and military" on the other side of the road where they were dropped off.⁶⁴

29. At least seven empty buses then arrived to collect the people, one of which was being driven by an armed man "in a military uniform". Konaj and his family got on the last available bus which drove them to the border crossing where they got off. The driver told the group to stay on the main road because the place was mined. Konaj and his group then started walking towards the Albanian border. While at the border crossing, Konaj saw many police officers telling people to throw all their identification papers into a wooden box, which already contained many documents and license plates. The men were searched and the women's bags were checked, but Konaj managed to hide his documents. The group was allowed to cross into Albania on the morning of 29 March 1999.⁶⁵ In the period from 27 to 29 March, Konaj and his family did not have any food.⁶⁶

30. The Chamber has already recorded its concern about the almost irrational refusal of some Kosovo Albanian witnesses to acknowledge the extent of the activities of the KLA. Konaj was one such witness, refusing to acknowledge that he was aware of a notorious KLA attack on Serb policemen in July 1998 in the community of Loxha close to his home, involving kidnapping and mutilation, until intervention from the Bench. Because of his prevarication, the Chamber has exercised particular care in assessing his credibility on the important events of 1999. Having done so, the Chamber has concluded that his account of events in March 1999 is credible and reliable, bearing in mind how it fits with the other evidence referred to in this section.

31. Radovan Paponjak confirmed that there was, indeed, a large-scale displacement of the population, but gave a rather different account to that of Zatriqi and Konaj concerning the reasons why people were leaving the area at the end of March. Paponjak testified that, after the commencement of the NATO bombing, he noticed more "movement of vehicles and pedestrians along the roads," but claimed that he did not remember any particular events on 27 and 28 March.⁶⁷ He agreed that Kosovo Albanians were leaving their houses in large numbers and in organised columns, going mainly to Albania or to Montenegro. However, according to Paponjak, this happened because they did not wish to be exposed to the NATO bombing, which was striking their

⁶⁴ Ndrec Konaj, P2372 (witness statement dated 12 June 2001), p. 5.

⁶⁵ Ndrec Konaj, P2372 (witness statement dated 12 June 2001), p. 5, T. 4913 (16 October 2006).

⁶⁶ Ndrec Konaj, P2372 (witness statement dated 12 June 2001), p. 5.

⁶⁷ Radovan Paponjak, T. 24551–24552 (19 March 2008).

homes.⁶⁸ He emphasised that nobody from the army or the police ordered civilians to go to Albania.⁶⁹

32. The documentary records of bombing by NATO of targets in Peć/Peja municipality do not support Paponjak's explanation. Entries in the war diary of the Armoured Battalion of the 125th Motorised Brigade for 26, 27, 28, and 29 March all record specifically that there were not attacks on these days.⁷⁰ The first record of bombing is in the war diary entry for 30 March that VJ forces "withdrew from the positions targeted the previous evening".⁷¹ The entry for that date also refers to two locations, Belo Polje/Bellopoja on the outskirts of Peć/Peja town, and Zagrimlje/Zagërme, south of Belo Polje/ Bellopoja, as having been targeted.⁷² A list of "incidents and consequences of NATO bombing" for the territory of the Peć SUP, certified by Paponjak, records the first damage in the area as happening on 31 March 1999.⁷³ A combat report of the 125th Motorised Brigade records the bombing of the VJ barracks in Peć/Peja which, along with the Peć SUP, was the only specific example given by Paponjak, as taking place on the morning of 1 April 1999.⁷⁴

33. Bearing in mind all of these records, and the fact that neither Zatriqi nor Konaj mentioned the NATO bombing as a factor contributing to their departure from Peć/Peja town on 27 and 28 March 1999, the Chamber does not accept Paponjak's explanation for the movement of the population in that area. His explanation is also seriously undermined by his assertion that there were no VJ forces or armed Serb civilians present in Peć/Peja town centre at the end of March 1999.⁷⁵ The war diary recorded the presence of units of the brigade in the town as of 27 March 1999,⁷⁶ and stated that on 28 March 1999 "some of our forces participated in clearing part of the town, in the Grammar School and Aslan Česma sectors",⁷⁷ which is consistent with the evidence of Konaj and Zatriqi.

34. Despite his claim not to recall any specific events in Peć/Peja on 27 and 28 March 1999, Paponjak testified that, as a result of reports he received in late March concerning the movement of people into and around the town, which had an adverse impact on the movement of traffic, he sent

⁶⁸ Radovan Paponjak, 6D1603 (witness statement dated 14 March 2008), para. 46.

⁶⁹ Radovan Paponjak, 6D1603 (witness statement dated 14 March 2008), para. 54.

⁷⁰ P2802 (War Diary of the Armoured Battalion of the 125th Motorised Brigade), pp. 1–3.

⁷¹ P2802 (War Diary of the Armoured Battalion of the 125th Motorised Brigade), pp. 4–5.

⁷² P2802 (War Diary of the Armoured Battalion of the 125th Motorised Brigade), p. 5.

⁷³ 6D1557 (List of incidents and consequences of NATO bombing in the territory of the SUP Peć between 24 March and 10 June 1999).

⁷⁴ P2038 (125th Motorised Brigade Combat Report to PrK, 1 April 1999), p. 1. *See also* Radovan Paponjak, 6D1603 (witness statement dated 14 March 2008), para. 43; Radojica Nikčević, T. 23243 (26 February 2008).

⁷⁵ Radovan Paponjak, T. 24575, 24585 (19 March 2008).

⁷⁶ P2802 (War Diary of the Armoured Battalion of the 125th Motorised Brigade), pp. 2–11.

⁷⁷ P2802 (War Diary of the Armoured Battalion of the 125th Motorised Brigade), p. 3.

patrols to regulate traffic to the centre of town, and later decided to go there himself. When he arrived in the town centre he found that there were thousands of Kosovo Albanians gathered. There were some speakers addressing the crowd through a loudspeaker in Albanian, but he could not understand what they were saying; however, it seemed as if the situation was being dealt with in an organised manner.⁷⁸ Even though he was the highest ranking officer of the Peć SUP there,⁷⁹ he did nothing to deal with the situation, nor did he address the crowd.⁸⁰ However, while in the town centre people approached him and asked him whether they could go to Đakovica/Gjakova, Montenegro, or Priština/Prishtina, and whether they “would be restricted in terms of movement”.⁸¹ After being asked why crowds would gather in the centre of Peć/Peja town during those days, Paponjak replied that he did not know why they were doing so and leaving the town, but he assumed they were doing it for the same reasons as everyone else: “fear of bombing, attacks, conflicts with terrorists”.⁸²

35. The Trial Chamber is unconvinced by this account. Indeed, as he was the most senior traffic policeman in Peć/Peja at the time, the evidence of Konaj suggests that it was Paponjak who was attempting to separate men from women in the town square on 28 March and directing people on to the buses to take them to the border. Paponjak’s own admission that he was in the town centre in the same approximate time period, and spoke to people in the crowd, supports that evidence.

36. Paponjak further claimed that the only movement of people which could be linked to the VJ and MUP in Peć/Peja municipality was the transfer of civilians from areas where combat units were being deployed, in order to protect them from combat operations, and this was regardless of their ethnic background.⁸³ However, the war diary of the Armoured Battalion of the 125th Motorised Brigade, which was the main VJ unit deployed in the area during that time, records only that on 26 March 1999 “Šiptar terrorists gangs” were active in the western part of Peć/Peja town, and that “units [were] deployed to blockade the southern part of [Peć/Peja] town from the Raušić village direction”, and that on 27 March “during the day there were clashes with Šiptar terrorist gangs”.⁸⁴ No other operation in or around Peć/Peja town is recorded during those days.⁸⁵ The Trial Chamber

⁷⁸ Radovan Paponjak, 6D1603 (witness statement dated 14 March 2008), para. 55, T. 24553–24554, 24573 (19 March 2008).

⁷⁹ Radovan Paponjak, 6D1603 (witness statement dated 14 March 2008), para. 55, T. 24575 (19 March 2008).

⁸⁰ Radovan Paponjak, T. 24553, 24573–24574 (19 March 2008).

⁸¹ Radovan Paponjak, T. 24555 (19 March 2008).

⁸² Radovan Paponjak, T. 24577–24578 (19 March 2008).

⁸³ Radovan Paponjak, 6D1603 (witness statement dated 14 March 2008), para. 53.

⁸⁴ P2802 (War Diary of the Armoured Battalion of the 125th Motorised Brigade), pp. 1–2.

⁸⁵ P2802 (War Diary of the Armoured Battalion of the 125th Motorised Brigade).

heard no evidence to confirm that civilians were being moved for their protection in the municipality.

37. Paponjak further denied that there was a strong police presence in the centre of Peć/Peja town at this time.⁸⁶ He testified that there were only four patrols—each consisting of two or three men—which was the minimum number needed to regulate traffic,⁸⁷ and explained that there were between 20 and 30 policemen in the centre of town during those days.⁸⁸ He then added that there were “regular patrols” in the centre of Peć/Peja town in their three permanent points or posts: one towards the Patriarchate of Peć/Peja, another one towards Đakovica/Gjakova, and the third one towards Kosovska Mitrovica/Mitrovica.⁸⁹ The police located at these posts were trying to assist the movement of vehicles and passengers.⁹⁰ Paponjak emphatically denied that the police controlled the direction of movement of the population or restricted where they could go.⁹¹ He conceded that the police patrols monitoring the departure of people, in particular at the permanent check-point at *Savine Vode* on the road to Kula/Kullë, which was comprised of members of the traffic police, the general police, and the crime police,⁹² were stopping vehicles to check the people in them.⁹³ However, he stated that police from the Peć SUP did not escort “refugees” to the border,⁹⁴ and affirmed that “as chief of the Traffic Police Department I personally inspected the work of members of my Department and I saw it for myself. The police acted legally”.⁹⁵ He emphasized that members of the police “worked according to the orders they received to regulate traffic on the route, above all to protect the lives of people and safety of persons and property, and prevent any criminal conduct by individual groups”.⁹⁶

38. Attempting to counter the evidence concerning the transfer of people in buses from the centre of Peć/Peja town, Paponjak asserted that buses could not reach the town centre because of the traffic regulations in place at the time.⁹⁷ However, this claim seems to be contradicted by his 2002 “Report on the forced deportation of Albanians, their persecution on racial grounds and seizing their personal identification documents,” which records that Kosovo Albanians assembled

⁸⁶ Radovan Paponjak, 6D1603 (witness statement dated 14 March 2008), para. 59, T. 24552 (19 March 2008).

⁸⁷ Radovan Paponjak, 6D1603 (witness statement dated 14 March 2008), para. 59, T. 24552 (19 March 2008).

⁸⁸ Radovan Paponjak, T. 24575 (19 March 2008).

⁸⁹ Radovan Paponjak, T. 24553, 24574 (19 March 2008).

⁹⁰ Radovan Paponjak, T. 24553 (19 March 2008).

⁹¹ Radovan Paponjak, 6D1603 (witness statement dated 14 March 2008), para. 60.

⁹² Radovan Paponjak, T. 24580–24581 (19 March 2008).

⁹³ Radovan Paponjak, T. 24579 (19 March 2008).

⁹⁴ Radovan Paponjak, T. 24581 (19 March 2008).

⁹⁵ Radovan Paponjak, 6D1603 (witness statement dated 14 March 2008), para. 63.

⁹⁶ Radovan Paponjak, 6D1603 (witness statement dated 14 March 2008), para. 58.

⁹⁷ Radovan Paponjak, T. 24556 (19 March 2008).

in the centre of Peć/Peja at around 10:00 a.m. on 27 March 1999, and that “they brought their vehicles to the place of assembly (busses, trucks, tractors, PMV /passenger car/) ... After the gathering, Albanians left in vehicles or on foot in various directions.”⁹⁸ Furthermore, Paponjak explained that “all bus traffic at the time was still running pretty regularly, there were buses leaving for Belgrade and other parts of the country” and explained that “[y]ou could go to Montenegro, Prizren, Djakovica, there were local buses as well as inter-city buses. People were using buses normally”.⁹⁹ He also asserted that the police did not organise buses to transport the Kosovo Albanians to the border,¹⁰⁰ and that he did not see FRY/Serbian forces loading civilians onto trucks on 27 and 28 March 1999.¹⁰¹

39. The Trial Chamber accepts the evidence given in the consistent accounts of Zatriqi and Konaj, supported by documentary records. In contrast to their evidence, that of Paponjak was, in many places, inconsistent with contemporary documentary records. The Chamber considers that, in giving his account, he lacked candour, and finds it unreliable.¹⁰²

4. Destruction in Peć/Peja

40. Both Edison Zatriqi and Ndrec Konaj returned to Peć/Peja following the signing of the Kumanovo Agreement, after having been in Montenegro and Albania, respectively. Zatriqi testified that he returned on 26 July 1999, and found his house and business office totally burned. He also found his three buses in the garage where they had been confiscated; they too had been burned.¹⁰³ About ten other buses had also been destroyed.¹⁰⁴ He learned from friends and colleagues that the buses had been burned by the Serbian police.¹⁰⁵ While Radovan Paponjak testified that Zatriqi’s buses were parked next to a workshop/garage used for parking police vehicles, which caught fire around 24 or 25 March 1999 and spread such that Zatriqi’s buses also “burned down to the ground,” this alternative explanation for the damage to the vehicles was never put to Zatriqi upon cross-examination.¹⁰⁶ Zatriqi was not an eye-witness to the burning of the buses, but Paponjak’s assertion about the circumstances and date of their destruction conflicts with

⁹⁸ 6D1543 (Report on the forced deportation of Albanians, their persecution on racial grounds and seizing their personal identification documents, May 2002), p. 2.

⁹⁹ Radovan Paponjak, T. 24556 (19 March 2008).

¹⁰⁰ Radovan Paponjak, T. 24584 (19 March 2008).

¹⁰¹ Radovan Paponjak, T. 24586 (19 March 2008).

¹⁰² Prosecution Final Trial Brief, 28 July 2008 (public version), para. 404.

¹⁰³ Edison Zatriqi, P2347 (witness statement dated 20 June 2001), pp. 2–3, T. 4418 (29 September 2006).

¹⁰⁴ Edison Zatriqi, T. 4424 (29 September 2006).

¹⁰⁵ Edison Zatriqi, P2347 (witness statement dated 20 June 2001), pp. 2–3, T. 4418 (29 September 2006).

¹⁰⁶ Radovan Paponjak, T. 24593–24596 (19 March 2008).

Zatriqi's evidence about having seen one of his buses filled with people leaving Peć/Peja on 28 March 1999, which the Chamber has accepted.

41. In addition to his own property, Zatriqi found that many other Kosovo Albanian houses had been burned and destroyed, but did not see any houses belonging to Serbs in the town that had been damaged. He also saw that many religious sites had been destroyed; in particular the Qarshia mosque, the Red mosque in Kapešnica/Kapeshnica, and the Hamam mosque, were all completely destroyed.¹⁰⁷ Konaj confirmed that, when he returned to Peć/Peja, he observed that many houses had been destroyed and that mosques were also damaged.¹⁰⁸

42. In addition to the testimony of these eyewitnesses, the Chamber heard evidence from András Riedlmayer, an expert witness called by the Prosecution who provided a report on the destruction of cultural heritage in Kosovo in 1998–1999.¹⁰⁹ He testified that many religious sites were damaged in Peć/Peja municipality from March 1998 to October 1999.¹¹⁰

43. In a general challenge to Riedlmayer's evidence, the Pavković Defence points out that he is neither a military expert nor has he any technical training in "the field", and the co-author of his expert report, Andrew Herscher, is trained as an architect. The Pavković Defence submits that neither author is qualified to state as an expert precisely when or how certain damage was caused.¹¹¹ It points out that the joint Defence expert witness on cultural heritage, Branimir Jokić, testified that he was unable to discern any methodology that Riedlmayer used in his report, and that the report was not produced according to professional standards.¹¹² According to the Pavković Defence, the Trial Chamber should not attach any weight to the hearsay accounts used in Riedlmayer's report as sources, as they are not verified.¹¹³ It also argues that Riedlmayer drew conclusions about the cause of certain damage based on photographs only and that this is an unsatisfactory standard to be applied by an expert witness and of limited or no value to the Trial Chamber.¹¹⁴

¹⁰⁷ Edison Zatriqi, T. 4418 (29 September 2006).

¹⁰⁸ Ndreć Konaj, T. 4890–4891 (16 October 2006). *See also* P407 (OSCE/KVM Bluebook), p. 929.

¹⁰⁹ P1789 (András Riedlmayer's Expert Report).

¹¹⁰ András Riedlmayer, T. 5506–5507 (30 October 2006), *see also* T. 5514–5515 (30 October 2006), T. 5593, 5599–5600 (31 October 2006), T. 5625, 5628–5633 (1 November 2006), P1550 (Extracts from P1789), p. 13.

¹¹¹ Pavković Final Trial Brief, 28 July 2008 (public version), para. 668.

¹¹² Pavković Final Trial Brief, 28 July 2008 (public version), para. 667.

¹¹³ Pavković Final Trial Brief, 28 July 2008 (public version), para. 669.

¹¹⁴ Pavković Final Trial Brief, 28 July 2008 (public version), para. 670.

44. Riedlmayer gave evidence that investigating and establishing who caused the damage was secondary to his primary task which was to record the damage.¹¹⁵ The Chamber notes that Riedlmayer did not visit all the sites mentioned in paragraph 77(d) of the Indictment personally. For the sites he did not visit, he relied on a range of secondary sources including *inter alia* photographs and a database provided to him by the “International Management Group”, which he himself questions in his report.¹¹⁶ He acknowledged that he was not a military expert and had no formal training on arson or munitions, but he had wide experience of examining damaged buildings and was capable in certain circumstances of establishing the cause of such damage.¹¹⁷

45. The joint Defence expert, Branimir Jokić, who is a history professor, confined himself to a critique of the methodology used by Riedlmayer and Herscher and did not himself undertake examination of the buildings discussed in their report with a view to determining the accuracy of their findings. He acknowledged that he was not an expert in Muslim religious buildings. In his report and evidence he adopted an overly theoretical approach, which was confined to technicalities such as whether a particular building was registered as a mosque, and was unwilling to address in a realistic and common sense way the issue of the damage to the buildings.¹¹⁸ As a result, the Trial Chamber found his evidence to be of little or no assistance in establishing whether a building was used as a religious building in fact, and the extent of any damage to religious buildings.

46. The Chamber considers Riedlmayer’s report and evidence, in general, to be of assistance in identifying the extent of damage to particular buildings, but in a limited number of cases was it of assistance in identifying the cause of such damage. The Chamber has found it necessary to look closely at all the relevant evidence in relation to each building in respect of which there is an allegation of damage or destruction to decide what weight, if any, to give to the findings of Riedlmayer discussed in his report and evidence. These facts are discussed below in the sections dealing with each municipality.

47. The Indictment does not specifically charge the destruction of any mosque or religious building or cultural monument in Peć/Peja town. Moreover, there is no evidence concerning the circumstances in which the sites in the municipality discussed by Riedlmayer, and the mosques mentioned by Zatriqi and Konaj, were damaged or destroyed, or by whom. The available evidence does not enable the Chamber to make any findings in relation to property damage in Peć/Peja.

¹¹⁵ Andrés Riedlmayer, T. 5534 (31 October 2006).

¹¹⁶ Andrés Riedlmayer, T. 5538 (31 October 2006); P1789 (Andrés Riedlmayer’s Expert Report), e-court pp. 34–35.

¹¹⁷ Andrés Riedlmayer, T. 5601–5602 (31 October 2006).

¹¹⁸ See e.g. Branimir Jokić, T. 25873–25875, 25878–25880, 25921–25922 (23 April 2008).

5. Factual findings

48. The Trial Chamber finds that a significant number of Kosovo Albanians in Peć/Peja town were directly expelled from their homes on 27 and 28 March 1999. Many of these people were forced to go either to Albania or to Montenegro. The Chamber is in no doubt that forces of the VJ and the police, working together with armed Serb civilians and other irregular forces, operated together in Peć/Peja to ensure and control the direction of the departure of the Kosovo Albanian residents into Albania and Montenegro. Such operations would have required significant planning and co-ordination. The Chamber thus finds that the expulsion of the Kosovo Albanian population of the town was carried out in an organised manner, utilising forces and resources under the control of the FRY and Serbian government authorities, including the VJ and MUP.

B. DEČANI/DEÇAN

1. Charges in Indictment

49. The Indictment charges the Accused with responsibility for three different categories of crimes against humanity allegedly committed in the municipality of Dečani/Deçan: deportation, forcible transfer, and persecution. The charged persecution is alleged to have taken the form of “sexual assault by forces of the FRY and Serbia of Kosovo Albanians, in particular women”.¹¹⁹

50. The specific factual averments are set out in Paragraph of 72(l) of the Indictment, which states that:

On or about 29 March 1999, forces of the FRY and Serbia surrounded and attacked the village of Beleg, and other surrounding villages in the Dečani/Deçan municipality. Forces of the FRY and Serbia went from house to house and told villagers to leave their houses immediately. These forces then looted and burned the houses. Several men, women and children were moved out of their homes and gathered in a nearby field in the village of Beleg. Forces of the FRY and Serbia ordered all men and women to undress and all their personal property was taken away. Men were separated from women and children and taken to the basement of a building near the field. Women and children were ordered to go to another building. During the night at least 3 women were sexually assaulted. The next day, forces of the FRY and Serbia told the villagers to leave the village in trucks and tractors and go to Albania.¹²⁰

2. Background

51. Dečani/Deçan municipality lies in western Kosovo between Peć/Peja and Đakovica/Gjakova and borders on both Albania and Montenegro. The western areas of the municipality are mountainous, with several of its villages lying on paths connecting Kosovo to

¹¹⁹ Indictment, para. 77(c).

Albania. The population of this area was almost entirely Kosovo Albanian.¹²¹ Throughout 1998 Dečani/Dečan was a route for the transportation by the KLA of arms and men trained in camps in northern Albania into Kosovo.¹²² The municipality was therefore one over which the FRY/Serbian authorities sought to maintain control.¹²³ MUP reports indicate that there were regular KLA attacks against MUP and VJ positions in 1998, primarily in the villages of Prilep/Prelep and Drenovac/Drenovc.¹²⁴ Sporadic clashes between KLA and FRY/Serbian forces in Dečani/Dečan continued in 1999.¹²⁵

3. Events in Dečani/Dečan municipality in late March 1999

52. The Trial Chamber heard from three witnesses led by the Prosecution about events at the end of March 1999 in the villages of Drenovac/Drenovc and Beleg, both of which are in Dečani/Dečan municipality to the east and south-east of Dečani/Dečan town. These were Mehmet Mazrekaj, who was a village elder and school-teacher from Drenovac/Drenovc, K58, a Kosovo Albanian housewife from the same village, and K20, a young Kosovo Albanian woman, who was sexually assaulted on the night of 29 March 1999. The Chamber has carefully considered the credibility of these witnesses, taking into account *inter alia* challenges made to their evidence during cross-examination and in the parties' final briefs, and the consistency with other witnesses' accounts and with documentary evidence. The Chamber notes that the Accused did not call any witnesses to refute the evidence of K20, K58, or Mazrekaj on the specific events that occurred in Beleg from 28 to 30 March 1999. Dragan Živanović's evidence was not based on direct personal experience of the events in Beleg, and the Chamber prefers the direct evidence of K20, K58, and Mazrekaj. In providing her evidence about these events, K20 impressed the Chamber as a credible witness. Although her testimony varied on certain details from the evidence she gave during the *Milošević* trial, on cross-examination she provided satisfactory explanations for the discrepancies, as described herein. There were some inconsistencies between the evidence of K58 and that of Mazrekaj and K20, for example in relation to the precise dates on which the events in Beleg

¹²⁰ Indictment, para. 72(l).

¹²¹ P615 (Kosovo Atlas), e-court p. 7; Vladimir Lazarević, T. 17761 (6 November 2007)

¹²² John Crosland, 3D505 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 8023–8024; Vladimir Lazarević, T. 17761 (6 November 2007); Božidar Filić, T. 23930–23931 (7 March 2008).

¹²³ John Crosland, T. 9919 (8 February 2007); 3D505 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 7969; Vladimir Lazarević, T. 17761 (6 November 2007); Mehmet Mazrekaj, T. 5816 (3 November 2006); P1101 (PrK Command for Relocation, 5 September 1998).

¹²⁴ 6D491 (SUP Đakovica, supplemental report to criminal denunciation, 21 December 1998).

¹²⁵ 6D1014 (MUP Prizren Report, 20 January 1999); 6D1017 (MUP Prizren Report, 28 January 1999); 3D99 (Report of KLA incidents in Kosovo, KVM); 6D1233 (MUP overview of security events, 25 March 1999), p. 4; 6D1234 (MUP overview of security events, 26 March 1999), p. 3; 6D614 (MUP Overview of recorded criminal offences, 1 July 1998 to 20 June 1999), p. 699/581; Radovan Zlatković, 6D1627 (witness statement dated 13 April 2008), para. 30; Dragan Živanović, T. 20469 (17 January 2008).

occurred, but she was willing to concede that her memory for precise details may have been affected by the passage of time.¹²⁶ Although Mazrekaj was evasive in answering questions on the KLA and is considered by the Chamber to be an unreliable witness with regard to the extent of the activity of the KLA in the area, his evidence was consistent on the key events with the accounts of K20 and K58. The overall consistency of these three separate accounts leads the Chamber to conclude that they are generally reliable and it accepts them.

53. K58 and Mehmet Mazrekaj testified that on 27 March 1999 the police entered Drenovac/Drenovc and drove out the Kosovo Albanian residents and others who had found refuge there after fleeing from their own villages, which included Glodane/Gllogjan and Slup/Slupp.¹²⁷ As a consequence K58 and the rest of the occupants of Drenovac/Drenovc went to nearby Beleg.¹²⁸ Whilst both Mazrekaj and K58 stated that the villagers were “forced” or “driven” out of Drenovac/Drenovc, there was no evidence of specific acts of violence being perpetrated against them at that stage. Mazrekaj further stated that this “evacuation” of the village was carried out by the police on the pretext that NATO bombing was imminent.¹²⁹ The war diary of the 125th Motorised Brigade, which had an area of responsibility encompassing the villages around Dečani/Deçan including Drenovac/Drenovc and Beleg, recorded that on 27 March 1999 a NATO airborne assault was expected but did not state where this was expected.¹³⁰ The war diary also reported that there were no NATO attacks in the 125th Motorised Brigade’s area of responsibility on 27 or 28 March 1999.¹³¹

54. The displaced villagers arrived in Beleg at around 4:00 p.m. on 27 March 1999.¹³² K58 and Mazrekaj both testified that shooting could be heard that day.¹³³ After spending the night in Beleg Mazrekaj observed the arrival the next day of armed forces that he described as army, police, and

¹²⁶ K58, T. 7483 (29 November 2006).

¹²⁷ K58, P2550 (witness statement dated 2 February 2000), e-court p. 12; Mehmet Mazrekaj, T. 5810 (3 November 2006). The Chamber notes that K20 and Mehmet Mazrekaj referred to the same dates for the key events described herein. K58 testified that FRY/Serbian forces arrived in Drenovac/Drenovc on 26 March 1999. However, she testified that her precise memory for dates had faded given the length of time that had elapsed, K58, T. 7483 (29 November 2006). Consequently, the dates of K20 and Mazrekaj are correct in light of the sequence of events and the agreed day that the civilians left Beleg.

¹²⁸ K58, P2550 (witness statement dated 2 February 2000), e-court pp. 12–13; T. 7483 (29 November 2006).

¹²⁹ Mehmet Mazrekaj, T. 5801-5803 (2 November 2006).

¹³⁰ P2616 (War diary of the 125th Motorised Brigade), pp. 8–10.

¹³¹ P2616 (War diary of the 125th Motorised Brigade), pp. 8–10.

¹³² Mehmet Mazrekaj, P2374 (witness statement dated 18 September 2004), p. 5.

¹³³ K58, T. 7470, 7483–7484 (29 November 2006); P2550 (witness statement dated 2 February 2000), e-court p. 13. K58 testified that Beleg was shelled continuously on 28 March. However, she conceded that her memory of specific dates had faded, and none of the other witnesses gave evidence relating to the shelling of Beleg. Consequently, the Chamber does not accept her account of the shelling of Beleg. *See also* Mehmet Mazrekaj, P2374 (witness statement dated 18 September 2004), p. 20.

paramilitary personnel.¹³⁴ On cross-examination Mazrekaj stated that the army members wore VJ uniforms and masks. He distinguished “paramilitaries” on the basis that, although they also wore “army clothes”, they were older than the regular VJ members.¹³⁵ The Chamber notes that volunteers incorporated into the VJ during the NATO airstrikes included members of paramilitary groups,¹³⁶ and that VJ reservists, who may have included such volunteers, would sometimes wear their VJ uniforms along with non-standard apparel such as hats and masks, and would sometimes have long beards.¹³⁷

55. K20 described the arrival in Beleg of the “Serbian police and Serbian soldiers” or “the Serbian police and military” escorted by armoured vehicles on 28 March.¹³⁸ She saw APCs and heavy weapons in the village,¹³⁹ and referred to seeing “doves in a circle” on one of the weapons pointed by a VJ soldier, which is consistent with the two white eagles against a red background contained in the VJ emblem.¹⁴⁰ Additionally, when shown a photoboard, she identified the MUP troops as wearing the uniform of the PJP.¹⁴¹ K58 gave evidence that the army and police arrived on 27 March and that they returned again on the morning of 28 March.¹⁴²

56. The war diary of the 125th Motorised Brigade confirms that the VJ was conducting operations in Dečani/Dečan during this period and that it was engaged in carrying out combat operations and “providing support” to MUP forces.¹⁴³ The then commander of the 125th Motorised Brigade, Dragan Živanović, also confirmed that the VJ was operating in the Dečani/Dečan area in late March 1999, but stated that the only clash with the KLA there around this time occurred on 29 March in the nearby village of Požare/Poshar, where the VJ sent three tanks to assist the

¹³⁴ Mehmet Mazrekaj, T. 5808–5809 (3 November 2006).

¹³⁵ Mehmet Mazrekaj, T. 5809 (3 November 2006).

¹³⁶ See, e.g. an order from the General Staff/Supreme Command Staff allowing paramilitary members to become volunteers as long as they passed screening requirements, P1479 (Order re Volunteers, 7 April 1999), p. 3; and Branko Gajic's evidence that the “Pauk” group of paramilitaries “side-stepped” admission procedures and was incorporated into the 125th Motorised Brigade, Branko Gajic, T. 15308–15312 (10 September 2007).

¹³⁷ K73, T. 3310 (13 September 2006); P1599 (Photo depicting armed forces of the FRY and Serbia).

¹³⁸ K20, P2669 (witness statement dated 9 June 1999), p. 2; P2670 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 2515–2516, 2519–2520 (under seal).

¹³⁹ She described the arrival of army trucks, the weapons as BRDM-2, Praga and BOV-3 anti-aircraft artillery manned by men in both blue and green camouflage. K20, P2669 (witness statement dated 9 June 1999), p. 2, 5, P2670 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 2521 (under seal).

¹⁴⁰ K20, P2670 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 2520 (under seal); P1323 (Table of VJ and MUP insignia), p. 1.

¹⁴¹ P2670 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-), T. 2518–2519 (under seal); P1326 (Exhibit containing different examples of uniforms used by VJ and MUP units), photo 6.

¹⁴² K58, T. 7464, T. 7469 (29 November 2006); P2550 (witness statement dated 2 February 2000), pp. 2–4.

¹⁴³ P2616 (War diary of the 125th Motorised Brigade), p. 10; see also P2802 (War Diary of the Armoured Battalion of the 125th Motorised Brigade), pp. 3–4.

MUP.¹⁴⁴ Mazrekaj also testified there had been a confrontation between the KLA and “Serb soldiers” in the area at this time.¹⁴⁵ Based on the descriptions of personnel given by K20, Mazrekaj, and K58, the war diaries’ confirmation of the VJ presence in the area, and the other evidence referred to above, the Chamber is satisfied that members of the VJ, including VJ reservists who were described as paramilitaries, and MUP, including the PJP, arrived in Beleg on or around 28 March 1999.

57. A KVM report of KLA incidents stated that five Serb families were expelled from the village of Loćane, which is close to Drenovac/Drenovc, by the KLA on 22 March 1999.¹⁴⁶ Mazrekaj acknowledged that those Serbs moved out from that village, but stated that he did not know about the alleged incident.¹⁴⁷ Aside from this reported incident of KLA activity in the area, there is no evidence concerning the activity of the KLA in Beleg in the period of 26 to 29 March 1999.¹⁴⁸ Indeed K20 testified that there were no KLA forces present in Beleg at this time although it was in the area.¹⁴⁹

58. At around 6:00 a.m. on 29 March, K20 and her family were ordered by one of the policemen to go to the basement of another house in the village, in which some 300 people from Beleg, Crnobreg/Carrabreg, Drenovac/Drenovc and Slup/Sllup – including many children – were already held, crowded together.¹⁵⁰ These people were predominantly women and children, as the men from these villages had fled in the preceding days.¹⁵¹ However, approximately 60 men remained and were detained there by the FRY/Serbian forces.¹⁵² During the day the whole group of Kosovo Albanians was taken to a field, where some of them were searched by the FRY/Serbian forces while others were returned to the basement to be searched.¹⁵³ K20 described how one of the Kosovo Albanian men was beaten in front of her for speaking to the commander and responding to

¹⁴⁴ Dragan Živanović, T. 20469–20470 (17 January 2008); P2616 (War Diary of the 125th Motorised Brigade), p. 10; P615 (Kosovo Atlas), e-court p. 21.

¹⁴⁵ Mehmet Mazrekaj, P2374 (witness statement dated 18 September 2004), p. 5; T. 5837–5838 (3 November 2006). Mazrekaj stated that he heard that the KLA killed 18 “Serb soldiers” on this occasion, which the Chamber considers an exaggerated number.

¹⁴⁶ 3D99 (Report of KLA incidents in Kosovo, KVM), p. 6.

¹⁴⁷ Mehmet Mazrekaj, T. 5851–5852 (3 November 2006).

¹⁴⁸ There is evidence of KLA presence in Beleg in 1998; 6D698 (Order of the PrK, 5 September 1998), also admitted as P1101; 6D776 (List of places evacuated by KLA in Kosovo), p. 3; 6D103 (Statement of Aljaj Iber dated 20 August 1998); *see however* K20, P2670 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 2556 (under seal). *See also* 6D1014 (MUP Prizren Report, 20 January 1999); 6D1017 (MUP Prizren Report, 28 January 1999).

¹⁴⁹ K20, P2670 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 2517 (under seal). *See also* P1969 (Joint Command Order, 28 March 1999), p. 1.

¹⁵⁰ K20, T. 10055 (9 February 2007); P2669 (witness statement dated 9 June 1999), pp. 2–3, P2670 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 2521 (under seal).

¹⁵¹ K20, P2669 (witness statement dated 9 June 1999), p. 6.

¹⁵² K20, P2669 (witness statement dated 9 June 1999), p. 6.

a query as to his origin by saying that he was Albanian.¹⁵⁴ Mehmet Mazrekaj, who was amongst those being held in the basement at this time, was himself beaten and later stripped and searched by a traffic policeman from Dečani/Dečan whom he knew as a former pupil of his, and who was wearing a regular police uniform.¹⁵⁵ K58 also confirmed seeing Mazrekaj being beaten by a policeman.¹⁵⁶ Mazrekaj also saw other men being beaten and mistreated by police and “paramilitaries”.¹⁵⁷

59. Mazrekaj, K20, and K58 gave evidence about the killing of *inter alios* Qazim Hulaj, Daut Alickaj, Nezir Vishaj, and Naim Vishaj, while the Kosovo Albanian population of Beleg was being rounded up by the police and “paramilitaries.” Although none of these killings is charged as murder in the Indictment, the evidence in relation to them is relevant to the Chamber’s consideration of the situation in the village and the circumstances in which the Kosovo Albanians who were present there in late March 1999 departed. K58 described how, when she and a group of approximately 100 people were leaving the house of Naim Vishaj in Beleg, as ordered by the police, she saw Nezir Vishaj being shot in the cheek.¹⁵⁸ In relation to Daut Alickaj, K58 stated that she saw him falling to the ground after he had been shot by the same policeman who had shot Nezir Vishaj.¹⁵⁹ Mazrekaj testified that he saw Daut Alickaj’s body lying between two houses.¹⁶⁰ Mazrekaj heard that Qazim Hulaj was shot dead by the FRY/Serbian forces as he fled from a house in Beleg, and that Daut Alickaj had also been killed.¹⁶¹ K20 was told by a woman who was held in the basement that her father and cousin had been killed by the police and army.¹⁶² K20 also heard from another fellow detainee in the basement that “the Serbs” had killed two men from Beleg as they had tried to surrender.¹⁶³

60. In the afternoon of 29 March the detained Kosovo Albanians were ordered out of the basement and further mistreated.¹⁶⁴ K20 testified that they were taken to a nearby field. On the way police officers and about 100 soldiers threatened them with heavy weapons and some of the

¹⁵³ K20, P2669 (witness statement dated 9 June 1999), pp. 3–4; Mehmet Mazrekaj, P2374 (witness statement dated 18 September 2004), p. 7; K58, P2550 (witness statement dated 2 February 2000), p. 5.

¹⁵⁴ K20, P2670 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 2523 (under seal).

¹⁵⁵ Mehmet Mazrekaj, T. 5810, 5834 (3 November 2006), P2374 (witness statement dated 18 September 2004), p. 7.

¹⁵⁶ K58, T. 7487 (29 November 2006), K58, P2550 (witness statement dated 2 February 2000), e-court p. 15.

¹⁵⁷ Mehmet Mazrekaj, T. 5810 (3 November 2006); *see also* K58, P2550 (witness statement dated 2 February 2000), p. 5.

¹⁵⁸ K58, P2550 (witness statement dated 2 February 2000), e-court pp. 13–14.

¹⁵⁹ K58, P2550 (witness statement dated 2 February 2000), e-court p. 14.

¹⁶⁰ Mehmet Mazrekaj, P2374 (witness statement dated 18 September 2004), p. 9.

¹⁶¹ Mehmet Mazrekaj, P2374 (witness statement dated 18 September 2004), pp. 6–7.

¹⁶² K20, P2670 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 2521 (under seal).

¹⁶³ K20, P2669 (witness statement dated 9 June 1999), p. 3.

¹⁶⁴ Mehmet Mazrekaj, T. 5810 (3 November 2006).

men were beaten with rifles.¹⁶⁵ The villagers were all “checked” for hidden money, and their documents and valuables were seized.¹⁶⁶ This process involved the women being told to undress and being searched, after which they were returned, frequently carrying their clothes, to the field, where they were made to wait in the rain until nightfall.¹⁶⁷ However, K58 testified that some of the seized possessions, including jewellery and gold that had been taken from the women, were returned to the villagers the next day.¹⁶⁸ Consequently the Chamber does not consider that the allegation of looting is proven by this evidence.

61. With the onset of darkness the women, including K20 and K58, were taken into two rooms and the courtyard cattle shed, or stable, of a house in Beleg.¹⁶⁹ Later that evening two or three VJ soldiers and a policeman, at least one of whom spoke Albanian,¹⁷⁰ entered one of the rooms where the women were being detained and said they needed some “girls” for cleaning.¹⁷¹ Some older women volunteered, but the soldiers used torch lights to identify five younger women or girls.¹⁷² K20, one of the five thus selected, explained how, after offering them cigarettes and shining the torch on their faces, the soldiers told two of the girls to return to the room.¹⁷³ The remaining three were then taken to another house.¹⁷⁴

62. K20 was taken into a bathroom by herself and was then forcibly undressed and raped by one of the soldiers.¹⁷⁵ As this was happening the policeman and other soldiers stood in the doorway occasionally illuminating the scene with a torch.¹⁷⁶ Once the first soldier had finished, K20 tried to dress herself, but she was slapped by the policeman causing her to lose consciousness temporarily.

¹⁶⁵ K20, P2669 (witness statement dated 9 June 1999), pp. 3–4, K20, P2670 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 2523–2524 (under seal).

¹⁶⁶ K20, P2670 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 2524–2525 (under seal), P2669 (witness statement dated 9 June 1999), p. 4; K58, P2550 (witness statement dated 2 February 2000), e-court pp. 14–17, K58, T. 7468 (29 November 2006).

¹⁶⁷ K20, P2669 (witness statement dated 9 June 1999), p. 4; K58, P2550 (witness statement dated 2 February 2000), p. 5; Mehmet Mazrekaj, P2374 (witness statement dated 18 September 2004), p. 8.

¹⁶⁸ K58, P2550 (witness statement dated 2 February 2000), e-court pp. 16–17; K58, T. 7468 (29 November 2006).

¹⁶⁹ K20, P2670 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 2525–2526 (under seal); K58, P2550 (witness statement dated 2 February 2000), e-court p. 16.

¹⁷⁰ K20, P2670 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 2526–2527 (under seal); K58, P2550 (witness statement dated 2 February 2000), e-court p. 16.

¹⁷¹ K20, P2670 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 2527 (under seal), P2669 (witness statement dated 9 June 1999), p. 4; K58, P2550 (witness statement dated 2 February 2000), pp. 6, 16; K58, T. 7467, 7477 (29 November 2006).

¹⁷² K20, P2670 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 2527 (under seal); K58, P2550 (witness statement dated 2 February 2000), p. 6.

¹⁷³ K20, P2669 (witness statement dated 9 June 1999), p. 4, P2670 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 2527 (under seal).

¹⁷⁴ K20, P2669 (witness statement dated 9 June 1999), pp. 4–5, P2670 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 2527–2528 (under seal).

¹⁷⁵ K20, P2670 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 2529–2530 (under seal).

¹⁷⁶ K20, P2670 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 2531 (under seal).

She was then raped by a second soldier, and then again by a third.¹⁷⁷ Although the policeman told her after the third soldier that he would be the last, a fourth soldier entered the bathroom from the hallway and also raped her.¹⁷⁸ K20 could not describe the individual soldiers, but testified that they were wearing green camouflage uniforms, some with insignia, and all spoke Serbian.¹⁷⁹ While K20 was being raped in the bathroom, she could hear one of the other two girls who had been taken to the house with her screaming in the next room.¹⁸⁰ When K20 was allowed to leave the house, the Albanian-speaking police officer stated to her “the [KLA] did worse than they are doing. You can handle them.”¹⁸¹ As she was leaving, she also heard the second of the other two selected girls screaming. About half an hour after she was returned to the place where the rest of the women were being detained, one of the two girls who had been taken away with her returned, followed by the other some time later. The first said that she had not been required to do anything; the second said merely that she had had to clean, but looked “lost”.¹⁸² K20 concluded that these two girls had also been raped, as “their screams were the same as my screams while they raped me.”¹⁸³

63. K58 described how, while K20 and the two other girls were absent from the room, more young women were selected by “paramilitaries”, who came to the rooms about four or five times, until approximately 20 young women or girls had been taken, with the last being returned at around 5:00 a.m.¹⁸⁴ These girls returned dishevelled and crying, and K58 overheard one of them telling her mother that she had been raped.¹⁸⁵

64. K20’s compelling account of her ordeal, supported by the evidence of K58, convinces the Chamber that she was raped by VJ soldiers. In the circumstances described by K20 and K58, where young women were selected and taken away for lengthy periods of time throughout the night, and in light of K20’s description of the screaming she heard from the other two young women who were taken away at the same time as herself, the Chamber considers that the only reasonable inference is that these two at least were also sexually assaulted and that the woman whose complaint was overheard by K58 was also raped.

¹⁷⁷ K20, P2669 (witness statement dated 9 June 1999), p. 5, P2670 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 2531 (under seal).

¹⁷⁸ K20, P2669 (witness statement dated 9 June 1999), p. 5.

¹⁷⁹ K20, P2669 (witness statement dated 9 June 1999), p. 5, P2670 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 2538–2540 (under seal).

¹⁸⁰ K20, P2669 (witness statement dated 9 June 1999), p. 6.

¹⁸¹ K20, P2669 (witness statement dated 9 June 1999), p. 5.

¹⁸² K20, P2669 (witness statement dated 9 June 1999), p. 6.

¹⁸³ K20, P2669 (witness statement dated 9 June 1999), p. 6, P2670 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 2532 (under seal).

¹⁸⁴ K58, P2550 (witness statement dated 2 February 2000), p. 6.

¹⁸⁵ K58, T. 7468 (29 November 2006); K58, P2550 (witness statement dated 2 February 2000), p. 6.

65. The women were kept in the house until around 8:00 or 9:00 the next morning, 30 March 1999, when they were told by a policeman, who was described by K20 as “the Commander”, to leave the village for Albania.¹⁸⁶ K58 reported that the women were told: “Go to Albania – you have asked for NATO”.¹⁸⁷ Led by three APCs (one army and two police), the displaced villagers were then put into a convoy and made to leave along with ten of the older men were allowed to go with the convoy to drive the tractors.¹⁸⁸ However, 40-50 men (some from Drenovac/Drenoc and Slup/Sllup) were kept behind and have not been heard of since.¹⁸⁹

66. Dragan Živanović testified that it was not possible for a VJ APC to have been in that location, as his unit (the 125th Motorised Brigade) did not have any APCs in the area at that time.¹⁹⁰ However, on the basis of the consistent evidence of Mazrekaj and K20 that the VJ was present in Beleg the Chamber finds that armoured vehicles of the VJ and MUP were present in the village on 28 to 30 March 1999.

67. These Kosovo Albanians from Drenovac/Drenoc, Beleg, and other nearby villages then made their way south in a convoy of around 1,000 displaced people to Kukës in Albania.¹⁹¹ On the way they were frequently stopped by MUP and VJ members who asked them for their identity documents, which had already been seized in Beleg.¹⁹² Mazrekaj, however, left the convoy and went to Istinić/Isniq, to the north of Dečani/Dečan town, to find his family. He and his family then travelled together to Albania when Istinić/Isniq began to be shelled by “the Serbs”.¹⁹³ On the way he witnessed police officers at a bridge in Đakovica/Gjakova seizing identity documents from other fleeing Kosovo Albanians.¹⁹⁴

4. Findings

¹⁸⁶ K20, P2669 (witness statement dated 9 June 1999), p. 6.

¹⁸⁷ K58, P2550 (witness statement dated 2 February 2000), e-court p. 17; K20, P2669 (witness statement dated 9 June 1999), p. 6; K20, P2670 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 2533 (under seal).

¹⁸⁸ Mehmet Mazrekaj, T. 5811–5813 (3 November 2006); K20, P2669 (witness statement dated 9 June 1999), p. 2.

¹⁸⁹ K20, P2670 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 2533 (under seal), P2669 (witness statement dated 9 June 1999), pp. 6; K58, T. 7468 (29 November 2006), P2550 (witness statement dated 2 February 2000), e-court p. 16.

¹⁹⁰ Dragan Živanović, T. 20471 (17 January 2008).

¹⁹¹ Mehmet Mazrekaj, T. 5811–5812 (3 November 2006); Mehmet Mazrekaj, P2374 (witness statement dated 18 September 2004), p. 10; K20, P2669 (witness statement dated 9 June 1999), p. 6; K58, P2550 (witness statement dated 2 February 2000), p. 7.

¹⁹² K58, P2550 (witness statement dated 2 February 2000), p. 7; Mehmet Mazrekaj, T. 5813 (3 November 2006).

¹⁹³ Mehmet Mazrekaj, P2374 (witness statement dated 18 September 2004), p. 10.

¹⁹⁴ Mehmet Mazrekaj, P2374 (witness statement dated 18 September 2004), p. 10; Mehmet Mazrekaj, T. 5838 (3 November 2006).

68. The Chamber finds that on or around 28 March 1999 MUP personnel, including PJP members, and VJ personnel, including VJ “paramilitary” reservists, arrived in Beleg and detained, harassed, and strip searched Kosovo Albanians from that village and nearby villages, physically assaulted a number of the Kosovo Albanian men, and seized the villagers’ identity documents. On or around 29 March 1999 at least four of the young women who had been detained were taken by some of these VJ and MUP personnel to a building, where two were raped by them, and two others were sexually assaulted. The next day the villagers were forced to leave Beleg and go to Albania, although a number of men were kept behind.

69. The Chamber is satisfied that the VJ and MUP were not engaged in combat with the KLA in Beleg at this time and that there were no NATO airstrikes in the area. It finds that VJ and MUP personnel operated together in Dečani/Deçan to ensure, and control the direction of, the movement of the Kosovo Albanians whom they expelled. The Chamber thus finds that the expulsion of the group of Kosovo Albanians from Beleg was carried out in an organised manner utilising forces and resources under the control of the FRY and Serbian state authorities, including the VJ and MUP.

C. ĐAKOVICA/GJAKOVA

1. Charges in Indictment

70. The Indictment charges the Accused with responsibility for three kinds of underlying offences allegedly committed in the municipality of Đakovica/Gjakova from 24 March 1999 to 11 May 1999: forcible displacement, murder, and persecution.

71. The specific factual averments in relation to Đakovica/Gjakova are set out in paragraphs 72(h) and 75 (g) and (h) of the Indictment, which read as follows:

By March 1999, the population of the town of Đakovica/Gjakovë had increased significantly due to the large number of internally displaced persons who fled their villages to escape deliberate shelling by forces of the FRY and Serbia during 1998, and to escape the armed conflict between these forces and members of the Kosovo Liberation Army. The continual movement of these internally displaced persons increased after 24 March 1999 when, following violent expulsions in the town of Đakovica/Gjakovë, many internally displaced persons returned from the town of Đakovica/Gjakovë to the outlying villages, only to be expelled from these villages again by forces of the FRY and Serbia. Those forces controlled and coordinated the movement of these internally displaced persons as they travelled from these villages to and from the town of Đakovica/Gjakovë, and finally to the border between Kosovo and the Republic of Albania. Persons travelling on foot were sent from the town of Đakovica/Gjakovë directly toward one of several border crossings. Persons travelling in motor vehicles were routed first towards

the town of Prizren before approaching the border and crossing into the Republic of Albania.¹⁹⁵

From on or about 24 March 1999 through 11 May 1999, forces of the FRY and Serbia began forcing residents of the town of Đakovica/Gjakovë to leave. Forces of the FRY and Serbia spread out through the town and went from house to house ordering Kosovo Albanians from their homes. In some instances, people were killed, and many persons were threatened with death. Many of the houses and shops belonging to Kosovo Albanians were set on fire, while those belonging to Serbs were protected. On 24 March 1999, the old mosque in Rogovo/Rogovë and the old historic quarter of Đakovica/Gjakovë, which included the bazaar, the Hadum Mosque and adjoining Islamic Library, were among the several cultural sites substantially and/or totally destroyed. During the period from 2 to 4 April 1999, thousands of Kosovo Albanians living in the town of Đakovica/Gjakovë and neighbouring villages joined a large convoy, either on foot or driving in cars, trucks and tractors, and moved to the border with Albania. Forces of the FRY and Serbia directed those fleeing along pre-arranged routes, and at checkpoints along the way most Kosovo Albanians had their identification papers and license plates seized by the forces of the FRY and Serbia. In some instances, Yugoslav army trucks were used to transport persons to the border with Albania.¹⁹⁶

In addition, during late March and April 1999, forces of the FRY and Serbia forcibly expelled the Kosovo Albanian residents of many villages in the Đakovica/Gjakovë municipality, including the villages of Dobroš/Dobrosh, Korenica/Korenicë and Meja/Mejë. Many of these residents were subsequently ordered or permitted to return to their communities, only to be expelled again by forces of the FRY and Serbia. On or about the early morning hours of 27 April 1999, forces of the FRY and Serbia launched a massive attack against the Carragojs, Erenik and Trava Valleys (Đakovica/Gjakova municipality), including the remaining residents of the aforementioned villages, in order to drive the population out of the area. A large number of soldiers and policemen were deployed, and several checkpoints were established. In Meja/Mejë, Korenica/Korenicë and Meja Orize/ Orize, a large, and as yet undetermined, number of Kosovo Albanian civilian males were separated from the mass of fleeing villagers, abducted and executed. Throughout the entire day, villagers under direct threat from the forces of the FRY and Serbia left their homes and joined several convoys of refugees using tractors, horse carts and cars and eventually crossed into Albania. Forces of the FRY and Serbia confiscated the identity documents of many of the Kosovo Albanians before they crossed the border.¹⁹⁷

On or about the late evening of 1 April 1999 and continuing through the early morning hours of 2 April 1999, forces of the FRY and Serbia launched an operation against the Qerim district of Đakovica/Gjakovë. Over a period of several hours, forces of the FRY and Serbia forcibly entered houses of Kosovo Albanians in the Qerim district, killed the occupants, and then set fire to the buildings. Dozens of homes were destroyed and over 50 persons were killed. For example, in a house located at 157 Miloš Gilić/Millosh Giliq Street, forces of the FRY and Serbia shot the occupants and then set the house on fire. As a result of the shootings and the fires set by the forces of the FRY and Serbia at this single location, 20 Kosovo Albanians were killed, of whom 19 were women and children. (The names of those killed at this location are set forth in Schedule G, which is attached as an appendix to [the] indictment.)¹⁹⁸

On or about the early morning hours of 27 April 1999, forces of the FRY and Serbia launched a massive attack against the Kosovo Albanian population of the Carragojs,

¹⁹⁵ Indictment, para. 72(h).

¹⁹⁶ Indictment, para. 72(h)(i).

¹⁹⁷ Indictment, para. 72(h)(ii).

¹⁹⁸ Indictment, para. 75(g).

Erenik and Trava Valleys (Đakovica/Gjakovë municipality) in order to drive the population out of the area. A large number of forces of the FRY and Serbia were deployed, and several checkpoints were established. Throughout the entire day, villagers under direct threat from the forces of the FRY and Serbia left their homes and joined several convoys of refugees using tractors, horse carts and cars. In Meja/Mejë, Korenica/Korenicë and Meja Orize/Orize, a large, and as yet undetermined, number of Kosovo Albanian civilian males were separated from the mass of fleeing villagers and abducted. Many of these men were summarily executed, and approximately 300 persons went missing. Identity documents pertaining to at least seven persons and human remains of many of those 300 persons last seen at Meja/Mejë on 27 April 1999 were found in a clandestine mass grave located at the SAJ training centre in Batajnica, near Belgrade, Serbia.¹⁹⁹

72. The Indictment further avers that in Đakovica/Gjakova the murders alleged above,²⁰⁰ as well as the “wanton destruction or damage of Kosovo Albanian religious sites”,²⁰¹ including mosques in Đakovica/Gjakova, also amounted to persecution.²⁰²

2. The principal witnesses

73. A number of witnesses called by the Prosecution and the Defence gave evidence concerning the crimes alleged to have been committed in Đakovica/Gjakova during the period relevant to the Indictment. Some are particularly significant and so the Chamber discusses their credibility and reliability before addressing the substantive evidence relating to this municipality. The evidence given by or relating to each witness is referred to at the relevant point in the section and in some cases is also specifically referred to in the following assessments.

74. K90 was a VJ soldier stationed in Đakovica/Gjakova. When giving oral evidence, K90 minimised the allegations made in his witness statement as to the involvement of the VJ in criminal activity in Đakovica/Gjakova, most notably by requesting that the terms “expulsion” and “expelled” in relation to the VJ’s conduct towards Kosovo Albanian civilians be replaced by the terms “relocation” and “relocate”. However, his evidence was consistent with that provided by other witnesses. For example, his account of the burning of buildings in Đakovica/Gjakova town was consistent with that given by Fuat Haxhibeqiri, and his description of events relating to Korenica and Meja during the Reka/Caragoj valley operation was consistent with those of other VJ personnel, K73 and Nike Peraj, as well as civilians Merita Deda and Lizane Malaj. A number of attacks were made against his credibility by *inter alios* Vlatko Vuković, but these lacked foundation as discussed herein. Similarly, other challenges mounted as to K90’s presence during the Reka/Caragoj valley were based on statements from individuals not called as witnesses and not

¹⁹⁹ Indictment, para. 75(h).

²⁰⁰ Indictment, para. 76.

²⁰¹ Indictment, para. 77(d).

²⁰² Indictment, para. 77(d).

entered into evidence.²⁰³ K90 was also challenged about his account of three men from the 2nd Motorised Battalion of the 549th Motorised Brigade being wounded on 27 April, as the war diary of that unit recorded that the third of these men had in fact been wounded on 28 April.²⁰⁴ Noting that two of the three men referred to by K90 were injured on 27 April, the Chamber does not consider this to undermine the reliability of his evidence. Consequently, the Chamber finds K90 generally credible and reliable on the issues from his witness statement that he re-confirmed in his oral evidence.

75. Hani Hoxha was a Kosovo Albanian resident of Đakovica/Gjakova town. His evidence as to events at the Vejsa compound in early April 1999 was consistent in all significant respects with that of Lulzim Vejsa and Dren Caka, as was his account of leaving Kosovo, with the exception of the fact that he stated that identity documents were taken at the Čafa Prushit/Qafa e Prushit border crossing. The Chamber notes that, while Vejsa did not mention such a taking of documents in his statement, he was not asked about it in oral evidence. Furthermore, consistently with Hoxha, K74 also referred to identification documents being taken at this border post. Consequently, the Chamber finds Hoxha generally credible and reliable.

76. Lulzim Vejsa and Dren Caka were Kosovo Albanian residents of Đakovica/Gjakova town. Their accounts of the events at the Vejsa compound were cogent, consistent *inter se*, and supported by the forensic information in evidence in the case. The Chamber finds them both credible and reliable. The Chamber had particular regard to the fact that Dren Caka was only ten years of age when the events about which he spoke occurred. He impressed the Chamber as a mature young man.

77. Merita Deda was a Kosovo Albanian resident of Guska, Đakovica/Gjakova. Her evidence about the events that occurred during the Reka/Caragoj valley operation in April 1999 was consistent with that of Lizane Malaj and supported by the accounts of K90 and K73. Furthermore, it was consistent with the relevant forensic evidence. Because of some inconsistencies between her evidence and prior statements were pointed out, the Chamber has relied upon Deda's evidence only where corroborated by other evidence.²⁰⁵

78. K73 was a soldier in the VJ. His evidence was consistent with other witnesses not associated with him, including Merita Deda, K90, and Lizane Malaj. He dealt confidently with his

²⁰³ K90, T. 9438 (30 January 2007) (private session).

²⁰⁴ K90, T. 9330 (29 January 2007), T. 9432 (30 January 2007); P2019 (War Diary of the 2nd Motorised Battalion of the 549th Motorised Brigade), p. 11–12 (under seal).

²⁰⁵ 3D2 (ICG Database Report), p. 1; Merita Deda, T. 1412 (10 August 2006).

identifications of uniforms and equipment, and acknowledged when he did not know something. He also spoke Serbian and Albanian and came from a family of VJ officers. He must have found it difficult to give evidence indicative of criminal conduct by VJ soldiers and the Chamber considers that this lends credence to his evidence. For these reasons the Chamber finds K73 both credible and reliable.

79. Lizane Malaj was a Kosovo Albanian resident of Korenica, Đakovica/Gjakova. She impressed the Chamber as a reliable witness. Her evidence on events during the Reka/Caragoj valley operation was consistent with that of other witnesses, including Merita Deda. Furthermore, her testimony was consistent with the forensic evidence admitted in the case. The Chamber therefore accepts her evidence.

80. Martin Pnishi was a Kosovo Albanian resident from the village of Meja in Đakovica/Gjakova. Pnishi's account of the Reka/Caragoj valley operation was consistent with that of K90 and Nike Peraj. An inconsistency between his description of the situation in Kosovo in 1998 and that of Merita Deda is not significant, given that she recounted her own experiences as a young girl, whereas he was referring to the more general situation.²⁰⁶ Consequently, the Chamber finds him credible and generally reliable.

81. Fuat Haxhibeqiri was a Kosovo Albanian resident of Đakovica/Gjakova town. The Chamber notes that much of Haxhibeqiri's evidence was based on hearsay rather than personal experience and parts of it were confusing. It is only prepared to rely on his evidence where it is based on direct personal experience or else is consistent with other evidence from independent sources, in accordance with its decision of 8 September 2006 limiting the admission of parts of Haxhibeqiri's evidence.²⁰⁷

82. Nike Peraj was an officer of the 52nd Artillery Rocket Brigade of the VJ, who was from the Đakovica/Gjakova area. In relation to the Reka/Caragoj valley operation, his account was cogent and consistent with the accounts provided independently by Kosovo Albanian residents of the Meja and Korenica area, Lizane Malaj and Merita Deda, and by the other members of the VJ, K90 and K73. Peraj was challenged on cross-examination about the identity of the VJ officer who he said accompanied him on 27 April 1999 when he witnessed a number of the incidents around Meja. Peraj admitted that he had substituted the name of another VJ officer in order to protect the identity

²⁰⁶ Martin Pnishi, T. 1520 (11 August 2006). *See also* Merita Deda, T. 1416–1422 (10 August 2006).

²⁰⁷ *Prosecutor v. Milutinović et. al.*, Decision on Evidence Tendered through Faut Haxhibeqiri, 8 September 2006 (stating that it “shall not take into account oral evidence given by the witness that amounts to a repetition of information obtained by him through the investigations of the CHHRF, rather than being from his personal knowledge”), p. 6.

of the person who did in fact accompany him. He had done so at the request of this person, Sergej Perović. Noting that this admission was made immediately and without prevarication, the Chamber does not consider that it undermines his credibility on the material issues. Challenges to Peraj's evidence from other VJ witnesses were either vague or unfounded, such as the claim that he would not be able to enter a VJ command post because of his low rank.²⁰⁸ Indeed, Peraj was able to enter the command post in Đakovica/Gjakova town, which was partly based at the cultural centre, as acknowledged by Zdravko Vintar, who was a VJ member from the same unit as Peraj.²⁰⁹ Consequently, the Chamber finds Peraj generally credible and reliable.

83. Zdravko Vintar was Chief of the Information and Morale Organ of the 52nd Artillery Rocket Brigade. His evidence was primarily limited to refuting that of Nike Peraj, and in this respect his statements were partly supported by VJ documentation, such as his statement that Nike Peraj's unit moved to the Đakovica/Gjakova cultural centre on 1 April 1999.²¹⁰ However, Vintar's attacks on Peraj's credibility were largely undermined on cross examination, such as when he exhibited a surprising lack of knowledge in response to being asked about the details of a house in which part of his unit was located in Đakovica/Gjakova town.²¹¹ Vintar's assertion that he did not know of the VJ opening fire during the Reka/Caragoj valley operation conflicts with the accounts presented by K73 and also with VJ documentation that records clashes in villages including Korenica.²¹² Although the Chamber finds him reliable on some matters, it considers that his relevant knowledge was in fact limited.

84. Vlatko Vuković, who was the Commander of 2nd Motorised Battalion of the 549th Motorised Brigade of the Priština Corps, did not impress the Chamber as a credible witness. When asked about a conviction for an offence of dishonesty, Vuković maintained his innocence despite the record of this albeit minor conviction.²¹³ Furthermore, he disputed the apparent meaning of statements in the war diary of his unit without providing satisfactory explanations for his assertions.²¹⁴ The Chamber, therefore, has accepted his evidence generally speaking only on non-controversial matters.

²⁰⁸ Goran Jevtović, T. 20365 (16 January 2008).

²⁰⁹ Zdravko Vintar, 5D1394 (witness statement dated 25 December 2007), paras. 20–21; Nike Peraj, P2253 (witness statement dated 9 August 2006), paras. 27, 67; P1086 (War Diary of the 52nd Artillery Rocket Brigade), p. 9.

²¹⁰ Zdravko Vintar, 5D1394 (witness statement dated 25 December 2007), para. 20; P1086 (War Diary of the 52nd Artillery Rocket Brigade), p. 9.

²¹¹ Zdravko Vintar, T. 21050 (25 January 2008).

²¹² P2019 (War Diary of the 2nd Motorised Battalion of the 549th Motorised Brigade), p. 11 (under seal).

²¹³ Vlatko Vuković, T. 21329–21330 (29 January 2008).

²¹⁴ P2019 (War Diary of the 2nd Motorised Battalion of the 549th Motorised Brigade), p. 11 (under seal); Vlatko Vuković, T. 21417–21418 (30 January 2008).

85. Similarly, the Chamber did not find Momir Stojanović, who was the Head of the security department of the Priština Corps, to be a credible witness. Stojanović's claims as to his lack of involvement in ordering operations of VJ units are undermined by the fact that the war diary of the 52nd Military Police Battalion records that on 13 April 1999 a specially formed company from this battalion was in fact "tasked" by the Chief of the Priština Corps security department, Stojanović, to capture a border post in Kamenica.²¹⁵

86. Sergej Perović, who was the Head of security for the 52nd Artillery Rocket Brigade, is considered to be an entirely unreliable witness. For example, his denial of having seen 20 dead bodies during the Reka/Caragoj valley operation is contradicted by the independent evidence of Aleksandar Vasiljević that Perović reported to him about 20 dead bodies at this time.

87. Radovan Zlatković, who was an investigator into criminal matters at the Đakovica SUP, provided an unsatisfactory account of his investigations into 40 bodies found near Meja, disclaiming any opinion as to whether the VJ or MUP were involved in these killings.²¹⁶ Furthermore, he stated that he did not learn of the death of 300 Kosovo Albanians in the Reka/Caragoj valley operation at the time, which suggests that his knowledge of these events was limited.²¹⁷ Consequently, his evidence is not considered generally reliable in relation to events in Đakovica/Gjakova.

88. Dragan Živanović, who was the commander of the 125th Motorised Brigade, was credible on some issues but less credible on others, and his attempts to limit VJ involvement in operations conflicted with evidence from K73 and K90. Consequently, the Chamber does not rely on his evidence in its entirety, but addresses specific parts of it where relevant.

89. Like Dragan Živanović, Saša Antić, who was the commander of a special purpose military police company in the 52nd Military Police Battalion, was credible on some issues but less credible on others, and attempted to limit the involvement of the VJ in activities in a way that conflicted with the evidence of VJ members K73 and K90. Notably, his explanation that some senior Kosovo Albanians in Ramoc were asked to stay in the town to see that the VJ did not enter households did not strike the Chamber as credible and clashed with K73's account of the fate of these men.²¹⁸ The Chamber does not rely on all his evidence, but rather addresses specific parts of it where relevant.

²¹⁵ P2297 (War Diary of the 52nd Military Police Battalion), p. 6. *See also* K73, P2440 (witness statement), para. 33, T. 3313–3317 (13 September 2006).

²¹⁶ Radovan Zlatković, T. 25305–25307 (15 April 2008).

²¹⁷ Radovan Zlatković, T. 25314 (15 April 2008).

²¹⁸ Saša Antić, 5D1443 (witness statement dated 5 January 2008), para. 25. *See* K73's evidence on this incident below.

90. Milan Kotur was the Chief of Infantry in the Priština Corps and the Head of the Priština Corps team for co-operation with the KVM. Although he was credible on some issues, he was less credible on others and attempted to minimise the VJ involvement in the Reka/Caragoj valley operation. For example, he testified that only a small number of military police and paratroopers from the VJ were used in the operation, which clashed with a contemporaneous report stating that a volunteer company from the 549th Motorised Brigade was also used to help search the terrain.²¹⁹ Consequently, the Chamber does not rely on his evidence in its entirety, but addresses specific parts of it where relevant.

91. Goran Jevtović was the Head of the Operations Department at the forward command post of the Priština Corps. His contention that Nike Peraj's description of the Reka/Caragoj valley operation was "completely unrealistic" is unsustainable given the similar accounts of the operation given by other VJ witnesses such as K73 and K90, as described herein.²²⁰ Furthermore, Jevtović stated that he himself did not take part in the action, and that his evidence concerning the action was based on what he had heard and read in combat reports.²²¹ Consequently, only limited weight can be placed on his knowledge of the events during this operation. In relation to the Joint Command, Jevtović provided contradictory accounts, at first claiming to know the nature of this entity and then denying knowledge of it.²²² On this basis the Chamber does not find him to be a reliable witness on controversial matters.

92. There are, of course, occasions on which the Trial Chamber has accepted the evidence of those whose evidence has been more generally rejected. Aside from these witnesses, others gave evidence relating to the issues discussed herein. Their reliability and credibility is discussed where it is relevant to a specific issue addressed in the text below.

3. Background

93. The municipality of Đakovica/Gjakova is located in the western part of Kosovo, bordering Albania, between Prizren municipality (to the south) and Dečani/Deçan municipality (to the north).²²³ The largest town in the municipality, also called Đakovica/Gjakova, is roughly in the centre of the municipality on the main road running from Prizren to Peć/Peja. The villages

²¹⁹ Milan Kotur, T. 20729–20730 (21 January 2008); P2026 (Combat Report of 125th Motorised Brigade, 29 April 1999), p. 2; *see also* Dragan Živanović, T. 20589–20590.

²²⁰ Goran Jevtović, T. 20408–20409 (16 January 2008).

²²¹ Goran Jevtović, T. 20412 (16 January 2008).

²²² Goran Jevtović, T. 20381–20383 (16 January 2008), *cf.*, 5D1385 (witness statement dated 24 December 2007), para. 15.

²²³ P615 (Kosovo Atlas), p. 30.

mentioned in the Indictment generally lie to the west and south of Đakovica/Gjakova town and the Reka/Caragoj valley is to the west of the town.²²⁴ It was described by the Accused Lazarević as a valley 10 to 15 kilometres long and three to five kilometres wide, stretching along the area beside the border with Albania, between Đakovica/Gjakova and Dečani/Dečan.²²⁵

94. It is undisputed that large numbers of civilians departed from Đakovica/Gjakova town and other villages throughout the municipality during the period from March to May 1999. Many of these civilians ended up crossing the Čafa Prushit/Qafa e Prushit border post, to the south-west of Đakovica/Gjakova town, and the Vrbnica/Vërbnica border post, south of Prizren, into Albania.²²⁶ The Prosecution alleges that these expulsions were part of an organised operation targeting the civilian population of Đakovica/Gjakova, and during which numerous crimes were perpetrated against Kosovo Albanians.²²⁷ The Defence teams dispute the allegation and instead point to the ongoing hostilities between the FRY/Serbian forces and the KLA, the activities of the KLA, and fear of the NATO bombing as the causes of the exodus,²²⁸ or else argue that it has not been shown that crimes were carried out by forces under the command of the individual Accused.²²⁹

4. FRY/Serbian forces in Đakovica/Gjakova

95. It is uncontested that units of the VJ were present in Đakovica/Gjakova from spring 1998 and throughout the NATO air campaign from 24 March to mid-June 1999.²³⁰ The main VJ units that operated in Đakovica/Gjakova during that period were the 549th Motorised Brigade, the 52nd Artillery Rocket Brigade, the 52nd Military Police Battalion, and the 125th Motorised Brigade.

96. Elements of the 549th Motorised Brigade, which was commanded by Božidar Delić, were based in Đakovica/Gjakova during 1998 and 1999.²³¹ The 2nd Motorised Battalion of the 549th Motorised Brigade was based in Zhub/Žub, a town to the south-west of Đakovica/Gjakova town near the Čafa Prushit/Qafa e Prushit border crossing,²³² under the command of Vlatko Vuković.²³³

²²⁴ P35 (Map of Đakovica/Gjakova); P615 (Kosovo Atlas), p. 30.

²²⁵ Vladimir Lazarević, T. 17812 (7 November 2007).

²²⁶ See, e.g., Vlatko Vuković, 5D1442 (witness statement dated 5 January 2008), para. 44; Nike Peraj, T. 1574 (14 August 2006); P326 (map of Reka/Caragoj valley operation); Mahmut Halimi, T. 4456–4457 (9 October 2006). Lizane Malaj testified that she crossed the border at Vrbnica/Vërbnica on 28 April 1999, and that the crossing is called Vrbnica by Serbs, and Qafa e Morina by Albanians. Lizane Malaj, T. 1383–1384, 1391 (10 August 2006). According to P615 (Kosovo Atlas), p. 26, the border is called Vrbnica/Vërmicë on the Serbian side and Morinë on the Albanian side.

²²⁷ Prosecution Final Trial Brief, 29 July 2008 (public version), para. 430 *et seq.*

²²⁸ See Lukić Final Trial Brief, 7 August 2008 (public version), para. 1069 *et seq.*

²²⁹ See Lazarević Final Trial Brief, 29 July 2008 (public version), para. 359 *et seq.*

²³⁰ Momir Stojanović, T. 19703 (6 December 2007); 3D996 (PrK Command Security Department Report, 12 June 1998), p. 1.

²³¹ P2019 (War Diary of the 2nd Motorised Battalion of the 549th Motorised Brigade) (under seal).

²³² P35 (Map of Đakovica/Gjakova town).

Throughout late March 1999 this unit was engaged in villages around Đakovica/Gjakova and assisted the MUP in “mopping up” the territory.²³⁴

97. From 4 to 10 April 1999 the 2nd Motorised Battalion was engaged in securing the border with Albania in Đakovica/Gjakova.²³⁵ Over the next ten days the war diary of this battalion does not record any operations in Đakovica/Gjakova by the 549th Motorised Brigade, but notes that during this time their units were being bombed by NATO. On 19 April the 2nd Motorised Battalion sealed off and searched the villages of Poštra/Poshtra, Lipovac/Lipofc, and Grčina/Gërçina, which are located to the south of Đakovica/Gjakova town close to the Albanian border.²³⁶

98. The 52nd Artillery Rocket Brigade of the VJ, under the command of Miloš Došan and his deputy Novica Stanković, was also stationed in Đakovica/Gjakova town from December 1998.²³⁷ The headquarters of this brigade were relocated to the Đakovica/Gjakova cultural centre on 1 April 1999 and its weapons were stationed on the nearby Čabrat hill, which is in the western part of the town.²³⁸ The 52nd Artillery Rocket Brigade engaged in operations together with the MUP, such as on 1 April 1999 when it apprehended 30 Kosovo Albanians pulling out of Đakovica/Gjakova town and handed them over to the MUP,²³⁹ and also worked with other VJ units, such as on 13 April 1999 when a platoon of engineers was sent to help the 2nd Motorised Battalion to lay mines.²⁴⁰

99. The 52nd Military Police Battalion was stationed in Priština/Prishtina during late March and April 1999, and its activities were also primarily focused on the Priština/Prishtina area.²⁴¹ However, Saša Antić, who was a commander in the battalion, testified that on 12 or 13 April 1999 a company was formed from the battalion, resubordinated to the 125th Motorised Brigade, and sent to the area near the Košare/Koshara border post in the north of Đakovica/Gjakova to strengthen the defence of the border from attacks by “terrorists” from Albania.²⁴² The war diary of the 52nd

²³³ Vlatko Vuković, T. 21401 (30 January 2008), 5D1442 (witness statement dated 5 January 2008), paras. 2, 42–44. P2019 (War Diary of the 2nd Motorised Battalion of the 549th Motorised Brigade), p. 2 (under seal).

²³⁴ P2019 (War Diary of the 2nd Motorised Battalion of the 549th Motorised Brigade), p. 4–6 (under seal).

²³⁵ P2019 (War Diary of the 2nd Motorised Battalion of the 549th Motorised Brigade), p. 6–8 (under seal).

²³⁶ P2019 (War Diary of the 2nd Motorised Battalion of the 549th Motorised Brigade), p. 10 (under seal); P35 (Map of Đakovica/Gjakova).

²³⁷ See Nike Peraj, P2248 (witness statement dated 18 April 2000), p. 8, P2253 (witness statement dated 9 August 2006), para. 4. Nike Peraj has four statements; three of the statements, dated 18 April 2000, 12–15 February 2001, and 8 May 2002, were admitted into evidence as one Prosecution exhibit. See Nike Peraj, P2248 (witness statement dated 18 April 2000) (witness statement dated 15 February 2001), (witness statement dated 8 May 2002). The fourth statement is P2253 (witness statement dated 9 August 2006).

²³⁸ P1086 (War Diary of the 52nd Artillery Rocket Brigade), p. 9; P10 (Map of Đakovica/Gjakova).

²³⁹ P1086 (War Diary of the 52nd Artillery Rocket Brigade), p. 9.

²⁴⁰ P1086 (War Diary of the 52nd Artillery Rocket Brigade), p. 12.

²⁴¹ P2297 (war log of the the 52nd Military Police Battalion), pp. 1–3.

²⁴² Saša Antić, 5D1443 (witness statement dated 5 January 2008), para. 15, 5D1398 (witness statement dated 5 January 2008), para. 8 (under seal). See also P2297 (War diary of the 52nd Military Police Battalion), p. 6.

Military Police Battalion notes that the company was tasked by the head of the Priština Corps security department to capture a border post at Kamenica, which they succeeded in doing.²⁴³

100. The 125th Motorised Brigade, commanded by Dragan Živanović, was based in Đakovica/Gjakova during the NATO air campaign, and was particularly active in defending the border area around Košare/ Koshara from 10 April onwards.²⁴⁴

101. At the start of April 1999 the Đakovica Military Territorial Detachment was also called into action in Đakovica/Gjakova town, and tasked with *inter alia* securing the VJ barracks and other key buildings in the town, organising joint patrols with the MUP forces there, and engaging in operations against the KLA in the area.²⁴⁵

102. On 27 and 28 April 1999 a number of VJ units, along with MUP forces, engaged in an operation in the Reka/Caragoj valley to the west and slightly north of Đakovica/Gjakova town.²⁴⁶ The specific units involved in the operation were the 52nd Artillery Rocket Brigade,²⁴⁷ the 549th Motorised Brigade,²⁴⁸ the 63rd Parachute Brigade,²⁴⁹ the 125th Motorised Brigade,²⁵⁰ the 52nd Military Police Battalion,²⁵¹ and the PJP 73rd Territorial Detachment.²⁵² However, no written order launching this operation has been entered into evidence in this case.

103. While UK Military Attaché John Crosland testified that he encountered forces whom he considered to be “paramilitaries” in Đakovica/Gjakova in 1998,²⁵³ Radovan Zlatković, who worked

²⁴³ P2297 (war log of the 52nd Military Police Battalion), p. 6.

²⁴⁴ Dragan Živanović, T. 20478 (17 January 2008); 5D468 (125th Motorised Brigade Command Combat Report, 11 April 1999).

²⁴⁵ 6D750 (Order of the PrK, 31 March 1999).

²⁴⁶ 3D836 (Combat report of the Section for Operations and Staff Affairs of the SCS, 1 May 1999), p. 3; P1086 (War Diary of the 52nd Artillery Rocket Brigade), p. 33; P2019 (War Diary of the 2nd Motorised Battalion of the 549th Motorised Brigade), pp. 11–12 (under seal); P2567 (Combat Report of the 2nd Battalion of the 549th Brigade, 27 April 1999) (under seal); P2568 (Combat Report of the 2nd Battalion of the 549th Brigade, 28 April 1999) (under seal).

²⁴⁷ Sergej Perović, T. 21086 (25 January 2008); Milan Kotur, T. 20679–20682 (21 January 2008).

²⁴⁸ P2019 (War Diary of the 2nd Motorised Battalion of the 549th Motorised Brigade), p. 11–12, (under seal); Bodžar Delić, T. 19641 (6 December 2007); Sergej Perović, T. 21086 (25 January 2008); P2567 (Combat Report of the 2nd Battalion of the 549th Brigade, 27 April 1999) (under seal); P2568 (Combat Report of the 2nd Battalion of the 549th Brigade, 28 April 1999) (under seal).

²⁴⁹ Milan Kotur, T. 20679 (21 January 2008); Saša Antić, T. 21176 (28 January 2008) (private session).

²⁵⁰ Vladimir Lazarević, T. 18689–18690 (21 November 2007); Sergej Perović, T. 21086 (25 January 2008); Vlatko Vuković, T. 21343 (29 January 2008); Dragan Živanović, T. 20587–20590 (18 January 2008). *See also* P2023 (125th Motorised Brigade Combat Report, 25 April 1999); P2024 (125th Motorised Brigade Combat Report, 27 April 1999); P2025 (125th Motorised Brigade Combat Report, 28 April 1999), p. 2; P2026 (125th Motorised Brigade Combat Report, 29 April 1999), p. 2.

²⁵¹ Sergej Perović, T. 21086–21087 (25 January 2008); Milan Kotur, T. 20679, 20734 (21 January 2008).

²⁵² *See* K73, T. 3304, 3327 (13 September 2006) (closed session); P2023 (125th Motorised Brigade Combat Report, 25 April 1999).

²⁵³ John Crosland, P2645 (witness statement dated 31 October 2006), para. 15.

in the Đakovica SUP until May 1999, asserted that there were no paramilitaries operating in the area.²⁵⁴

5. KLA and NATO activities in Đakovica/Gjakova

a. NATO bombing of Đakovica/Gjakova

104. Zdravko Vintar gave evidence that, from the initial bombing on the first day of the NATO airstrikes, the NATO attacks continued for 42 days in Đakovica/Gjakova.²⁵⁵ A number of locations in Đakovica/Gjakova town itself were hit, including *inter alia* the VJ barracks at Erenik, a MUP facility, and the old quarter of the town, as well as sites in the area between the town and the border to the west causing a number of civilian casualties.²⁵⁶

105. As discussed further below, several reports in evidence record that NATO airstrikes hit targets in Đakovica/Gjakova on 24 to 28 March 1999.²⁵⁷ On 28 March the VJ stationary communications centre in Đakovica/Gjakova was destroyed.²⁵⁸ During the following two weeks intermittent airstrikes continued against targets in the municipality.²⁵⁹

106. Branko Krga, then Chief of the Intelligence Administration within the General Staff of the VJ, testified that a ground force operation named Arrow (*Strela*) was launched by the KLA between 9–10 April and 26 May 1999, in the area of Košare/Koshara, wherein significant forces were deployed in order to break through from Albania on to the territory of Kosovo.²⁶⁰ Combat reports from VJ units in the area reported that NATO strikes had been intensified, and that the KLA had engaged in a major operation to break through from Albania to the interior of Đakovica/Gjakova.²⁶¹ Subsequently, reports from May stated that activities against the KLA

²⁵⁴ Radovan Zlatković, T. 25305 (15 April 2008).

²⁵⁵ Zdravko Vintar, 5D1394 (witness statement dated 25 December 2007), para. 14.

²⁵⁶ Zdravko Vintar, 5D1394 (witness statement dated 25 December 2007), para. 14. *See also* Radovan Zlatković, 6D1627 (witness statement dated 13 April 2008), para. 30, T. 25268 (14 April 2008); 6D538 (criminal report of NATO bombings by Đakovica SUP to Peć District Public Prosecutor, 30 March 1999).

²⁵⁷ 5D231 (Combat Report of the PrK, 28 March 1999); P1086 (War Diary of the 52nd Artillery Rocket Brigade), p. 5; 6D1234 (SUP Security Review, 26 March 1999); Radovan Zlatković, 6D1627 (witness statement dated 13 April 2008), para. 30; P2019 (War Diary of the 2nd Motorised Battalion of the 549th Motorised Brigade), p. 3 (under seal); P1099 (MUP Staff sitrep, 28 March 1999), p. 2; P1086 (War Diary of the 52nd Artillery Rocket Brigade), p. 4.

²⁵⁸ Ljubomir Anđelković, T. 16407 (26 September 2007). *See also* 5D1097 (Combat Report of the 52nd Corps Communication Centre), p. 2.

²⁵⁹ P2019 (War Diary of the 2nd Motorised Battalion of the 549th Motorised Brigade) (under seal).

²⁶⁰ Branko Krga, T. 16811–16812 (3 October 2007); Saša Antić, 5D1443 (witness statement dated 5 January 2008), para. 15.

²⁶¹ 5D984 (Combat Report of the Military District Command for Đakovica, 11 April 1999); 3D815 (Combat Report of the VJ General Staff, 10 April 1999); 3D817 (Combat Report of the VJ General Staff, 12 April 1999), p. 2; 3D819 (Combat Report of the VJ General Staff, 18 April 1999); 3D821 (Combat Report of the VJ General Staff, 16 April 1999);

occurred on 29 April in the Đakovica/Gjakova area.²⁶² Dragan Živanović testified that this was perceived by the VJ to be an operation by the KLA with the support of NATO to invade from Albania and to link up with KLA members active in the Reka/Caragoj valley.²⁶³

107. NATO bombing continued through April 1999. A VJ report stated that on 14 April NATO bombs struck a civilian column crossing a bridge on the Đakovica/Gjakova–Prizren road.²⁶⁴ Zdravko Vintar testified that, following this attack, an emergency medical team was sent to provide assistance to the victims.²⁶⁵ According to Božidar Delić, the bombing on 14 April resulted in the death and wounding of Kosovo Albanian civilians.²⁶⁶

108. Also in April 1999 a combat report from the Priština Military District command recorded that NATO bombs hit a “refugee camp” in Đakovica/Gjakova, killing and wounding civilians.²⁶⁷ Consistent with this report, Zlatković stated that around 20 April a settlement comprising 50 people from the Serbian Krajina was hit by a NATO attack in Meja village, between Đakovica/Gjakova and Bistražin/Bistrashin village on the road to Prizren.²⁶⁸

b. KLA activity in Đakovica/Gjakova

109. The Chamber heard evidence that the KLA operated in various parts of Đakovica/Gjakova municipality, which was a key area in the conflict because it was the site of many supply routes from Albania.²⁶⁹ John Crosland testified that the KLA was commanded by Ramush and Daut Haradinaj in the Đakovica/Gjakova area in 1998.²⁷⁰ The Chamber heard further evidence from Bislim Zyrapi that during 1998 and 1999 KLA brigades were operating in the municipality.²⁷¹ According to a map marked by Zyrapi, Đakovica/Gjakova town was part of an area held by the

²⁶² 3D836 (Combat Report of the VJ General Staff, 1 May 1999); 3D838 (Combat Report of the VJ General Staff, 3 May 1999); 3D839 (Combat Report of the VJ General Staff, 4 May 1999); Dragan Živanović, T. 20482 (17 January 2008).

²⁶³ Dragan Živanović, T. 20612 (18 January 2008).

²⁶⁴ See 5D1158 (Combat Report of the 52nd Artillery Brigade, 14 April 1999).

²⁶⁵ Zdravko Vintar, T. 21042–21043 (24 January 2008).

²⁶⁶ Božidar Delić, T. 19313 (29 November 2007); 5D1242 (Video clips).

²⁶⁷ 5D986 (Combat Report of the Military District Command, 21 April 1999); 5D1159 (Combat Report of the 52nd Artillery Brigade, 21 April 1999); 6D44 (Đakovica SUP report, 23 April 1999), p.2; 6D1251 (MUP Overview of Security Events, 15 April 1999). See also 6D295 (Excerpts from a video of Meja, 14 April 1999).

²⁶⁸ Radovan Zlatković, T. 25273–25274, 25280–25281 (14 April 2008). See also 3D431 (Military District Command Report, 21 April 1999), p. 1.

²⁶⁹ John Crosland, T. 10008 (9 February 2007).

²⁷⁰ John Crosland, T. 9865–9866 (8 February 2007), 3D510 (witness statement dated 30 June 2006), para. 21.

²⁷¹ Bislim Zyrapi, T. 5932, 5967 (6 November 2006).

KLA immediately prior to the NATO bombing.²⁷² The KLA units were in the villages around Đakovica/Gjakova town rather than inside the town itself.²⁷³

110. Contrary to Zyrapi's evidence, Radovan Zlatković testified that from the commencement of the NATO bombing the KLA was inside the town and controlled the neighbourhoods of Novo Naselje, Čabrat, the area below the hospital towards the Erenik River, and the area of the bus station.²⁷⁴ However, Nike Peraj gave evidence that the bus station was an area in which the MUP and paramilitaries walked around, setting buildings on fire, as discussed further below.²⁷⁵ Fuat Haxhibeqiri stated during his cross-examination that it was likely that the KLA was in the vicinity of Đakovica/Gjakova in late March 1999,²⁷⁶ but that the fighting in Đakovica/Gjakova town between the KLA and the FRY/Serbian forces did not begin until 7 May 1999 in the Kodra e Cabrati neighbourhood.²⁷⁷ Despite accepting that it was likely that the KLA was in the vicinity of Đakovica/Gjakova in late March 1999, he claimed that he had not heard of any instances of it violating human rights laws or committing crimes.²⁷⁸

111. According to Momir Stojanović and Božidar Delić, the villages of Batuša/Batusha, Korenica, and Brovina, Glodjane/Gllogjan, Jablanica/Jabllanica, Kraljane/Kralan, Crmljane/Cermjan, and Bec were under KLA control from the beginning of 1998.²⁷⁹ Delić added that the KLA increased its area of control in 1999.²⁸⁰

112. On 3 April 1999 Vlatko Vuković issued an order detailing a large-scale defensive operation intended to counter a predicted attack by KLA forces from Albania.²⁸¹ In addition, and as noted above, the FRY/Serbian forces predicted a large-scale attack by the KLA with NATO support, through the border area to the west of the Đakovica/Gjakova town around 10 April 1999. The Accused Lazarević testified that there was indeed a KLA ground attack from Albania along the Košare/Koshara-Morina axis which began on 9 April 1999.²⁸² Similarly, Bislim Zyrapi testified that a KLA heavy weapons unit, based in Albania, provided artillery support to units operating in

²⁷² Bislim Zyrapi, T. 6021, 6049 (7 November 2006), T. 6267–6268 (10 November 2006); P2469 (Map showing KLA operational zones as indicated by witness Bislim Zyrapi).

²⁷³ Bislim Zyrapi, T. 6264–6265 (10 November 2006).

²⁷⁴ Radovan Zlatković, 6D1627 (witness statement dated 13 April 2008), para. 33.

²⁷⁵ Nike Peraj, T. 1669–1670 (15 August 2006), T. 1800 (17 August 2006). *See also* Nike Peraj, P2253 (witness statement dated 9 August 2006), para. 15.

²⁷⁶ Fuat Haxhibeqiri, T. 1163 (8 August 2006).

²⁷⁷ Fuat Haxhibeqiri, T. 1078 (7 August 2006).

²⁷⁸ Fuat Haxhibeqiri, T. 1163, 1166–1167 (8 August 2006).

²⁷⁹ Momir Stojanović, T. 19703 (6 December 2007); Božidar Delić, T. 19275–19276 (28 November 2007).

²⁸⁰ Božidar Delić, T. 19275–19276 (28 November 2007).

²⁸¹ 5D87 (Combat Group 2 Command Defence Order, 3 April 1999) (under seal).

Kosovo starting on 9 April as part of the *Strela 1* operation. He stated that the artillery fire was directed at the FRY/Serbian forces in the Reka/Caragoj valley.²⁸³ Additionally, reports from the U.S. Embassy in Skopje indicated that, at the same time as this attack was expected, on or after 11 April 1999 KLA forces entered Đakovica/Gjakova town and started to make gains in the town.²⁸⁴

113. Goran Jevtović testified that intelligence indicated that the KLA had a force roughly the size of a brigade stationed in the Reka/Caragoj valley, which attacked MUP check points and VJ columns and vehicles.²⁸⁵ The Accused Lazarević also testified that the Reka/Caragoj valley operation, discussed further below, was launched as a response to the presence of “several hundred terrorists” in the valley.²⁸⁶ Dragan Živanović testified that KLA members operating in the region would mingle with the civilian population.²⁸⁷ VJ and MUP reports indicate that the KLA continued to operate in Đakovica/Gjakova municipality throughout the NATO campaign.²⁸⁸ In addition, Bislim Zyrapi confirmed that KLA attacks into Đakovica/Gjakova continued to mid-May as part of the *Strela 2* operation, which took place in Košare/Koshara. Again, artillery fire was directed at the FRY/Serbian forces in the Reka/Caragoj valley.²⁸⁹

114. However, in contrast to the above accounts, K90 testified that the VJ knew that there was no KLA in the area of Meja and Korenica in late April 1999. He explained that the area between the two villages was surrounded and secured by the VJ so that there was no way that any KLA fighters could be there or in a position to shoot at the VJ at that time.²⁹⁰ Similarly, Lizane Malaj, a Kosovo Albanian woman from Korenica, denied that there was any KLA activity in her village, although she indicated that she had heard that in 1998 “Serbian forces” fired at KLA positions in Nec/Neci, Smocica/Smolica, Pacaj, Ramoc, and other villages in the Reka/Caragoj valley.²⁹¹

²⁸² Vladimir Lazarević, T. 17987 (9 November 2007). See 5D366 (Order of the PrK, 5 April 1999); 5D195 (Order of the PrK, 15 April 1999).

²⁸³ Bislim Zyrapi, T. 6238–6239 (9 November 2006).

²⁸⁴ 6D1637 (Report from American Embassy in Skopje, 13 April 1999), p. 5; 6D1638 (Report from American Embassy in Skopje, 11 April 1999), p. 2; 6D1639 (Report from American Embassy in Skopje, 19 April 1999), p. 3.

²⁸⁵ Goran Jevtović, T. 20356–20357 (16 January 2008). See also P2019 (War Diary of the 2nd Motorised Battalion of the 549th Motorised Brigade), pp. 11–12 (under seal).

²⁸⁶ Vladimir Lazarević, T. 18286–18287 (14 November 2007). See also P2023 (125th Motorised Brigade Combat Report to PrK, 25 April 1999), p. 2; Sergej Perović, 5D1396 (witness statement dated 8 January 2008), para. 21.

²⁸⁷ Dragan Živanović, T. 20495–20496 (17 January 2008). See also Sergej Perović, 5D1396 (witness statement dated 8 January 2008), paras. 22–23.

²⁸⁸ P2011 (Order of the PrK, 20 May 1999); 6D614 (MUP Overview of recorded criminal offences, 1 July 1998 to 20 June 1999), p. 734, para. 740; Radovan Zlatković, 6D1627 (witness statement dated 13 April 2008), para. 32.

²⁸⁹ Bislim Zyrapi, T. 6231, 6238–6239 (9 November 2006).

²⁹⁰ K90, P2652 (witness statement dated 8 December 2002), paras. 62–63.

²⁹¹ Lizane Malaj, T. 1341, 1358–1359 (10 August 2006). See also Lizane Malaj, T. 1373–1375 (10 August 2006), P2232 (witness statement dated 1 September 2000), p. 2.

115. The Chamber finds that the KLA was active in Đakovica/Gjakova municipality in 1998 and early 1999, and is satisfied that it had some presence in and around Đakovica/Gjakova town in late March 1999. While there was also a strong VJ presence in the area throughout late 1998 and up to the end of the NATO campaign in June 1999, it did not have complete control of the territory. The Chamber also finds, on the basis of K90's evidence, that the KLA presence in the Reka/Caragoj valley on 27 and 28 April was limited.

6. Events in Đakovica/Gjakova town

a. Destruction of buildings and violence

116. The Prosecution alleges that during March and early April 1999 VJ and MUP forces burned a number of Kosovo Albanian properties and historical and cultural sites in Đakovica/Gjakova town.²⁹² The Lazarević and Lukić Defences counter that this burning of houses was caused by NATO bombing or else was not carried out by forces under the control of the Accused.²⁹³ Similarly, in relation to the allegation in the Indictment that FRY/Serbian forces destroyed a number of religious and cultural sites in Đakovica/Gjakova town, the Lazarević and Lukić Defences deny that this occurred, and argue that, where such sites were destroyed, this was the result of NATO bombing and KLA activity.²⁹⁴

117. Fuat Haxhibeqiri, who resided in Đakovica/Gjakova town, testified about the actions of the FRY/Serbian forces in the town in 1998 and 1999. He stated that from August 1998 until sometime in 1999 the VJ would shell the villages around the municipality on a daily basis including at night. This resulted in people from numerous villages being forced into the town.²⁹⁵ Similarly, Martin Pnishi testified that the VJ shelled villages to the west of Đakovica/Gjakova town from vantage points such as Čabrat hill.²⁹⁶ Haxhibeqiri also stated that police and “paramilitary” forces would enter villages, threaten or arrest, and then beat the Kosovo Albanian men, and force their families to leave.²⁹⁷

²⁹² Prosecution Final Trial Brief, 29 July 2008 (public version), para. 430.

²⁹³ Lazarević Final Trial Brief, 29 July 2008 (public version), paras. 359–374; Lukić Final Trial Brief, 7 August 2008 (public version), paras. 1079–1080.

²⁹⁴ Lazarević Final Trial Brief, 29 July 2008 (public version), para. 374; Lukić Final Trial Brief, 7 August 2008 (public version), paras. 1079–1080.

²⁹⁵ Fuat Haxhibeqiri, P2308 (witness statement dated 28 August 2001), p. 5.

²⁹⁶ Martin Pnishi, T. 1527 (11 August 2006).

²⁹⁷ See Fuat Haxhibeqiri, P2308 (witness statement dated 28 August 2001), p. 5. See also Fuat Haxhibeqiri, T. 1068 (7 August 2006).

118. It is uncontested that on 24 March 1999 many buildings in the historic centre of Đakovica/Gjakova town and surrounding residential areas were destroyed or damaged by fire.²⁹⁸ However, there are conflicting accounts concerning the cause of this destruction. Kosovo Albanian residents of the town testified that none of the NATO bombs that destroyed VJ and MUP targets in and around the town in the first days of the NATO bombing hit any civilian areas.²⁹⁹ Rather, fires which destroyed many buildings in the centre of the town were deliberately started by Serbian police and paramilitary forces.³⁰⁰ However, Haxhibeqiri, who blamed Serbs, did not personally see any of these forces setting buildings alight, as he was in the Blloku i Ri neighbourhood, to the south of the town centre, at that time. He testified that on the night of 24 to 25 March he could see that houses in the old town were burning.³⁰¹ Similarly, Lulzim Vejsa stated that the police burned buildings, but admitted that he did not see this himself and only heard of it.³⁰² Nike Peraj stated that he saw MUP members and paramilitaries setting houses on fire in Đakovica/Gjakova town near the bus station before the NATO started bombing, but did not provide a precise date for these events.³⁰³

119. In contrast with these accounts, witnesses led by the Defence, who were VJ or MUP officers, along with some VJ and MUP documents, indicated that fires on the night of 24 to 25 March 1999 in the part of Đakovica/Gjakova called the Old Town, which sits at the foot of Čabrat hill, were caused by NATO airstrikes rather than arson.³⁰⁴ According to these sources, the NATO bombing resulted in damage to many businesses and apartment buildings and a number of civilian casualties.³⁰⁵ A MUP report stated that on the night of 24 to 25 March 1999 NATO bombs landed in the old part of Đakovica/Gjakova town, causing fires which destroyed 220 buildings.³⁰⁶ A

²⁹⁸ Fuat Haxhibeqiri, P2308 (witness statement dated 28 August 2001), p. 6; P1789 (András Riedlmayer's Expert Report) (provides photographs of the damage caused to various cultural sites); András Riedlmayer, T. 5418–5420 (30 October 2006); Zdravko Vintar, T. 21040–21041 (24 January 2008), 5D1394 (witness statement dated 25 December 2007), para. 16; 5D2 (Criminal Denunciation, MUP, Peć).

²⁹⁹ Fuat Haxhibeqiri, P2308 (witness statement dated 28 August 2001), p. 5; Lulzim Vejsa, T. 4087 (27 September 2006). *See also* Lulzim Vejsa, T. 4094 (27 September 2006).

³⁰⁰ Fuat Haxhibeqiri, P2308 (witness statement dated 28 August 2001), p. 6; Lulzim Vejsa, P2350 (witness statement dated 16 April 1999), p. 2, T. 4085 (27 September 2006).

³⁰¹ Fuat Haxhibeqiri, P2308 (witness statement dated 28 August 2001), p. 6.

³⁰² Lulzim Vejsa, P2350 (witness statement dated 16 April 1999), p. 2.

³⁰³ Nike Peraj, T. 1669 (15 August 2006), T. 1800 (17 August 2006), P2253 (witness statement dated 9 August 2006), para. 15.

³⁰⁴ Zdravko Vintar, T. 21040–21041 (24 January 2008), 5D1394 (witness statement dated 25 December 2007), para. 16; 5D2 (Criminal Denunciation, MUP, Peć); P1099 (MUP Staff sitrep, 28 March 1999), p. 2; P1086 (War Diary of the 52nd Artillery Rocket Brigade), p. 4. *See also* Radovan Zlatković, 6D1627 (witness statement dated 13 April 2008), para. 33.

³⁰⁵ Radovan Zlatković, 6D1627 (witness statement dated 13 April 2008), paras. 30, 33, T. 25268 (14 April 2008); 6D538 (Criminal Reports from Đakovica, 25 and 30 March 1999); P1086 (War Diary of the 52nd Artillery Rocket Brigade), p. 5. *See also* 5D231 (Combat Report of the PrK Comand, 28 March 1999)

³⁰⁶ 6D1234 (SUP Security Review, 26 March 1999). *See also* Radovan Zlatković, 6D1627 (witness statement dated 13 April 2008), para. 30.

criminal denunciation written about that night recorded that an investigation by a judge from the municipal court of Đakovica/Gjakova established that a NATO missile had sparked a chain of fires, burning 220 houses and killing a number of inhabitants.³⁰⁷ Zdravko Vintar stated that a NATO bomb hit Čabrat hill and that this sparked the fires in the centre of the nearby old town.³⁰⁸ He also testified that on 24 March NATO planes bombed the VJ barracks at the southern end of the town, next to the catholic church.³⁰⁹ Additionally, the war diary of the 2nd Motorised Battalion of the 549th Motorised Brigade noted that on 26 March the explosives depot in the “old” VJ barracks in Đakovica/Gjakova town was hit by NATO air strikes, killing four people from the town.³¹⁰

120. In relation to the alleged destruction of religious and cultural sites, Andrés Riedlmayer’s report and testimony regarding the municipality of Đakovica/Gjakova focused on four sites, the first of which was the bazaar in the old town. He reported that the bazaar had been heavily damaged on 24 March 1999, describing the shops on the site as burnt out, the historic bazaar area destroyed, the building interiors burned to the rooflines, and the roofs collapsed.³¹¹ Riedlmayer also reported that FRY/Serbian authorities claimed that NATO air strikes had caused the damage, but his report found no signs of the blast damage that would have been expected if the bazaar had been hit by air strikes; rather the damage was consistent with burning.³¹² Moreover, his report summarised the statements of two informants, only one of whom is identified, who both claimed to have witnessed MUP forces setting the bazaar on fire the night after NATO began bombing.³¹³ Similarly, Fuat Haxhibeqiri stated that the bazaar was burnt by FRY/Serbian forces and that this was seen by “citizens”, but he did not state that he witnessed the setting on fire of the bazaar himself.³¹⁴ Branimir Jokić’s report did not specifically deal with the locations in Đakovica/Gjakova described by Riedlmayer.³¹⁵

³⁰⁷ 5D2 (Criminal Report from Đakovica, 30 March 1999), p.2.

³⁰⁸ Zdravko Vintar, T. 21040–21041 (24 January 2008). *See also* Radovan Zlatković, 6D1627 (witness statement dated 13 April 2008), para. 33.

³⁰⁹ Zdravko Vintar, 5D1394 (witness statement dated 25 December 2007), para. 16.

³¹⁰ P2019 (War Diary of the 2nd Motorised Battalion of the 549th Motorised Brigade), p. 3 (under seal); P1099 (MUP Staff sitrep, 28 March 1999), p. 2; P1086 (War Diary of the 52nd Artillery Rocket Brigade), p. 5; Radovan Zlatković, 6D1627 (witness statement dated 13 April 2008), para. 33.

³¹¹ P1797 (photographs of the bazaar and the adjacent street); P1781 (Extract from P1789 re Đakovica/Gjakova town old bazaar), p. 1. *See also* Andrés Riedlmayer, T. 5500–5501 (30 October 2006).

³¹² P1781 (Extract from P1789 re Đakovica/Gjakova town old bazaar), p. 1; Andrés Riedlmayer, T. 5497, 5500 (30 October 2006).

³¹³ P1781 (Extract from P1789 re Đakovica/Gjakova town old bazaar), p. 2; Andrés Riedlmayer, T. 5501–5502 (30 October 2006).

³¹⁴ Fuat Haxhibeqiri, T. 1200–1206 (8 August 2006).

³¹⁵ 1D743 (Branimir Jokić’s evaluation of the report “The destruction of Cultural Heritage in Kosovo, 1998-1999”, by Andrew Herscher and Andrés Riedlmayer).

121. The second site that Riedlmayer reported on was the Hadum Mosque in Đakovica/Gjakova old town centre. He said that it had been heavily damaged through burning, the paintings and dome interiors had been damaged, and the minaret was decapitated.³¹⁶ His report stated that this also occurred on the night of 24 March 1999. The report summarised the statement of a local citizen who saw “Serbs” setting the old bazaar and the Hadum Mosque on fire, and noted that local residents had reported seeing 50 Serbs carrying petrol canisters and heading in the direction of the local mosque.³¹⁷ Riedlmayer further reported that the minaret of the mosque was shot down by “Serbs” using a rocket launcher at the later date of 8 May 1999. This information apparently also came from his informants.³¹⁸

122. This is consistent with the evidence of Fuat Haxhibeqiri who noted that the inside of the mosque was burnt on 25 March, although he did not state that he personally saw the burning at that time. However, he did claim to have heard an explosion on 8 May 1999 when he was at his home located close to the mosque, following which debris landed around him and he saw that the minaret of the mosque had been destroyed. Although Haxhibeqiri attributed this to shelling by the VJ, he did not clearly explain on what basis he had come to that conclusion.³¹⁹

123. The third site that Riedlmayer reported on was the Library of Hadum Suleiman Efendi, an Islamic library also in the old town centre. He said that it had been completely burned with the loss of the entire manuscript collection and Islamic archive.³²⁰ The fourth site that Riedlmayer reported on was the Kel Hasan Aga Mosque in the village of Rogovo/Rogova, which is addressed below in the discussion of events in villages in Đakovica/Gjakova municipality.³²¹

124. Although Haxhibeqiri did not see anyone setting houses on fire on the night of 24 to 25 March, he testified that he did see police and “paramilitary” forces setting fire to homes close to his house throughout the rest of the NATO air campaign.³²² Each day, two or more houses were burned in this manner.³²³ He stated that FRY/Serbian forces also looted property from the houses in his neighbourhood, including the equipment from a doctor’s office near the location in which he

³¹⁶ P1782 (Extract from P1789 re Hadum Mosque), p. 1.

³¹⁷ P1781 (Extract from P1789 re Đakovica/Gjakova municipality), p. 2; P1782 (Extract from P1789, re Hadum Mosque), p. 2.

³¹⁸ P1782 (Extract from P1789 re Hadum Mosque), p. 2.

³¹⁹ Fuat Haxhibeqiri, T. 1200–1206 (8 August 2006).

³²⁰ P1783 (Extract from P1789 re Library of Hadum Suleiman Efendi), p. 1.

³²¹ P1784 (Extract from P1789 re Kel Hasan Aka Mosque), p. 1.

³²² Fuat Haxhibeqiri, T. 1077 (7 August 2006).

³²³ Fuat Haxhibeqiri, P2308 (witness statement dated 28 August 2001), p. 7. *See* Fuat Haxhibeqiri, T. 1077 (7 August 2006).

was hiding.³²⁴ He testified that the “paramilitary” forces setting these houses on fire wore stripes and ribbons. However, Haxhibeqiri provided inconsistent descriptions of the police wearing blue uniforms, but also olive-green uniforms.³²⁵

125. Lulzim Vejsa and K74 both independently testified that, as they walked through Đakovica/Gjakova town in early April, they saw that only the houses belonging to Kosovo Albanians were burnt.³²⁶ K90 testified that in early April 1999 he went with some policemen into Đakovica/Gjakova town, where they burned houses belonging to Kosovo Albanians using an aerosol can to light the fires. Later they withdrew when NATO bombs started dropping.³²⁷ Hani Hoxha stated that he heard MUP forces stating “this is because of NATO”, when they were burning houses in Đakovica/Gjakova town.³²⁸

126. Residents of the town provided evidence of violent acts committed against the Kosovo Albanian population. Hani Hoxha stated that on approximately 27 March he overheard the murders of two of his neighbours, Shefqet Pruthi and Avni Ferizi, who also lived in the Kula area of Đakovica/Gjakova.³²⁹ He described how, half-hidden behind a board in his courtyard, he watched the homes around his burn. He recounted that a vehicle burst through the courtyard gate of his neighbour, Shefqet Pruthi, and that the vehicle’s occupants set fire to Pruthi’s house. The men then chased Shefqet Pruthi to a position about five metres from where Hoxha was hiding, where he overheard shouting in Serbian, “[g]et out, we will fuck your Albanian mothers.” Hoxha stated that he heard shots fired, and later that evening he was told that Pruthi had been killed.³³⁰ Hoxha recounted that, following the attack on Pruthi’s house, the same men went to the home of another neighbour, Avni Ferizi, whom they also shot and killed.³³¹ According to Hoxha, the wives of Shefqet Pruthi and Avni Ferizi went to the local police the following day to ask them to investigate. However, the local police told them to “[g]o and complain to NATO.” While the police did briefly visit the site of the killings, no examination or investigation was carried out.³³²

³²⁴ Fuat Haxhibeqiri, T. 1171–1172 (8 August 2006).

³²⁵ Fuat Haxhibeqiri, T. 1077 (7 August 2006), T. 1169–1170 (8 August 2006).

³²⁶ Lulzim Vejsa, P2350 (witness statement dated 16 April 1999), p. 3; K74, P2532 (witness statement), p. 4.

³²⁷ K90, P2652 (witness statement dated 8 December 2002), paras. 35–37, T. 9378–9379 (30 January 2007).

³²⁸ Hani Hoxha, P2267 (witness statement dated 22 April 1999), p. 5.

³²⁹ Hani Hoxha, P2267 (witness statement dated 22 April 1999), pp. 2–3.

³³⁰ Hani Hoxha, P2267 (witness statement dated 22 April 1999), p. 2.

³³¹ Hani Hoxha, P2267 (witness statement dated 22 April 1999), pp. 2–3.

³³² Hani Hoxha, P2267 (witness statement dated 22 April 1999), p. 3. *See also* Hani Hoxha, T. 1554–1555, 1560 (11 August 2006).

127. Sergej Perović countered Hoxha's account by denying having any information concerning these incidents in the Kula area of Đakovica/Gjakova town.³³³ However, he claimed that there was sporadic gun-fire from the KLA directed towards the VJ and MUP units in the Novi (new) neighbourhood of Đakovica/Gjakova town at this time, but stated that the fighting was more concentrated in the old part of town.³³⁴ Radovan Zlatković confirmed that he had heard of the deaths of Shefqet Pruthi and Avni Ferizi, but asserted that he had also heard that these were due to the fires caused by the NATO bombing.³³⁵ A MUP overview of security events, written at the time, also attributed these deaths to a NATO bomb that hit the MUP building in Đakovica/Gjakova.³³⁶

128. Fuat Haxhibeqiri testified about a number of other Kosovo Albanians who were killed in the town throughout the NATO bombing.³³⁷ He saw several corpses on the streets, but did not personally witness any of these killings.³³⁸ When asked about the victims that he personally saw, he testified that these included Urim Rexha, who was shot in the head around 27 March 1999.³³⁹ He also mentioned a number of other corpses that he saw on the streets in May 1999, as detailed below.

129. Ndrec Konaj, a Kosovo Albanian man from Peć/Peja, provided evidence of violence directed at Kosovo Albanians in Đakovica/Gjakova town at the beginning of the period of the NATO bombing. Konaj testified about his removal from Peć/Peja, along with "thousands" of other Kosovo Albanians.³⁴⁰ The Chamber has found his account of his expulsion and journey to Albania to be generally reliable. He was taken in a convoy of buses to Prizren, and as they passed through Đakovica/Gjakova they were stopped at a checkpoint opposite the police station in the town. There Konaj saw members of the police beating men in a large group of people with the butts of their weapons. Additionally, he saw police, paramilitary, and other forces beating people on a vehicle in the same convoy that he was travelling in.³⁴¹

b. Events in the Ćerim/Qerim district, 1 and 2 April 1999

³³³ Sergej Perović, T. 21100–21101 (25 January 2008).

³³⁴ Sergej Perović, T. 21106 (25 January 2008).

³³⁵ Radovan Zlatković, 6D1627 (witness statement dated 13 April 2008), para. 33.

³³⁶ 6D1235 (MUP overview of security events), p. 2.

³³⁷ See Fuat Haxhibeqiri, P2308 (witness statement dated 28 August 2001), p. 3, T. 1113 (8 August 2006), T. 1292–1295 (9 August 2006).

³³⁸ Fuat Haxhibeqiri, T. 1175 (8 August 2006), T. 1292 (9 August 2006).

³³⁹ Fuat Haxhibeqiri, T. 1156–1157 (8 August 2006).

³⁴⁰ Ndrec Konaj, P2372 (witness statement dated 12 June 2001), p. 4.

³⁴¹ Ndrec Konaj, P2372 (witness statement dated 12 June 2001), p. 5.

130. The Indictment alleges that over 50 people were killed by FRY/Serbian forces in the Ćerim/Qerim district of Đakovica/Gjakova town at the start of April 1999. A number of witnesses gave specific accounts of killings in this district committed during 1 and 2 April 1999. These include Dren Caka, a Kosovo Albanian boy from the town who was ten years old in April 1999, Hani Hoxha, and Lulzim Vejsa.³⁴²

131. In the early morning hours of 2 April 1999 Caka was staying in the basement of the Vejsa compound, on Miloš Gilić/Millosh Giliq Street in the Ćerim/Qerim district, along with 20 other people, all but one of whom were women and children. Vejsa and Hoxha were upstairs with other Kosovo Albanian men.³⁴³ During cross-examination Lulzim Vejsa denied being a member of the KLA, and said that his relatives and friends had been staying in his basement, not because of NATO bombs, but because of their fear of the FRY/Serbian forces located at Čabrat hill.³⁴⁴ Around 2:00 a.m. a vehicle broke through the gate of the compound and Vejsa, Hoxha, and the other men fled through a rear exit as they had previously decided to do in case the FRY/Serbian forces entered the compound, because they thought that this would make it less likely that the women and children would be harmed.³⁴⁵

132. Caka recounted that around six Serb police officers entered the building and asked the group of people in the basement if they were with the KLA, which they denied.³⁴⁶ The police officers then ordered the group of women and children out of the basement and upstairs into the Vejsa house.³⁴⁷ Caka described these police officers as wearing dark blue-black patterned uniforms, and heavily armed with machine-guns, AK-47s, and secondary “normal” hand-guns.³⁴⁸ During cross-examination he was asked about a statement he had provided to the Prosecution, wherein he described the police as wearing blue camouflage with greenish bullet proof vests and “bombs”.³⁴⁹ In court he stated that the uniforms were blue, not green.³⁵⁰ He continued that one policeman had a hat, that the guns they carried resembled AK-47s, not rifles, and that he did not see any badges on the uniforms.³⁵¹ He noted that none of the policemen was ethnic Albanian.³⁵² The

³⁴² See Dren Caka, T. 2630–2631 (31 August 2006).

³⁴³ Dren Caka, T. 2634–2635 (31 August 2006); Hani Hoxha, T. 1539–1540 (11 August 2006); IC24 (aerial photo of Miloš Gilić/Millosh Giliq Street marked by Caka).

³⁴⁴ Lulzim Vejsa, T. 4086, 4089 (27 September 2006).

³⁴⁵ Hani Hoxha, P2267 (witness statement dated 22 April 1999), p. 3–4; Dren Caka, T. 2636–2637 (31 August 2006); Lulzim Vejsa, P2350 (witness statement dated 16 April 1999), pp. 2–3.

³⁴⁶ Dren Caka, T. 2636–2638 (31 August 2006); Lulzim Vejsa, P2350 (witness statement dated 16 April 1999), pp. 2–3; Hani Hoxha, P2267 (witness statement dated 22 April 1999), p. 4; Hani Hoxha, T. 1540 (11 August 2006);

³⁴⁷ See Dren Caka, T. 2636–2638 (31 August 2006); P2279 (diagram of Vejsa house).

³⁴⁸ Dren Caka, T. 2638–2639 (31 August 2006).

³⁴⁹ Dren Caka, 6D71 (witness statement dated 12 May 2001), p. 4; Dren Caka, T. 2662 (31 August 2006).

³⁵⁰ Dren Caka, T. 2662 (31 August 2006).

³⁵¹ Dren Caka, T. 2663 (31 August 2006).

Chamber notes that Caka also referred to the intruders as police in a video made when he was in hospital in Albania after the incident, and that he has consistently described them as police in subsequent statements.³⁵³

133. As Hoxha, Vejsa, and the other Kosovo Albanian men fled from the house, the uniformed intruders started firing their weapons.³⁵⁴ Hoxha heard voices, including pleas to “Spare me, don’t kill me”.³⁵⁵ Caka testified that in the Vejsa house the policemen started shooting those present, first Flaka Hoxha, then her mother, and “Luli’s” wife and his baby daughter, then Caka’s own mother, and then they sprayed bullets across the room. Although shot in the arm, Caka survived and escaped through a window.³⁵⁶

134. At about 7:30 a.m. the Kosovo Albanian men, including Vejsa and Hoxha, made their way back to the compound which had been burned and had collapsed to the ground.³⁵⁷ Outside his compound Vejsa saw three men, whom he knew personally to be local policemen, and his neighbour told him that others had been present.³⁵⁸ Hoxha then proceeded to another house in the same compound where he saw the charred body of his son-in-law’s uncle, Hysen Gashi.³⁵⁹ At a neighbouring house Hoxha learnt from Dren Caka that his relatives had been killed.³⁶⁰ All three witnesses testified that in total 20 people were killed by shooting and burning in the Vejsa compound on Miloš Gilić/Millosh Giliq Street, including Caka’s mother and younger sister.³⁶¹ Lulzim Vejsa lost his wife, four daughters, his son, his mother, and his sister, amongst other relatives killed during this attack.³⁶² Hani Hoxha lost his wife and two daughters.³⁶³

135. K74 testified that on 2 April 1999 the “Serbs” burned the houses of Kosovo Albanians whom he knew in Miloš Gilić/Millosh Giliq Street, leaving only the Serb houses intact.³⁶⁴ However, during his oral testimony K74 clarified that he personally did not witness any of the

³⁵² Dren Caka, T. 2664 (31 August 2006).

³⁵³ See P2278 (video of Caka taken after the incident in Đakovica/Gjakova town); P2277 (translation of video of Caka taken after incident in Đakovica/Gjakova town); Dren Caka, 6D71 (witness statement dated 12 May 2001).

³⁵⁴ Hani Hoxha, P2267 (witness statement dated 22 April 1999), p. 4. See Lulzim Vejsa, P2350 (witness statement dated 16 April 1999), pp. 2–3.

³⁵⁵ Hani Hoxha, P2267 (witness statement dated 22 April 1999), p. 4, T. 1541 (11 August 2006).

³⁵⁶ Dren Caka, T. 2644–2646 (31 August 2006), 6D71 (witness statement dated 12 May 2001), pp. 3–4.

³⁵⁷ Hani Hoxha, P2267 (witness statement dated 22 April 1999), p. 4; Lulzim Vejsa, P2350 (witness statement dated 16 April 1999), p. 3.

³⁵⁸ Lulzim Vejsa, T. 4082–4084, 4092 (27 September 2006), P2350 (witness statement dated 16 April 1999), p. 3.

³⁵⁹ Hani Hoxha, P2267 (witness statement dated 22 April 1999), p. 4, T. 1544 (11 August 2006).

³⁶⁰ Hani Hoxha, P2267 (witness statement dated 22 April 1999), p. 4,

³⁶¹ Hani Hoxha, P2267 (witness statement dated 22 April 1999), p. 5–6; Dren Caka, T. 2635 (31 August 2006) Lulzim Vejsa, P2350 (witness statement dated 16 April 1999), pp. 2–3.

³⁶² Lulzim Vejsa, P2350 (witness statement dated 16 April 1999), p. 3.

³⁶³ Hani Hoxha, P2267 (witness statement dated 22 April 1999), p. 5.

³⁶⁴ K74, P2532 (witness statement), p. 2.

killings or the setting on fire of the houses, but that he had recognised some local Serbs, prior to 2 April 1999, carrying weapons, searching the neighbourhood, and committing acts of theft, and it was for this reason that he concluded they were responsible for the killings and burning of houses.³⁶⁵ In light of this concession, the Chamber does not consider K74 to be a reliable witness in regard to the killings in Miloš Gilić/Millosh Giliq Street alleged in the Indictment.

136. Radovan Zlatković refuted specific aspects of Vejsa's evidence, including his identification of one of the policemen involved in the attack, and his assertion that three policemen, dressed in plain blue uniforms, were standing outside the burnt house on 2 April. He stated that the plain blue uniforms described by Vejsa belonged to the fire fighting service.³⁶⁶ However, the Chamber notes that MUP members also had plain blue uniforms, as described in section VI.A.3 above. Furthermore, the Chamber notes that Caka's direct evidence of the police forces that entered the compound on the night of 1 April was that they were wearing blue camouflage uniforms.

137. Forensic evidence relating to these killings was provided through Dr. Eric Baccard, an expert witness led by the Prosecution. He based his findings relevant to Miloš Gilić/Millosh Giliq Street on a report prepared by Dr. William C. Rodriguez III, who examined human remains from the site and Đakovica/Gjakova cemetery.³⁶⁷ Dr. Rodriguez concluded that, because of the very burnt and fragmentary condition of the remains, as well as their dispersion, the exact number of victims they represented could not be ascertained. However, his report concludes that "a minimum number of individuals represented ... can be considered consistent with as many as 20 individuals": one adult male, several adult females, many "sub adults" (children), and some undetermined victims.³⁶⁸ Baccard's report stated that, due to the badly burnt and skeletonized condition of the body parts, it was impossible to determine the cause of death or any injury.³⁶⁹ The Chamber notes that 20 victims are named in Schedule G of the Indictment.

c. Exodus of Kosovo Albanians from Đakovica/Gjakova town

138. The Prosecution alleges that, during and after the Ćerim/Querim district "operation" on 1 and 2 April 1999, large numbers of Kosovo Albanians were forced to flee their homes and formed

³⁶⁵ K74, T. 7516–7517, 7523–7526 (29 November 2006).

³⁶⁶ Radovan Zlatković, 6D1627 (witness statement dated 13 April 2008), para. 35.

³⁶⁷ P1809 (Eric Baccard's overview report), pp. 15, 37–39. Baccard's report contains a section discussing evidence gathered by the experts of a United States forensic team from 157 Miloš Gilić/Millosh Giliq Street and from the cemetery in Đakovica/Gjakova town on 25, 26, and 27 May 1999. It is based on a forensic anthropological and pathological report prepared by Dr. William C. Rodriguez III. *See also* P249 (Forensic examination and analysis of human remains in Kosovo, 13 October 1999).

³⁶⁸ P249 (Forensic examination and analysis of human remains in Kosovo), p. 9.

³⁶⁹ P1809 (Eric Baccard's overview report), p. 39.

convoys to travel to Albania. It further asserts that these people were harassed by FRY/Serbian forces along the way, including by having their personal papers taken.³⁷⁰ The Lazarević Defence counters that it has not been proven that the VJ was involved in the expulsion of civilians from the municipality or that, where such population movements did occur, they were the result of duress by the VJ.³⁷¹ The Lukić Defence argues that any such departures of civilians were caused by fear of the NATO bombing, rather than forcible removal.³⁷²

139. After the killings at the Vejsa compound, Hani Hoxha and Lulzim Vejsa left Đakovica/Gjakova town in a long convoy in early April 1999, along with many thousands of Kosovo Albanians who were leaving the town around this time.³⁷³ MUP and VJ personnel were located at street corners and, according to Hoxha, at the edge of town MUP personnel ordered the people in the convoy to leave their identification papers in a large box.³⁷⁴ About three kilometres outside of town members of the VJ stopped some people in the convoy. After detaining them for three hours in a field, they ordered them to continue to the Albanian border.³⁷⁵ Hoxha stated that at the Čafa Prušit/Qafa e Prushit border crossing policemen again ordered the people in the convoy to hand over their identification papers.³⁷⁶ Despite identification papers being demanded on two occasions, Hoxha managed to retain his driver's license.³⁷⁷ K74 also stated that he joined a column of displaced people leaving Đakovica/Gjakova town, and that this group was directed by MUP forces to the Čafa Prušit/Qafa e Prushit border crossing. He stated that at the border the police asked for papers and he handed over his identification card, but kept his passport hidden on him.³⁷⁸

140. Hoxha explained that his reason for leaving his home in Đakovica/Gjakova was that "Serb forces" killed his family in the Vejsa compound on Miloš Gilić/Millosh Giliq Street and destroyed his home, which caused him to fear for his own life.³⁷⁹ As he joined the column, friends from his neighbourhood told him of others killed in Đakovica/Gjakova town, and they saw many houses

³⁷⁰ Prosecution Final Trial Brief, 29 July 2008 (public version), para. 430.

³⁷¹ Lazarević Final Trial Brief, 29 July 2008 (public version), para. 376.

³⁷² Lukić Final Trial Brief, 7 August 2008 (public version), para. 1082.

³⁷³ Hani Hoxha, P2267 (witness statement dated 22 April 1999), p. 5, T. 1564 (11 August 2006); Lulzim Vejsa, P2350 (witness statement dated 16 April 1999), pp. 3–4, T. 4081–4082 (27 September 2006). *See also* Vlatko Vuković, 5D1442 (witness statement dated 5 January 2008), para. 42; P2019 (War Diary of the 2nd Motorised Battalion of the 549th Motorised Brigade), pp. 3–7 (under seal); Vlatko Vuković, T. 21362 (30 January 2008).

³⁷⁴ Hani Hoxha, P2267 (witness statement dated 22 April 1999), p. 5, T. 1549, 1563–1364 (11 August 2006). *See also* Lulzim Vejsa, T. 4081–4082 (27 September 2006).

³⁷⁵ Hani Hoxha, P2267 (witness statement dated 22 April 1999), p. 5, T. 1549 (11 August 2006); Lulzim Vejsa, P2350 (witness statement dated 16 April 1999), p. 3–4. *See also* Lulzim Vejsa, T. 4081–4082 (27 September 2006).

³⁷⁶ Hani Hoxha, P2267 (witness statement dated 22 April 1999), p. 5. *See* Lulzim Vejsa, P2350 (witness statement dated 16 April 1999), pp. 3–4, T. 4081–4082 (27 September 2006); K74, P2532 (witness statement), p. 6.

³⁷⁷ Hani Hoxha, P2267 (witness statement dated 22 April 1999), p. 5.

³⁷⁸ K74, P2532 (witness statement), p. 6.

³⁷⁹ Hani Hoxha, P2267 (witness statement dated 22 April 1999), p. 5.

burning.³⁸⁰ Dren Caka also testified that, following the killing of his family in Miloš Gilić/Millosh Giliq Street, he and a group of his remaining family members left Đakovica/Gjakova town and headed to Albania by way of the border crossing at Čafa Prushit/Qafa e Prushit due to fear of the police in the town.³⁸¹ Similarly, K74 stated that he left with his family due to the “Serbs” burning Kosovo Albanian houses, and fear of what the police would do to them. He stated that he was not afraid of the NATO airstrikes as they only hit military targets around Đakovica/Gjakova town.³⁸² Hoxha stated that no offer of assistance was made to the convoy of displaced Kosovo Albanians by the MUP or VJ personnel who were conducting the expulsion.³⁸³

d. Events in Đakovica/Gjakova town in May 1999

141. As noted above, Fuat Haxhibeqiri stated that he saw the bodies of Kosovo Albanians in Đakovica/Gjakova town throughout the NATO air campaign.³⁸⁴ Between 7 and 11 May 1999 he saw VJ, paramilitary, and police forces enter western Đakovica/Gjakova town, and proceed to burn a number of private properties and loot a number of shops.³⁸⁵ These forces acted in concert during this operation. People were shot in the street. However, Haxhibeqiri did not witness any of these shootings.³⁸⁶ When asked about the bodies of victims that he personally saw, he testified that between 7 and 11 May he saw seven corpses within 50 metres of his house, all with bullet wounds. He identified one of them as Ali Beqe Rama, from the identity card in his pocket, and learned that two of the victims were brothers with the name Humaj, but he did not know the names of the other four. In a lane near his aunt’s house he saw four more bodies, one of whom was called Florenc Sulejmani; all had been shot dead.³⁸⁷

142. As noted above, Radovan Zlatković stated that the KLA was active in Đakovica/Gjakova town during the period of 7 to 11 May and controlled parts of the city.³⁸⁸ Similarly, Haxhibeqiri acknowledged that there was fighting between the KLA and FRY/Serbian forces in the town in early May 1999.³⁸⁹ In accordance with these accounts, MUP reports record that joint operations with the VJ continued in Đakovica/Gjakova in May 1999. At a meeting of the MUP Staff for

³⁸⁰ Hani Hoxha, P2267 (witness statement dated 22 April 1999), p. 4.

³⁸¹ Dren Caka, T. 2654 (31 August 2006).

³⁸² K74, P2532 (witness statement), p. 6.

³⁸³ Hani Hoxha, P2267 (witness statement dated 22 April 1999), p. 5.

³⁸⁴ Fuat Haxhibeqiri, P2308 (witness statement dated 28 August 2001), pp. 3, 7, T. 1113 (8 August 2006), T. 1292–1295 (9 August 2006).

³⁸⁵ See Fuat Haxhibeqiri, P2308 (witness statement dated 28 August 2001), p. 8.

³⁸⁶ Fuat Haxhibeqiri, T. 1175 (8 August 2006), T. 1292–1293 (9 August 2006).

³⁸⁷ Fuat Haxhibeqiri, T. 1292, 1295–1296 (9 August 2006).

³⁸⁸ Radovan Zlatković, 6D1627 (witness statement dated 13 April 2008), paras. 32–33.

³⁸⁹ Fuat Haxhibeqiri, P2308 (witness statement dated 22 April 1999), p. 5, T. 1078 (7 August 2006).

Kosovo on 11 May 1999, a PJP commander reported that operations in Đakovica/Gjakova town had eradicated most of the “terrorists”, and that “mopping up” operations would continue neighbourhood by neighbourhood. He stated that similar operations were being conducted in the towns in the municipality, in conjunction with the VJ. He also noted that VJ forces were displaying ill-discipline, stating that “after all operations VJ reservists burned houses and went into them”, and then added that the VJ commanders had been informed of this.³⁹⁰ The Chamber notes that the Lazarević Defence relies on this document in relation to the issue of resubordination, but does not comment about the allegations made by MUP commander that VJ soldiers burned houses in Đakovica/Gjakova town.³⁹¹

e. Findings

143. It is uncontested that many buildings in the centre of Đakovica/Gjakova town, including the old bazaar, were damaged or destroyed by fire in the opening days of the NATO campaign. However, neither Haxhibeqiri nor Vejsa provided evidence as to how the fires started. Furthermore, the Prosecution has failed to discount beyond reasonable doubt the possibility that the fires on this night resulted from a blaze started by a NATO bomb. Consequently, the Chamber cannot conclude who, if anyone, set fire to the buildings in Đakovica/Gjakova town on the night of 24 March 1999.

144. The Chamber finds that the Hadum mosque in Đakovica/Gjakova was destroyed on 8 May 1999, as described by Haxhibeqiri and confirmed by Riedlmayer. However, neither of these witnesses was able to give evidence about who was responsible for this destruction. Consequently, the Chamber finds that the charge set out in paragraph 77(d) of the Indictment is not proven in so far as it relates to the Hadum mosque in Đakovica/Gjakova town. The destruction of the Library of Hadum Suleiman Efendi is not specifically included in the persecution charges set out in paragraph 77(d) of the Indictment and the Chamber has heard no evidence concerning who was responsible for its burning. Therefore, the Chamber reaches no finding on this site.

145. Aside from the evidence relating specifically to the fires started on the night of 24 March, residents of Đakovica/Gjakova town testified that Kosovo Albanian houses continued to be burned in late March and early April 1999. Haxhibeqiri’s evidence that he saw police and paramilitary forces lighting fires during the period of the NATO bombing is consistent with Nike Peraj’s testimony that he saw MUP members and paramilitaries setting houses on fire in Đakovica/Gjakova

³⁹⁰ P1993 (Minutes of the MUP Staff meeting, 11 May 1999), p. 6.

³⁹¹ See Lazarević Final Trial Brief, 29 July 2008 (public version), para. 801.

town, using “bombs” to light these more quickly.³⁹² K90 referred to a practice of using aerosol cans to ignite the buildings in his account of burning houses along with MUP members in the town. The Chamber notes that this is supported by the accounts given by Vejsa and K74 of such burning being directed exclusively at Kosovo Albanians. Consequently, the Chamber finds that the MUP, along with paramilitaries, was responsible for burning the houses of Kosovo Albanians in Đakovica/Gjakova town in March and April 1999. The only evidence of VJ involvement in the burning of Kosovo Albanian houses in Đakovica/Gjakova town at this stage was that provided by K90, who testified about his own participation.

146. The Chamber’s reservations about the contrary evidence of Perović and Zlatković are immaterial since Hoxha’s evidence on the killing of Pruthi and Ferizi was not based on his direct personal observation of the crimes, and the Prosecution led no further evidence about the killings. Consequently, these killings have not been proven as murders.

147. The Chamber finds Haxhibeqiri’s evidence that many dead Kosovo Albanians were left in the streets of Đakovica/Gjakova town and Konaj’s account of seeing members of a group of civilians being beaten by police and paramilitaries outside the police station convincing. The Chamber considers that this activity, along with the burning of the homes of Kosovo Albanians, contributed to an atmosphere of fear and violence created by the MUP, and later the VJ, in Đakovica/Gjakova town. The Chamber finds the consistent evidence of Lulzim Vejsa, Hani Hoxha, Dren Caka, and K74 relating to their departure from Đakovica/Gjakova town at the start of April 1999 to be reliable. Their sudden flight from the town was precipitated by the killing of members of their families by MUP forces, and their fear of the further actions of those forces. In addition, MUP and VJ forces controlled their departure, along with significant numbers of other Kosovo Albanian residents of the town, and seized the identity documents of many of these people. The Chamber considers that Haxhibeqiri’s indirect evidence of seeing bodies during the period from 7 to 11 May is not sufficient to establish any finding as to the cause of their death. While it is established that he saw the dead Kosovo Albanians, there is evidence indicating KLA activities in the town in May 1999, and consequently there is a possibility that the killings may have been part of legitimate operations against the KLA. However, the Chamber does accept his evidence that the MUP continued to burn and loot Kosovo Albanian property during this period, and that in May 1999 the VJ was also involved in the arson in Đakovica/Gjakova town.

³⁹² Nike Peraj, T. 1669 (15 August 2006), T. 1800 (17 August 2006). *See also* Nike Peraj, P2253 (witness statement dated 9 August 2006), para. 15.

148. In relation to the killings at Miloš Gilić/Millosh Giliq Street, on the basis of the forensic evidence along with the testimony of Dren Caka, Lulzim Vejsa, and Hani Hoxha, the Chamber finds that the following people were killed on 2 April 1999, as a result of being either shot by MUP members or as a direct consequence of being at Lulzim Vejsa's house after it was set on fire by MUP forces: Dalina Caka, Delvina Caka, Diona Caka, Valbona Caka, Hysen Gashi, Doruntina Haxhiavdija, Egzon Haxhiavdija, Rina Haxhiavdija, Valbona Haxhiavdija, Flaka Hoxha, Shahindere Hoxha, Manushe Nuçi, Shirine Nuçi, Arlind Vejsa, Dorina Vejsa, Fetije Vejsa, Marigona Vejsa, Rita Vejsa, Sihana Vejsa, and Tringa Vejsa.

7. Other villages in Đakovica/Gjakova municipality

149. The Prosecution alleges that during late March and April 1999 FRY/Serbian forces also forcibly displaced civilians from various villages in Đakovica/Gjakova municipality.³⁹³ The Lazarević Defence counters that it has not been proven that the VJ was involved in the expulsion of civilians from the municipality.³⁹⁴ The Lukić Defence argues that any such departure of civilians was caused by fear of NATO bombing, rather than forcible removal.³⁹⁵

150. Merita Deda, from Guska, a small village to the west of Đakovica/Gjakova town inhabited by Kosovo Albanians, testified that she had heard that on 25 March 1999 VJ forces entered the nearby villages of Deva and Babaj Baks/Babaj i Bokës and executed eight civilians.³⁹⁶ A few days later March an "army commander" whose name was Dragan came to Guska and told the inhabitants they had to leave the village within an hour.³⁹⁷ Deda stated that as a consequence of this order she and her family, along with others from the village, took tractors and cars and headed towards Korenica.³⁹⁸ During the next three weeks Deda saw VJ and police forces, who had surrounded the village, patrolling Korenica and ordering the inhabitants to remain in their houses.³⁹⁹

151. Lizane Malaj, who was from Korenica, described her village as composed of Kosovo Albanians, the majority of whom were Catholic and some of whom were Muslim.⁴⁰⁰ According to Malaj, on 4 April 1999 the police arrived in the village. Eight policemen came to her compound,

³⁹³ Indictment, para. 72(h)(ii). *See also* Prosecution Final Trial Brief, 29 July 2008 (public version), para. 434.

³⁹⁴ Lazarević Final Trial Brief, 29 July 2008 (public version), para. 376.

³⁹⁵ Lukić Final Trial Brief, 7 August 2008 (public version), para. 1082.

³⁹⁶ Merita Deda, P2233 (witness statement dated 8 April 2000), p. 2.

³⁹⁷ Merita Deda, T. 1399 (10 August 2006), P2233 (witness statement dated 8 April 2000), p. 2.

³⁹⁸ Merita Deda, P2233 (witness statement dated 8 April 2000), p. 2. *See also* Merita Deda, T. 1400 (10 August 2006).

³⁹⁹ Merita Deda, P2233 (witness statement dated 8 April 2000), p. 3.

⁴⁰⁰ Lizane Malaj, T. 1307 (9 August 2006), P2232 (witness statement dated 9 September 2001), p. 2.

one of whom ordered her family to leave the village and go to Albania.⁴⁰¹ She testified that the policemen wore blue police uniforms, carried machine guns, and came in armoured cars.⁴⁰² Malaj's family complied with the order and left the village, along with over 30 other villagers, in tractors. However, in a village called Sufadol, around one kilometre from Korenica, the convoy was stopped by two other policemen and told to return to Korenica.⁴⁰³ Malaj recognised one of these policemen as a man named Aca Micunović, who had previously lived in Korenica. Malaj and her family returned to Korenica, where they found their home undamaged.⁴⁰⁴ The Lukić Defence argues that this demonstrates that the MUP did not intend for civilians to be permanently displaced from Korenica, and that the expulsion of Malaj and her family, along with the other 30 others, was an isolated action by specific individuals.⁴⁰⁵

152. Witness K90 testified that during April 1999 his VJ unit was involved in ordering Kosovo Albanian villagers to leave their homes in Đakovica/Gjakova municipality.⁴⁰⁶ K90 participated in the "relocation"⁴⁰⁷ of Kosovo Albanians from villages and hamlets around the municipality; specifically, he took part in the ordering out of people from about nine or ten villages in mid-April 1999.⁴⁰⁸

153. K90 testified that, in accordance with his orders, he would address villagers in Serbian and would tell them to go towards Đakovica/Gjakova town and its surrounding villages.⁴⁰⁹ He further explained that the orders his unit received to "relocate" people were never written, but that they were passed down verbally because the authorities had learned from experience in Croatia and Bosnia that such orders should not be in writing.⁴¹⁰ He also stated that orders of that importance would have to be approved at the highest levels as these types of actions could not be ordered by a local commander alone. Moreover, these orders were always only related to Kosovo Albanian villages.⁴¹¹ While there was an exception allowing local commanders to order the relocation of villagers for their own protection, in which case the order would be put in writing, there was no

⁴⁰¹ Lizane Malaj, P2232 (witness statement dated 9 September 2001), p. 2, T. 1308 (9 August 2006), T. 1366 (10 August 2006).

⁴⁰² Lizane Malaj, P2232 (witness statement dated 1 September 2000), p. 3, T. 1307–1308 (9 August 2006), T. 1372 (10 August 2006).

⁴⁰³ Lizane Malaj, P2232 (witness statement dated 9 September 2001), p. 2–3. *See also* Lizane Malaj, T. 1308 (9 August 2006), T. 1368 (10 August 2006).

⁴⁰⁴ Lizane Malaj, P2232 (witness statement dated 9 September 2001), p. 3. *See also* Lizane Malaj, T. 1308 (9 August 2006), T. 1368 (10 August 2006).

⁴⁰⁵ Lukić Final Trial Brief, 7 August 2008 (public version), para. 1118.

⁴⁰⁶ K90, P2652 (witness statement dated 8 December 2002), para. 41.

⁴⁰⁷ K90, P2652 (witness statement dated 8 December 2002), paras. 41–45, T. 9271, 9273 (29 January 2007).

⁴⁰⁸ K90, P2652 (witness statement dated 8 December 2002), para. 44, T. 9297–9298 (29 January 2007).

⁴⁰⁹ K90, T. 9302 (29 January 2007).

⁴¹⁰ K90, P2652 (witness statement dated 8 December 2002), para. 41.

legitimate military rationale for the relocation of these civilians.⁴¹² During his oral testimony, K90 stated that his commander never ordered the “expulsion” of villagers and that rather he was ordered to direct “these people towards Djakovica and the first villages near Djakovica.”⁴¹³ Furthermore, he stated that civilians were not directed towards Albania until after cluster bombs were dropped by NATO.⁴¹⁴ However, when it was suggested to him that the villagers were removed because of NATO bombing and the danger of land invasion, he disagreed with this proposition.⁴¹⁵ Although initially reluctant to say in court that Kosovo Albanian civilians were expelled, he ultimately testified “if you’re [*sic*] clearing up a village, you’re expelling these people”.⁴¹⁶

154. K90 explained that “[a]fter we had ordered a village to leave within an hour it was like an atom bomb had hit the village” due to looting, but clarified that it was not whole units that engaged in such acts, only certain individual VJ members.⁴¹⁷ He also testified that in his unit individuals caught looting were prosecuted and sent to prison.⁴¹⁸

155. K90 acknowledged that his unit was involved in the expulsion/relocation of Kosovo Albanians from Žub/Zhub to the south-west of Đakovica/Gjakova town.⁴¹⁹ He said that the order to remove the inhabitants of Žub/Zhub was received prior to mid-April 1999, although the exact date is unclear.⁴²⁰ However, he also stated that the inhabitants of the village were not told to leave, but came with his unit voluntarily.⁴²¹ K89, also a VJ soldier deployed in the Đakovica/Gjakova area, testified that sometime around 10 or 12 April 1999 he saw eight people who had been killed in Žub/Zhub: men and elderly women in civilian clothes. However, he did not witness their killing.⁴²²

156. Vlatko Vuković refuted the claim that his unit took part in expulsion of civilians from the majority of the villages and hamlets around Đakovica/Gjakova during the first half of April 1999.⁴²³ Vuković stated that on 30 March 1999, at the entrance to Žub/Zhub, he encountered a group of Kosovo Albanian civilians who were leaving for Albania, and that he aided them by

⁴¹¹ K90, P2652 (witness statement dated 8 December 2002), para. 41.

⁴¹² K90, P2652 (witness statement dated 8 December 2002), para. 42.

⁴¹³ K90, T. 9273 (29 January 2007).

⁴¹⁴ K90, T. 9273 (29 January 2007).

⁴¹⁵ K90, T. 9408 (30 January 2007).

⁴¹⁶ K90, T. 9331 (29 January 2007).

⁴¹⁷ K90, P2652 (witness statement dated 8 December 2002), para. 45.

⁴¹⁸ K90, T. 9303–9304 (29 January 2007).

⁴¹⁹ K90, P2652 (witness statement dated 8 December 2002), paras. 41–43, T. 9271, 9273, 9297–9298 (29 January 2007).

⁴²⁰ K90, P2652 (witness statement dated 8 December 2002), para. 43.

⁴²¹ K90, T. 9297–9298 (29 January 2007).

⁴²² K89, T. 9144–9145 (25 January 2007).

⁴²³ Vlatko Vuković, 5D1401 (witness statement dated 5 January 2008), para. 102 (under seal).

arranging for vehicle transport to the border.⁴²⁴ Vuković also testified that on 4 April 1999 he encountered another group of Kosovo Albanian civilians who were leaving Kosovo by way of the Đakovica/Gjakova-Prizren road.⁴²⁵ He stated that these people told him that they were leaving due to the NATO bombing and their fear of the KLA, and thus he denied that his unit participated in the deportation of civilians.⁴²⁶ However, as discussed below, the Chamber does not accept that this was the reason for the departure of large numbers of Kosovo Albanians from Đakovica/Gjakova.

157. Vuković also recounted receiving information from his deputy on 30 March 1999 that 5,000 civilians had left Kosovo through the Ćafa Prushit/Qafa e Prushit border crossing to Albania between 27 and 29 March 1999.⁴²⁷ Vuković testified that the 2nd Motorised Battalion had helped the civilians through a minefield to reach the border safely. He estimated that 12,000 civilians left Kosovo through the 2nd Motorised Battalion's area of responsibility and the Ćafa Prushit/Qafa e Prushit border crossing on 28 to 31 March and 1 and 4 April 1999.⁴²⁸ He further recalled the large-scale movement of civilians along the Đakovica/Gjakova-Prizren road during the same period.⁴²⁹ VJ documentation confirms that civilians were removed from their villages in Đakovica/Gjakova municipality by FRY/Serbian forces at the end of March and beginning of April 1999. The Priština Corps daily combat report of 31 March 1999 reports that, along with the MUP, VJ forces were "channelling" civilians across the border to Albania.⁴³⁰ Goran Jevtović, who wrote the report, explained that this "channelling" meant that they were aiding the civilians to safely cross the border, as they had no legal power to prevent them from leaving the country.⁴³¹ The war diary of the 2nd Motorised Battalion for 2 April 1999 stated that VJ troops moved civilians out of the villages of Goden and Zulfaj, both of which are south west of Đakovica/Gjakova close to the Ćafa Prushit/Qafa e Prushit border crossing. This expulsion was done on the basis that the villagers were "sending light signals" and exhibiting hostile behaviour.⁴³²

158. In relation to these departures, Radovan Zlatković testified that civilians of all nationalities left Đakovica/Gjakova at the same time that the NATO bombing commenced.⁴³³ Zlatković also

⁴²⁴ Vlatko Vuković, T. 21400–21401 (30 January 2008), 5D1442 (witness statement dated 5 January 2008), para. 43.

⁴²⁵ Vlatko Vuković, T. 21394–21395 (30 January 2008), 5D1442 (witness statement dated 5 January 2008), para. 46.

⁴²⁶ Vlatko Vuković, 5D1442 (witness statement dated 5 January 2008), paras. 46, 50.

⁴²⁷ Vlatko Vuković, 5D1442 (witness statement dated 5 January 2008), para. 42. *See also* P2019 (War Diary of the 2nd Motorised Battalion of the 549th Brigade), pp. 3–7 (under seal); Vlatko Vuković, T. 21362 (30 January 2008).

⁴²⁸ Vlatko Vuković, 5D1442 (witness statement dated 5 January 2008), para. 44.

⁴²⁹ Vlatko Vuković, 5D1442 (witness statement dated 5 January 2008), para. 45. *See* P2019 (War Diary of the 2nd Motorised Battalion of the 549th Brigade) (under seal).

⁴³⁰ P2930 (PrK Combat Report, 31 March 1999), para. 4.

⁴³¹ Goran Jevtović, 5D1385 (witness statement dated 24 December 2007), paras. 21–22.

⁴³² P2019 (War Diary of the 2nd Motorised Battalion of the 549th Motorised Brigade), p. 6 (under seal).

⁴³³ Radovan Zlatković, 6D1627 (witness statement dated 13 April 2008), para. 38.

stated that the KLA utilised the difficulties caused by the NATO bombing, such as electricity black-outs, to conduct their activities, and referred to, as an example, an attack on a Red Cross vehicle in Rakovina on 1 April 1999.⁴³⁴

159. With regard to the allegations of destruction of buildings in villages in Đakovica/Gjakova, Sabri Popaj, a Kosovo Albanian from Bela Crkva/Bellacërka in Orahovac/Rahovec municipality, testified that he saw the mosque in Rogovo/Rogova being blown up on 28 March 1999,⁴³⁵ the Muslim holiday of Bajram and the same day that the mosques in Celina and Bela Crkva/Bellacërka were destroyed.⁴³⁶ Popaj explained that all three mosques were located close to each other; Celina and Bela Crkva/Bellacërka were only about one and a half of kilometres apart.⁴³⁷ He did not, however, see who was responsible for the explosion that destroyed the Rogovo/Rogova mosque.

160. As referred to above, the 2nd Motorised Battalion of the 549th Motorised Brigade carried out an operation in Rogovo/Rogova on 30 March 1999.⁴³⁸ Božidar Delić, who was born in Đakovica/Gjakova, denied claims that VJ forces under his control destroyed mosques in a number of locations, including Đakovica/Gjakova.⁴³⁹

161. In his expert report, Andrés Riedlmayer reported on the condition of the Kel Hasan Aga Mosque, in the village of Rogovo/Rogova. The report described the mosque as heavily damaged, with the minaret blown up, extensive burn damage, a large section of the portico roof smashed, and the exterior walls cracked.⁴⁴⁰ According to village residents, “Serb forces” attacked the mosque on 3 April 1999.⁴⁴¹ During his oral testimony Riedlmayer was shown a photograph of the mosque and described the damage thereto.⁴⁴²

a. Findings on allegations relating to villages in Đakovica/Gjakova

162. The Chamber is satisfied that many civilian inhabitants of villages in Đakovica/Gjakova municipality, including Korenica and Guska, left their homes and travelled to Albania in late March and April 1999. However, in relation to the expulsion of villagers from Deva and Babaj

⁴³⁴ Radovan Zlatković, 6D1627 (witness statement dated 13 April 2008), para. 31. See 6D614 (MUP Overview of recorded criminal offences, 1 July 1998 to 20 June 1999), p. 704, para. 603.

⁴³⁵ Sabri Popaj, T. 5678–5679 (1 November 2006). Popaj’s evidence in relation to the mosques situated in Celina, and Bela Crkva/Bellacërka (near to Rogovo/Rogova), is discussed in Section VII.E below.

⁴³⁶ Sabri Popaj, T. 5650, 5678 (1 November 2006).

⁴³⁷ Sabri Popaj, T. 5679–5681 (1 November 2006), 5762 (2 November 2006), P2446 (witness statement dated 14 June 1999), p. 11. See also IC97 (marked P1806 depicting destroyed mosque in Rogovo/Rogova).

⁴³⁸ P2019 (War Diary of the 2nd Motorised Battalion of the 549th Motorised Brigade), p. 5 (under seal).

⁴³⁹ Bodizar Delić, T.19391 (29 November 2007).

⁴⁴⁰ P1784 (Extract from P1789 re Kel Hasan Aka Mosque), p. 1.

⁴⁴¹ See P1784 (Extract from P1789 re Kel Hasan Aka Mosque), pp. 1–2.

Baks/Babaj i Bokës around 29 March 1999, in light of Merita Deda's evidence being based on indirect information that she had heard, the Chamber does not reach any findings. The Chamber further finds that it has not been demonstrated that force was used to compel the villagers of Guska to leave at the end of March 1999. Similarly, it has not been proven that Kosovo Albanians were forcibly displaced from Žub/Zhub.

163. In relation to Korenica, the Chamber relies on the evidence of Lizane Malaj and finds that villagers were forcibly displaced from their homes on 4 April 1999 by members of the MUP. The Chamber accepts Malaj's account that this forcible displacement was not caused by the KLA or NATO bombing. The Chamber notes the evidence, particularly that of K90, Vlatko Vuković, and Goran Jevtović, regarding the displacement of villagers from their homes in the municipality and will deal with the general allegation of the expulsion of villagers from Đakovica/Gjakova municipality in its findings on the Reka/Caragoj valley operation below.

164. Although it has been shown that the Kel Hasan Aga mosque in Rogovo/Rogova was significantly damaged on 28 March 1999, along with two other mosques in its vicinity, the Chamber finds that the identity of those who caused the damage has not been established.

8. Operation in Reka/Caragoj and surrounding valleys (27 and 28 April 1999)

165. The VJ and MUP engaged in a major operation throughout the Reka/Caragoj valley on 27 and 28 April 1999. The Prosecution alleges that during this operation MUP and VJ forces forcibly displaced, murdered, and persecuted Kosovo Albanian civilians in the area. It contends that this operation was primarily and intentionally targeted against the civilian population of the area.⁴⁴³ The Prosecution alleges that a group of more than 300 people were killed by MUP and VJ forces during the operation.⁴⁴⁴ The Lukić and Lazarević Defences dispute this account, and claim that the Reka/Caragoj valley operation was a legitimate operation against the KLA, undertaken because of ongoing hostile KLA activity in the area. The Lukić and Lazarević Defence teams also argue that the Prosecution has failed to show that crimes were carried out during the operation by forces under the command of the individual Accused.⁴⁴⁵

⁴⁴² Andrés Riedlmayer, T. 5469 (30 October 2006).

⁴⁴³ Prosecution Final Trial Brief, 29 July 2008 (public version), para. 451.

⁴⁴⁴ Prosecution Final Trial Brief, 29 July 2008 (public version), para. 456.

⁴⁴⁵ Lukić Final Trial Brief, 7 August 2008 (public version), para. 1069 *et seq.*; Lazarević Final Trial Brief, 29 July 2008 (public version), para. 359 *et seq.*

166. Forensic reports document the exhumation in 2001 of the human remains of a large number of Kosovo Albanians from mass graves in Batajnica and Petrovo Selo in Serbia.⁴⁴⁶ It has been proven that 287 remains were those of Kosovo Albanians who went missing on 27 April 1999 in and around Meja, as recorded by the UNMIK Office of Missing Persons and Forensics. A review of the evidence concerning the bodies from around Meja found at Batajnica indicates that they were dressed in civilian clothing, and where the cause of death could be identified, the large majority were killed by gunshot wounds and were male, aged 15 to 80 years. Of the 17 named victims whose killings are specifically described below by witnesses Merita Deda, Lizane Malaj, and Martin Pnishi, 13 were positively identified as being in the mass graves in Batajnica.

a. Genesis and command of Reka/Caragoj valley operation

167. Although there has been a large amount of evidence provided to the Chamber concerning the Reka/Caragoj valley operation, no written order launching it has been entered into evidence. The Chamber is satisfied that the operation was ordered and commanded orally, and now proceeds to examine the controversial circumstances surrounding it.

168. Around 5:00 p.m. on 22 April 1999 Milutin Praščević, a local MUP official, was killed along with four other policemen in the village of Meja, located close to Đakovica/Gjakova town at the southern end of the Reka/Caragoj valley.⁴⁴⁷ That same day, convoys of MUP forces arrived from Đakovica/Gjakova and fired automatic rifles into the houses along the road.⁴⁴⁸ K90 testified that the killing of the five policemen was the catalyst for a mass deployment of police in the area, and that within days about 400 additional police arrived in about ten buses and a number of civilian vehicles, including members of the PJP and Frenki's men from the State Security Department of the MUP, the JSO. K90 recognised Frenki's men by their uniforms and because they were wearing "the familiar Frenki hats".⁴⁴⁹

169. Nike Peraj testified that shortly after the killing of Praščević an informal meeting took place in a private home in Đakovica/Gjakova town, involving *inter alios* the Head of security for his

⁴⁴⁶ See Annex A; see P2798 (OMPF list of missing persons); P2559 (Addendum to Expert Report); P2415 (Documents related to the exhumation site Batajnica 05: Autopsy reports), pp. 24–29; P2454 (Copies of forensic inspection reports and death certificates produced by the OMPF in Kosovo, in relation to mortal remains transferred from Batajnica and Petrovo Selo); P944 (Copies of forensic inspection reports and death certificates, in relation to mortal remains transferred from Batajnica); P942 (Documents related to the exhumation site Batajnica 02: Autopsy reports); P943 (OMPF Reports); P2394 (Copies of forensic inspection reports and death certificates produced by the OMPF in Kosovo, in relation to mortal remains transferred from Batajnica, prior to 31 March 2005).

⁴⁴⁷ Martin Pnishi, P2236 (witness statement dated 4 April 2000), p. 2, T. 1441–1442 (10 August 2006), T. 1457 (11 August 2006); 6D35 (Criminal Report of the MUP to the Public Prosecutor of Đakovica, 22 April 1999), p. 2.

⁴⁴⁸ Martin Pnishi, T. 1442 (10 August 2006).

⁴⁴⁹ K90, T. 9313–9314 (29 January 2007), P2652 (witness statement dated 8 December 2002), para. 47.

brigade, the 52nd Artillery Rocket Brigade, Sergej Perović, and the Head of the Priština Corps security department, Momir Stojanović.⁴⁵⁰ Peraj recounted that “during the meeting, Stojanović addressed Mičunović [Commander of VJ reservists in Đakovica/Gjakova] and Kovačević [Chief of the Đakovica SUP] ordering them to carry out an operation in the Carragojs [*sic*] Valley where at least 100 ‘heads’ had to be eliminated, and all houses burned in retribution for the killing of Praščević.”⁴⁵¹ According to Peraj, Stojanović referred to his very close friendship with the Accused Pavković and offered to protect Mičunović and Kovačević.⁴⁵² Peraj described Stojanović as a “good acquaintance” of his, who in early March 1999 told him that FRY/Serbian forces were going to carry out an ethnic cleansing operation against the Kosovo Albanian population of Đakovica/Gjakova municipality.⁴⁵³ Peraj stated that he was present at this time because the meeting took place in the same building that he occupied with his security unit.⁴⁵⁴ On cross-examination he clarified that the statement about 100 heads being eliminated was made at the time of Praščević’s funeral and that he did not directly participate in the conversation, but overheard the comments being made.⁴⁵⁵

170. Conversely, Momir Stojanović said that he never attended a meeting of this nature.⁴⁵⁶ He testified that Peraj was “assistant commander for garrison affairs”, a position which would not have led to his involvement in brigade command meetings.⁴⁵⁷ Stojanović opined that Peraj had been blackmailed by the KLA into making false statements.⁴⁵⁸ He also denied having ordered VJ units to expel Kosovo Albanians or burn buildings. He testified that he only became aware of the Reka/Caragoj valley operation on the evening of 28 April 1999, having been informed by the chief of security for the 52nd Artillery Rocket Brigade. He claimed that, despite his position, he was not informed of the operational use of military police, but only received security-related information.⁴⁵⁹

171. However, Stojanović’s claims as to his lack of involvement in the operations of the VJ units are undermined by the fact that the war diary of the 52nd Military Police Battalion records that on 13 April 1999 a specially formed company from this battalion was in fact “tasked” by the Chief of

⁴⁵⁰ Nike Peraj, P2253 (witness statement dated 9 August 2006), para. 59.

⁴⁵¹ Nike Peraj, P2253 (witness statement dated 9 August 2006), para. 59, T. 1673 (15 August 2006).

⁴⁵² Nike Peraj, P2253 (witness statement dated 9 August 2006), paras. 60–61, T. 1780 (16 August 2006).

⁴⁵³ Nike Peraj, P2253 (witness statement dated 9 August 2006), para. 57.

⁴⁵⁴ Nike Peraj, P2253 (witness statement dated 9 August 2006), para. 62.

⁴⁵⁵ Nike Peraj, T. 1779 (16 August 2006).

⁴⁵⁶ Momir Stojanović, T. 19787–19788 (7 December 2007). *See also* Sergej Perović, 5D1396 (witness statement dated 8 January 2008), para. 18.

⁴⁵⁷ Momir Stojanović, T. 19786–19787 (7 December 2007). *See also* Sergej Perović, 5D1396 (witness statement dated 8 January 2008), para. 20.

⁴⁵⁸ Momir Stojanović, T. 19839 (7 December 2007). *See also* Sergej Perović, 5D1396 (witness statement dated 8 January 2008), para. 21.

⁴⁵⁹ Momir Stojanović, T. 19858–19862 (7 December 2007).

the Priština Corps security department to capture a border post in Kamenica.⁴⁶⁰ This demonstrates that Stojanović was closely involved in the operations of, and issuing of tasks to, subordinate units of the Priština Corps, and would be informed of their movements. Furthermore, the Chamber notes that Peraj acknowledged that the discussion he overheard was not part of a formal meeting, and so his position in the VJ would not be a bar to his presence there.

172. Vintar stated that the 52nd Artillery Rocket Brigade was stationed in the Đakovica/Gjakova cultural centre, and not in a private Albanian house where Peraj alleged that the meeting to plan the Reka/Caragoj valley operation took place.⁴⁶¹ Vintar's assertion is partly supported by the war diary of the 52nd Artillery Rocket Brigade, which indicates that it had its headquarters relocated to the Đakovica/Gjakova cultural centre on 1 April 1999.⁴⁶² However, when asked about the reference in the war diary to the Brigade moving from "the Marsenić house" to the cultural centre on 1 April, Vintar stated that he had no knowledge of this house, and provided unconvincing explanations as to why members of his unit could not be at a private house.⁴⁶³

173. Milan Kotur testified that he attended a co-ordination meeting in preparation for the Reka/Caragoj valley operation with the Chief of the Đakovica SUP, Kovačević.⁴⁶⁴ He testified that it was at this meeting that Veroljub Živković, the Commander of the Priština Corps forward command post and Chief of Staff of the Priština Corps, issued the combat command order to the units of the VJ to secure the Reka/Caragoj area.⁴⁶⁵

174. Nike Peraj further testified that on 23 or 24 April Nikola "Dragan" Mičunović told him that the Reka/Caragoj Valley was going to pay a "very high price" for the recent killing of Milutin Prašević. Peraj noted that Prašević had been Mičunović's "godfather".⁴⁶⁶ He suggested that there were three motives behind the Reka/Caragoj valley operation: to eliminate the presence of the KLA in the area, to take revenge for the killing of Prašević, and to kill Kosovo Albanians who could go to Albania for training and return to Kosovo to fight for the KLA.⁴⁶⁷ He testified that the

⁴⁶⁰ P2297 (war log of the 52nd Military Police Battalion), p. 6. *See also* K73, P2440 (witness statement), para. 33, T. 3313–3317 (13 September 2006).

⁴⁶¹ Zdravko Vintar, 5D1394 (witness statement dated 25 December 2007), para. 20. *See also* Sergej Perović, 5D1396 (witness statement dated 8 January 2008), para. 20.

⁴⁶² P1086 (War Diary of the 52nd Artillery Rocket Brigade), p. 9.

⁴⁶³ Zdravko Vintar, T. 21049–21051 (25 January 2008).

⁴⁶⁴ Milan Kotur, T. 20680 (21 January 2008). He did not state when this meeting occurred.

⁴⁶⁵ Milan Kotur, T. 20682–20683 (21 January 2008).

⁴⁶⁶ Nike Peraj, P2253 (witness statement dated 9 August 2006), para. 58.

⁴⁶⁷ Nike Peraj, T. 1731–1732 (16 August 2006).

third motive was the most important, and that it was principally held by the police, paramilitary forces, and the territorial defence forces.⁴⁶⁸

175. Milan Kotur testified that the motive for the operation was to control the KLA threat, rather than revenge for the killing of Prašćević.⁴⁶⁹ Saša Antić, who was then the commander of the 52nd Military Police Battalion, similarly testified that the Reka/Caragoj operation was launched to address the threat of the KLA forces on the border linking up with the KLA located in the Reka/Caragoj valley.⁴⁷⁰ When confronted with a passage from a war diary containing a section stating that the Reka/Caragoj valley operation action went according to plan, Jevtović maintained that there was no written plan or decision for the Reka/Caragoj valley action.⁴⁷¹

176. Witness K73 was deployed in Dečani/Dečan municipality, to the north of Đakovica/Gjakova municipality, in April 1999.⁴⁷² He was told by his commander that his unit was going to “clean” the area of Kosovo Albanians, and send all the Kosovo Albanian civilians towards Korenica so that the police could apprehend KLA members, who were referred to as “terrorists”.⁴⁷³ K73 testified that this was “a cover up story” and that the only purpose of the operation was to cleanse the villages of Kosovo Albanians. He clarified this statement in response to questioning from the Chamber stating that he did not know that the villagers were to be killed, but that he did know that they were to be expelled.⁴⁷⁴ In relation to the KLA, he stated that no member would have willingly gone there as it would have been impossible for them to escape the VJ and MUP forces.⁴⁷⁵

177. However, Saša Antić contested K73’s claims, testifying that the purpose of the Reka/Caragoj valley operation was to prevent the flow or “spillover” of KLA personnel who were being sought by MUP units.⁴⁷⁶ Similarly, Momir Stojanović stated that there were never VJ orders to expel civilians from their villages.⁴⁷⁷

⁴⁶⁸ Nike Peraj, T. 1731–1732 (16 August 2006).

⁴⁶⁹ Milan Kotur, T. 20680–20681 (21 January 2008).

⁴⁷⁰ Saša Antić, 5D1443 (witness statement dated 5 January 2008), para. 21. *See also* Sergej Perović, 5D1396 (witness statement dated 8 January 2008), para. 22.

⁴⁷¹ Goran Jevtović, T. 20415–20416 (16 January 2008); P1086 (War Diary of the 52nd Artillery Rocket Brigade), p. 33.

⁴⁷² K73, P2440 (witness statement), paras. 38, 40.

⁴⁷³ K73, P2440 (witness statement), para. 40, T. 3380 (14 September 2006) (closed session).

⁴⁷⁴ K73, P2440 (witness statement), para. 40, T. 3326 (13 September 2006) (closed session), T. 3382–3383 (14 September 2006) (closed session).

⁴⁷⁵ K73, P2440 (witness statement), para. 40. *See also* K73, T. 3326 (13 September 2006) (closed session), T. 3381–3382 (14 September 2006) (closed session).

⁴⁷⁶ Saša Antić, 5D1443 (witness statement dated 5 January 2008), paras. 22, 23, T. 21156 (28 January 2008).

⁴⁷⁷ Momir Stojanović, T. 19732 (6 December 2007).

178. The witnesses' accounts as to who commanded this operation are also divergent. Nike Peraj stated that the Accused Lazarević co-ordinated it together with Goran Jevtović, from the Priština Corps forward command post in Đakovica/Gjakova town.⁴⁷⁸ Peraj added that he saw Milan Kotur and Novica Stanković representing the Priština Corps Command in the Osek Hilja/Osek Hyle command post, which had a view down the Reka/Caragoj valley, during the operation.⁴⁷⁹ The Chamber notes that on 11 April 1999 the 1st Mixed Artillery Battery of the 52nd Artillery Rocket Brigade took up position in the sector of Osek Hilja/Osek Hyle.⁴⁸⁰ The MUP command post was set up in a nearby village named Dužnje/Dužhnje.⁴⁸¹

179. Milan Kotur disputed Peraj's account, stating that only Živković could issue orders to all the VJ units involved in the operation.⁴⁸² Dragan Živanović, Goran Jevtović, and Vlatko Vuković testified that they were tasked with this operation by an oral order from Živković, as it involved only certain platoons out of brigades rather than whole brigades.⁴⁸³ However, a combat report dated 27 April 1999, sent by the 125th Motorised Brigade to the Priština Corps Command, refers to mopping up the terrain in the Reka/Caragoj valley "in keeping with your decision".⁴⁸⁴ Kotur testified that the decision referred to in this report was that of the Commander of the forward command post, Živković, and not of Lazarević.⁴⁸⁵

b. The conduct of the Reka/Caragoj valley operation

180. On 27 April 1999 VJ and MUP forces deployed at the northern end of the Reka/Caragoj valley swept downwards through the valley, reaching Korenica on 28 April 1999.⁴⁸⁶ The 63rd Parachute Brigade of the VJ proceeded down the valley to the left and parallel with the 52nd Military Police Battalion, and the PJP 73rd Territorial Detachment operated down a parallel line to

⁴⁷⁸ Nike Peraj, T. 1580–1582 (14 August 2006), P2253 (witness statement dated 9 August 2006), para. 63.

⁴⁷⁹ Nike Peraj, T. 1629 (14 August 2006); Nike Peraj, P2253 (witness statement dated 9 August 2006), para. 63.

⁴⁸⁰ P1086 (War Diary of the 52nd Artillery Rocket Brigade), p. 17.

⁴⁸¹ See Nike Peraj, P2253 (witness statement dated 9 August 2006), para. 63; P326 (marked map of Đakovica/Gjakova area).

⁴⁸² Milan Kotur, T. 20736 (21 January 2008).

⁴⁸³ Dragan Živanović, T. 20587–20588 (18 January 2008); Goran Jevtović, T. 20400–20401 (16 January 2008); Vlatko Vuković, 5D1442 (witness statement dated 5 January 2008), paras. 68–70.

⁴⁸⁴ P2024 (125th Motorised Brigade Combat Report to PrK Command, 27 April 1999), p. 2.

⁴⁸⁵ Milan Kotur, T. 20733–20739 (21 January 2008). See also Goran Jevtović, T. 20402 (16 January 2008).

⁴⁸⁶ Nike Peraj indicated that the VJ, MUP forces took positions and moved through the Reka/Caragoj Valley in a south-easterly direction, from around Junik to around Đakovica/Gjakova town, from 27 to 28 April 1999. P326 (Meja killings: map of area marked by witness). This map is similar to those marked by K73 and Antić. However, this map also has the movements of refugee columns marked on it. Jevtović was shown this map of the Reka/Caragoj Valley, marked previously by Nike Peraj, to indicate the size and movement of VJ and MUP troops. Jevtović commented that he thought that the assessment made by Peraj was completely unrealistic. See Goran Jevtović, T. 20407–20409 (16 January 2008); P2023 (125th Motorised Brigade Combat Report, 25 April 1999). Saša Antić indicated this on a map marked as IC172. Saša Antić, T. 21153–21155 (28 January 2008). He stated that the 63rd Parachute Brigade had about 30 to 40 men in the operation. Saša Antić, T. 21176 (28 January 2008).

the right.⁴⁸⁷ Milan Kotur stated that the PJP companies from Đakovica/Gjakova and Prizren, as well as the Military Police Company of the 52nd Military Police Battalion, and a unit of the 63rd Parachute Brigade, participated in searching the terrain.⁴⁸⁸

181. Vlatko Vuković utilised a map of the area to mark the positions of the VJ forces involved in the operation. Consistent with the foregoing, he drew the 52nd Military Police Battalion in the middle of the valley, the 63rd Parachute Brigade to the east side, and the MUP forces to the west.⁴⁸⁹ Additionally, he indicated that the 125th Motorised Brigade was located in the area of Smonica, and that the 52nd Artillery Rocket Brigade was located on the outskirts of Đakovica/Gjakova town, on Čabrat hill, near Osek Hilja/Osek Hyle. Vuković stated that PJP units from Đakovica/Gjakova and Peć/Peja were engaged in searching the terrain and destroying the KLA, while he engaged three shooting squads, a military police squad, and other logistic departments in Korenica as part of the anti-terrorist actions there.⁴⁹⁰

182. Saša Antić, whose description of the conduct of the operation accorded broadly with those of K73, Nike Peraj, and Vlatko Vuković, stated that he used two units from the 52nd Military Police Battalion, numbering 40 to 50 men, to move along from Dobroš/Dobrosh village to Korenica, in order to prevent the flow or “spillover” of KLA personnel that were being searched out by MUP units.⁴⁹¹

183. So far as the roles played by the various VJ and MUP forces are concerned, Goran Jevtović testified that MUP forces were responsible for combat and search operations, while the VJ forces involved were responsible for protecting the flanks of the operation and the Dečani/Dečan-Đakovica/Gjakova road.⁴⁹² However, this evidence conflicts with the account of the operation provided by K73 and Nike Peraj, referred to above, and reports of the 125th Motorised Brigade which stated that part of the brigade was engaged in “mopping up” the Reka/Caragoj valley of KLA members.⁴⁹³ Dragan Živanović testified that this reference to “mopping up” the terrain merely referred to maintaining the blockade of these areas.⁴⁹⁴ However, VJ documentation indicates that VJ units were not limited to securing the flanks of the operation for the MUP units.

⁴⁸⁷ K73, P2440 (witness statement), para. 41; Nike Peraj, P2253 (witness statement dated 9 August 2006); P2023 (125th Motorised Brigade Combat Report, 25 April 1999), para. 65.

⁴⁸⁸ Milan Kotur, T. 20679–20680 (21 January 2008). He testified that the 52nd Military Police Battalion of the VJ joined in in the place of the PJP unit from Peć/Peja, as that unit was unavailable.

⁴⁸⁹ IC174 (marked map of Reka/Caragoj valley, marked by Vuković on 29 January 2008).

⁴⁹⁰ Vlatko Vuković, 5D1442 (witness statement dated 5 January 2008), para. 69.

⁴⁹¹ Saša Antić, 5D1443 (witness statement dated 5 January 2008), paras. 22, 23, T. 21156 (28 January 2008).

⁴⁹² Goran Jevtović, T. 20357 (16 January 2008).

⁴⁹³ P2024 (125th Motorised Brigade Combat Report, 27 April 1999), p. 2; P2025 (125th Motorised Brigade Combat Report, 27 April 1999), p. 2; Dragan Živanović, T. 20589–20590 (18 January 2008).

For example, the war diary of the 549th Motorised Brigade indicates that it operated within the village of Korenica where crimes are alleged to have been committed.⁴⁹⁵ It states that on 27 April 1999, at 6:00 a.m., the brigade blocked off the Korenica village axis, and then at 8:35 a.m. someone from a group of civilians fired on them from within Korenica.⁴⁹⁶ Furthermore, Milan Kotur testified that VJ units were directly engaged in searching the terrain, saying that they remained under the command of the commander of the 63rd Parachute Brigade, while MUP forces were under the command of police commanders.⁴⁹⁷

184. Checkpoints were operated by the FRY/Serbian forces in the area during this operation, as detailed below. One was located on the road from Dobroš/Dobrosh to Meja, which was the road that displaced Kosovo Albanians used to travel south down the Reka/Caragoj valley. The second was located near the crossroads on the road from Korenica to Đakovica/Gjakova town, which was the road used by displaced Kosovo Albanians from Korenica and the surrounding villages.⁴⁹⁸ Radovan Zlatković confirmed that a mixed checkpoint near Meja was set up during the NATO air campaign.⁴⁹⁹ Nike Peraj and K73 stated that the Reka/Caragoj valley operation was designed to expel the civilian population from the area and drive them towards these two checkpoints where the “massacres” occurred.⁵⁰⁰ Martin Pnishi testified that the second of these checkpoints, near Meja, was used to separate the men from the women and children, and to seize identification papers from them, as described below.⁵⁰¹

185. A report from the Priština Corps to the 3rd Army Command and Supreme Command Staff recorded that no soldiers were killed during the entire Reka/Caragoj valley operation, but that 25 were wounded, and that “dozens of terrorists” were killed.⁵⁰² This is consistent with the report of the 125th Motorised Brigade of 29 April 1999, which asserted that the operation had been

⁴⁹⁴ Dragan Živanović, T. 20589 (18 January 2008).

⁴⁹⁵ P2019 (War Diary of the 2nd Motorised Battalion of the 549th Motorised Brigade), p. 11 (under seal).

⁴⁹⁶ P2019 (War Diary of the 2nd Motorised Battalion of the 549th Motorised Brigade), p. 11 (under seal); Vlatko Vuković, 5D1442 (witness statement dated 5 January 2008), para. 71.

⁴⁹⁷ Milan Kotur, T. 20703–20704 (21 January 2008).

⁴⁹⁸ Nike Peraj, T. 1578–1579 (14 August 2006); P326 (Meja Killings, map of area marked by Nike Peraj); IC8 (map of Reka/Caragoj valley, marked by Nike Peraj on 14 August 2006). Peraj described the checkpoint where the convoys of civilians from the Reka/Caragoj valley and Korenica met up as Oriza. The Chamber notes that the towns of Meja and Oriza were joined to each other. *See* Martin Pnishi, T. 1524 (11 August 2006). Therefore, the Chamber considers that Peraj used the name Oriza to describe the crossroads where the roads from Korenica to Đakovica/Gjakova, and the roads from Junik down the Reka/Caragoj valley, meet. Radovan Zlatković also referred to another checkpoint located at Brekovac/Brekovc on the outskirts of Đakovica/Gjakova town. Radovan Zlatković, T. 25293 (15 April 2008). *See also* 3D1128 (3rd Army combat report to General Staff, 4 April 1999), p. 3 (stating the mixed military and police checkpoints had been set up on all important roads from Kosovo).

⁴⁹⁹ Radovan Zlatković, T. 25293 (15 April 2008).

⁵⁰⁰ Nike Peraj, P2253 (witness statement dated 9 August 2006), para. 65; K73, P2440 (witness statement), para. 40, T. 3333 (13 September 2006).

⁵⁰¹ Martin Pnishi, P2236 (witness statement dated 14 March 2002), p. 4.

successfully completed, and that it had suffered no losses apart from one minor wounding.⁵⁰³ In fact, one soldier was killed during the operation, according to the statement of Saša Antić who detailed the killing of a private from his unit in Ramoc.⁵⁰⁴ This tally is consistent with the account given by K73 that a soldier was killed in Ramoc on the night of 27 April in a random attack.⁵⁰⁵

i. Dobroš/Dobrosh and Ramoc

186. K73 recounted that the first village that his unit “sealed” on 27 April was Dobroš/Dobrosh, at the northerly end of the Reka/Caragoj valley, and the “ethnic cleansing” continued from there for two days until they reached Korenica.⁵⁰⁶ On the first day they expelled “hundreds” of Albanian civilians and set their houses on fire.⁵⁰⁷ It was unclear from K73’s evidence whether the arson resulted from a direct order, routine practice, or rogue behaviour.⁵⁰⁸ He stated that it usually occurred as a practice to indicate the position of the various units that were in radio contact, by utilising the smoke plumes created.⁵⁰⁹ He further stated that the civilians, including some handicapped people, begged not to be expelled, but that the commander of the 52nd Military Police Battalion, Saša Antić, ordered them to leave.⁵¹⁰

187. K73 testified that at the end of the first day of the campaign his unit arrived in the village of Ramoc and summoned the villagers out of their houses and into the street. There were about 50 civilians whom K73 was ordered to instruct to go to Korenica. Saša Antić asked these people whether there were any KLA members in the village, which they denied. Antić then removed three men from the group and said that he was going to keep them, along with another Kosovo Albanian man whom they had come upon in the forest, with the unit until the next day.⁵¹¹ The remaining people left in the direction of Korenica. Partially supporting this account, the combat report of the

⁵⁰² 6D1468 (PrK report, 30 April 1999), pp. 1–2.

⁵⁰³ P2026 (125th Motorised Brigade Combat Report, 29 April 1999), p. 2. This report notes that a company of volunteers was also engaged in the operation.

⁵⁰⁴ Saša Antić, 5D1443 (witness statement dated 5 January 2008), para. 26.

⁵⁰⁵ K73, P2440 (witness statement), para. 44, T. 3332 (13 September 2006) (closed session). *See also* P2297 (war log of the 52nd Military Police Battalion), p. 12 (“During the night, we lost Private Željko (son of Rajko) TOŠIĆ from VP/Military Post/8070/5, who was killed in the Ramoc sector”).

⁵⁰⁶ K73, P2440 (witness statement), para. 41.

⁵⁰⁷ K73, P2440 (witness statement), para. 42.

⁵⁰⁸ K73, P2440 (witness statement), para. 42, P2441 (witness statement dated 10 September 2006), para. 8.

⁵⁰⁹ K73, T. 3329 (13 September 2006); *see also* K73, P2440 (witness statement), para. 42, P2441 (witness statement dated 10 September 2006), para. 8.

⁵¹⁰ K73, P2440 (witness statement), para. 42.

⁵¹¹ K73, P2440 (witness statement), para. 43.

125th Motorised Brigade of 27 April 1999 refers to a column of civilians who “want to” pull out of the sector of Ramoc where the VJ were undertaking operations.⁵¹²

188. During the night of 27 April 1999 there was some shooting, and K73 recounted that a VJ soldier and a member of the KLA were killed.⁵¹³ The next morning Antić ordered the troops to burn every house in the village. K73 stated that this was in retaliation for the killing of the VJ soldier.⁵¹⁴

189. Antić ordered his troops on to another village, taking the four detained Kosovo Albanians from Ramoc along. There they joined up with a PJP unit.⁵¹⁵ In spite of begging the VJ soldiers not to hand them over to the PJP, the four were placed in PJP custody.⁵¹⁶ A PJP officer took them into the woods about 20 metres from K73’s position.⁵¹⁷ K73 then overheard the PJP commander remind the officer, over the radio, to untie the men’s hands.⁵¹⁸ K73 thought the men were going to be freed, but,

a minute later we heard multiple gunshot sound[s] from the woods. I saw the officer coming back with the plastic ties [which had bound the hands of the men] in his hands. The officer looked satisfied and said to his commander in front of us: “I was too fair. I gave them a cigarette and they were smoking and crying because they understood what was going to happen”.⁵¹⁹

190. Saša Antić testified that his company spent the night of 27 April on the outskirts of Ramoc village, and that all the villagers, apart from the heads of three households, left and went to Đakovica/Gjakova town due to fear of being bombed by NATO.⁵²⁰ Antić’s account accords with K73’s in describing an attack against the unit that night by the KLA, and the handing over to the PJP of the three elderly Kosovo Albanians that had remained in Ramoc and another that they had found hiding in the forest. However, Antić said that was done to determine whether they had been involved in the attacks of the previous evening.⁵²¹ He denied K73’s claims that four Albanians

⁵¹² P2024 (125th Motorised Brigade Combat Report, 27 April 1999), p. 2.

⁵¹³ K73, P2440 (witness statement), para. 44, T. 3332 (13 September 2006) (closed session). *See also* P2297 (war log of the 52nd Military Police Battalion), p. 12.

⁵¹⁴ K73, T. 3392, 3430–3431 (14 September 2006) (closed session), P2440 (witness statement), para. 44.

⁵¹⁵ K73, T. 3414 (14 September 2006) (closed session), P2440 (witness statement), para. 44.

⁵¹⁶ K73, P2440 (witness statement), para. 45, P2441 (witness statement dated 10 September 2006), para. 6.

⁵¹⁷ K73, P2440 (witness statement), para. 45, T. 3427 (14 September 2006) (closed session).

⁵¹⁸ K73, P2440 (witness statement), para. 45.

⁵¹⁹ K73, P2440 (witness statement), para. 45.

⁵²⁰ Saša Antić, 5D1443 (witness statement dated 5 January 2008), para. 25.

⁵²¹ Saša Antić, 5D1443 (witness statement dated 5 January 2008), paras. 26, 27, T. 21167–21168 (28 January 2008) (private session).

were held hostage and executed in nearby woods and said that K73 was not in a position to see or hear anything about this incident because of his location.⁵²²

191. Antić denied the allegations about the engagement of the VJ in these villages; he stated that its goal was not to “mop up” Kosovo Albanian villages and expel civilians from the area.⁵²³ Antić also denied categorically that houses were intentionally set on fire to “mark the lines attained” or for any other reason.⁵²⁴ He explained that such a practice would not have made sense as it would have made them an easy target for NATO bombing.⁵²⁵

ii. Meja and Korenica

192. The villages of Korenica and Meja sit at the southern end of the Reka/Caragoj valley, to the west of Đakovica/Gjakova town.⁵²⁶ Merita Deda, who had travelled from Guska to Korenica in early April 1999, testified that on 27 April armed and uniformed Serbian forces entered the courtyard of the Markaj family compound in the village and ordered the occupants outside. In the courtyard the men were separated from the women, were beaten, and had their valuables taken. They were also forced to raise three fingers in a salute and shout the word “Serbia” a number of times.⁵²⁷ The women were then ordered to leave. When Deda was about 20 metres from the house, she heard weapons being fired. She turned back to see nine men, including her father, other members of her family, and her neighbours, lying on the ground.⁵²⁸ Deda testified that she never saw any of those men alive again and that some of the bodies were later returned to her from mass graves in Batajnica.⁵²⁹ She stated that none of these men was a KLA member but that her family was targeted because her cousin was a member of the Liberal Political Party of Kosovo.⁵³⁰ Deda was not challenged on cross-examination about whether she had KLA members in her family.

193. In court and in her written statement given to the Prosecution in 2000, Deda indicated that members of the VJ were involved in the beatings and shootings in the Markaj courtyard on 27

⁵²² Saša Antić, 5D1398 (witness statement dated 5 January 2008), para. 33 (under seal).

⁵²³ Saša Antić, 5D1398 (witness statement dated 5 January 2008), paras. 20, 29 (under seal), 5D1443 (witness statement dated 5 January 2008), para. 17.

⁵²⁴ Saša Antić, 5D1398 (witness statement dated 5 January 2008), para. 31 (under seal), T. 21170 (28 January 2008) (private session),

⁵²⁵ Saša Antić, 5D1398 (witness statement dated 5 January 2008), para. 31 (under seal).

⁵²⁶ P615 (Kosovo Atlas), p. 9.

⁵²⁷ Merita Deda, T. 1400–1401, 1427 (10 August 2006), P2233 (witness statement dated 8 April 2000), p. 3.

⁵²⁸ Merita Deda, P2233 (witness statement dated 8 April 2000), p. 3, T. 1400–1401 (10 August 2006).

⁵²⁹ Merita Deda, T. 1402 (10 August 2006). The remains of Mark Deda, 47 years old, Pashk Deda, 42 years old, Linton Deda, 16 years old, Prend Markaj, 60 years old, Pashuk Markaj, 38 years old, Mark Markaj, 65 years old, Bekim Markaj, 23 years old, and Petrit Markaj, 27 years old, were found in the mass graves at Batajnica, as discussed in the annexes below. However, the body of the Skender Pjetri was not identified at Batajnica.

⁵³⁰ Merita Deda, P2233 (witness statement dated 8 April 2000), p. 4.

April. When confronted by the undated record of an interview she gave to members of the International Crisis Group, wherein she had said that the perpetrators were “Serb police”⁵³¹, she maintained that the individuals in her courtyard were VJ members.⁵³² She described them as wearing different uniforms, including green and brown camouflage, black masks, scarves, bandanas, and ribbons.⁵³³

194. Lizane Malaj similarly testified that at around 7:30 a.m. on 27 April 1999 armed Serbian forces surrounded her house in Korenica and then entered the courtyard. These men were dressed in military, police, and paramilitary uniforms.⁵³⁴ They ordered her son, Blerim, on to the ground and did the same with the other men found in the house, including her husband, Vat Malaj, her nephew, Arben Kabashi, her brother, Nikoll Kabashi, Kabashi’s son—and thus Malaj’s nephew—, Andrush Kabashi, and her nephew Engjelli.⁵³⁵ They then told the women to leave and go to Albania.⁵³⁶ Malaj did not want to leave, but was compelled to do so. When she and the other women were about 50 metres from the house, she heard multiple shots coming from the direction of the house and her son crying, and she looked back to see her house in flames. Malaj recounted that she tried to go back, but that a policeman prevented her from returning.⁵³⁷ She stated that none of the male members of her family were in the KLA, and that there were no weapons in the house.⁵³⁸

195. Like Deda, Malaj testified that she later received the bodies of some of her male relatives from whom she had been separated.⁵³⁹ She stated that “about 73” of the men from village were still missing when she testified.⁵⁴⁰ In addition to her immediate relatives, Malaj testified that other members of her village had been killed, stating that “Klaudia the daughter of Maria Malaj, she was killed ... as she was walking, behind her back”.⁵⁴¹

⁵³¹ See 3D2 (International Crisis Group Database Incidents – Merita Deda), p. 1.

⁵³² Merita Deda, T. 1400–1412, 1421 (10 August 2006), P2233 (witness statement dated 8 April 2000), p. 4.

⁵³³ Merita Deda, T. 1401, 1403, 1427, 1428–1429 (10 August 2006), P2233 (witness statement dated 8 April 2000), pp. 3–4.

⁵³⁴ Lizane Malaj, T. 1310, 1319, 1322 (9 August 2006). See Lizane Malaj, P2232 (witness statement dated 9 September 2001), p. 3.

⁵³⁵ Lizane Malaj, T. 1310 (9 August 2006). See also Lizane Malaj, P2232 (witness statement dated 1 September 2000), p. 3–4.

⁵³⁶ Lizane Malaj, T. 1310 (9 August 2006).

⁵³⁷ Lizane Malaj, T. 1311 (9 August 2006), P2232 (witness statement dated 1 September 2000), p. 4.

⁵³⁸ Lizane Malaj, P2232 (witness statement dated 1 September 2000), p. 4, T. 1359 (10 August 2006).

⁵³⁹ Lizane Malaj, T. 1314–1315 (9 August 2006). See also 6D13 (Penal Denunciation Letter, 28 August 2001); Lizane Malaj, T. 1389 (10 August 2006). The bodies of Blerim Malaj, Nikoll Kabashi, Arben Kabashi, Andrush Kabashi, and Vat Malaj were amongst those found at the Batajnica mass graves, as discussed in the annexes below. However, the body of her nephew, Engjelli, for whom no surname was provided, was not identified at Batajnica.

⁵⁴⁰ Lizane Malaj, P2232 (witness statement dated 9 September 2001), p. 3.

⁵⁴¹ Lizane Malaj, T. 1389 (10 August 2006).

196. Malaj described the “paramilitaries” involved as having many weapons, beards, masks, and ribbons on their arms, and wearing a blue to brown uniform. She described the policemen as wearing both blue and light blue police uniforms with ribbons on their arms. She described other forces present as army, wearing brown green uniforms and having insignia on their arms.⁵⁴² Some members of all three groups wore masks. With respect to this description and Malaj’s reference to VJ forces as being involved, the Lazarević Defence argues that it conflicts with other evidence, such as that of K73, who stated that his own unit never wore ribbons during operations in 1999, and the evidence that the VJ wore olive-green uniforms rather than green-brown uniforms.⁵⁴³ However, the Chamber notes that Malaj distinguished between those wearing ribbons and the others wearing brown green uniforms whom she described as VJ members.

197. Vlatko Vuković confirmed that some units of the 2nd Battalion of the 549th Motorised Brigade were sent to the area of Korenica on 27 and 28 April 1999, on the oral order of Živković.⁵⁴⁴ However, in contrast to the accounts of Malaj and Deda, Vuković claimed that there were no soldiers from his unit in Korenica at 6:00 a.m. on 27 April.⁵⁴⁵ Vuković also disputed the allegation that civilians were rounded up in Korenica by soldiers at 6:30 that morning.⁵⁴⁶ When he was shown the war diary of the 549th Motorised Brigade, which referred to securing the cemetery in Korenica at 6:00 a.m. on 27 April, he disputed the meaning of the entry.⁵⁴⁷ He testified that the cemetery is on the outskirts of the village.⁵⁴⁸ Vuković also refuted the allegation that firing occurred in Korenica at 7:30 a.m. the same day.⁵⁴⁹ He stated that the first clash between his unit and the KLA occurred at 8:30 a.m., near this cemetery, when a platoon engaged a group of KLA members who were firing from within a group of civilians.⁵⁵⁰

198. Vuković testified that, when his unit was located outside Korenica on 27 and 28 April, they saw groups of civilians leaving the village in the direction of the VJ forces. When asked what the villagers were fleeing from, he attributed this to the KLA in the village.⁵⁵¹ However, the Chamber notes that this is inconsistent with his account of the VJ forces being fired on from within the group

⁵⁴² Lizane Malaj, T. 1318–1321 (9 August 2006).

⁵⁴³ Lazarević Final Trial Brief, 29 July 2008 (public version), para. 398; K73, T. 3307 (13 September 2006) (closed session).

⁵⁴⁴ Vlatko Vuković, T. 21332–21333 (29 January 2008).

⁵⁴⁵ Vlatko Vuković, T. 21333 (29 January 2008), T. 21411–21412 (30 January 2008).

⁵⁴⁶ Vlatko Vuković, T. 21413–21414 (30 January 2008).

⁵⁴⁷ P2019 (War Diary of the 2nd Motorised Battalion of the 549th Motorised Brigade), p. 11 (under seal); Vlatko Vuković, T. 21415–21417 (30 January 2008).

⁵⁴⁸ Vlatko Vuković, T. 21408 (30 January 2008).

⁵⁴⁹ Vlatko Vuković, T. 21412–21413 (30 January 2008).

⁵⁵⁰ Vlatko Vuković, 5D1442 (witness statement dated 5 January 2008), para. 71, T. 21412–21414 (30 January 2008); P2019 (War Diary of the 2nd Motorised Battalion of the 549th Motorised Brigade), p. 11 (under seal).

⁵⁵¹ Vlatko Vuković, T. 21408 (30 January 2008).

of civilians, and with the account in the war diary of the 2nd Mechanised Brigade of the 549th Motorised Brigade, which stated that one member of the group of civilians fired upon the VJ.⁵⁵²

199. K73's evidence supports the accounts of Deda and Malaj that VJ and MUP forces were present in Korenica during the Reka/Caragoj valley operation, and engaged in criminal activity. He testified that, following the night spent in Ramoc, on 28 April his unit was ordered to Korenica.⁵⁵³ On approaching the village he saw that many of the houses were burning.⁵⁵⁴ Saša Antić disputed the assertion that K73 could have seen the village ablaze, claiming that he could not see Korenica because he was in the forest 300 metres northwest of the village.⁵⁵⁵

200. However, K73 testified that he continued to Korenica, which was devoid of civilians but full of PJP personnel.⁵⁵⁶ He was surprised by the absence of civilians. When he asked one of the policemen where the civilians were, he was told that the Kosovo Albanians had been sent "out on a trip".⁵⁵⁷

201. Consistent with that evidence from K73 is the evidence of K90, who testified that on 27 April 1999 the VJ, including his own unit, received the order to secure the area around the villages of Meja and Korenica. Once the area was secured, a large number of policemen were deployed, entering into villages and randomly firing into homes. K90 explained that, as soon as the villagers left their homes, the houses would be set alight.⁵⁵⁸ He further testified that Korenica was "cleared up", people were expelled, and there was no gun-fire against the police as the area was surrounded by VJ forces.⁵⁵⁹ He testified that three soldiers from his unit were wounded, but added that he thought this was from police fire, as the KLA was not present in the area.⁵⁶⁰

202. Martin Pnishi testified that at around 7:00 a.m. on 27 April 1999 large numbers of police, military, and other forces appeared unexpectedly in Meja.⁵⁶¹ Two MUP personnel accompanied by

⁵⁵² See P2019 (War Diary of the 2nd Motorised Battalion of the 549th Motorised Brigade), p. 11 (under seal).

⁵⁵³ See K73, T. 3421 (14 September 2006) (closed session).

⁵⁵⁴ K73, P2440 (witness statement), para. 46, T. 3333 (13 September 2006) (closed session).

⁵⁵⁵ Saša Antić, T. 21157–21160 (28 January 2008) (private session). See K73, P2440 (witness statement), para. 46.

⁵⁵⁶ K73, T. 3437–3438 (14 September 2006) (closed session).

⁵⁵⁷ K73, T. 3333–3334 (13 September 2006) (closed session), T. 3424 (14 September 2006) (closed session). See also K73, T. 3394–3395 (14 September 2006) (closed session).

⁵⁵⁸ K90, P2652 (witness statement dated 8 December 2002), para. 48, T. 9314–9315, 9328–9329 (29 January 2007).

⁵⁵⁹ K90, P2652 (witness statement dated 8 December 2002), paras. 62–63, T. 9314–9315, 9328–9329 (29 January 2007).

⁵⁶⁰ K90, P2652 (witness statement dated 8 December 2002), paras. 62–63, T. 9450 (30 January 2007).

⁵⁶¹ Martin Pnishi, P2236 (witness statement dated 14 March 2002), p. 2–3, T. 1443 (10 August 2006). Pnishi stated that the VJ had tanks stationed on Čabrat Hill, as mentioned above. However, during cross-examination, K72 stated that there were no tanks on Čabrat hill, but rather Pragas and other military vehicles. K72, T. 5344–5345 (26 October 2006).

two “Russian soldiers” told him to leave his house with his family as they were about to burn it.⁵⁶² The MUP officers wore masks and green camouflage uniforms and one of them had ranks on his uniform, including a star and a bar. Pnishi knew that they were local MUP officers. The other two men were speaking a language he identified as Russian,⁵⁶³ but wore the same grey trousers and jackets as the Serbian paramilitary forces. They had machine guns and big knives.⁵⁶⁴ Pnishi stated that the “soldiers” had insignia on their shoulders.⁵⁶⁵ The MUP members received an order on the radio and then took a Kosovo Albanian whom he knew, Kole Duzhmani, to the neighbouring house, which was owned by his brother. Pnishi heard gun shots and then saw the house being set on fire. He saw Duzhmani’s bullet-ridden body 19 days later.⁵⁶⁶ Pnishi explained the lack of degradation of the corpse by saying that it had been preserved because of the smoke from the fire.⁵⁶⁷

203. At around 10:30 a.m. that same day police, soldiers, and “paramilitaries” gathered near the school. He took his wife to his godfather’s house, which was further from the crossroads.⁵⁶⁸ From there Pnishi had a view of the bridge across the Trava River, which was about 50 metres away. The Chamber notes that, when cross-examined on the basis of a map drawn by the Ojdanić Defence, Pnishi initially hesitated in his account but, after stating that aspects of the map were inaccurate, recounted events consistently with his witness statement.⁵⁶⁹ He saw Serb policemen march seven young men to the bridge. One officer then killed them all with a machine gun.⁵⁷⁰ Pnishi stated that one of the policemen in this group was Predrag Stojanović, a member of the Đakovica/Gjakova police force.⁵⁷¹ The seven bodies were collected on 2 May 1999 and taken to the Đakovica/Gjakova public cemetery by local Albanian “collaborators”.⁵⁷²

⁵⁶² Martin Pnishi, P2236 (witness statement dated 14 March 2002), p. 3.

⁵⁶³ See Martin Pnishi, T. 1497 (11 August 2006).

⁵⁶⁴ Martin Pnishi, P2236 (witness statement dated 14 March 2002), p. 3. Pnishi elaborated on the uniforms during direct-examination, saying that the Russians wore a “blue to grey colour uniform”. See Martin Pnishi, T. 1456 (11 August 2006), T. 1523–1524 (11 August 2006).

⁵⁶⁵ Martin Pnishi, P2236 (witness statement dated 14 March 2002), p. 5.

⁵⁶⁶ Martin Pnishi, P2236 (witness statement dated 14 March 2002), p. 4; Martin Pnishi, T. 1444–1447 (10 August 2006).

⁵⁶⁷ Martin Pnishi, T. 1447 (10 August 2006), T. 1515–1516 (11 August 2006).

⁵⁶⁸ Martin Pnishi, P2236 (witness statement dated 4 April 2000), p. 4, T. 1480–1481 (11 August 2006); IC6 (Marked map of Meja).

⁵⁶⁹ Martin Pnishi, T. 1464 (11 August 2006); 3D27 (Map of Meja area by Ojdanić Defence).

⁵⁷⁰ Martin Pnishi, P2236 (witness statement dated 4 April 2000), p. 4. See also Martin Pnishi, T. 1448 (10 August 2006), T. 1493 (11 August 2006).

⁵⁷¹ Martin Pnishi, T. 1448 (10 August 2006).

⁵⁷² Martin Pnishi, P2236 (witness statement dated 4 April 2000), p. 4, T. 1526 (11 August 2006).

204. On 27 April 1999 Nike Peraj went from Đakovica/Gjakova town to the area around Meja in order to provide assistance to local people he had heard were being held by the police.⁵⁷³ He testified that there was a checkpoint controlled by the MUP beside the Hasanaj house and meadow.⁵⁷⁴ This was the first checkpoint on the route that civilians displaced during the Reka/Caragoj valley operation had to cross, as referred to above.⁵⁷⁵ When he passed the checkpoint he saw approximately 20 male corpses lying there.⁵⁷⁶ The heads of these corpses bore powder burns, which indicated close-range execution-style killings.⁵⁷⁷ After seeing these bodies, Peraj saw that a MUP officer whom he recognised had lined up 12 Kosovo Albanians next to the Hasanaj house. However, this MUP officer released these individuals when Peraj and Sergej Perović, who was with him at the time, called for another VJ unit to come and talk to him.⁵⁷⁸ Peraj stated that, along with another VJ officer, he continued to Osek Hilja and saw 11 more male corpses between the ages of 20 and 50, about 700 metres from the Shyt Hasanaj meadow.⁵⁷⁹ Pnishi also testified that sometime in June 1999 he went to a place near Shyt Hasanaj meadow, that had been used as an execution site, and there saw traces of approximately 74 burned bodies.⁵⁸⁰ K73 was asked whether he saw any bodies at checkpoints in the Reka/Caragoj valley area when he drove from Korenica to Junik on 28 April. He denied having seen any such bodies but added that his view of the checkpoints was from a moving bus.⁵⁸¹ The Trial Chamber does not consider this evidence to undermine the eye witness testimony of Peraj and Pnishi.

205. The then Assistant Head of the VJ Security Administration, Aleksandar Vasiljević, gave evidence partially supporting Nike Peraj's account. Vasiljević testified that Sergej Perović, whose evidence is discussed below, reported to him that 20 corpses had been found in a bus station in Đakovica/Gjakova.⁵⁸² It is unclear when exactly Vasiljević received this report, but the fact that he rejoined the VJ on 27 April 1999 indicates that it was on or after that date. Perović informed Vasiljević that in Đakovica/Gjakova a MUP colonel named Kovačević headed a group of about 15

⁵⁷³ Nike Peraj, P2253 (witness statement dated 9 August 2006), para. 68. Although Peraj's written statements indicate that he went to Meja with major Živković, he stated that he had actually gone with captain Perović, whose identity Perović asked Peraj to keep secret. *See* Nike Peraj, T. 1685–1687 (15 August 2006) (private session).

⁵⁷⁴ The Chamber notes that the towns of Meja and Oriza were joined to each other. Martin Pnishi, T. 1524 (11 August 2006).

⁵⁷⁵ Nike Peraj, T. 1578–1579 (14 August 2006); P326 (marked map of the Đakovica/Gjakova area).

⁵⁷⁶ Nike Peraj, P2253 (witness statement dated 9 August 2006), para. 73.

⁵⁷⁷ Nike Peraj, P2253 (witness statement dated 9 August 2006), para. 74, P2248 (witness statement dated 15 February 2001), p. 17.

⁵⁷⁸ Nike Peraj, P2253 (witness statement dated 9 August 2006), paras. 76–79, T. 1677 (15 August 2006).

⁵⁷⁹ Nike Peraj, P2253 (witness statement dated 9 August 2006), para. 79.

⁵⁸⁰ Martin Pnishi, P2236 (witness statement dated 4 April 2000), p. 5.

⁵⁸¹ K73, T. 3422–3423 (14 September 2006).

⁵⁸² Aleksandar Vasiljević, T. 8698 (19 January 2007) (private session), T. 9034 (24 January 2007).

men known as Legija.⁵⁸³ These men were reported to have been involved in the murder of the 20 Kosovo Albanians as well as the expulsion of Kosovo Albanians from their houses and the theft of their money. Vasiljević testified that at a meeting of the Priština Corps security department he was provided with information consistent with that which Perović had provided to him, which confirmed that these acts had occurred.⁵⁸⁴

206. Sergej Perović refuted several aspects of Peraj's evidence, but accepted that he was with him on 27 April.⁵⁸⁵ He confirmed that he agreed to accompany Peraj to visit his house near Đakovica/Gjakova town, but claimed to have been stopped by a group of MUP members after Brekovac/Brekoc, on the road to Meja village, and to have gone no further with Peraj.⁵⁸⁶ Furthermore, he denied having seen 20 bodies at a police checkpoint at the Hasanaj house, and denied the existence of a police checkpoint or knowing anyone called Hasanaj.⁵⁸⁷

207. While confirming that his job entailed gathering information on criminal activity by members of the 52nd Artillery Rocket Brigade, Perović denied reporting to Vasiljević that he had located 20 dead bodies by the bus station in Đakovica/Gjakova.⁵⁸⁸ Rather, he testified that in June 1999, at a meeting with Stojanović and Vasiljević, he was asked to verify whether a paramilitary group called "Legija" led by a colonel named Kovačević was operating in Kosovo. After enquiring, he was unable to confirm these allegations.⁵⁸⁹

208. As described above, a second checkpoint was located beside the crossroads on the road leading from Korenica to Đakovica/Gjakova town, where the road to Meja branches off.⁵⁹⁰ It was the checkpoint encountered by people displaced from Korenica travelling to Đakovica/Gjakova town.⁵⁹¹ Martin Pnishi testified that he saw that at the checkpoint Kosovo Albanian men were separated from women and children, and some were sent to the school at the entrance of the village

⁵⁸³ Aleksandar Vasiljević, T. 9034 (24 January 2007), P2594 (witness statement dated 26 October 2006), para. 30 (under seal).

⁵⁸⁴ Aleksandar Vasiljević, T. 9032 (24 January 2007).

⁵⁸⁵ Serej Perović, 5D1396 (witness statement dated 8 January 2008), para. 24.

⁵⁸⁶ Serej Perović, 5D1396 (witness statement dated 8 January 2008), para. 24, T. 21091–21094 (25 January 2008).

⁵⁸⁷ Sergej Perović, T. 21091–21094 (25 January 2008).

⁵⁸⁸ Sergej Perović, T. 21094 (25 January 2008).

⁵⁸⁹ Sergej Perović, T. 21083 (25 January 2008).

⁵⁹⁰ Dragan Zlatković, T. 25292–25294 (15 April 2008); Nike Peraj, T. 1578–1579 (14 August 2006); P326 (marked map of Đakovica/Gjakova area).

⁵⁹¹ Nike Peraj, T. 1578–1579 (14 August 2006); P326 (marked map of Đakovica/Gjakova area); *see also* K90, P2652 (witness statement dated 8 December 2002), paras. 54–55, 58–59; Martin Pnishi, T. 1448–1449 (10 August 2006). *See also* IC120 (marked map of Đakovica/Gjakova by K90); IC3 (marked map of Đakovica/Gjakova by Martin Pnishi).

on the left side. He also saw that the Kosovo Albanians were forced to discard their identification papers.⁵⁹²

209. On 27 and 28 April, K90 saw members of the MUP stopping Kosovo Albanians passing this checkpoint and separating the men from the women and stealing money from them.⁵⁹³ From the VJ command post on the road between Korenica and Đakovica/Gjakova town at the crossroads with the turn off to Meja he was able to see a large number of police in the area, as well as around 500 displaced Albanians, who seemed to be “coming from everywhere”, and “houses burning all around”.⁵⁹⁴ Vlatko Vuković also testified that he could see civilians passing along the road from the command post, but stated that these were small groups.⁵⁹⁵

210. According to K90 women and children passing through the checkpoint were allowed to continue along the road towards Đakovica/Gjakova town, whereas any men were taken in groups, at gunpoint, to a compound located nearby.⁵⁹⁶ There they were “herded” into a house, followed by the police. Although K90 could no longer see them, he heard automatic gunfire that continued for a long time, following which the police left the building. K90 testified that “I could understand why they fired for so long. It was very clear to me what was going on, the Albanian men had just been murdered.”⁵⁹⁷ He saw at least four groups of men taken to the compound in this manner. He then entered the compound and looked into one of the houses and saw dead bodies. In his witness statement he stated that he could not tell how many bodies there were, but that they covered the floor.⁵⁹⁸ However, during his oral testimony he asserted that “there were, say, not more than three or four people lying on the floor”.⁵⁹⁹ While at the compound, K90 spoke to a policeman who told him that they were slaughtering “Šiptars”, and made it clear that “it was none of [their] business what they were doing”.⁶⁰⁰ K90 then went back to the checkpoint at the crossroads close to the VJ command post, which was further along the main road to Korenica, and saw a group of about ten men walking towards him from the direction of the command post. These men were being forced to sing a Serbian nationalistic song and were taken to the compound from where K90 again heard

⁵⁹² Martin Pnishi, P2236 (witness statement dated 14 March 2002), p. 4.

⁵⁹³ K90, P2652 (witness statement dated 8 December 2002), paras. 54–55, 58–59, T. 9328–9329 (29 January 2007). *See also* IC120 (marked map of Đakovica/Gjakova by K90).

⁵⁹⁴ K90, P2652 (witness statement dated 8 December 2002), paras. 52–53, T. 9270–9271 (29 January 2007).

⁵⁹⁵ Vlatko Vuković, T. 21407–21408 (30 January 2008); IC179 (marked map of Đakovica area).

⁵⁹⁶ K90, P2652 (witness statement dated 8 December 2002), paras. 54–55, 58–59, 65.

⁵⁹⁷ K90, P2652 (witness statement dated 8 December 2002), paras. 54–55, 58–59, 65.

⁵⁹⁸ K90, P2652 (witness statement dated 8 December 2002), para. 60.

⁵⁹⁹ K90, T. 9470 (31 January 2007).

⁶⁰⁰ K90, P2652 (witness statement dated 8 December 2002), para. 60, T. 9330–9331 (29 January 2007).

weapons firing.⁶⁰¹ K90 reported what he had seen to his superior who reacted angrily, but did not report about the incident to anyone.⁶⁰²

211. On 27 or 28 April 1999 K90 was instructed to go to Meja to escort civilians through Đakovica/Gjakova so that they would not be killed by the police. Along with another soldier, he escorted over 100 people from Meja to the bridge just before Đakovica/Gjakova town. There was a checkpoint at the bridge, where the people were allowed to cross because K90 told the police and soldiers manning the point that that was the order.⁶⁰³ Vuković refuted that K90 was ordered to accompany civilians for their protection from the MUP forces, and testified that K90 was never at the VJ command post on the road between Korenica and the Meja crossroads.⁶⁰⁴

212. Nike Peraj testified that, as he and Perović moved around the area of Meja on 27 April 1999, they arrived at a checkpoint at the crossroads just before Meja (the second checkpoint) where they were stopped by Serb police and paramilitaries.⁶⁰⁵ By an adjacent building Peraj saw the corpses of four men, aged between 20 and 30, whose bodies were marked by blood and boot prints.⁶⁰⁶ Perović, however, denied having seen four dead bodies with Peraj at this checkpoint on 27 April 1999.⁶⁰⁷

213. On cross-examination Peraj stated that regular VJ forces were located near the tyre shop at the edge of Meja, 400 metres away from the checkpoint, on 27 April 1999.⁶⁰⁸ According to Peraj, professional members of the VJ did not carry out the killings at this checkpoint and in fact some of these soldiers approached the police and paramilitaries there in order to prevent them killing Kosovo Albanians.⁶⁰⁹ Consistent with that, Martin Pnishi saw police, soldiers, and paramilitary members at this checkpoint in Meja and around the area.⁶¹⁰

214. Although Peraj testified that VJ personnel were not at the checkpoint in Meja, he testified more generally that “those taking part in the Meja massacres were the VJ, MUP, local police, and paramilitaries”. He added that Mičunović, Kotur, and Kovačević from the MUP were the people

⁶⁰¹ K90, P2652 (witness statement dated 8 December 2002), para. 65.

⁶⁰² K90, P2652 (witness statement dated 8 December 2002), para. 61, T. 9331 (29 January 2007).

⁶⁰³ K90, P2652 (witness statement dated 8 December 2002), para. 64.

⁶⁰⁴ Vlatko Vuković, T. 21346–21347 (29 January 2008) (private session).

⁶⁰⁵ Nike Peraj, P2253 (witness statement dated 9 August 2006), para. 68, T. 1576 (14 August 2006).

⁶⁰⁶ Nike Peraj, P2253 (witness statement dated 9 August 2006), para. 69.

⁶⁰⁷ Sergej Perović, T. 21091–21094 (25 January 2008).

⁶⁰⁸ Nike Peraj, T. 1605 (14 August 2006), T. 1678 (15 August 2006), P2253 (witness statement dated 9 August 2006), para. 65. *See also* IC8 (Map of Caragoj Valley marked by Peraj on 14 August 2006).

⁶⁰⁹ Nike Peraj, T. 1678 (15 August 2006).

⁶¹⁰ Martin Pnishi, P2236 (witness statement dated 14 March 2002), p. 4.

most responsible for the massacres.⁶¹¹ Peraj's evidence indicates that he did not consider the territorial defence forces to be part of the VJ. However, he acknowledged that these units were subordinate to military districts.⁶¹² As noted above in Section VI.A, military territorial defence units, which were composed of VJ reservists, were part of the VJ structure. The involvement of MUP and VJ members in the killings carried out in and around Meja on 27 April is addressed below.

215. In a witness statement Nike Peraj referred to the incidents in Korenica and Meja as "massacres", and to a list that he saw being typed by Vintar on the night of 27 April, which stated that 78 KLA members had been killed in Korenica and 68 in Meja.⁶¹³ However, later in his witness statement he described seeing this list of names four days after the events at Meja.⁶¹⁴ Vintar denied typing any such report.⁶¹⁵ Noting the discrepancy in the dates provided by Peraj, the Chamber does not make any finding as to the existence of this list.

(A) Movement, discovery, and examination of bodies

216. An Office of Missing Persons and Forensics (OMPF) was set up by UNMIK in June 2002, with a mandate to determine the whereabouts of missing persons from Kosovo, to identify their remains, and to return those remains to the families of the missing.⁶¹⁶ The OMPF, in conjunction with the ICRC, created and regularly updated a "consolidated list of missing persons", using information provided by the ICRC, the UNMIK police, the OSCE, and various family associations, which was intended as an exhaustive record of all those unaccounted for after the Kosovo conflict.⁶¹⁷ This list, as it stood in October 2006, was admitted into evidence in the present case without objection by the Defence, through OMPF Head Jose-Pablo Baraybar.⁶¹⁸ It records that over 300 people went missing from the area of Meja on 27 April 1999. The Chamber is satisfied that the list was an appropriate and reliable basis on which further investigations were conducted when human remains were exhumed from mass graves in Batajnica, near Belgrade, and examined from 2001 onwards. Reports on these examinations confirm that remains of 287 people who went missing from the area of Meja, and who are listed in Schedule H of the Indictment, were identified

⁶¹¹ Nike Peraj, P2253 (witness statement dated 9 August 2006), paras. 89–92, T. 1678, 1688 (15 August 2006); Martin Pnishi P2236 (witness statement dated 14 March 2002), p. 4.

⁶¹² Nike Peraj, P2253 (witness statement dated 9 August 2006), para. 12, T. 1594 (14 August 2006), 1679 (15 August 2006).

⁶¹³ Nike Peraj, P2253 (witness statement dated 9 August 2006), para. 83.

⁶¹⁴ Nike Peraj, P2253 (witness statement dated 9 August 2006), para. 86.

⁶¹⁵ Zdravko Vintar, 5D1394 (witness statement dated 25 December 2007), para. 22.

⁶¹⁶ Jose-Pablo Baraybar, P2794 (witness statement dated 1 November 2006), p. 2.

⁶¹⁷ Jose-Pablo Baraybar, P2794 (witness statement dated 1 November 2006), p. 6.

⁶¹⁸ P2798 (OMPF list of missing persons).

through DNA testing and comparison with surviving family members.⁶¹⁹ These 287 included the 13 people who were named by the eye-witnesses as having been killed in Korenica, described above. The Chamber is satisfied, therefore, that the attacks in and around Meja and Korenica on 27 April 1999, described by the above witnesses, involved the killing of at least 287 Kosovo Albanians, each discussed in Annex A to this Judgement.

217. The Prosecution alleges that subsequent efforts on the part of the FRY/Serbian forces to remove and conceal the bodies prove that these killings were carried out as part of a joint operation by the VJ and MUP.⁶²⁰ These efforts are now discussed.

218. Nike Peraj testified that on 29 April he saw two trucks carrying approximately 40 bodies heading towards Đakovica/Gjakova town from Meja. The bodies were covered by tarpaulins, but he saw body parts when the wind lifted the covers. These trucks were accompanied by a police escort.⁶²¹ According to Peraj, the “head of the commission of cleansing of the area and for the collection of bodies” was a senior sanitary inspector and worked with a VJ major on the commission called Ljubiša Živković.⁶²² He stated that the VJ and MUP were looking for bulldozers after the Meja massacres, ostensibly for the repair of roads, but he suspected for the removal of bodies.⁶²³ Similarly, Merita Deda testified that, when she was in the convoy travelling between Korenica and Meja on 27 April 1999, she saw VJ soldiers loading eight dead bodies onto a VJ truck, which was ordered to go to Đakovica/Gjakova.⁶²⁴

219. Witness K72 lived in Đakovica/Gjakova and worked as an excavator operator. The Chamber discusses his evidence in detail in Section VII.P below, including evidence concerning excavation operations to remove bodies at the Bistražin/Bistrazhin Bridge in mid to late April 1999,⁶²⁵ at the Brekovac/Brekoc cemetery located at the outskirts of Đakovica/Gjakova next to the VJ barracks in May 1999,⁶²⁶ in the village of Guska, and in a forest nearby around May 1999.⁶²⁷

⁶¹⁹ P2559 (Addendum to Expert Report); P2415 (Documents related to the exhumation site Batajnica 05: Autopsy reports), p. 24–29; P2454 (Copies of forensic inspection reports and death certificates produced by the OMPF, in relation to mortal remains transferred from Batajnica and Petrovo Selo); P944 (Copies of forensic inspection reports and death certificates, in relation to mortal remains transferred from Batajnica); P942 (Documents related to the exhumation site Batajnica 02: Autopsy reports); P943 (OMPF Reports); P2394 (Copies of forensic inspection reports and death certificates produced by the OMPF in Kosovo, in relation to mortal remains transferred from Batajnica, prior to 31 March 2005).

⁶²⁰ Prosecution Final Trial Brief, 29 July 2008 (public version), para. 457.

⁶²¹ Nike Peraj, P2253 (witness statement dated 9 August 2006), paras. 86, 88, T. 1645 (15 August 2006).

⁶²² Nike Peraj, P2253 (witness statement dated 9 August 2006), para. 87, T. 1784–1785 (16 August 2006).

⁶²³ Nike Peraj, P2253 (witness statement dated 9 August 2006), paras. 86, 88.

⁶²⁴ Merita Deda, P2233 (witness statement dated 8 April 2000), p. 3.

⁶²⁵ The Chamber notes that the dates given by K72 for the Bistražin/Bistrazhin Bridge job were not precise and could have been as late as 27 April 1999.

⁶²⁶ K72, T. 5328 (26 October 2006).

⁶²⁷ K72, P2390 (witness statement dated 26 October 2005), paras. 17–20 (under seal).

K72 stated that he did not take part in the removal of Kosovo Albanians killed in Meja and Korenica on 27 April 1999.⁶²⁸ However, he clarified that he made this statement because he never went to Meja or Korenica with construction machinery and noted that he did not know where the bodies that he was asked to dig up from Bistražin/Bistrashin, Brekovac/Brekoc cemetery, and Guska originally came from.⁶²⁹ Given K72's evidence that these digging jobs involved large numbers of bodies, and noting that the bodies of Kosovo Albanians killed in and around Meja and Korenica were seen being taken in trucks towards Đakovica/Gjakova town after the killings, as well as the fact that nearly 300 of the bodies of Kosovo Albanians killed on 27 April were later found at the Batajnica mass graves in Serbia, the Chamber is satisfied that some of the bodies dug up by K72 were those of Kosovo Albanians killed in and around Meja on 27 April.

220. Radovan Zlatković testified that he was informed by the duty service and the Chief of the Crime Police Administration at the SUP at the end of April 1999 that bodies had been found in the Reka/Caragoj valley. He stated that he informed an investigating judge and the Peć Public Prosecutor; he recounted that the SUP conducted an on-site investigation over a period of seven days without the attendance of the investigating judge.⁶³⁰ His team found 20 to 25 bodies in Ramoc, Ponoševac/Ponoshec, Popovac/Popoc, Korenica, Nikovaz, Smonica, Racaj/Rracaj, Pacaj, and Junik.⁶³¹ Some of these bodies had civilian clothes and some had black and camouflage uniforms. Those that were unidentified were buried at the Muslim cemetery in Đakovica/Gjakova. There were three teams from the SUP involved in the on-site investigation;⁶³² the other teams found at least another 10 to 15 bodies.⁶³³ However, Zlatković testified that he did not know that over 300 bodies were found.⁶³⁴

221. The bodies found had sustained gun-shot wounds.⁶³⁵ However, the cause of death had not been established by May 1999. Zlatković reckoned that they must have been killed in fighting.⁶³⁶ While interviews with members of the VJ or MUP who may have been deployed in the area had been planned, they were not ultimately conducted.⁶³⁷ Zlatković stated that his departure from the

⁶²⁸ K72, P2390 (witness statement dated 26 October 2005), para. 26 (under seal).

⁶²⁹ K72, T. 5335 (26 October 2006).

⁶³⁰ Radovan Zlatković, T. 25284–25285 (14 April 2008); 6D1627 (witness statement dated 13 April 2008), paras. 39–42.

⁶³¹ Radovan Zlatković, T. 25296–25297 (15 April 2008).

⁶³² Radovan Zlatković, T. 25285 (14 April 2008).

⁶³³ Radovan Zlatković, T. 25299 (15 April 2008).

⁶³⁴ Radovan Zlatković, T. 25314 (15 April 2008).

⁶³⁵ Radovan Zlatković, T. 25298 (15 April 2008).

⁶³⁶ Radovan Zlatković, T. 25301 (15 April 2008).

⁶³⁷ Radovan Zlatković, T. 25313–25314 (15 April 2008).

area disrupted the procedure and that others working on the investigation also had to leave when the NATO campaign finished in June 1999.⁶³⁸

222. The Chamber also received forensic evidence with regard to the Reka/Caragoj valley victims from numerous reports and testimony of those who attended, supervised, and participated in the exhumation and identification of bodies from the mass graves in Batajnica, from 2001 onwards. A description of the forensic evidence relating to victims from Đakovica/Gjakova, and compiled and presented by Dr. Baccard, Dr. Dunjić, Dr. Aleksandrić, and Dr. Sterenberg, is contained in Annex A to the present Judgement.

iii. Exodus of Kosovo Albanians from the Reka/Caragoj valley

223. Nike Peraj testified that on 27 and 28 April one convoy of Kosovo Albanians from the Junik area, and another from Korenica, met at the crossroads on the road to Đakovica/Gjakova, near the second checkpoint. From there, some went in the direction of Albania via Čafa Prušit/Qafa e Prushit to the south-west of Đakovica/Gjakova town, and the remainder went towards the border crossing at Vrbnica/Vërbnica (Morina), in Prizren municipality.⁶³⁹

224. After the shooting of her family, Merita Deda joined a convoy of people travelling in the direction of Đakovica/Gjakova town.⁶⁴⁰ She recounted that there were Serb police officers wearing light and dark blue camouflaged uniforms stationed along the route, but that they were not taking part in the military operations.⁶⁴¹ She described her journey from Korenica as leading past the village of Meja, where she saw many VJ soldiers and heard shooting, and then past Đakovica/Gjakova and Bistražin/Bistrazhin.⁶⁴² However, those in the convoy who were on foot were ordered back to their villages by VJ soldiers at Gradiš/Gradish hill, just south of Bistražin/Bistrazhin on the road to Prizren.⁶⁴³ Deda returned to Bistražin/Bistrazhin, where she stayed for a few weeks until NATO forces arrived in Kosovo. She then returned to Guska and found that her home had been looted and her cattle killed.⁶⁴⁴

225. Lizane Malaj testified that after the killing of male members of her family in Korenica she joined a convoy with other people from Korenica, numbering around 300–400.⁶⁴⁵ They were sent

⁶³⁸ Radovan Zlatković, T. 25313–25314 (15 April 2008).

⁶³⁹ See P326 (Meja killings, map of area marked by Nike Peraj); Nike Peraj, T. 1573–1574 (14 August 2006).

⁶⁴⁰ Merita Deda, P2233 (witness statement dated 8 April 2000), p. 3.

⁶⁴¹ Merita Deda, P2233 (witness statement dated 8 April 2000), p. 5, T. 1427 (10 August 2006).

⁶⁴² Merita Deda, P2233 (witness statement dated 8 April 2000), p. 4.

⁶⁴³ Merita Deda, P2233 (witness statement dated 8 April 2000), p. 4.

⁶⁴⁴ Merita Deda, P2233 (witness statement dated 8 April 2000), p. 4.

⁶⁴⁵ See Lizane Malaj, T. 1311 (9 August 2006), P2232 (witness statement dated 9 September 2001), p. 3.

to Đakovica/Gjakova town, where they asked if they could go to other villages in Kosovo. She stated that police, army, and paramilitary forces were deployed all along the way to Albania and escorted the convoy.⁶⁴⁶ They were told that they had to leave Kosovo or they would be executed. They travelled by foot to the border crossing at Vrbnica/Vërbnica (Morina), entered Albania on 28 April 1999, and proceeded to Kukës.⁶⁴⁷ During the journey they were asked for their identity documents but, as far as she could see, people did not have their personal documents with them.⁶⁴⁸ When the convoy arrived at the Vrbnica/Vërbnica (Morina) border post, they met other displaced villagers from Đakovica/Gjakova seeking to cross. They were again asked by the police for their identification papers. She stated that VJ members were also present. She saw people handing over their documents.⁶⁴⁹ Civilians driving tractors were made to remove their license plates before being allowed to drive to Albania. Malaj returned to Kosovo on 3 July 1999 and found her house “completely burnt.”⁶⁵⁰ She emphasised that she left Kosovo because she was forced out and not because of the NATO bombing.⁶⁵¹

226. The Lazarević Defence argues that the evidence provided by Deda that she and the convoy she was with were ordered back to their villages by VJ soldiers at Gradiš/Gradish on 28 April 1999 undermines the Prosecution’s allegation that the VJ was attempting to deport Kosovo Albanians.⁶⁵² However, the Chamber notes that K90 testified that some Kosovo Albanians were not removed from areas in which the VJ was operating as that would have left the VJ without the protection of surrounding civilians and thus vulnerable to NATO attacks. He stated that this was decided at the command level of the VJ.⁶⁵³ Momir Stojanović partly agreed with this sentiment, stating that the Priština Corps commanders did not deport Kosovo Albanians as they knew that the civilian population provided them protection from the NATO bombing and that if they were moved out this would make the VJ vulnerable.⁶⁵⁴

227. Goran Jevtović, however, testified that the VJ and MUP did indeed direct civilians across the border to Albania, and that this was done in order to ensure their safety from the NATO

⁶⁴⁶ Lizane Malaj, P2232 (witness statement dated 1 September 2000), p. 4. *See also* Lizane Malaj, P2232 (witness statement dated 9 September 2001), p. 3.

⁶⁴⁷ *See* Lizane Malaj, P2232 (witness statement dated 9 September 2001), p. 5, T. 1378 (10 August 2006).

⁶⁴⁸ Lizane Malaj, P2232 (witness statement dated 9 September 2001), p. 3.

⁶⁴⁹ Lizane Malaj, P2232 (witness statement dated 9 September 2001), p. 5.

⁶⁵⁰ Lizane Malaj, P2232 (witness statement dated 1 September 2000), p. 4, P2232 (witness statement dated 9 September 2001), p. 5.

⁶⁵¹ Lizane Malaj, P2232 (witness statement dated 9 September 2001), p. 5, T. 1385 (10 August 2006).

⁶⁵² Lazarević Final Trial Brief, 29 July 2008 (public version), para. 384.

⁶⁵³ K90, T. 9408 (30 January 2007).

⁶⁵⁴ Momir Stojanović, T. 19732 (6 December 2007).

bombing and minefields that had been placed in the area to prevent a NATO land invasion.⁶⁵⁵ Similarly, Vuković testified that the 2nd Motorised Battalion was ordered to assist civilians wanting to cross the border because there were mines located beside the road to the border crossing.⁶⁵⁶ Vuković testified that he had been ordered by the Priština Corps Command to allow the civilians to leave, but that there was no written order to this effect.⁶⁵⁷ Furthermore, Božidar Delić testified about the situation at border posts, stating that civilians trying to cross the state border to Albania from Đakovica/Gjakova would be stopped, checked, and if they were normal civilians, sent back to Đakovica/Gjakova or Prizren.⁶⁵⁸

c. Findings

228. Noting all this evidence, the Chamber now sets out its findings in relation to the Reka/Caragoj valley operation. The Chamber finds that the Reka/Caragoj operation was launched in part as a response to the killing of five policemen on 22 April. Nike Peraj's evidence, which the Chamber accepts, as to comments made in his presence at an informal meeting of senior VJ and MUP officers, indicates that one of the motives behind the operation was vengeance against the Kosovo Albanians in the area. K73's evidence indicates that another motive, also averred to by Peraj, was to cleanse the villages of the area of their Kosovo Albanian inhabitants. Given the number of different units involved and the level of co-ordination required to carry out the sweep through the Reka/Caragoj valley, the Chamber is convinced that this was an organised joint operation of the VJ and MUP, carried out with the awareness and approval of the superior MUP and VJ chains of command, in which members of paramilitary groups also participated. VJ documentation discussed above, including combat reports sent by the 125th Motorised Brigade to the Priština Corps command, confirms that this was an operation approved by the Priština Corps command.⁶⁵⁹

229. The Chamber accepts the evidence of K73 and K90 on events during the Reka/Caragoj valley operation. As noted above, K73 gave evidence that on the first day of the Reka/Caragoj valley operation, his unit expelled "hundreds" of Albanian civilians and set their houses on fire.⁶⁶⁰ Similarly, K90 explained that, as soon as the villagers left their homes, their houses would be

⁶⁵⁵ Goran Jevtović, 5D1385 (witness statement dated 24 December 2007), paras. 21–22.

⁶⁵⁶ Vlatko Vuković, T. 21401 (30 January 2008), 5D1442 (witness statement dated 5 January 2008), paras. 42–44.

⁶⁵⁷ Vlatko Vuković, T. 21401–21402 (30 January 2008).

⁶⁵⁸ Božidar Delić, T. 19464 (4 December 2007).

⁶⁵⁹ P2024 (125th Motorised Brigade Combat Report, 27 April 1999); P2025 (125th Motorised Brigade Combat Report, 28 April 1999), p. 2; P2026 (125th Motorised Brigade Combat Report, 29 April 1999), p. 2.

⁶⁶⁰ K73, P2440 (witness statement), para. 42.

burned.⁶⁶¹ In light of K73 and K90's description of arson directed against Kosovo Albanian houses, the Chamber does not accept Perović's conflicting account and finds that this practice was a feature of the Reka/Caragoj valley operation.⁶⁶²

230. The Chamber finds that during the Reka/Caragoj valley operation VJ and MUP forces, acting jointly, expelled Kosovo Albanian civilians from their villages, and sent many of them to Albania. This is on the basis of the evidence of Lizane Malaj and Merita Deda, who said that this practice was widespread and organised, K90, who said that the practice of removing Kosovo Albanians from their villagers was carried out by the VJ according to oral orders, and that of K73, who gave accounts of expelling villagers during the operation. It is also supported by the evidence of Martin Pnishi and Nike Peraj in relation to events at Meja and Korenica on 27 and 28 April 1999. Many of the expelled Kosovo Albanians were forced on to Albania by MUP and VJ forces, under threat of death. The Chamber is also satisfied that these removals were forcible and involved mistreatment and the taking of personal documentation from the displaced individuals. On the basis of the evidence of *inter alios* K73 and K90, the Chamber finds that the KLA presence in this area was not significant on 27 and 28 April 1999, and that the Reka/Caragoj valley operation was primarily directed at the Kosovo Albanian civilian population. Taking account of the evidence relating to the activities of VJ and MUP forces throughout late March and early to mid April 1999 in Đakovica/Gjakova municipality, including that of Fuat Haxhibeqiri as discussed above, the Chamber finds that these expulsions were part of a more general policy of forcibly displacing Kosovo Albanians from their villages in Đakovica/Gjakova municipality.

231. Looking to specific villages in which crimes were committed during the Reka/Caragoj valley operation, the Chamber finds that on 27 April in Dobroš/Dobrosh the VJ forced the inhabitants to leave the village. Although K73 stated that his unit burned Kosovo Albanian houses, he did not specifically refer to Dobroš/Dobrosh and so the Chamber does not find that it was burned down by the VJ forces.

232. The Chamber further finds that on 27 and 28 April 1999 in Ramoc the VJ forced the inhabitants to leave the village and handed four male villagers over to the PJP. The Chamber notes that K73 acknowledged that he did not see the killings in Ramoc, but that he witnessed the lead up to these incidents, heard the shootings, and saw the MUP official returning afterwards with the hand ties, and finds that the only reasonable inference is that these villagers were executed by the PJP with the awareness of the VJ forces present.

⁶⁶¹ K90, P2652 (witness statement dated 8 December 2002), para. 48.

233. In relation to Korenica, the Chamber recalls that VJ reports demonstrate that members of the 549th Motorised Brigade engaged in operations in the Korenica cemetery on the same day that Deda and Malaj described seeing VJ soldiers in that village.⁶⁶³ The Chamber is satisfied on the basis of the evidence of Merita Deda, Lizane Malaj, and K73 that on 27 April 1999 members of the MUP, including PJP, the VJ, including the 549th Motorised Brigade and reservists, and paramilitaries, killed a number of Kosovo Albanian men during a joint operation, and forcibly expelled a number of Kosovo Albanian civilians including Merita Deda and Lizane Malaj, some of whom were forced on to Albania. The Kosovo Albanians killed at the Markaj compound were Mark Deda, Pashk Deda, Linton Deda, Pren Markaj, Pashk Markaj, Mark Markaj, Bekim Markaj, and Petrit Markaj. The Chamber notes that there is no forensic evidence with respect to Skender Pjetri. Consequently, it is not satisfied that it has been proven that Skender Pjetri was killed in Korenica on 27 April 1999. Noting Deda's evidence that there were no KLA members in her family, but rather that they were targeted because of their political connections, and the fact that she was not challenged on cross-examination about this, the Chamber finds that these individuals were civilians. The Kosovo Albanians killed at the Malaj compound were Vat Malaj, Blerim Malaj, Arben Kabashi, Nikoll Kabashi, and Andrush Kabashi. Although Malaj denied that there were any KLA members in her family, she stated that her knowledge of the KLA was limited. Nonetheless, the Chamber is satisfied that the circumstances in which they were killed indicate that these individuals were not engaged in combat operations at the time.

234. The Chamber finds that VJ, MUP, and paramilitary forces entered the village of Meja on 27 April 1999, and members of the MUP killed seven unidentified men at the bridge over the Trava River. However, due to the unconvincing evidence about the state of his body after 19 days, the Chamber is not satisfied that it has been proved that these forces killed Kole Duzhmani on 27 or 28 April 1999.

235. The Chamber accepts Peraj's account of seeing the bodies of 20 people at a checkpoint near the Hasanaj meadow on 27 April 1999, and another 11 bodies around 700 metres from this checkpoint. The Chamber does not accept Perović's denial of accompanying Peraj to the checkpoint and of seeing any dead bodies, as this account clashes with Vasiljević's independent reference to Perović reporting to him about 20 dead bodies in the area. The Chamber also finds that at a checkpoint on the road between Korenica and Đakovica/Gjakova town MUP forces selected at least three unidentified men and took them to a compound where they were killed. The Chamber is

⁶⁶² Sergej Perović, 5D1396 (witness statement dated 8 January 2008), para. 25, T. 21081, 21101–21102 (25 January 2008).

satisfied that K90 was present at Meja on 27 April 1999 and witnessed these killings. The accounts of K90 and Nike Peraj of the existence of these checkpoints, along with the evidence of Martin Pnishi, were consistent with the information provided to K73 that the civilians expelled during the Reka/Caragoj operation would be checked at the end of the valley around Korenica. It is clear that this formed part of the Reka/Caragoj valley operation and the VJ provided support to the MUP during these activities in Meja, as demonstrated by *inter alia* the evidence of Nike Peraj that members of the territorial defence units, commanded by Mičunović of the VJ, were responsible for the killings in and around Meja.

236. On the basis of the above evidence, and the forensic evidence from the Batajnica mass graves, as discussed in detail in Annex A below, the Chamber finds that the specific killings described by Malaj, Deda, Pnishi, Peraj, and K90 in Meja and Korenica, and other villages in the Reka/Caragoj valley on 27 April 1999, are indicative of a far greater massacre that occurred as a part of the Reka/Caragoj valley operation carried out by VJ and MUP personnel, along with members of paramilitary groups, which resulted in the killing of at least 287 Kosovo Albanians. The only reasonable inference from all of the evidence is that many of these killed people were civilians or *hors de combat* at the time of their killing.

237. Taking into consideration the evidence of Peraj, Deda, Pnishi, and K72, the Chamber finds that, following the Reka/Caragoj valley joint VJ/MUP operation, bodies of many of those Kosovo Albanians killed during its course were taken to the public cemetery at Brekovac/Brekoc in Đakovica/Gjakova by VJ and MUP forces acting jointly. K72's evidence of digging up bodies from this location, as described in Section VII.P below, and the subsequent finding of at least 287 bodies of Kosovo Albanians killed during the Reka/Caragoj valley operation, particularly the eight individuals whose killings were witnessed by Merita Deda and the five individuals whose killings were witnessed by Lizane Malaj, at the Batajnica mass graves, satisfies the Chamber that these bodies were shifted in order to conceal the crimes committed during the operation. Given that K72 carried out these operations under the direction of the MUP, the role of the VJ in shifting bodies to conceal crimes appears to be more limited. However, 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 that the MUP was responsible for the cover up provides strong evidence of its forces' involvement in the commission of crimes.

⁶⁶³ P2019 (War Diary of the 2nd Motorised Battalion of the 549th Motorised Brigade, 24 March 1999 to 26 June 1999), p. 11 (under seal).

238. Consequently, on the basis of the forensic and additional evidence relating to the Reka/Caragoj valley operation discussed above, the Chamber finds that the following 275 individuals named in Schedule H of the Indictment were killed by the VJ and MUP forces on 27 April 1999 in and around the villages of Meja and Korenica (in addition to the 13 victims named above):

Mark Abazi; Pashk Abazi; Bekim Ademaj; Shemsi Ademaj; Isuf Ademi; Mazllum Ademi; Liridon Ahmetaj; Ahmet Ahmeti; Ahmet Ahmeti; Blerim Ahmeti; Hysen Ahmeti; Adem Aliaj; Agron Aliaj; Ali Aliaj; Sali Aliaj; Zenun Aliaj; Ymer Avdullahu; Avdyl Avdyli; Bajrush Avdyli; Hysen Avdyli; Muhedin Avdyli; Lavdim Bajraktari; Shaban Bajrami; Syle Bajrami; Xhafer Bajrami; Xhavit Bajrami; Ali Bala; Bajram Bala; Mehmet Bala; Perparim Bala; Ragip Baliu; Demush Bardheci; Idriz Bardheci; Haki Batusha; Armend Beqaj; Bajram Beqaj; Bedri Beqaj; Brahim Beqaj; Dritan Beqaj; Emin Beqaj; Kujtim Beqaj; Milazim Beqaj; Ramadan Beqaj; Rasim Beqaj; Tafe Beqaj; Ymer Beqaj; Albert Beqiraj; Arsim Beqiraj; Syle Beqiraj; Tahir Beqiraj; Halil Berisha; Avni Binaku; Binak Binaku; Ismet Bobi; Fiqrih Cuni; Muharrem Cuni; Sutki Cuni; Frrok Dedaj; Gjon Dedaj; Mikel Dedaj; Pjeter Dedaj; Deli Deliu; Ali Demaj; Agron Duzhmani; Frane Duzhmani; Gostin Duzhmani; Mikel Duzhmani; Gezim Duzhmani; Manuel Duzhmani; Marjan Duzhmani; Pashk Duzhmani; Pal Duzhmani; Male Fazlija; Haxhi Fetaj; Lulzim Gashi; Brahim Gaxherri; Xhafer Gaxherri; Deme Gjocaj; Ardian Gjokaj; Asllan Golaj; Avdi Golaj; Idriz Golaj; Musa Gola; Rame Golaj; Rexhe Golaj; Skender Hadergjonaj; Faik Hajredini; Hysni Hajredini; Qamil Hajredini; Gjon Hasanaj; Luan Hasanaj; Shyt Hasanaj; Mentor Haxhaj; Avdi Haxhiu; Florim Haxhiu; Tahir Haxhiu; Ardian Hoxha; Blendian Hoxha; Bajram Hoxha; Fitim Hoxa; Hajrullah Hoxha; Naim Hoxha; Ramiz Hoxha; Rifat Hoxha; Binak Hyseni; Hysni Ibrahim; Masar Idrizi; Demë Islamaj; Bajram Isufi; Isa Isufi; Besim Kameri; Gëzim Kameri; Muharrem Kamberi; Rrustem Kameri; Shpend Kameri; Nikolle Komani; Fran Komani; Pashk Komani; Mikel Kqira; Pashk Kqira; Luz Kqira; Albert Krasniqi; Pjeter Krasniqi; Mark Krasniqi; Ndue Krasniqi; Hasan Kuqi; Shpend Kuqi; Haki Kurtaj; Isa Kurtaj; Muhamet Kurtaj; Sami Kurtaj; Kllaudie Mala; Kol Mala; Monika Mala; Blerim Maloku; Burim Maloku; Petrit Maloku; Ymer Maloku; Besim Malushaj; Shefki Mulashaj; Dede Markaj; Gezim Marku; Gjovalin Markaj; Milan Markaj; Sokol Markaj; Agron Mehmeti; Arben Mehmeti; Gani Mehmeti; Hysen Mehmeti; Hysni Mehmeti; Muharrem Mehmeti; Quash Mehmeti; Rame Mehmeti; Sami Mehmeti; Marash Merturi; Bajram Meta; Ismet Miftari; Brahim Miroci; Fahredin Miroci; Isuf Miroci; Sokol Miroci; Kole Nreaj; Nue Ndue; Ahmet Neziri; Sokol Ndue; Sokol Nuza; Shpend Osmani; Avdyl Pajaziti; Smajl Pajaziti; Gani Pajaziti; Haxhi Pajaziti; Ismet Pajaziti; Muje Pajaziti; Qerim Pajaziti; Shkelzen Pajaziti; Shpend Pajaziti; Zenel Pajaziti; Uke Pepaj; Gasper Pjetri; Ilirjan Pjetri; Ardian Prelaj; Driton Prelaj;

Sokol Prelaj; Gjergj Prelaj; Tome Prelaj; Pal Prendi; Prend Prendi; Sokol Prendi; Vitor Prendi; Hajdar Qestaj; Adem Rama; Bujar Rama; Nijazi Rama; Sadri Rama; Sezaj Rama; Zenun Rama; Zeqir Rama; Rame Ramaj; Tahir Ramaj; Adem Rexha; Anton Rexhaj; Avni Rexha; Bashkim Rexha; Iber Rexha; Ruzhdi Rexha; Hamza Rexhaj; Isuf Rexhaj; Xhevdet Rexhaj; Bekim Rrustemi; Dan Rrustemi; Xhafer Rrustemi; Iber Sadiku; Ismet Sadiku; Osman Sadiku; Ramiz Sadiku; Sadik Sadiku; Hysni Sadriu; Rexhep Sadriu; Shaqir Sadriu; Osman Salihaj; Bajram Salihu; Beqir Selmanaj; Nexhat Selmanaj; Ali Selmani; Baki Selmani; Burim Selmani; Jonuz Selmani; Ujkan Selmani; Xheme Selmani; Zenun Selmani; Deme Shala; Ismet Shehu; Agim Shehu; Ahmet Shehu; Bujar Shehu; Mehmet Shehu; Rame Shehu; Elvis Shoshi; Gani Smajli; Filip Sokoli; Kastriot Sokoli; Kriste Sokoli; Simon Sokoli; Ismet Sylja; Rexhep Sylja; Bajram Sylja; Bajram Tahiraj; Halil Tahiraj; Isuf Tahiraj; Osman Tahiraj; Ramadan Tahiraj; Rrustem Tahiraj; Selman Tahiraj; Xhevdet Tahiraj; Uke Xhemajli; Hasan Xhemajli; Isa Xhemajli; Miftar Xhemajli; Rifat Xhemajli; Xhemajli Xhemajli; Elez Ymeri; Halit Ymeri; Hasan Ymeri; Hysen Ymeri; Musa Ymeri; Xhafer Ymeri; Zenel Ymeri; Bajram Zenuni; Xhevat Zenuni; Zenel Zenuni; Hasan Zeqiri; Arber Zyberi; Gani Zyberi; Skender Zyberi.

239. In relation to the remaining individuals named in Schedule H of the Indictment, the Chamber finds that, although it is probable that they were also killed on 27 April 1999 in and around Meja and Korenica, it has not been proven beyond reasonable doubt. These individuals are:

Pjeter Abazi; Male Ahmeti; Arben Aliaj; Afrim Avdyli; Mehmet Avdyli; Pajazit Avdyli; Ali Bajrami; Mentor Beqaj; Ahmet Berisha; Ismail Binaku; Istref Curri; Izet Curri; Shani Fazlijaj; Lulzim Gashi; Hasan Gaxheri; Elson Hasanaj; Mitër Hasanaj; Ndue Hasanaj; Afrim Haxhiu; Fadil Hoxha; Gafurr Hykosmanaj; Ali Ibrahimi; Pjeter Kacoli; Tom Kacoli; Lazer Krasniqi; Ilmi Kurpali Anton Lleshi; Vilson Malaj; Esad Malushaj; Mehmet Mehmeti; Naim Nimanaj; Pashk Ndrejaj; Nrec Nrejaj; Idriz Pajaziti; Halil Pajaziti; Mark Palokaj; Gjergj Prendi; Robert Prendi; Mark Prendi; Leonard Prendi; Tahir Rexhaj; Esat Sahiti; Xhavit Salcaj; Nimon Salihu; Sherif Selmani; Shpend Selmani; Perparim Shoshi; Naser Shoshi; Gjergj Sokoli; Shpend Xhemajli; Alban Xhemajli; Ilija Xhemajli; Muharrem Xhemajli; Shkelzen Xhemajli; Gani Ymeri.

240. The Chamber notes that Mark Markaj was listed twice in the Indictment and finds that this was an error, as described in Annex A below.

D. PRIZREN

1. Charges in Indictment

241. The Indictment charges the Accused with responsibility for three different categories of crimes against humanity allegedly committed in the municipality of Prizren: deportation, forcible transfer, and persecution. The charged persecution is alleged to have taken the form of sexual assault of Kosovo Albanian women in Prizren municipality, as described in paragraph 72(b), and “the wanton destruction or damage of Kosovo Albanian religious sites,” including the damage and/or destruction of the mosque at Landovica.⁶⁶⁴

242. The specific factual averments are set out in Paragraph of 72(b) of the Indictment, which states that:

On 25 March 1999 the village of Pirane was surrounded by forces of the FRY and Serbia, tanks and various military vehicles. The village was shelled and a number of the residents were killed. Thereafter, forces of the FRY and Serbia entered the village and burned the houses of Kosovo Albanians. After the attack, the remaining villagers left Pirane and went to surrounding villages. In the town of Landovica/Landovicë, an old mosque was burned and heavily damaged by forces of the FRY and Serbia. Some of the Kosovo Albanians fleeing towards Srbica/Sërbica were killed or wounded by snipers. Forces of the FRY and Serbia then launched an offensive in the area of Srbica/Sërbica and shelled the villages of Donji Retimlje/Reti e Ulët, Retimle/Reti and Randubrava/Randobravë. Kosovo Albanian villagers were forced from their homes and sent to the Albanian border. From 28 March 1999, in the city of Prizren, forces of the FRY and Serbia went from house to house, ordering Kosovo Albanian residents to leave. They were forced to join convoys of vehicles and persons travelling on foot to the Albanian border. En route, members of the forces of the FRY and Serbia beat and killed Kosovo Albanian men, separated Kosovo Albanian women from the convoy and sexually assaulted the women. At the border personal documents were taken away from the Kosovo Albanians by forces of the FRY and Serbia.⁶⁶⁵

2. Background

243. Prizren municipality is in the south of Kosovo, bordering Albania on the western side, and Macedonia on the eastern side. Its main town is also called Prizren. The village of Landovica is approximately eight kilometres north of Prizren town, on the road to Đakovica/Gjakova, and Pirane/Pirana lies on the same road, three kilometres north of Landovica.⁶⁶⁶ Srbica/Sërbica village is divided into upper and lower parts, and is to the east and south-east, and about three kilometres

⁶⁶⁴ Indictment, paras. 77(c) and 77(d).

⁶⁶⁵ Indictment, para. 72(b).

⁶⁶⁶ Rahim Latifi, T. 4959 (16 October 2006).

from Pirane/Pirana.⁶⁶⁷ Donji Retimlje/Retia e Ulët, Retimlje/Retia, and Randubrava/Randobrava are villages further to the north, close to Orahovac/Rahovec municipality.⁶⁶⁸

244. Rahim Latifi, Halil Morina, Rexhep Krasniqi and Hysni Kryeziu were led by the Prosecution in relation to the crimes alleged to have been committed in Prizren municipality. The Defence brought, among others, Božidar Delić, Franjo Glončak and Nebojša Ognjenović. Several other witnesses also testified in relation to the situation in the municipality at that time. As has been noted previously with regard to other witnesses, the Trial Chamber views with scepticism the broad denials of many witnesses concerning KLA activities near their homes, and in this regard finds Rahim Latifi unreliable insofar as his evidence relates to the KLA presence in the area, and his evidence in general thus worthy of close scrutiny. Despite the Pavković Defence's submissions that Hysni Kryeziu's written statement cannot be relied upon due to the corrections he made to it,⁶⁶⁹ the Chamber considers these discrepancies not to be material and finds him to be generally credible. Kryeziu's account of his expulsion from Dušanovo/Dushanova at the end of March 1999 was largely consistent with that of Krasniqi, whom the Chamber finds to be reliable. The Chamber further finds that some aspects of Božidar Delić's evidence are credible, but it does not consider the evidence of Franjo Glončak and Nebojša Ognjenović to be generally credible. The Chamber has, where necessary, dealt with specific issues relating to the credibility and reliability of these witnesses below.

245. The Chamber heard evidence that in 1998 and early 1999 the border area between Prizren and Albania was the site of significant KLA movement and activity and combat actions undertaken by MUP and VJ forces in response.⁶⁷⁰ In addition, on the basis of the testimony of *inter alios* witness K54, witness K79, Hamide Fondaj, and Božidar Delić, the Trial Chamber concludes that the main roads through the municipality, from Suva Reka/Suhareka and Đakovica/Gjakova down to

⁶⁶⁷ P615 (Kosovo Atlas); Rahim Latifi, T. 4985 (17 October 2006).

⁶⁶⁸ P615 (Kosovo Atlas).

⁶⁶⁹ Pavković Final Trial Brief, 28 July 2008 (public version), para. 404.

⁶⁷⁰ See e.g. Joseph Maisonneuve, P2772 (witness statement dated 10 March 2000), paras. 12–13; 3D134 (Terrorist attacks in 1999), para. 163; 3D136 (CC Priština report 15 November 1998), p. 1; 3D137 (OSCE/KVM, General overview from Co-ordination Centre 1, 18 January 1999); 3D138 (TM Prizren report, 3 March 1999), p. 2. See also John Crosland, T. 10008 (9 February 2007); Božidar Delić, T. 19275 – 19276 (28 November 2007), 19558 - 19561 (5 December 2007); Tomislav Mitić, 5D1390 (witness statement dated 27 December 2007), paras. 50–51; Miloš Vojnović, T. 24172 (12 March 2008); 6D1013 (MUP Prizren Report, 13 March 1999), p. 5; 3D179 (KVM report on compliance by the parties in Kosovo, 12 March 1999), also admitted as P444; Bislim Zyrapi, T. 6043 (7 November 2006); 4D87 (PrK Command report to the General Staff of the VJ, 28 October 1998), p. 1; 3D139 (UNHCR Weekly Security Sitrep, 19 November 1998); P2071 (Order of the PrK, 16 March 1999); P2072 (Order of the 549th Motorised Brigade, 16 March 1999); P1999 (Analysis of the actions of the 549th Motorised Brigade, 18 March 1999); 3D1051 (3rd Army Command Report, 6 March 1999), para. 2.4; P1998 (Report to PrK on actions of units of the 549th Motorised Brigade, 12 March 1999).

Prizren town, and from there to the Albanian border and on to Kukës in Albania, were major transit routes for displaced Kosovo Albanians during the period of the Indictment.⁶⁷¹

246. Božidar Delić testified that units of the 549th Motorised Brigade took part in all joint operations with the MUP in Prizren municipality in the period relevant to the Indictment.⁶⁷² He further asserted that actions were co-ordinated between the VJ and the MUP (PJP) in Prizren, and mentioned as an example an attack pursuant to an order of 9 March 1999, against the KLA in the area of Ješkovo/Jeshkovë village south of Prizren town.⁶⁷³ A MUP report dated 12 March 1999 and the testimony of witnesses K54 and K82 confirm this assertion.⁶⁷⁴ K54 and K82, two members of the 549th Motorised Brigade, both described the action in Ješkovo/Jeshkovë, and other similar actions in which they participated.⁶⁷⁵ In relation to Ješkovo/Jeshkovë, both witnesses gave evidence of a large force of combined VJ and PJP forces attacking the village. The village was first shelled with heavy weapons for about 30 minutes and then the infantry moved in. Around 30 people were killed during this action.⁶⁷⁶ Both K54 and K82 stated that they saw only dead civilians.⁶⁷⁷ However, these killings are not charged as crimes in the Indictment, and the Chamber need not make specific findings in relation to them. The Chamber also does not find it necessary to resolve the conflict in regard to orders from Delić, preceding the action, that might be interpreted as orders to kill non-combatants in the village.⁶⁷⁸

3. Pirane/Pirana

⁶⁷¹ See e.g., K54, T. 10514 (26 February 2007); Hamide Fondaj, P2283 (witness statement dated 9 June 2001), pp. 3–5; Halit Berisha, P2326 (witness statement dated 17 August 2001), p. 4; K58, P2550 (witness statement dated 2 February 2000), e-court p. 17; K79, T. 9653–9655 (1 February 2007), T. 9678–9679 (2 February 2007); 5D113 (KVM Report 11 March 1999), p. 1. See also Božidar Delić, T. 19313 (29 November 2007); 5D1242 (Video clips); Nebojša Ognjenović, T. 22882, 22885–22886 (20 February 2008); P3153 (Online news article AFP, 30 March 1999).

⁶⁷² Božidar Delić, T. 19590 (5 December 2007). See also P2166 (Minutes of the Beli Dvor meeting held on 29 October 1998), p. 5.

⁶⁷³ Božidar Delić, T. 19472 (4 December 2007), T. 19541 (5 December 2007), T. 19669, 19679 (6 December 2007); P2067 (Order of the 549th Motorised Brigade, 9 March 1999); P1998 (Report to PrK on actions of units of the 549th Motorised Brigade, 12 March 1999). See also 6D1013 (MUP Prizren Report, 13 March 1999), p. 5.

⁶⁷⁴ 6D1007 (MUP Report from the Prizren RDB Centre, 12 March 1999).

⁶⁷⁵ K82, T. 11802–11803 (15 March 2007), T. 11746–11747, 11807 (15 March 2007), P2863 (witness statement dated 14 September 2006), para. 6; K54, P2883 (witness statement dated 26 April 2002), pp. 4–5, P2677 (transcript from *Prosecutor v. Milošević*, Case No. IT–02–54–T), T. 8233–8236 (under seal); P1998 (Report to PrK on actions of units of the 549th Motorised Brigade, 12 March 1999). See also 5D112 (OSCE, KVM Report 11 March 1999), p. 2.

⁶⁷⁶ K82, T. 11746–11747, 11807 (15 March 2007), P2863 (witness statement dated 14 September 2006), para. 6; K54, P2883 (witness statement dated 26 April 2002), pp. 4–5, P2677 (transcript from *Prosecutor v. Milošević*, Case No. IT–02–54–T), T. 8233–8236 (under seal); P1998 (Report to PrK on actions of units of the 549th Motorised Brigade, 12 March 1999). See also 5D112 (OSCE, KVM Report 11 March 1999), p. 2.

⁶⁷⁷ K54, T. 10580 (27 February 2007), P2883 (witness statement dated 26 April 2002), p. 5, P2677 (transcript from *Prosecutor v. Milošević*, Case No. IT–02–54–T), T. 8236 (under seal); K82, T. 11747, 11805 (15 March 2007), P2863 (witness statement dated 14 September 2006), para. 6. But see Miloš Vojnović, T. 24175 (12 March 2008); 5D113 (OSCE, KVM Report 12 March 1999), p. 1; 5D114 (KVM Report 13 March 1999), p. 1.

⁶⁷⁸ K54, P2883 (witness statement dated 26 April 2002), pp. 4–5, P2677 (transcript from *Prosecutor v. Milošević*, Case No. IT–02–54–T), T. 8233–8236 (under seal).

247. The village of Pirane/Pirana lies at the junction that links the Prizren–Đakovica/Gjakova road and the road to Mamuša/Mamusha. Rahim Latifi, a Kosovo Albanian resident of the village, testified that forces of the FRY and Serbia were constantly on the move there. However, he asserted that he did not see the KLA in that area in March or April 1999 and that NATO never bombed Pirane/Pirana in April 1999.⁶⁷⁹ According to a report from the European Community Monitoring Mission (ECMM), dated 3 March 1999, Pirane/Pirana consisted of 220 houses and had approximately 2,300 inhabitants. This report also stated that the village was providing shelter to more than 260 IDPs (Internally Displaced Persons) from Retimlje/Retia, Opuša/Opuša, Zocište/Zočishtë and Ratkovac/Ratkoc at that time. It further noted that Pirane/Pirana lay close to KLA strongholds, but that it had, until then, stayed “out of big trouble.” Although the ECMM was informed that the villagers did not have any communication with the KLA forces located to the north, the report expressed doubt that the villagers had no way of communicating MUP movements to the KLA. The ECMM monitors recorded that a lot of MUP forces were deployed in the area and that on 27 February, as a result of an “attack” by these forces, almost 85 per cent of the residents of Pirane/Pirana fled towards Mamuša/Mamusha, Medvece/Medvec and Prizren town. These people then returned to their homes, although the police still had regular patrols in the area.⁶⁸⁰

248. The OSCE/KVM also reported that on 10 March 1999 60 per cent of the women and children occupants of Pirane/Pirana had left the village, due to the threat of an imminent MUP action to free a kidnapped MUP employee.⁶⁸¹ According to one KVM report, the KLA had indirectly confirmed its involvement in the kidnapping, but the reason for it was unclear.⁶⁸² Latifi testified that he had heard about the kidnapping but did not know who was responsible.⁶⁸³ He further stated that, while his family did not flee their home at that time, “there was panic all the time, non-stop, because every time the forces moved people were frightened. I was frightened as well.”⁶⁸⁴

249. In contrast to Latifi, Božidar Delić and the Accused Lazarević testified that Pirane/Pirana was a KLA stronghold and that there was a lot of fire from that village directed at the Prizren–Đakovica/Gjakova road.⁶⁸⁵ On a map of Kosovo marked by Bislim Zyrap to show areas where the

⁶⁷⁹ Rahim Latifi, T. 4978–4979, 4983–4984, 4986 (17 October 2006). *But see* 6D2, 6D1632 (witness statement), para. 103.

⁶⁸⁰ 3D138 (ECMM daily report, 3 March 1999).

⁶⁸¹ 3D140 (OSCE, KVM report, 9 March 1999), pp. 3–4; 3D141 (OSCE, KVM report, 10 March 1999), p. 2. The employee was called Ymer Xhafiqi.

⁶⁸² 3D140 (OSCE, KVM report, 9 March 1999), p. 1.

⁶⁸³ Rahim Latifi, T. 4972 (16 October 2006), T. 4976–4978 (17 October 2006).

⁶⁸⁴ Rahim Latifi, T. 4974 (16 October 2006), T. 4983 (17 October 2006).

⁶⁸⁵ Božidar Delić, T. 19373 (29 November 2007); Vladimir Lazarević, T. 17860 (7 November 2007); 6D1013 (MUP Prizren Report, 13 March 1999), p. 5. *See also* Vlatko Vuković, 5D1442 (witness statement dated 15 January 2008),

KLA was present, and the direction of attack by the “Serb forces” at the end of March 1999, Pirane/Pirana stands at the edge of an area held by the KLA immediately prior to the NATO bombing.⁶⁸⁶ Zyrapi gave no evidence about whether there was a KLA presence in the village itself. He did, however, testify that the KLA’s operational zone two, the Paštrik zone, encompassed Suva Reka/Suhareka, Orahovac/Rahovec, and Prizren municipalities.⁶⁸⁷

250. Taking into account Zyrapi’s testimony, and the documentary evidence, and the Trial Chamber’s view noted above that Rahim Latifi is unreliable insofar as his evidence relates to the KLA in and around Pirane/Pirana, the Chamber is indeed satisfied that there was a KLA presence close to, if not in, Pirane/Pirana at the commencement of the NATO bombing on 24 March 1999.

251. It is uncontested that at the end of March an action involving VJ and MUP forces was undertaken covering parts of Prizren municipality, including Pirane/Pirana village, as well as Orahovac/Rahovec and Suva Reka/Suhareka municipalities.⁶⁸⁸ An order of 23 March from Delić stated that the KLA had strongholds in the area of Retimlje/Retia, as well as Studencane/Studenčan, Samodreža/Samodrezha, Dobrodeljane/Dobërdolan, and Pagaruša/Pagarusha. The order directs *inter alia* that the 549th Motorised Brigade, in co-operation with the 37th PJP detachment from Niš, the 5th PJP company from Prizren, and the 4th PJP company from Đakovica/Gjakova, lift the “blockade” of the Suva Reka/Suhareka–Orahovac/Rahovec road, destroy the KLA in Retimlje/Retia, and establish control of the territory in this area. It further states that among the objectives of the action was the destruction of the KLA in Pirane/Pirana, taking control of Pirane/Pirana, and the blockade of the area from the junction of the road to Donja Srbica/Sërbica e Poshtme with the Prizren–Đakovica/Gjakova road, which includes Pirane/Pirana.⁶⁸⁹

252. Bislim Zyrapi testified that, when the NATO bombing started on 24 March 1999, “Serb forces” launched an artillery attack on KLA positions in the areas that it held at that time.⁶⁹⁰ The

para. 18; P1100 (Report by the MUP Staff to Serbian MUP, 27 March 1999), p. 4 (stating that there was a “terrorist” attack on 25 March 1999 in the Pirane village towards Oteruša/Oterusha in Prizren municipality and that five members of the VJ and the SUP were wounded in that attack).

⁶⁸⁶ P2447 (Map showing KLA-held areas); P2469 (map showing different KLA operational zones); IC105 (Enlarged map marked by Zyrapi).

⁶⁸⁷ Bislim Zyrapi, T. 5934, 5967 (6 November 2006), T. 6258 (10 November 2006); P2469 (map showing different KLA operational zones); P2459 (KLA Protocol 20 February 1999).

⁶⁸⁸ P2015 (Joint Command Order, 23 March 1999). In the order, the VJ was ordered to provide assistance to the MUP forces in destroying “Šiptar terrorist forces” (ŠTS) in the Orahovac/Rahovec, Suva Reka/Suhareka, and Velika Kruša/Krusha e Madhe sector and the 549th Motorised Brigade was ordered to co-operate with the MUP in an operation against the KLA in Oteruša/Oterusha, Celina, Velika Kruša/Krusha e Madhe, Mala Kruša/Krusha e Vogel, Pirane, Studencane/Studenčan, Slapuzhane/Slapuzhan, Zojić/Zojz, Medvece/Medvec, and Pecane/Peqan. *See also* P1981 (Order of the 549th Motorised Brigade, 23 March 1999); P1995 (Analysis of the operation of the 549th Motorised Brigade, 30 March 1999).

⁶⁸⁹ P1981 (Order of the 549th Motorised Brigade, 23 March 1999), pp. 4–5.

⁶⁹⁰ Bislim Zyrapi, T. 5991 (7 November 2006).

KLA forces then began to withdraw from their positions, together with the local population, for security reasons. Upon the commencement of attacks by the “Serb forces” on 24 and 25 March, the population of Randubrava/Randobrava and Donji Retimlje/Retia e Ulët was withdrawn to Mamuša/Mamusha.⁶⁹¹ It appears from his testimony, although it is not entirely clear, that this withdrawal was carried out under the orders and organisation of the KLA in order to protect the local Kosovo Albanians from being caught in any crossfire between the FRY/Serbian forces and the KLA. However, he gave no evidence about whether the population of Pirane/Pirana was “withdrawn” with the KLA.

253. A report dated 30 March 1999 from Delić to the Commander of the Priština Corps records that the above-described action was carried out from 25 to 29 March, and its objectives met, the KLA forces being “routed” and full control of the territory from the Prizren– Zrze/Xërxa road to the Suva Reka/Suhareka–Orahovac/Rahovec road being established. Furthermore, on 26 March part of the KLA forces attempted to break through the VJ and MUP “encirclement” at Pirane/Pirana, and a group of KLA members opened fire from the village of Landovica. The report notes that various combat groups of the 549th Motorised Brigade, as well as units of the PJP numbering 1,020 men, were involved in the action. On 28 March a “mopping up operation” was conducted in the area around Donji Retimlje/Retia e Ulët; and on 29 March full control of the territory was established.⁶⁹² Co-ordination with the MUP forces functioned well and the “joint command” of the MUP and the VJ commanded the forces.⁶⁹³

254. Delić testified that on 25 March 1999 the task of his brigade, in co-ordination with MUP forces, was to block the “terrorist forces” from the KLA’s Paštrik operational zone. The blockade was along the line of the road from Pirane/Pirana to the village of Rogovo/Rogova, and, on the other side, to the south of Pirane/Pirana in the direction of Gornja Srbica/Sërbicë e Epërme and Donja Srbica/Sërbica e Poshtme. The “terrorist forces” in the area of Retimlje/Retia, where the command of the 124th Brigade was, were to be encircled.⁶⁹⁴ Delić testified that the “terrorists” persistently defended the area of Upper and Lower Retimlje/Retia, Randubrava/Randobrava, Studencane/Studençan, and the route along which they were withdrawing together with the civilian population, through Dobrodeljane/Dobërdolan towards Pagaruša/Pagarusha.⁶⁹⁵

⁶⁹¹ Bislim Zyrapi, T. 5992 (7 November 2006).

⁶⁹² P1995 (Analysis of the operation of the 549th Motorised Brigade, 30 March 1999). *See also* Božidar Delić, T. 19349 (29 November 2007).

⁶⁹³ P1995 (Analysis of the operation of the 549th Motorised Brigade, 30 March 1999), pp. 3, 5.

⁶⁹⁴ Božidar Delić, T. 19347, 19358 (29 November 2007); IC150 (Map marked by Božidar Delić).

⁶⁹⁵ Božidar Delić, T. 19669 (6 December 2007).

255. The Prosecution led evidence from Rahim Latifi concerning events in Pirane/Pirana on 25 March 1999, his departure from the village, and his journey ultimately to Albania.⁶⁹⁶ Latifi's account was partially supported by the written evidence of Halil Morina, now deceased, from nearby Landovica, whose statement and oral testimony in the *Milošević* trial was admitted pursuant to Rule 92 *quater*.⁶⁹⁷

256. According to Latifi, Pirane/Pirana was surrounded by Serbian police and army forces early in the morning of 25 March 1999. The army shelled from the direction of Landovica, but caused no damage or casualties.⁶⁹⁸ Police forces, who were wearing camouflaged blue and white uniforms, then entered the village and began setting houses on fire, some of them using some kind of "shotguns" to do so.⁶⁹⁹ Halil Morina confirmed that at about 9:00 a.m. on 25 March 1999 he saw houses burning in Pirane/Pirana from a hill near where he lived in Landovica.⁷⁰⁰ Despite the submission by the Lukić Defence that Latifi's description of the uniforms worn by the police was not that of a regular police uniform,⁷⁰¹ the Trial Chamber finds that there is no reason to doubt Latifi's evidence that the forces involved in burning the houses were members of the police. In this regard, the Chamber particularly notes the evidence about the different police uniforms used by various MUP units during the Indictment period, discussed in Section VI.A.3 above, and that blue camouflage uniforms were regularly worn by the police.

257. When faced with this evidence from Latifi, Delić testified that on 25 March 1999 Combat Group 1 of the 549th Motorised Brigade entered Pirane/Pirana, and from there it was supposed to go towards the villages of Medvece/Medvec and Zojic/Zojz. However, he asserted that Latifi was incorrect in saying that the village was surrounded by VJ forces, because they were moving along a south-west/north-east direction, towards Zojic/Zojz and Medvece/Medvec and towards Randubrava/Randobrava.⁷⁰² According to Delić, fire was opened at the unit [Combat Group 1]

⁶⁹⁶ Rahim Latifi T. 4956–4975 (16 October 2006); T. 4976–5011 (17 October 2006), P2381 (witness statement dated 28 April 1999), P2382 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 3631–3657.

⁶⁹⁷ Halil Morina, P2522 (witness statement dated 5 October 2001), P2523 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T) T. 870–957.

⁶⁹⁸ Rahim Latifi, T. 4962 (16 October 2006), P2381 (witness statement dated 28 April 1999), p. 2.

⁶⁹⁹ Rahim Latifi, T. 4960–4963 (16 October 2006); P2381 (witness statement dated 28 April 1999), p. 2; P2382 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 3644–3646. The Chamber notes in this regard evidence regarding the use of so-called flamethrowers, *see e.g.* Agim Jemini, P2338 (witness statement dated 17 July 1999), e-court p. 10; Hamide Fondaj, T. 3838–3839 (25 September 2006), P2283 (witness statement dated 9 June 2001), p. 4; Sabri Popaj, P2446 (witness statement dated 14 June 1999), p. 3.

⁷⁰⁰ Halil Morina, P2523 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 873, 908.

⁷⁰¹ Lukić Final Trial Brief, 7 August 2008 (public version), para. 859.

⁷⁰² Božidar Delić, T. 19372–19373 (29 November 2007). *But see* K54, P2883 (witness statement dated 25–26 April 2002), p. 4.

from houses on the northern rim of the village.⁷⁰³ During the course of the day the unit reached the vineyards above the village but, since fire was directed at them from Randubrava/Randobrava and Medvece/Medvec, they spent the night between 25 and 26 March there. The resistance and the firing from the KLA were less towards the village of Brestovac/Brestoc in Orahovac/Rahovec municipality.⁷⁰⁴ Delić testified that in the evening of 25 March he personally went through part of Velika Kruša/Krusha e Madhe and Nogavac/Nagafc and Celina in Orahovac/Rahovec municipality, and that he was still in that area when he was informed that the barracks in Prizren had been bombed.⁷⁰⁵

258. Latifi further testified that he left Pirane/Pirana along with the other residents on 25 March, as “danger was approaching”. Some of them went in the direction of Mamuša/Mamusha, whereas he, along with others, went towards Srbica/Sërbica. From there he was able to see the police continuing to set houses alight.⁷⁰⁶ Latifi also stated that, as his group fled towards Srbica/Sërbica, bullets flew by his head, and a man among them was killed, while another was wounded.⁷⁰⁷

259. On the basis of all the evidence, the Trial Chamber finds that an action involving VJ and MUP forces was carried out in Prizren municipality, over an area including Pirane/Pirana village, between 25 and 29 March 1999. The Chamber further finds, based on the eye-witness evidence of Latifi, partially supported by Morina, that Pirane/Pirana was shelled by the army and that police forces thereafter entered the village and set houses on fire. The local Kosovo Albanian population consequently fled and took shelter in other nearby villages. Some of the occupants of the village were killed or wounded as they departed. Despite the Lukić Defence submission that the KLA presence in Pirane/Pirana was a “potential reason for people leaving their homes”,⁷⁰⁸ or that this presence was a reason for the FRY/Serbian forces to attack the village,⁷⁰⁹ this does not alter the fact that, through the joint actions of the VJ and the MUP of first shelling the village and then driving inhabitants out by burning houses there, Kosovo Albanian civilians were forced to leave Pirane/Pirana out of fear for their lives, caused by the actions of the FRY/Serbian forces, rather than the KLA.

⁷⁰³ Božidar Delić, T. 19372–19373 (29 November 2007); IC151 (Map marked by Delić). *See also* K54, P2883 (witness statement dated 26 April 2002), p. 5.

⁷⁰⁴ Božidar Delić, T. 19374–19375 (29 November 2007).

⁷⁰⁵ Božidar Delić, T. 19375–19376 (29 November 2007).

⁷⁰⁶ Rahim Latifi, T. 4963 (16 October 2006); P2381 (witness statement dated 28 April 1999), p. 2–3.

⁷⁰⁷ Rahim Latifi, T. 4964 (16 October 2006); P2381 (witness statement dated 28 April 1999), p. 3.

⁷⁰⁸ Lukić Final Trial Brief, 7 August 2008 (public version), para. 163.

⁷⁰⁹ Lukić Final Trial Brief, 7 August 2008 (public version), paras. 856–857. *See also* Pavković Final Trial Brief, 28 July 2008 (public version), para. 409.

4. Landovica

260. The only evidence led by the Prosecution in relation to the charges concerning the village of Landovica was the written testimony of Halil Morina, a Kosovo Albanian resident of the village at that time.⁷¹⁰ However, his subsequent death before this trial means that his evidence concerning events in Landovica during the course of the attack on 26 March cannot support a finding unless corroborated by other evidence. It is only in relation to damage to the local mosque that this arises. The details of all of Morina's evidence are, therefore, not set out here, except insofar as they are relevant to that issue.

261. Morina stated that on 26 March 1999 at around 10.00 a.m. three soldiers from the VJ were killed in the centre of Landovica by the KLA.⁷¹¹ At around 11.00 a.m. "mixed Serbian forces," including the VJ, police, and paramilitaries, arrived on the asphalt road outside of the village, accompanied by tanks, APCs, Pragas, and cannons. They began to burn houses on the outskirts of the village. They made no attempt to enter the village straight away, but started shelling. After the shelling, which lasted until 3.00 p.m., the "mixed Serbian forces" entered the village and continued setting houses on fire and killing people.⁷¹² From a nearby hiding place Morina saw that the mosque was burning.⁷¹³

262. The following day Morina watched as about 20 to 30 VJ soldiers again arrived in Landovica. One group of these soldiers with army uniforms went into the mosque, carrying something.⁷¹⁴ The soldiers stayed inside for three to four minutes.⁷¹⁵ About ten minutes after they left the mosque, there was a loud explosion and Morina saw the minaret collapse. He concluded that the VJ soldiers had blown up the mosque using a mine.⁷¹⁶ Morina explained that the minaret fell over and destroyed the roof of the mosque.⁷¹⁷

263. While Morina's evidence was that the Landovica mosque was partially burned on 26 March and destroyed on 27 March, Delić testified that his units opened fire at the mosque on 26 March,

⁷¹⁰ According to Morina, there were no Serbs living in Landovica/Landovicë in 1999, only Kosovo Albanians and a few Roma. Halil Morina, P2523 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 870-871.

⁷¹¹ Halil Morina, P2522 (witness statement dated 5 October 2001), p. 2, P2523 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 874-877, 915-918, 920-921.

⁷¹² Halil Morina, P2522 (witness statement dated 5 October 2001), p. 2, P2523 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 877-883.

⁷¹³ Halil Morina, P2522 (witness statement dated 5 October 2001), p. 3.

⁷¹⁴ Halil Morina, P2522 (witness statement dated 5 October 2001), p. 4, P2523 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 896-897.

⁷¹⁵ Halil Morina, P2522 (witness statement dated 5 October 2001), p. 4, P2523 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 896-897.

⁷¹⁶ Halil Morina, P2522 (witness statement dated 5 October 2001), p. 4, P2523 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 897.

but stated that only the minaret from which the army had been fired upon was destroyed. Delić explained that on that same day in Landovica two soldiers had been killed and one wounded. It was not possible to help the wounded and retrieve the bodies due to the gun-fire that came from the mosque.⁷¹⁸

264. The fact of significant damage to the mosque in Landovica was also confirmed by the testimony of Prosecution expert witness Andrés Riedlmayer.⁷¹⁹ Riedlmayer viewed the mosque in the course of visits to Kosovo between October 1999 and March 2001, and classified it as “heavily damaged.” His report also stated that the damage to the mosque had been caused by partial burning on 27 March 1999, and the mining and shelling of the minaret.⁷²⁰ However, his information as to how and when the damage to the mosque was inflicted appears to have come from members of the local “Islamic community”. The Chamber notes that he was not even asked for his opinion whether the damage he saw was consistent with that account.

265. The Trial Chamber considers that anonymous hearsay from members of the “Islamic community”, is not an adequate basis on which to say that Morina’s evidence of the circumstances in which the damage was inflicted was corroborated. The Chamber therefore finds that the allegations in relation to the destruction of the mosque in Landovica have not been proven.

5. Srbica/Sërbica, Donji Retimlje/Retia e Ulët, Retimlje/Retia, and Randubrava/Randobrava

266. Latifi, who had fled to Srbica/Sërbica from Pirane/Pirana along with other Kosovo Albanians, testified that on 26 March 1999 a group of policemen came to Srbica/Sërbica and started shooting at the tractors belonging to them. No one was hurt.⁷²¹ He stayed in Srbica/Sërbica for a month, during which time the police often came but did not harm or threaten anyone. After three weeks Latifi was told by others that the chief of police from Prizren had come and ordered that all persons who were not from Srbica/Sërbica should leave for Albania. The local Serbs organised buses to transport them, but Latifi and his family stayed in Srbica/Sërbica for another ten days because there was no room for them on the buses.⁷²² Halil Morina’s evidence corroborates Latifi’s

⁷¹⁷ P2523 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 928.

⁷¹⁸ Božidar Delić, T. 19391 (29 November 2007). *See also* Miloš Vojnović, T. 24198 (12 March 2008); P2574 (War Diary of armoured battalion from 549th Motorised Brigade), p. 1.

⁷¹⁹ Andrés Riedlmayer, T. 5488–5489 (30 October 2006); P1803 (Photograph of the shell of Landovica/Landovicë mosque).

⁷²⁰ P1777 (Extract from P1789).

⁷²¹ Rahim Latifi, T. 4992 (17 October 2006); P2381 (witness statement dated 28 April 1999), p. 3.

⁷²² Rahim Latifi, T. 4964 (16 October 2006); T. 4993 (17 October 2006); P2381 (witness statement dated 28 April 1999), p. 3.

account of events in Srbica/Sërbica at this time. Although there are differences in the dates given by him to those given by Latifi, in light of the passage of time since these events these discrepancies do not substantially undermine the consistency of the evidence of the two witnesses. Morina stated that, when he arrived in Srbica/Sërbica on 30 March 1999, after leaving Landovica out of fear, there were already 800 people from Pirane/Pirana there. They had been “evicted” on 25 March.⁷²³ He further stated that on 8 April “mixed Serbian troops”, military and paramilitaries, entered Srbica/Sërbica and told the local Serbs that they were traitors for allowing the displaced Kosovo Albanians to shelter in their village, and that they had 24 hours to evict these people.⁷²⁴ On 9 April the local Serbs arranged for buses to transport the non-residents of Srbica/Sërbica to Žur/Zhur. These local Serbs drove the buses and were accompanied to Žur/Zhur by police. From Žur/Zhur they had to walk the remaining six kilometres to the border.⁷²⁵ At the border Morina’s identification papers were seized by the border police and thrown on to a pile.⁷²⁶

267. Latifi also gave evidence that on 25 April 1999 the “Serbs” started a large offensive in the Srbica/Sërbica area, which involved shelling of the villages of Pirane/Pirana, Donji Retimlje/Retia e Ulët, Retimlje/Retia, and Randubrava/Randobrava. The following day he and his family hired a bus for 2,000 German Marks, and local Serbs accompanied them to the village of Žur/Zhur. They then continued on to the border crossing at Vrbnica/Vërbnica (Morina),⁷²⁷ where their personal documents were seized, except for Latifi’s driver’s licence, which he was able to hide, before they passed into Albania.⁷²⁸

268. Based on the evidence given by Latifi and Morina, the Trial Chamber finds that in April 1999 “mixed Serbian troops” ordered displaced Kosovo Albanians sheltering in Srbica/Sërbica to leave for Albania. Subsequently, villages in the area of Srbica/Sërbica; Donji Retimlje/Retia e Ulët, Retimlje/Retia, and Randubrava/Randobrava were shelled by the VJ. Kosovo Albanians sheltering in Srbica/Sërbica travelled in buses accompanied by local Serbs and police to Žur/Zhur, and then on to the border to Albania. At the border, personal documents, such as identification

⁷²³ Halil Morina, P2523 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 901, 954, P2522 (witness statement dated 5 October 2001), p. 4.

⁷²⁴ Halil Morina, P2523 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 905, P2522 (witness statement dated 5 October 2001), p. 4.

⁷²⁵ Halil Morina, P2522 (witness statement dated 5 October 2001), p. 5, P2523 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 903-905. *See also* Nebojša Ognjenović, T. 22859 (20 Feb 2008).

⁷²⁶ Halil Morina, P2522 (witness statement dated 5 October 2001), p. 5, P2523 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 905-906.

⁷²⁷ Lizane Malaj testified that she crossed the border at Vrbnica/Vërmicë on 28 April 1999, and that the crossing is called Vrbnica by Serbs, and Qafa e Morinë by Albanians. Lizane Malaj, T. 1384, 1391 (10 August 2006). According to P615 (Kosovo Atlas), p. 14, the border is called Vrbnica/Vërmicë on the Serbian side and Morinë on the Albanian side.

⁷²⁸ Rahim Latifi, P2381 (witness statement dated 28 April 1999), p. 3, P2382 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 3648-3649.

documents, were taken from many of the Kosovo Albanians by the police. However, the charges in the Indictment concerning forcible displacement of Kosovo Albanians from Donji Retimlje/Retia e Ulët, Retimlje/Retia, and Randubrava/Randobrava have not been proved.

6. Prizren town (Dušanovo/Dushanova)

269. The evidence presented in support of the charges pertaining to Prizren town relates specifically to Dušanovo/Dushanova, which witnesses described as a suburb of the town.⁷²⁹ Rexhep Krasniqi and Hysni Kryeziu gave eyewitness evidence regarding events in Dušanovo/Dushanova, where they both lived in March 1999.

270. Krasniqi, who was a Kosovo Albanian factory worker, testified that there was no tension in Dušanovo/Dushanova prior to the NATO bombing.⁷³⁰ To his knowledge, there was no KLA activity in the area. On 23 March 1999 50 green tanks were stationed at the factory where he worked, along with 105 millimetre artillery pieces.⁷³¹ That same day Krasniqi was told by his Serb colleagues that soldiers had said that, if NATO started bombing, they would kill them.⁷³² A MUP report, dated 28 January 1999, states that at that time activities were underway to create a strong “terrorist” base in the area of Dušanovo/Dushanova and that young terrorists were being sent for training in Orahovac/Rahovec and then sent back to Dušanovo/Dushanova with weapons.⁷³³ The Chamber heard no further evidence to substantiate this report.

271. On cross-examination Krasniqi agreed with the proposition that the VJ barracks in Prizren were bombed by NATO on 24 March 1999, and that further bombings took place on 27 and 28 March not far from the Municipal Assembly building in Prizren, although it appears that he was not an eye-witness to these bombings, but merely heard the explosions.⁷³⁴ Kryeziu, a Kosovo Albanian man from Dušanovo/Dushanova who had worked as a barber and a driver, also testified that the “Serbian barracks” were struck by NATO at 8:00 p.m. on 24 March 1999.⁷³⁵ Delić testified that on 25 March 1999 he was informed that the VJ barracks in Prizren had been bombed.⁷³⁶ In

⁷²⁹ Rexhep Krasniqi, T. 4922 (16 October 2006); Božidar Delić, T. 19387 (29 November 2007); Hysni Kryeziu, T. 7543 (29 November 2006); P2514 (witness statement dated 14 May 1999 and correction dated 19 September 2004), e-court p. 8.

⁷³⁰ Rexhep Krasniqi, P2378 (witness statement dated 12 April 1999), e-court p. 13.

⁷³¹ Rexhep Krasniqi, T. 4923, 4938 (16 October 2006), T. 4925 (16 October 2006); P2378 (witness statement dated 12 April 1999), e-court p. 13.

⁷³² Rexhep Krasniqi, T. 4941–4943, 4953 (16 October 2006); P2378 (witness statement dated 12 April 1999), e-court p. 13.

⁷³³ 6D1017 (MUP Prizren Report, 28 January 1999), p. 7.

⁷³⁴ Rexhep Krasniqi, T. 4937, 4949 (16 October 2006).

⁷³⁵ Hysni Kryeziu, T. 7555 (30 November 2006); *see also* Rahim Latifi, T. 4986 (17 October 2006).

⁷³⁶ Božidar Delić, T. 19376–19377 (29 November 2007).

addition, a report by the MUP Staff to the Ministry of the Interior of Serbia, summarizing events registered in the period from 27 to 28 March 1999, recorded that NATO attacked the VJ communications centre located in the grounds of the Car Dušan Silni barracks in Prizren on 26 March 1999.⁷³⁷

272. K54, who was a member of the 549th Motorised Brigade in Kosovo in early 1999, also confirmed that soon after the NATO bombing started the military barracks in Prizren were struck and destroyed. As a result he and other soldiers in his unit moved to a nearby “settlement” from which they expelled the local people and occupied their houses.⁷³⁸

273. Krasniqi described events in Dušanovo/Dushanova on 28 March 1999, when members of the police wearing black combat uniforms and blue camouflage uniforms, and some wearing ski masks, arrived at his and his brother’s houses.⁷³⁹ At that time there were about 60 displaced persons from Mamuša/Mamusha (near to Pirane/Pirana) staying in homes in Dušanovo/Dushanova. The police arrived at about 4:30 or 5:00 p.m.⁷⁴⁰ They had green tanks with 105 millimetre cannons on them and anti-aircraft weapons, police armoured vehicles, and police jeeps with Prizren number plates.⁷⁴¹ In addition, there were VJ forces in the neighbourhood, and all of the streets were sealed off by them and the police. Krasniqi testified that the police broke down the front door of his house and entered, saying, “Go to Albania. There is no place for you here.”⁷⁴² Krasniqi was hit several times on the back by a policeman using his rifle butt, and threatened with death if he spoke. His wife and other members of his family were also beaten, and their money and jewellery were taken from them by the police. Krasniqi’s son had his identity card seized by one of the policemen.⁷⁴³ According to Krasniqi, these police forces told them that they were going to throw them out of Kosovo or “massacre” them. They were firing their weapons in the air all the time.⁷⁴⁴ The Serb residents had already left the previous evening. Despite the submission by the Lukić Defence that Krasniqi’s description of the uniforms does not correspond to that of a regular police uniform,⁷⁴⁵ the Trial Chamber finds that there is no reason to doubt his evidence that the police forced him and his family to leave and mistreated them. In this regard, the Chamber particularly notes the evidence

⁷³⁷ P1100 (Report by the MUP Staff to the Serbian MUP, 27 March 1999), p. 2.

⁷³⁸ K54, T. 10513–10514 (26 February 2007), P2677 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 8245 (under seal).

⁷³⁹ Rexhep Krasniqi, T. 4949 (16 October 2006), P2378 (witness statement dated 12 April 1999), e-court p. 13.

⁷⁴⁰ Rexhep Krasniqi, T. 4949 (16 October 2006), P2378 (witness statement dated 12 April 1999), e-court p. 13.

⁷⁴¹ Rexhep Krasniqi, T. 4923–4925 (16 October 2006), P2378 (witness statement dated 12 April 1999), e-court p. 13.

⁷⁴² Rexhep Krasniqi, T. 4950, P2378 (witness statement dated 12 March 1999), e-court p. 13. He stated that this was said by police wearing “ski masks”.

⁷⁴³ Rexhep Krasniqi, T. 4928–4930 (16 October 2006), P2378 (witness statement dated 12 March 1999), e-court p. 13.

⁷⁴⁴ Rexhep Krasniqi, T. 4929, 4954 (16 October 2006), P2378 (witness statement dated 12 March 1999), e-court p. 13.

⁷⁴⁵ Lukić Final Trial Brief, 7 August 2008 (public version), paras. 111 and 864.

that MUP officers wore blue camouflage uniforms during the Indictment period, discussed in Section VI.A.3 above.

274. Krasniqi testified that the same thing happened in almost every house in the neighbourhood. Consequently, around 4,000 to 5,000 people were forced out of Dušanovo/Dushanova and a convoy was formed that moved towards the border, some people travelling in vehicles and others on foot. On the outskirts of Dušanovo/Dushanova Krasniqi saw some young men jumping off tractors and running away from the police who shot at them with automatic weapons. He saw three of the men falling. He also saw men in camouflage and black uniforms, all mixed together, setting Kosovo Albanian houses on fire, in the presence of the army, who did nothing to stop it.⁷⁴⁶

275. Krasniqi testified that he walked for six hours to the Albanian border, passing through checkpoints manned by both police and military forces, and seeing police cars driving up and down beside the convoy all the time. He passed through Dobrušte/Dobrushtë village, much of which was on fire, and then through Žur/Zhur and on to the final border crossing at Vrbnica/Vërbnica (Morina). At that border crossing he recognised some of the local police from Dušanovo/Dushanova, including the commander of the border police. These policemen did not harm them, but as the people passed through the border crossing their identification documents were taken from them. Since Krasniqi and his family had not had time to collect their documents before they departed, their documents were not taken.⁷⁴⁷

276. Hysni Kryeziu confirmed that the Kosovo Albanian population of Dušanovo/Dushanova was expelled on 28 March 1999, following the arrival at about 5:00 p.m. of a large number of “police and military forces” with tanks and armoured vehicles, who started firing shots into the air and at the houses.⁷⁴⁸ These forces shouted things like, “Kosovo belongs to Serbia, you belong to Albania”.⁷⁴⁹ Kryeziu denied that there was a KLA presence in Dušanovo/Dushanova at that or at any other time, and stated that no attacks were launched by the KLA against the FRY/Serbian forces in that area.⁷⁵⁰ He also described how the whole neighbourhood left their homes and began moving out in a convoy which he joined. About 500 metres from his house Kryeziu was stopped by the police, including a local police commander whom he recognised despite the fact that he was wearing a nylon stocking over his head. These police officers threatened him and his family. “Soldiers” wearing black “Chetnik caps” with cockades on them also told him to leave his car

⁷⁴⁶ Rexhep Krasniqi, T. 4930 (16 October 2006); P2378 (witness statement dated 12 March 1999), e-court p. 14.

⁷⁴⁷ Rexhep Krasniqi, P2378 (witness statement dated 12 March 1999), e-court p. 14.

⁷⁴⁸ Hysni Kryeziu, T. 7547 (29 November 2006); P2514 (witness statement dated 14 May 1999), e-court p. 9; P1325 (Photographs of military vehicles).

⁷⁴⁹ Hysni Kryeziu, P2514 (witness statement dated 14 May 1999 and correction dated 19 September 2004), e-court p. 9.

behind and threatened him with a knife.⁷⁵¹ Their car, jewellery, money, and identification documents were all taken from them, and the documents were torn up or thrown away.⁷⁵² When Kryeziu's wife tried to retrieve something from the boot of the car, she was hit with a rifle-butt and lost consciousness.⁷⁵³ Kryeziu stated that he saw masked policemen and soldiers beating two men whom he knew, and setting fire to their house. He also saw some soldiers with the emblem of the White Eagles paramilitary group on the upper left arm of their uniforms.⁷⁵⁴ The Trial Chamber sees no reason to doubt that Kryeziu was able to recognise some of the perpetrators as members of the police, particularly as he recognised one of them personally. These police forces were working in concert with other irregular armed and uniformed forces.

277. According to Kryeziu, he and the other expelled people had to walk to the border and were further mistreated along the way. He saw "soldiers" grabbing jewellery from women and taking a small baby from its mother and throwing it on the ground.⁷⁵⁵ At the border crossing he saw policemen demanding money and taking cars, documents, and car number plates from the departing Kosovo Albanians.⁷⁵⁶

278. Delić, Tomislav Mitić, commander of the Prizren Military Department, VJ soldier Franjo Glončak, and Chief of the Prizren SUP Miloš Vojnović, all described Prizren as full of people during the NATO bombing, including civilians, police, VJ soldiers, and members of the civilian protection units.⁷⁵⁷ None of these witnesses was, however, asked about or mentioned a KLA presence in the town itself, or in the neighbourhood of Dušanovo/Dushanova. Delić indeed denied that his tanks would have been deployed in Dušanovo/Dushanova in late March 1999.⁷⁵⁸ When confronted with the testimony of Rexhep Krasniqi, Delić also denied that there were 50 tanks and 105-millimetres artillery pieces concealed in the factory where Krasniqi worked. He explained that he had a total of 31 combat tanks, and not one of them was in the factory and his unit never had 105 millimetre howitzers as mentioned by Krasniqi.⁷⁵⁹ Similarly, Franjo Glončak, a soldier in the 175th Infantry Brigade of the VJ from 25 March until 4 or 5 April 1999, and then in the 549th Motorised

⁷⁵⁰ Hysni Kryeziu, T. 7555–7556 (30 November 2006); P2514 (witness statement dated 14 May 1999), e-court p. 9.

⁷⁵¹ Hysni Kryeziu, T. 7544 (29 November 2006); P2514 (witness statement dated 14 May 1999), e-court p. 9.

⁷⁵² Hysni Kryeziu, T. 7544 (29 November 2006); P2514 (witness statement dated 14 May 1999), e-court p. 9.

⁷⁵³ Hysni Kryeziu, T. 7567 (30 November 2006).

⁷⁵⁴ Hysni Kryeziu, T. 7549 (29 November 2006), P2514 (witness statement dated 14 May 1999), e-court p. 9.

⁷⁵⁵ Hysni Kryeziu, T. 7570 (30 November 2006), P2514 (witness statement dated 14 May 1999), e-court p. 9.

⁷⁵⁶ Hysni Kryeziu, P2514 (witness statement dated 14 May 1999), e-court p. 10.

⁷⁵⁷ Božidar Delić, T. 19395 (4 December 2007); Franjo Glončak, T. 21117 (25 January 2008), 5D1395 (witness statement dated 26 December 2007), para. 9; Miloš Vojnović, T. 24181 (12 March 2008); Tomislav Mitić, 5D1390 (witness statement dated 27 December 2007), p. 10. *See also* 5D1242 (Video clips).

⁷⁵⁸ Božidar Delić, T. 19389–19390 (29 November 2007).

⁷⁵⁹ Božidar Delić, T. 19390 (29 November 2007).

Brigade,⁷⁶⁰ testified that there were no artillery units or artillery weapons in the vicinity of Dušanovo/Dushanova.⁷⁶¹ However, the war diary of the Anti-Aircraft Defence Light Artillery Rocket Battalion states that on 7 April 1999 the 3rd Motorised Battalion took up positions in Dušanovo/Dushanova village, 700 metres west of the farm *Ekonomija*, and carried out preparations for anti-aircraft combat.⁷⁶²

279. In the face of these denials of tanks and heavy weapons in Dušanovo/Dushanova, a MUP report covering the period 30 April–5 May 1999 states that the VJ positions in Dušanovo/Dushanova were a constant target of NATO aircraft. The report further states that the airstrikes caused enormous material damage, including the destruction of VJ weapons located in the village, over 40 homes and a number of private business facilities.⁷⁶³ Glončak, when confronted with this document, conceded that during the airstrikes on those days some weapons were destroyed that were part of the Anti-Aircraft Defence Light Artillery Rocket Battalion of the 549th Motorised Brigade.⁷⁶⁴ In light of this documentary evidence, and the eye-witness accounts of Krasniqi and Kryeziu, the Trial Chamber finds that, following the bombing of the VJ barracks in Prizren, the Kosovo Albanian residents of Dušanovo/Dushanova were expelled from their homes by police and VJ forces working together, and the VJ then took up position there.

280. The Lukić Defence also called Nebojša Ognjenović, who was the Commander of the Border Police Station at the Vrbnica/Vërbnica (Morina) border crossing in early 1999, to give evidence. Ognjenović testified that from the beginning of the NATO bombing large numbers of people began arriving at the border crossing seeking to cross. Due to their large numbers the border police did not conduct physical searches.⁷⁶⁵ He further recalled talking to Hysni Kryeziu, who was his neighbour in 1999, at the border crossing. However, contrary to the evidence of Kryeziu and Krasniqi, Ognjenović asserted that he never saw any policemen taking money from people, taking away people's cars and documents, or taking off the licence plates of cars, and stated that, had there been such cases, he would have taken action against those who did it. He further testified that

⁷⁶⁰ Franjo Glončak, T. 21122 (25 January 2008); 5D1395 (witness statement dated 26 December 2007), paras. 4–5.

⁷⁶¹ Franjo Glončak, T. 21116, T. 21119–21120 (25 January 2008).

⁷⁶² P2575 (War Diary of the Light Air Defence Rocket Artillery Battalion of the 549th Motorised Brigade), p. 7–8; Franjo Glončak, T. 21123 (25 January 2008).

⁷⁶³ 6D1004, (MUP Report covering Prizren 30 April – 5 May 1999, 6 May 1999), p. 4. Note however, that when this part of the document was read by the witness he translated the word *weapon* to “artillery pieces”. Franjo Glončak, T. 21121 (25 January 2008). Later on during his examination he clarified the translation: “It is an anti-aircraft weapon of the army of Yugoslavia, a combined cannon mounted on a vehicle called Praga with two barrels. It is not an artillery weapon. It is an anti-aircraft defence weapon.” Franjo Glončak, T. 21138 (25 January 2008). Re NATO bombing, *see also* Franjo Glončak, 5D1395 (witness statement dated 26 December 2007), para. 9; 5D914 (549th Motorised Brigade Combat Report).

⁷⁶⁴ Franjo Glončak, T. 21121 (25 January 2008).

⁷⁶⁵ Nebojša Ognjenović, T. 22885–22886 (20 February 2008).

nobody ever came to him to complain about the conduct and attitude of policemen at the border crossing.⁷⁶⁶

281. Ognjenović also claimed that Kosovo Albanians had themselves discarded their personal identity documents at or near the border crossing and that the border crossing employees collected and placed them in a room. Car documents, license plates and drivers' licenses were given to the Prizren SUP, but the personal ID cards remained in a room in the border post building even after the withdrawal of FRY/Serbian forces from Kosovo.⁷⁶⁷

282. Ognjenović further testified that on 27 March 1999 a group of 97 people arrived at the border crossing, seeking to go to Albania without the required travel documentation. He knew some of these people, and sought to persuade them to return home, but they persisted, and told him that they were leaving their homes because of NATO bombing the VJ positions near their village.⁷⁶⁸ After receiving advice from the chief of the Border Police Administration in Belgrade, he contacted the Albanian border authorities, who informed him that all Albanians could cross into Albanian territory without any documents at all, and so he let the group pass the border.⁷⁶⁹

283. Ognjenović claimed that the people in the group told him that their documents had been taken by the Prizren SUP. He telephoned that office after they had crossed the border, but was advised that no such documents had been retained there.⁷⁷⁰ He later submitted a written report about the incident to the Prizren SUP. This Official Note states that the Prizren SUP and the Border Police Administration were informed by telephone about the situation prior to permitting the group to cross the border, and approval was given for them to do so.⁷⁷¹ When shown the Official Note, Ognjenović changed his testimony and stated that he had indeed called the Prizren SUP before the group crossed the border.⁷⁷² However, at that point he only called them to inform them that there was an incident at the border crossing and not to ask if the documents were there.⁷⁷³

⁷⁶⁶ Nebojša Ognjenović, T. 22918–22919 (21 February 2008).

⁷⁶⁷ Nebojša Ognjenović, T. 22885, 22889–22891 (20 February 2008).

⁷⁶⁸ Nebojša Ognjenović, T. 22865–22866, 22887 (20 February 2008).

⁷⁶⁹ Nebojša Ognjenović, T. 22862–22864 (20 February 2008), T. 22930–22931 (21 February 2008). *See also* 6D1497 (Official report 27 March 1999).

⁷⁷⁰ Nebojša Ognjenović, T. 22862–22864, 22867 (20 February 2008), T. 22896–22897, 22904, 22938 (21 February 2008). *See also* 6D1497 (Official report 27 March 1999).

⁷⁷¹ Nebojša Ognjenović, T. 22867 (20 February 2008); T. 22896–22899 (21 February 2008); P3086 (Official note from Vrbnica/Vërmicë Border Police Station on the crossing of persons from Yugoslavia into Albania, 27 March 1999).

⁷⁷² Nebojša Ognjenović, T. 22902, 22904–22905 (21 February 2008).

⁷⁷³ Nebojša Ognjenović, T. 22904–22905, 22931 (21 February 2008).

284. Petar Dujković, who was the Deputy Head of the Border Police Administration in Belgrade,⁷⁷⁴ testified that he knew about this incident, but he never saw the report that was sent to his office. He also stated that any person in Belgrade receiving such a report would have been under an obligation to pass this along to the relevant office within the administration.⁷⁷⁵

285. The Trial Chamber is unconvinced by Ognjenović's assertion that many Kosovo Albanians discarded their personal identity documents as they crossed into Albania. Although this may have happened on occasion, the Chamber finds no reason to doubt the evidence of Krasniqi and Kryeziu, as well as eye-witnesses from other municipalities, who saw such documents being seized, or indeed had their own documents taken from them. It further finds his account of the incident on 27 March, when he claims to have called the Prizren SUP about documents retained there, implausible, and took this into account when assessing his credibility as a whole. Moreover, insofar as it relates to people leaving from Prizren town itself, his assertion that these people departed Kosovo due to the NATO bombing 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 absence of evidence of KLA activity.

286. The Trial Chamber thus finds, based on the evidence of Krasniqi supported by Kryeziu, that a large number of Kosovo Albanians from Dušanovo/Dushanova, a neighbourhood of Prizren town, were expelled from their homes on 28 March 1999, and directed towards Albania. MUP and VJ forces worked together to effect this expulsion and to direct the population to the border. Other irregular or special forces were also among the MUP forces involved. During the course of the expulsion, Kosovo Albanians were beaten, threatened, and robbed, and houses were set on fire. Around 4,000 to 5,000 people formed a convoy, and on the way to the border they were further mistreated. At the Vrbnica/Vërbnica (Morina) border crossing policemen seized many identity and other personal documents belonging to people in the convoy.

287. The Trial Chamber heard no evidence regarding the charges in the Indictment that Kosovo Albanian women were separated from the convoy and sexually assaulted.

⁷⁷⁴ The full name of the department was "Administration of Border Police, Foreign Nationals, and Administrative Affairs." Petar Dujković, T. 23303 (27 February 2008).

⁷⁷⁵ Petar Dujković, T. 23409–23410 (28 February 2008).

E. ORAHOVAC/RAHOVEC

1. Charges in Indictment

288. The factual averments relating to Orahovac/Rahovec municipality deal with events said to have taken place there in March and April 1999. The underlying offences of deportation and forcible transfer from locations within Orahovac/Rahovec municipality, charged under Counts 1 and 2 respectively, are described in paragraph 72(a) and 72(a)(i) of the Indictment, as follows:

On the morning of 25 March 1999, forces of the FRY and Serbia surrounded the village of Celina/Celinë with tanks and armoured vehicles. After shelling the village, forces of the FRY and Serbia entered the village and systematically looted and pillaged everything of value from the houses, set houses and shops on fire and destroyed the old mosque. Most of the Kosovo Albanian villagers had fled to a nearby forest before the army and police arrived. On 28 March 1999, forces of the FRY and Serbia forced the thousands of people hiding in the forest to come out. The men were separated from the women and were beaten, robbed, and all of their identity documents were taken from them. The men were then marched to Prizren and eventually forced to go to Albania.⁷⁷⁶

On 25 March 1999, a large group of Kosovo Albanians went to a mountain near the village of Nogavac/Nagavc, also in Orahovac/Rahovec municipality, seeking safety from attacks on nearby villages. Forces of the FRY and Serbia surrounded them and on the following day, ordered the 8,000 people who had sought shelter on the mountain to leave. The Kosovo Albanians were forced to go to a nearby school and then they were forcibly dispersed into nearby villages. After three or four days, forces of the FRY and Serbia entered the villages, went from house to house and ordered people out. Eventually, they were forced back into houses and told not to leave. On 2 April 1999, forces of the FRY and Serbia started shelling the villages, killing a number of people who had been sleeping in tractors and cars. Those who survived headed for the Albanian border. When the villagers arrived at the border, all their identification papers were taken from them. In the course of the expulsions, throughout the entire municipality of Orahovac/Rahovec, forces of the FRY and Serbia systematically burned houses, shops, cultural monuments and religious sites belonging to Kosovo Albanians. Several mosques were destroyed, including the mosques of Bela Crkva/Bellacërkvë, Brestovac/Brestovc, Velika Kruša/Krushë e Madhe and others.⁷⁷⁷

289. The Accused are also charged with murder, under Counts 3 and 4, in relation to events described in paragraph 75(b) and (c) of the Indictment which avers:

On or about 25 March 1999, forces of the FRY and Serbia surrounded and attacked the village of Bela Crkva/Bellacërkvë (Orahovac/Rahovec municipality). Many of the residents of Bela Crkva/Bellacërkë fled along the Belaja River outside the village and were forced to seek shelter near a railroad bridge. As the forces of the FRY and Serbia approached the bridge, they opened fire on a number of villagers, killing 12 persons including 10 women and children. A two-year old child survived this incident. The forces of the FRY and Serbia then ordered the remaining villagers out of the streambed, at which time the men and older boys were separated from the elderly men, women and small children. The forces of the FRY and Serbia ordered the men and older boys to strip and then systematically robbed them of all valuables. The women and children were then ordered to leave towards an adjacent village called Zrze/Xërxë. A doctor from

⁷⁷⁶ Indictment, para. 72(a).

⁷⁷⁷ Indictment, para. 72(a)(i).

Bela Crkva/Bellacërkë attempted to speak with a commander of the attacking forces, but he was shot and killed, as was his nephew. The remaining men and older boys were then ordered back into the streambed. After they complied, the forces of the FRY and Serbia opened fire on these men and older boys, killing approximately 65 Kosovo Albanians. A number of men and older boys survived this incident and other persons hiding in the vicinity also witnessed this incident. In addition, forces of the FRY and Serbia also killed six men found hiding in an irrigation ditch in the vicinity.⁷⁷⁸

On or about 25 March 1999, forces of the FRY and Serbia attacked the villages of Mala Kruša/Krusë e Vogël and Velika Kruša/Krushë e Mahde (Orahovac/Rahovec municipality). The villagers of Mala Kruša/Krusë e Vogël took refuge in a forested area outside Mala Kruša/Krusë e Vogël, where they were able to observe the forces of the FRY and Serbia systematically looting and burning their houses. The villagers subsequently took refuge in the house of Sedje Batusha, which is located on the outskirts of Mala Kruša/Krusë e Vogël. During the morning of 26 March 1999, forces of the FRY and Serbia located the villagers. The forces of the FRY and Serbia ordered the women and small children to leave the area and go to Albania. The forces of the FRY and Serbia detained and searched the men and boys and confiscated their identity documents and valuables. Subsequently, the forces of the FRY and Serbia ordered the men and boys, under threat of death, to walk to an unoccupied house in Mala Kruša/Krusë e Vogël. The forces of the FRY and Serbia forced the men and boys to enter the house. When the men and boys were assembled inside, the forces of the FRY and Serbia opened fire with machine guns on the group. After several minutes of gunfire, the forces of the FRY and Serbia set fire to the house in order to burn the bodies. As a result of the shooting and fire, approximately 105 Kosovo Albanian men and boys died.⁷⁷⁹

290. Those persons allegedly killed in Bela Crkva/Bellacërka are listed in Schedule B, and the persons allegedly killed in Mala Kruša/Krusha e Vogël are listed in Schedule C.⁷⁸⁰ Under Count 5 the Accused are charged with responsibility for persecution, in the form of the killings described in paragraph 75(b) and 75(c) and the “wanton destruction or damage of Kosovo Albanian religious sites” including the mosques in Celina, Bela Crkva/Bellacërka, Brestovac/Brestoc, and Velika Kruša/Krusha e Madhe, as described in paragraph 72(a) and 72(a)(i) of the Indictment.

2. Background

291. Orahovac/Rahovec municipality lies in the south-west part of central Kosovo, with Prizren to the south, Đakovica/Gjakova to the west, and Suva Reka/Suhareka to the east. Its main town, also called Orahovac/Rahovec, is in the centre of the municipality, and the villages of Celina, Velika Kruša/Krusha e Madhe, Mala Kruša/Krusha e Vogël, Brestovac/Brestoc, Nogavac/Nagafc, and Bela Crkva/Bellacërka are to the south and south-west, close to Prizren and Đakovica/Gjakova municipalities.

⁷⁷⁸ Indictment, para. 75(b).

⁷⁷⁹ Indictment, para. 75(c).

⁷⁸⁰ During the trial on 29 September 2006, the Prosecution withdrew the charges with respect of Sefer Batusha whose name appears in Schedule C of the Indictment. Mehmet Krasniqi, T. 4376–4377 (29 September 2006). The Trial Chamber will therefore not make any findings with respect to this individual.

292. The Trial Chamber heard evidence from a number of witnesses, led by both the Prosecution and the Defence, in relation to the crimes alleged to have taken place in Orahovac/Rahovec municipality.

293. As discussed in Section VI.B above, towards the end of July 1998 Orahovac/Rahovec town was the site of MUP and VJ action against the KLA, which was pushed back to its strongholds further north, around Mališevo/Malisheva. Bislim Zyrapi testified that up to 24 March 1999 the KLA controlled parts of Orahovac/Rahovec municipality, which fell within the KLA operational zone two, where several KLA brigades operated.⁷⁸¹

294. A Priština Corps Command order issued on 16 February 1999 described the area of Mališevo/Malisheva to the north of Orahovac/Rahovec as one of the major KLA strongholds in Kosovo.⁷⁸² Witness as well as documentary evidence confirms that the Main Staff and the command of the 124th KLA Brigade of the KLA were located in Retimlje/Retia.⁷⁸³ Further, there is evidence that KLA forces were present in the villages south of Brestovac/Brestoc in 1999.⁷⁸⁴ Božidar Delić testified that in 1999 the KLA “staged” incidents every day and they extended the territory under their control in relation to what they held in 1998.⁷⁸⁵ The Accused Lazarević also stated that in early March 1999 “terrorist” activities and the activities of the “armed rebels” escalated.⁷⁸⁶

295. The SUP in Prizren had an OUP in Orahovac/Rahovec. In 1999 Delić liaised usually with the chief of the SUP, Miloš Vojnović.⁷⁸⁷ Tomislav Mitić, Commander of the Prizren Military Department during 1998 and 1999, testified that the 101st Territorial Detachment in Orahovac/Rahovec was deployed in between the villages of Zrze/Xërxa, Bela Crkva/Bellacërka,

⁷⁸¹ Bislim Zyrapi, T. 5967 (6 November 2006), T. 5991 (7 November 2006), T. 6258–6259 (10 November 2006); P2447 (Map showing KLA held areas); P2469 (Map showing seven Operational Zones as indicated by Bislim Zyrapi).

⁷⁸² P2808 (Order of the PrK, 16 February 1999), p. 1.

⁷⁸³ 3D1048 (Report of the 3rd Army Command, 2 March 1999), para. 2.5; P2808 (Order of the PrK, 16 February 1999), p. 2; P2015 (Joint Command Order, 23 March 1999), p. 1; 6D1013 (MUP Prizren Report, 13 March 1999), p. 3; Božidar Delić, T. 19438 (4 December 2007); IC152 (Map marked by Božidar Delić); *see also* Vlatko Vuković, 5D1442 (witness statement dated 5 January 2008), para. 18.

⁷⁸⁴ Božidar Delić, T. 19438 (4 December 2007); P2015 (Joint Command Order, 23 March 1999), p. 1.

⁷⁸⁵ Božidar Delić, T. 19276 (28 November 2007), T. 19441–19442 (4 December 2007); *see also* 3D1041 (Report of the PrK Command to the General Staff of the VJ, 19 January 1999), p. 2; Branko Gajić, T. 15233–15235 (7 September 2007); 5D878 (Report from the 549th Motorised Brigade, 15 February 1999); 6D1017 (MUP Prizren Report, 28 January 1999), pp. 1–2; P444 (KVM report on compliance by the parties in Kosovo, 12 March 1999), p. 4, also admitted as 3D179; Tomislav Mitić, 5D1390 (witness statement dated 27 December 2007), para. 11; 6D77 (KLA Order, 24 February 1999); 3D1040 (Report of the PrK Command, 13 January 1999), para. 2.2; 6D614 (MUP Overview of recorded criminal offences, 1 July 1998 to 20 June 1999), p. 529, para. 47, p. 532, para. 56, p. 580, para. 50; 6D2, 6D1632 (witness statement), paras. 96–97, 100.

⁷⁸⁶ Vladimir Lazarević, T. 17859 (7 November 2007); *see also* 5D966 (Order of the 252nd Armoured Brigade, 9 May 1999); Miloš Mandić, 5D1391 (witness statement dated 8 January 2008), para. 31, T. 20906–20907 (23 January 2008), regarding actions in May 1999.

⁷⁸⁷ Božidar Delić, T. 19344–19345 (29 November 2007).

Velika Hoča/Hoça e Madhe, Opetruša/Opterusha, and Retimlje/Retia. There were also reserve police squads in that area.⁷⁸⁸

296. There is no dispute that at the end of March 1999 an action involving VJ and MUP forces was carried out covering parts of Orahovac/Rahovec municipality, as well as Prizren and Suva Reka/Suhareka municipalities, as discussed above.⁷⁸⁹ Pursuant to an order from the Joint Command dated 23 March 1999, the reinforced Priština Corps, and the “armed non-Šiptar population”, was ordered to assist MUP forces in blocking, crushing and destroying the KLA.⁷⁹⁰ The order further specifically assigned the 549th Motorised Brigade, in a joint action with the MUP, to carry out an attack and to break up and destroy the KLA on the axes of certain villages, including Bela Crkva/Bellacërka, Celina, Velika Kruša/Krusha e Madhe, and Brestovac/Brestoc.⁷⁹¹

297. Implementing this order, an order from the 549th Motorised Brigade dated 23 March 1999 directed *inter alia* that the 549th Motorised Brigade, in co-operation with the 37th PJP detachment from Niš, the 5th PJP company from Prizren, and the 4th PJP company from Đakovica/Gjakova, lift the “blockade” of the Suva Reka/Suhareka–Orahovac/Rahovec road, destroy the KLA in Retimlje/Retia, and establish control of the territory in this area.⁷⁹²

298. Zyrapi testified that a few hours after the beginning of the NATO campaign, in the early morning of 25 March 1999, “Serb forces” launched an attack on KLA positions.⁷⁹³ In Orahovac/Rahovec municipality these forces attacked the villages of Hoca/Hoça, Nogavac/Nagafc, and Nišor/Nishor, from the direction of Orahovac/Rahovec town. The forces also attacked from the south, coming from Pirane/Pirana and moving north-west towards Bela Crkva/Bellacërka.⁷⁹⁴ At this point the KLA forces, together with the population of Randubrava/Randobrava and Donji Retimlje/Retia e Ulët were withdrawn to Mamuša/Mamusha, while the KLA moved on to the mountainous territory around Dobrodeljane/Doberdolan village.⁷⁹⁵ As stated above in Section VII.D, it appears from his testimony, although it is not entirely clear, that this withdrawal was

⁷⁸⁸ Tomislav Mitić, T. 20888–20889 (23 January 2008), 5D1390 (witness statement dated 27 December 2007), paras. 20, 31.

⁷⁸⁹ P2015 (Joint Command Order, 23 March 1999); P1981 (Order of the 549th Motorised Brigade, 23 March 1999); P1995 (Analysis of the operation of the 549th Motorised Brigade, 30 March 1999); *see also* P1926 (3rd Army Combat Report to VJ General Staff, 25–26 March 1999), p. 3; 5D1357 (Combat Report of the PrK Command, 25 March 1999).

⁷⁹⁰ P2015 (Joint Command Order, 23 March 1999), p. 2.

⁷⁹¹ P2015 (Joint Command Order, 23 March 1999), p. 3.

⁷⁹² P1981 (Order of the 549th Motorised Brigade, 23 March 1999), pp. 2–3. The Chamber notes that the action was to be carried out in co-operation with the 37th PJP detachment, but Delić testified that instead the MUP sent the 23rd PJP Detachment. Božidar Delić, T. 19679 (6 December 2007). *See also* Vlatko Vuković, T. 21353 (30 January 2008).

⁷⁹³ Bislim Zyrapi, T. 5989–5990 (7 November 2006); P2447 (Map showing KLA held areas).

⁷⁹⁴ Bislim Zyrapi, T. 5991 (7 November 2006); P2447 (Map showing KLA held areas).

⁷⁹⁵ Bislim Zyrapi, T. 5992–5994 (7 November 2006); P2447 (Map showing KLA held areas).

carried out under the orders and organisation of the KLA in order to protect the local Kosovo Albanians from being caught in any crossfire between the Serbian forces and the KLA.

299. This action was also confirmed by Delić, who testified that the task of his brigade, in co-ordination with MUP forces, was to block the KLA. In particular, the command of the 124th KLA brigade, was to be encircled.⁷⁹⁶ During the activity in Retimlje/Retia the “terrorists” persistently defended the area of Upper and Lower Retimlje/Retia, Randubrava/Randobrave, Studenčane/Studenčan, and the route along which they were withdrawing together with the civilian population, through Dobrodeljane/Doberdolan towards Pagaruša/Pagarusha.⁷⁹⁷

300. Delić testified that on 26 and 27 March 1999 he personally was able to observe columns of civilians moving to Neprebište/Neprebishte, Mamuša/Mamusha, and further on to Studenčane/Studenčan, Dobrodeljane/Doberdolan, and Pagaruša/Pagarusha. He also saw columns being formed in the villages of Jančište/Jancishte and Moralija/Marali, heading towards Ostrozub/Astrazup.⁷⁹⁸ Delić did not give any explanation, however, as to why people were leaving the area.

301. As discussed above, a report dated 30 March 1999 from Delić to the Commander of the Priština Corps, stated that the above-described action was carried out from 25 to 29 March, and its objectives met.⁷⁹⁹

302. Another action was carried out in the municipality between 30 March and 3 April, again pursuant to an order by the Joint Command.⁸⁰⁰ The Priština Corps, with reinforcements and armed non-Albanian inhabitants of Kosovo, was ordered to provide support for the MUP forces in blocking, routing, and destroying the KLA in the general area of Mališevo/Malisheva.⁸⁰¹ Consequently, the Priština Corps Command issued an order instructing the forces, including the 549th Motorised Brigade, to prepare for operations in the “general area” of Mališevo/Malisheva.⁸⁰² On 29 March Delić issued a corresponding order to his units, instructing them to support the MUP forces in breaking and destroying the KLA on the Mali Grab–Pagaruša/Pagarusha village, Velika Hoča/Hoça e Madhe village–Milanović village–Jančište/Jancishte village and Orahovac/Rahovec–

⁷⁹⁶ Božidar Delić, T. 19358, 19370 (29 November 2007); IC150 (Map marked by Božidar Delić); *see also* Vlatko Vuković, T. 21353 (30 January 2008).

⁷⁹⁷ Božidar Delić, T. 19669–19670 (6 December 2007).

⁷⁹⁸ Božidar Delić, T. 19440–19441 (4 December 2007).

⁷⁹⁹ P1995 (Analysis of the operation of the 549th Motorised Brigade, 30 March 1999), pp. 1, 3–5; *see also* Božidar Delić, T. 19348–19349 (29 November 2007).

⁸⁰⁰ P1969 (Joint Command Order, 28 March 1999), p. 1.

⁸⁰¹ P1969 (Joint Command Order, 28 March 1999), p. 2.

⁸⁰² 5D339 (PrK Command order, 28 March 1999), p. 1.

Ostrozub village axes.⁸⁰³ According to the analysis of this operation prepared by Delić, the KLA was destroyed in the general area of Mališevo/Malisheva–Pagaruša/Pagarusha–Blace, and complete control was established over the territory.⁸⁰⁴

3. Celina

303. In early 1999 the village of Celina consisted of approximately 250 to 253 households with about 2,000 to 2,500 residents, all of whom were Kosovo Albanians.⁸⁰⁵ The layout of the village was such that the houses were set out in rows, separated from each other by walls of individual family compounds.⁸⁰⁶

304. Reshit Salihi, a Kosovo Albanian resident of the village, testified that there was no KLA presence in his village, nor was he or any member of his family a member of the KLA.⁸⁰⁷ Agim Jemini, the former mayor of Celina, similarly indicated that there was no KLA presence in the village.⁸⁰⁸ Jemini and Salihi also testified that Celina was not subject to any offensives prior to the start of the NATO bombing campaign.⁸⁰⁹ However, on 9 January 1999 Jemini had a meeting with two KVM verifiers, to whom he expressed the villagers' feelings of insecurity due to the fact that the VJ was setting up a checkpoint at the entrance to the village.⁸¹⁰ Jemini confirmed that the villagers had asked that the checkpoint be removed, but rejected the suggestion that they were ready to support any KLA activity by way of response to the VJ provocation.⁸¹¹ When Delić was confronted with this evidence, he stated that neither the VJ nor anyone else had any checkpoint at Celina.⁸¹² As discussed below, the Trial Chamber accepts Jemini's account of events in Celina at this time, which is consistent with that of Salihi, and therefore does not consider Delić's broad denial of the existence of the checkpoint to undermine Jemini.

⁸⁰³ P2000 (Order of the 549th Motorised Brigade, 29 March 1999), p. 2.

⁸⁰⁴ P2002 (Analysis of operations of 549th Motorised Brigade, 30 March [*sic*] 1999), p. 1. The Chamber notes that the date on the document is 30 March 1999 but that Delić testified that this was a mistake, and that it was signed after that date. Božidar Delić, T. 19562 (5 December 2007).

⁸⁰⁵ Agim Jemini, T. 4232 (28 September 2006); Reshit Salihi, T. 4204 (28 September 2006), P2336 (witness statement dated 29 April 1999), p. 2.

⁸⁰⁶ Reshit Salihi, P2336 (witness statement dated 29 April 1999), p. 2.

⁸⁰⁷ Reshit Salihi, T. 4225 (28 September 2006), P2336 (witness statement dated 29 April 1999), p. 5.

⁸⁰⁸ Agim Jemini, T. 4244 (28 September 2006).

⁸⁰⁹ Agim Jemini, T. 4244–4245 (28 September 2006); Reshit Salihi, P2336 (witness statement dated 29 April 1999), p. 2.

⁸¹⁰ Agim Jemini, T. 4278 (28 September 2006).

⁸¹¹ Agim Jemini, T. 4278–4279 (28 September 2006).

⁸¹² Božidar Delić, T. 19367 (29 November 2007).

305. Delić also testified that before the NATO bombing started the KLA held the area around Celina.⁸¹³ During the first months of 1999 the territory of Suva Reka/Suhareka, Velika Kruša/Krusha e Madhe and Orahovac/Rahovec increasingly came under the control of the KLA. The road leading from Suva Reka/Suhareka across Studenčane/Studenčan towards Orahovac/Rahovec was closed. The road between Prizren and Đakovica/Gjakova was open; however, there had been attacks along that road on MUP vehicles and MUP patrols. Delić did not experience any attacks on his units in that area since he did not use the roads.⁸¹⁴ But Vlatko Vuković, Commander of the 2nd Motorised Battalion of the 549th Motorised Brigade, stated that there were “terrorist forces” in Celina in 1999.⁸¹⁵

a. Attack on Celina on 25 March 1999

306. Salihi and Jemini testified that “Serb forces” attacked Celina in the early morning of 25 March 1999. The village was first surrounded by VJ tanks, armoured vehicles, and APCs. Most of the villagers left their homes. Sometime between 5:00 a.m. and 5:30 a.m., the VJ began shelling the village, which continued on and off until about 9:00 p.m. that night.⁸¹⁶ According to Jemini, it did not appear that the VJ was aiming at people in the village but rather that they were trying to scare them.⁸¹⁷

307. Salihi testified that the VJ shelled the village for a period and then stopped for a while, during which time the “Serb ground forces” entered the village. Once they withdrew, the shelling would recommence for a while. This pattern was repeated throughout the day.⁸¹⁸

308. Jemini testified that most of the elderly, women, and children gathered in one group; the younger men between 18 and 40 years, including himself, stayed away from this group, because they thought that they would be targets, and hid within the village.⁸¹⁹ Most of Salihi’s family left their compound to hide in some nearby houses, and later went into the woods.⁸²⁰ However, Salihi, his brothers Bajram and Faik, Salihi’s wife, three daughters, and two young sons, stayed behind and

⁸¹³ Božidar Delić, T. 19437 (4 December 2007); IC152 (Map marked by Božidar Delić); *see also* Tomislav Mitić, T. 20894 (23 January 2008).

⁸¹⁴ Božidar Delić, T. 19367 (29 November 2007).

⁸¹⁵ Vlatko Vuković, 5D1442 (witness statement dated 5 January 2008), paras. 18, 29.

⁸¹⁶ Reshit Salihi, T. 4209–4210 (28 September 2006), P2336 (witness statement dated 29 April 1999), p. 2; Agim Jemini, P2338 (witness statement dated 17 July 1999), p. 2, T. 4232–4234 (28 September 2006).

⁸¹⁷ Agim Jemini, P2338 (witness statement dated 17 July 1999), p. 2, T. 4245 (28 September 2006).

⁸¹⁸ Reshit Salihi, P2336 (witness statement dated 29 April 1999), p. 2.

⁸¹⁹ Agim Jemini, P2338 (witness statement dated 17 July 1999), p. 2.

⁸²⁰ Reshit Salihi, P2336 (witness statement dated 29 April 1999), p. 3, P2336 (witness statement dated 30 January 2002), p. 2.

were later joined by Miftare Zeqiri and 14 members of his family. They hid together in his farm compound.⁸²¹

309. Jemini climbed into the roof cavity of a new house and hid there with his cousin Isuf Jemini for about 48 hours.⁸²² He could see about 80 per cent of the village, because the house was only partly built and the roof had a window.⁸²³ At about 9:00 a.m. “military infantry” approached on foot in lines of four, and by 10:00 a.m. they had surrounded the village. There were about 500 “soldiers” who came into the village from four main directions: Bela Crkva/Bellacërka, Velika Kruša/Krusha e Madhe, Orahovac/Rahovec, and from the direction of the main Đakovica/Gjakova–Prizren road.⁸²⁴

310. Jemini testified that the forces that entered Celina belonged to the VJ and the MUP.⁸²⁵ The police who were present were wearing blue camouflage uniforms.⁸²⁶ The VJ forces were wearing brown-green camouflage uniforms with a two-headed eagle insignia on their left upper arm, and “various ribbons in various places”.⁸²⁷ Those who appeared in command wore dark green, beret style hats, and the soldiers wore hats that resembled “Partisan” style hats. All these hats had the same eagle insignia.⁸²⁸ Most of them carried automatic firearms and pistols. Some were carrying rocket launchers and some had grenades attached to their chests.⁸²⁹ Jemini indicated that some of the men wore blue uniforms with double-headed eagles on the chest. In his view, these were “usual police uniform[s]”, not army uniforms.⁸³⁰ Salihi testified that the “Serb forces” that entered the village itself were dressed in “black” uniforms; however, he was too far away to see the badges on the uniforms.⁸³¹ These forces entered the village in armoured wheeled vehicles, accompanied by some tanks, which had tracks instead of wheels.⁸³² Delić stated that all soldiers of his brigade wore uniforms called M-89, and the military police wore uniforms M-94, which were green camouflage uniforms.⁸³³ The Trial Chamber does not agree with the submissions of the Lukić and Lazarević

⁸²¹ Reshit Salihi, P2336 (witness statement dated 29 April 1999), p. 3.

⁸²² Agim Jemini, P2338 (witness statement dated 17 July 1999), p. 2; *see also* IC59 (Photo depicting Agim Jemini’s house in Celine, with his hiding place during the offence of 25 March 1999 marked (marked P2340)); Agim Jemini, T. 4236–4237 (28 September 2006).

⁸²³ Agim Jemini, P2338 (witness statement dated 17 July 1999), p. 2.

⁸²⁴ Agim Jemini, P2338 (witness statement dated 17 July 1999), p. 2.

⁸²⁵ Agim Jemini, P4271–4272 (28 September 2006).

⁸²⁶ Agim Jemini, P2338 (witness statement dated 17 July 1999), p. 2, P2338 (addendum to the witness statement dated 3 June 2002), T. 4271–4273 (28 September 2006).

⁸²⁷ Agim Jemini, T. 4232–4234, 4265 (28 September 2006).

⁸²⁸ Agim Jemini, P2338 (witness statement dated 17 July 1999), p. 2, T. 4275–4276 (28 September 2006).

⁸²⁹ Agim Jemini, P2338 (witness statement dated 17 July 1999), p. 2.

⁸³⁰ Agim Jemini, T. 4269–4273 (28 September 2006), P2338 (addendum to the witness statement dated 3 June 2002).

⁸³¹ Reshit Salihi, P2336 (witness statement dated 29 April 1999), p. 2.

⁸³² Reshit Salihi, P2336 (witness statement dated 29 April 1999), p. 2.

⁸³³ Božidar Delić, T. 19367–19368 (29 November 2007).

Defences that the description of uniforms by Jemini and Salihi are not consistent with the VJ and police uniforms used at the time.⁸³⁴ Other witnesses also described police uniforms as black, and the Chamber recalls that the dark blue police uniform could be described as almost black in colour.⁸³⁵ The Chamber notes, however, that the forces seen by the witnesses may have included reservists, volunteers, and other irregular forces.

311. Salihi stated that he saw “the Serbs” set fire to houses and buildings in the village, including the village mosque. By the end of the day only about 20 houses had been spared. The “Serbs” also went into the houses, took all valuable objects, and loaded them on to their vehicles. Once the vehicles were full, they either smashed the remaining items on the ground or set them on fire. The “Serb forces” also stole cars and tractors. People were coming out of their houses and homes to run away to hide in the forest surrounding the village area.⁸³⁶ Jemini testified that the soldiers took up different points around the village; at each point about 20 to 30 soldiers were stationed. Some of the points were manned for about 12 hours until midnight; some of them stayed for about two days. Throughout the night the soldiers would shoot at random in order to scare the villagers.⁸³⁷

312. At 9:30 a.m. that same morning Jemini saw about 35 soldiers break the gate of his compound consisting of five houses, which included the new house where he was hiding. After killing his dog, they searched all five houses and looted all the valuables.⁸³⁸ The commanders of the “offensive” were in a house that was about 10 to 12 metres away, opposite his hiding place.⁸³⁹ The commanders took their position on the balcony on the first floor, which was facing the house where he hid. Jemini was, therefore, able to hear all the conversations of the commanders.⁸⁴⁰ He also recognised their faces as soldiers from Orahovac/Rahovec, but did not know their names.⁸⁴¹ From the balcony the commanders were supervising what was going on in the village.⁸⁴²

⁸³⁴ Lazarević Final Trial Brief, 29 July 2008 (public version), para. 42; Lukić Final Trial Brief, 7 August 2008 (public version), paras. 846, 849.

⁸³⁵ See, e.g., Reshit Salihi, P2336 (witness statement dated 29 April 1999), pp. 2–3, T. 4204–4205 (28 September 2006); Lutfi Ramadani, T. 4285–4286, 4294–4295, 4323–4324 (28 September 2006). Ramadani explained that black uniforms were not quite black; nevertheless, he called them black. Ramadani, T. 4364 (29 September 2006). See also Section VI.A.3.

⁸³⁶ Reshit Salihi, P2336 (witness statement dated 29 April 1999), p. 2.

⁸³⁷ Agim Jemini, P2338 (witness statement dated 17 July 1999), p. 3.

⁸³⁸ Agim Jemini, P2338 (witness statement dated 17 July 1999), p. 5.

⁸³⁹ Agim Jemini, P2338 (witness statement dated 17 July 1999), p. 2, T. 4235, 4247 (28 September 2006); see also IC58 (Photo depicting the view from the attic window).

⁸⁴⁰ Agim Jemini, P2338 (witness statement dated 17 July 1999), p. 3, T. 4235, 4245–4248 (28 September 2006); see also IC58 (Photo depicting the view from the attic window).

⁸⁴¹ Agim Jemini, P2338 (witness statement dated 17 July 1999), p. 2, T. 4277 (28 September 2006). But see Božidar Delić, T. 19368 (29 November 2007).

⁸⁴² Agim Jemini, T. 4248 (28 September 2006).

313. Some soldiers entered the house where Jemini and his cousin were hiding and came up to the floor immediately below them, where they stationed themselves at the windows.⁸⁴³ Jemini was able to see this because there was a hole in the floor separating the two levels of the building.⁸⁴⁴ At the same time, he stated that it was very difficult for him and his cousin to move around for fear of making a noise and being discovered.⁸⁴⁵ However, he and his cousin would at times get closer to the window, while still keeping a safe distance from it, in order to see what was happening outside.⁸⁴⁶ They could take away the tiles from the roof to observe the village without the soldiers one floor below being able to hear them.⁸⁴⁷ Throughout the day, he saw soldiers entering and looting houses of valuables, and burning houses and the school.⁸⁴⁸

314. Jemini was also able to hear the conversations these commanders had via hand-held radios, including the replies coming through these radios.⁸⁴⁹ Throughout the day, Jemini heard the two commanders giving orders over the radio to the soldiers in Celina. They appeared to be talking in a special code, and it was difficult to understand exactly what the orders were.⁸⁵⁰ The soldiers remained in the house until midnight.⁸⁵¹

315. At around 3:00 p.m. Salihi, who was hiding with his brothers and Miftare Zeqiri and his family in his farm compound, saw a large number of Serb policemen entering nearby houses and setting them on fire. They were wearing black uniforms and carrying assault rifles.⁸⁵² His brother Bajram stood up to observe the movements of the police on the other side of the wall that surrounded the farm.⁸⁵³ At that time there were three bursts of automatic fire directed at their compound. Bajram was hit and killed instantly.⁸⁵⁴ Reshit Salihi ran to the house next door to his, which was part of the Zeqiri compound, and hid in a three-foot deep hole. A short while later he heard many bursts of automatic gunfire and screams of women and children coming from his

⁸⁴³ Agim Jemini, P2338 (witness statement dated 17 July 1999), p. 3, T. 4250–4252 (28 September 2006); *see also* IC62 (Photograph marked by Jemini to indicate where the soldiers were stationed in his house (marked IC59)).

⁸⁴⁴ Agim Jemini, T. 4251 (28 September 2006).

⁸⁴⁵ Agim Jemini, T. 4252 (28 September 2006).

⁸⁴⁶ Agim Jemini, T. 4250 (28 September 2006).

⁸⁴⁷ Agim Jemini, T. 4256–4258, 4280–4281 (28 September 2006); *see also* Agim Jemini, P2353 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 6562; IC63 (Photo depicting Agim Jemini's house in Celina with a marking indicating the part of the roof where he had moved the tiles (marked IC59)).

⁸⁴⁸ Agim Jemini, P2338 (witness statement dated 17 July 1999), p. 3, T. 4252–4256, 4279–4280 (28 September 2006); *see also* P2340 (Photo depicting Agim Jemini's house in Celina); P2339 (Photo depicting the view from the attic window of Agim Jemini's house).

⁸⁴⁹ Agim Jemini, P2338 (witness statement dated 17 July 1999), p. 3, T. 4245 (28 September 2006).

⁸⁵⁰ Agim Jemini, P2338 (witness statement dated 17 July 1999), p. 3, T. 4248 (28 September 2006).

⁸⁵¹ Agim Jemini, P2338 (witness statement dated 17 July 1999), p. 3.

⁸⁵² Reshit Salihi, P2336 (witness statement dated 29 April 1999), p. 3, T. 4204–4205 (28 September 2006).

⁸⁵³ Reshit Salihi, P2336 (witness statement dated 29 April 1999), p. 3; *see also* Reshit Salihi, T. 4228–4229 (28 September 2006).

⁸⁵⁴ Reshit Salihi, P2336 (witness statement dated 29 April 1999), p. 3, T. 4207, 4212–4218 (28 September 2006).

compound. He heard men shouting in the Serbian language, of which he understood a little. One of them shouted, “Shoot, there are terrorists here”, which was followed by about 15 minutes of continuous shooting. After that it was quiet.⁸⁵⁵ Reshit Salihi remained hidden for several more hours, during which time he could smell smoke coming from his compound, which led him to believe that it had been set on fire.⁸⁵⁶ He came out of hiding when it grew dark and he made his way to the woods where he met up with his family.⁸⁵⁷ Upon his return to Kosovo from Albania three months later, he saw that the whole village had been burned.⁸⁵⁸

316. When the evidence of Salihi and Jemini was put to him, Delić denied that he had any armoured personnel carriers in his units, or that his forces would have surrounded or shelled Celina.⁸⁵⁹ However, the “first clash” between the VJ and the KLA was in the village of Celina.⁸⁶⁰ On 25 March police forces “neutralised” the KLA in the village, and Delić acknowledged that his forces gave light artillery fire support, directed above the village along the elevations where the KLA trenches were located, without affecting the houses in the village.⁸⁶¹ Vlatko Vuković confirmed this evidence, and stated that “strong fire” was opened from the village towards his left wing squad and the police unit, and that his units returned the fire, and the “terrorist” forces were “crushed” and fled. When he passed through the village later, around 10:00 a.m., police units had already searched the village and the “terrorists” had been “neutralized”.⁸⁶² Vuković stated that he did not see any civilians in Celina at that time, nor did he see the VJ or the police burning houses, destroying mosques, or looting in the village.⁸⁶³ Some of the houses on the outskirts of the village had been prepared for combat.⁸⁶⁴

317. Delić testified that part of his forces passed through Celina around 10:00 a.m. on 25 March 1999, following the police along the road leading from Bela Crkva/Bellacërka. In addition, a mortar platoon of 120-millimetre mortars passed through the village.⁸⁶⁵ It was not true that the soldiers came in lines of four. There was no longer any resistance in the village because the KLA

⁸⁵⁵ Reshit Salihi, P2336 (witness statement dated 29 April 1999), p. 3.

⁸⁵⁶ Reshit Salihi, P2336 (witness statement dated 29 April 1999), p. 3.

⁸⁵⁷ Reshit Salihi, P2336 (witness statement dated 29 April 1999), p. 3.

⁸⁵⁸ Reshit Salihi, T. 4208–4209 (28 September 2006).

⁸⁵⁹ Božidar Delić, T. 19359, 19362–19363 (29 November 2007).

⁸⁶⁰ Božidar Delić, T. 19359 (29 November 2007); IC150 (Map marked by Božidar Delić); *see also* Vlatko Vuković, T. 21358 (30 January 2008).

⁸⁶¹ Božidar Delić, T. 19359, 19362–19363 (29 November 2007); Vlatko Vuković, T. 21358–21359 (30 January 2008).

⁸⁶² Vlatko Vuković, T. 21358–21359, 21387 (30 January 2008); Vlatko Vuković, 5D1442 (witness statement dated 5 January 2008), para. 27.

⁸⁶³ Vlatko Vuković, T. 21359 (30 January 2008); Vlatko Vuković, 5D1442 (witness statement dated 5 January 2008), para. 27.

⁸⁶⁴ Vlatko Vuković, 5D1442 (witness statement dated 5 January 2008), para. 27.

⁸⁶⁵ Božidar Delić, T. 19363–19364 (29 November 2007).

had withdrawn along the axis from Celina towards Randubrava/Randobrava and Donji Retimlje/Retia e Ulët.⁸⁶⁶

318. Witness SD1, a VJ officer, denied that his units took up positions in the yard outside the school of Celina on 25 March 1999. At that time the school was vacant and there were no civilians in that area. Later on in his testimony, however, he stated that he did see some civilians about 200 metres from the schoolyard that same afternoon.⁸⁶⁷ His units did not open fire with mortars on Celina on that day.⁸⁶⁸ He also confirmed having seen hundreds of civilians passing on the road from Celina towards Velika Kruša/Krusha e Madhe.⁸⁶⁹

319. At about 8:00 a.m. on 26 March 1999 Jemini's parents and other family members returned to the house looking for him. They told him that the soldiers had shouted at them, robbed them, and looted their houses. The soldiers told them that they should all leave for Zrze/Xërxa.⁸⁷⁰ He then noticed more forces approaching the village from the main road, including a troop carrier with 12 "special forces" police. He thought they were Arkan's men; they had long beards and shaved heads with no hats. They had similar uniforms and insignia to those of the soldiers from the day before, but with red ribbons hanging from their left shoulders. They were similarly armed but also carried large knives on their hips.⁸⁷¹ These men did not stay in Celina, but continued in the direction of Velika Kruša/Krusha e Madhe.⁸⁷²

320. Jemini remained hidden in the roof where he had been the day before with his cousin, and his parents hid in the basement. Half an hour later there were about 200 to 300 soldiers in the village. Groups of them had red ribbons like the men that he had already seen in the truck. Others had white ribbons. Some groups had headbands. Some headbands were all red, while others were patterned but mainly red or black. They all carried long knives similar to the ones he had seen earlier. They went from house to house.⁸⁷³

321. At about 9:30 a.m. around 30 soldiers entered his yard and searched every house. When they got to the second floor of the house in which he was hiding, they took up positions at the window and appeared to be guarding others. At that time he saw a group of about seven or eight

⁸⁶⁶ Božidar Delić, T. 19365, 19383 (29 November 2007); *see also* Vlatko Vuković, 5D1442 (witness statement dated 5 January 2008), para. 27.

⁸⁶⁷ SD1, T. 20228–20230 (13 December 2007) (private session).

⁸⁶⁸ SD1, T. 20229 (13 December 2007) (private session).

⁸⁶⁹ SD1, T. 20230–20231 (13 December 2007) (private session).

⁸⁷⁰ Agim Jemini, P2338 (witness statement dated 17 July 1999), p. 3.

⁸⁷¹ Agim Jemini, P2338 (witness statement dated 17 July 1999), p. 4, T. 4261 (28 September 2006).

⁸⁷² Agim Jemini, T. 4268, 4274 (28 September 2006).

⁸⁷³ Agim Jemini, P2338 (witness statement dated 17 July 1999), p. 4.

men enter the house and remove five people who were hiding in the basement. These were his father Sadri Jemini, his mother Synavere Jemini, his uncle Shaip Jemini, his uncle's son Muharrem Jemini, and his uncle's wife Zade Jemini. The soldiers first asked them for money, then they marched them towards the gate of the yard.⁸⁷⁴ When they passed the next house, the soldiers ordered them to turn left so that they were between two houses. One of the soldiers took his pistol and shot one round into the air. The other soldiers then opened fire with their automatic weapons and all five of them fell to the ground. Agim Jemini was sure that they were dead.⁸⁷⁵

322. A short time later a truck came into the yard. Soldiers stole valuables from Jemini's houses and loaded them into two trucks. They remained in the yard until about 1:00 a.m. the following morning. Throughout the day they used flame-throwers to burn every house in the village that would burn. Only the new houses, which would not burn, were left. In Jemini's compound three houses were burned; the one in which he hid and the one used by the commanders the previous day were left.⁸⁷⁶ Throughout the day Jemini heard the sounds of automatic weapons and the screams of men, women, and children. When the soldiers left, Jemini came out of the roof and escaped from the yard, making his way to Zrze/Xërxa via Bela Crkva/Bellacërka. He was not able to check on the bodies of his family members because there was a group of soldiers stationed about 50 metres away.⁸⁷⁷

323. Reshit Salihi stated that he and his family remained in the woods for the next three days and on the morning of the fourth day a group of 40 policemen arrived on foot.⁸⁷⁸ They were dressed in blue camouflage pattern uniforms and had white armbands, and dark blue or green scarves on their heads.⁸⁷⁹ They were armed with assault rifles.⁸⁸⁰ When they started firing their rifles in the air, Salihi decided to bring his family out from the edge of the forest. Many people were gathered there at that time.⁸⁸¹ The policemen ordered them to split into two groups, separating the women and children from the men. The policemen then started searching people and asking them to hand over their valuables, money, and identity documents. They threatened to shoot anyone who attempted to withhold any documentation. The "Serbs" then put all identification documents in a pile and

⁸⁷⁴ Agim Jemini, T. 4281 (28 September 2006), P2338 (witness statement dated 17 July 1999), p. 4, P2338 (addendum to the witness statement dated 3 June 2002).

⁸⁷⁵ Agim Jemini, P2338 (witness statement dated 17 July 1999), p. 4; *see also* IC60 (Photo depicting Agim Jemini's house in Celina); Agim Jemini, T. 4238–4239 (28 September 2006).

⁸⁷⁶ Agim Jemini, P2338 (witness statement dated 17 July 1999), p. 4.

⁸⁷⁷ Agim Jemini, P2338 (witness statement dated 17 July 1999), p. 5.

⁸⁷⁸ Reshit Salihi, P2336 (witness statement dated 29 April 1999), p. 3, T. 4206 (28 September 2006).

⁸⁷⁹ Reshit Salihi, P2336 (witness statement dated 29 April 1999), p. 3, P2336 (witness statement dated 30 January 2002), p. 2, T. 4206 (28 September 2006).

⁸⁸⁰ Reshit Salihi, P2336 (witness statement dated 29 April 1999), p. 3.

⁸⁸¹ Reshit Salihi, T. 4220, 4223 (28 September 2006), P2336 (witness statement dated 29 April 1999), p. 3.

burned them.⁸⁸² The Lukić Defence submits that Salihi's description of uniforms is not consistent with police uniforms used at the time.⁸⁸³ The Chamber recalls, however, that ribbons in different colours, including white, were worn at times by police acting in the municipality.⁸⁸⁴ The Chamber does not exclude that other irregular forces were there with the police.

324. Salihi testified that a villager named Agim Ramadani (about 22 years old) was searched and made to strip to the waist. Three policemen took him some 50 metres away, and one of them fired three shots at his head with a rifle, killing him.⁸⁸⁵ The men were ordered to put their hands behind their heads. Both groups were escorted back to the village in lines two abreast at gunpoint. During the march some people were kicked and assaulted with rifle butts. In the village they were handed over to another group of policemen who were dressed in the same blue camouflage uniforms and had dark green scarves on their heads.⁸⁸⁶ The policemen escorted them to the main road connecting Đakovica/Gjakova with Prizren and made them walk in the direction of Prizren, again at gunpoint.⁸⁸⁷

325. After walking for about 30 minutes, the group was stopped for six hours. During this time they were constantly held at gunpoint. The policemen continued to demand money and assault them.⁸⁸⁸ At about 4:00 p.m. they were ordered to board some trucks that had arrived.⁸⁸⁹ The trucks drove them to Žur/Zhur, at which point they were ordered to disembark and walk to Albania. That evening Salihi stayed at a camp in Kukes where he was able to locate his wife and two daughters; the next day he and his immediate family were taken to a refugee camp in Tirana.⁸⁹⁰

b. Bodies in Celina

326. Agim Jemini testified that, two days after he escaped to Zrze/Xërxa, he returned to Celina.⁸⁹¹ During the day, while hiding in the fields, he could observe that bodies were taken away

⁸⁸² Reshit Salihi, P2336 (witness statement dated 29 April 1999), pp. 3–4.

⁸⁸³ Lukić Final Trial Brief, 7 August 2008 (public version), para. 849; *see also* Pavković Final Trial Brief, 15 July 2008 (confidential version), para. 375.

⁸⁸⁴ *See, e.g.*, Isuf Zhuniqi, T. 4126 (27 September 2006); Mehmet Krasniqi, T. 4393–4394 (29 September 2006); K25, P2439 (witness statement dated 12 September 2001), p. 20; K73, T. 3306–3307 (13 September 2006) (closed session).

⁸⁸⁵ Reshit Salihi, P2336 (witness statement dated 29 April 1999), p. 4.

⁸⁸⁶ Reshit Salihi, P2336 (witness statement dated 29 April 1999), p. 4 (testifying that policemen were dressed in the same blue camouflage uniforms), P2336 (witness statement dated 30 January 2002), p. 2 (testifying that the policemen had dark green scarves on their heads and not blue berets).

⁸⁸⁷ Reshit Salihi, P2336 (witness statement dated 29 April 1999), p. 4.

⁸⁸⁸ Reshit Salihi, P2336 (witness statement dated 29 April 1999), p. 4.

⁸⁸⁹ Reshit Salihi, P2336 (witness statement dated 29 April 1999), p. 4, T. 4222–4223 (28 September 2006).

⁸⁹⁰ Reshit Salihi, P2336 (witness statement dated 29 April 1999), p. 4, T. 4222–4223 (28 September 2006).

⁸⁹¹ Agim Jemini, P2338 (witness statement dated 17 July 1999), p. 5, P2338 (addendum to the witness statement dated 3 June 2002), T. 4266 (28 September 2006).

by policemen in blue uniforms together with “gypsies”. They collected at least 20 to 30 bodies, including those of Jemini’s relatives who had been killed.⁸⁹²

327. Sabri Popaj, a Kosovo Albanian resident of Bela Crkva/Bellacërka, testified that on 29 March 1999 he and Nazim Rexhepi went to Celina to see whether any of his relatives had been killed. They went to the house of Naim Rexhepi where they found the bodies of five people who were all relatives of Nazim Rexhepi: Naim Rexhepi, Dergut Rexhepi, Isa Rexhepi, Hysni (whose family name Sabri Popaj did not know), and Adem Berisha from Bela Crkva/Bellacërka. The house was burned.⁸⁹³

328. Sabri Popaj and Nazim Rexhepi went to another house, which was about 100 metres away, owned by Njazi Rexhepi, where they found 13 bodies of people who had first been executed and then burned. Only two bodies were recognisable; they belonged to Njazi Rexhepi and his brother Dever Rexhepi.⁸⁹⁴

329. Popaj also testified that they found seven male bodies in the basement of a house belonging to Hamza, whose surname he did not know.⁸⁹⁵ They also found 27 bodies, among which were men, women, young girls, and babies, in a house of a man called “Myftar”. The bodies were subsequently buried. Popaj testified that they also found the bodies of two brothers in the garden of Jahir Rexhepi; Nazim Rexhepi identified them as Hydajet and Isa. They had been shot.⁸⁹⁶

330. During the following days, a group of about 22 to 23 men, mainly from Celina, entered the village during the night for four to five hours and buried the bodies they found.⁸⁹⁷ Jemini, as mayor of Celina at that time, was in charge of this group of people.⁸⁹⁸ Popaj testified that on 30 March 1999 the group returned to Celina and commenced burying the bodies. They first buried 13 bodies from the garage in the Njazi Rexhepi’s house and the five bodies from the basement in the garden of Naim Rexhepi’s house.⁸⁹⁹

331. Popaj testified that they found and buried 85 bodies altogether, including the 13 bodies in the garage and five in the basement. All had been shot, and some of them had been burned after

⁸⁹² Agim Jemini, P2338 (witness statement dated 17 July 1999), p. 5, T. 4266–4267 (28 September 2006).

⁸⁹³ Sabri Popaj, P2446 (witness statement dated 14 June 1999), pp. 8–9.

⁸⁹⁴ Sabri Popaj, P2446 (witness statement dated 14 June 1999), p. 9.

⁸⁹⁵ Sabri Popaj, P2446 (witness statement dated 14 June 1999), p. 9.

⁸⁹⁶ Sabri Popaj, P2446 (witness statement dated 14 June 1999), p. 10.

⁸⁹⁷ Agim Jemini, P2338 (witness statement dated 17 July 1999), p. 5; Sabri Popaj, P2446 (witness statement dated 14 June 1999), pp. 9–10.

⁸⁹⁸ Agim Jemini, P2338 (witness statement dated 17 July 1999), p. 5.

⁸⁹⁹ Sabri Popaj, P2446 (witness statement dated 14 June 1999), p. 9.

shooting. None of the bodies wore KLA uniforms or had any weapons.⁹⁰⁰ Agim Jemini testified that they buried about 78 bodies, 18 of which had been burned.⁹⁰¹

332. Popaj and Jemini both testified that the latter recorded on a separate piece of paper the name, surname, and year of birth of all the people in order of burial and according to where they were buried.⁹⁰² He placed each piece of paper in a one and a half litre bottle and buried it with the corresponding body. Every grave was covered with a sheet of plastic. In addition, he recorded most of the gravesites with a camera.⁹⁰³

c. Findings

333. The Trial Chamber notes that an action was carried out by the VJ and the MUP in the area of Celina at the time of the events described above. The Chamber finds no reason to doubt the credibility of the very detailed and consistent evidence from Jemini and Salihi about events in Celina on 25 March 1999, and the days following. Delić and Vuković's general denials of their units having seen or taken part in any of the events in the village, although they both admit being present in the area at the time, lack credibility.

334. The Trial Chamber finds that the VJ surrounded Celina on 25 March 1999, and shelled the village. Mixed VJ and MUP forces, including irregular forces, entered the village and looted and set fire to houses. The villagers consequently fled out of fear. Many fled to the woods. Some villagers were assaulted and killed. The Chamber also finds that MUP officers went to the woods where villagers were hiding and separated the men from the women. Many were beaten and robbed of their valuables and identification documents. Men were forced at gunpoint to go to Prizren and were further assaulted by police on the way. They were then forced to board some trucks which took them to Žur/Zhur where they were ordered to disembark and had to walk to Albania. Others, like Jemini, fled out of fear.

335. The Trial Chamber finds that there is direct evidence from Jemini that Sadri Jemini, Synavere Jemini, Shaip Jemini, Muharrem Jemini, and Zade Jemini were killed by the forces acting in Celina on 26 March 1999. The Chamber also heard evidence from Salihi, Popaj and Jemini that others were killed and that many bodies were found upon their return to the village, a number of

⁹⁰⁰ Sabri Popaj, P2446 (witness statement dated 14 June 1999), p. 10, T. 5677 (1 November 2006).

⁹⁰¹ Agim Jemini, P2338 (witness statement dated 17 July 1999), p. 5.

⁹⁰² Agim Jemini, P2338 (witness statement dated 17 July 1999), p. 5; Sabri Popaj, P2446 (witness statement dated 14 June 1999), p. 10.

⁹⁰³ Agim Jemini, P2338 (witness statement dated 17 July 1999), p. 5.

which had been burned. There is, however, no direct evidence as to how these victims died.⁹⁰⁴ The Trial Chamber notes that the killings in Celina have not been charged as murder in the Indictment, but finds that the killings proved, which included two women, contributed to the atmosphere of terror created by the actions of the forces of the FRY and Serbia.

4. Bela Crkva/Bellacërka

336. The Trial Chamber heard that in early 1999 the village of Bela Crkva/Bellacërka, a few kilometres from Celina, was inhabited exclusively by Kosovo Albanians, and consisted of about 350 houses with around 2,800 residents.⁹⁰⁵

337. KVM member Joseph Maisonneuve testified that there was a KLA presence in Bela Crkva/Bellacërka in early 1999.⁹⁰⁶ However, Isuf Zhuniqi, a Kosovo Albanian farmer from Bela Crkva/Bellacërka, testified that there had never been a KLA base or presence there. He had never joined the KLA and had never been interested in doing so.⁹⁰⁷ His younger brother, Avni Zhuniqi, who did not live with him in Kosovo, had been a member of the KLA for about a year and had been engaged in combat.⁹⁰⁸ Sabri Popaj, also from the village, testified that he and his immediate family members had never been KLA members.⁹⁰⁹ He also repeatedly denied that there was a KLA presence in Bela Crkva/Bellacërka.⁹¹⁰ However, in his written statement he mentioned that there were three members of the KLA in the village whom everyone knew.⁹¹¹ On cross-examination, he changed his previous testimony and explained that these three KLA members were from Drenovac/Drenoc and not Bela Crkva/Bellacërka.⁹¹² He had, in the past, along with most of the village, given money and food to the KLA.⁹¹³ Popaj also testified that he knew that the KLA was positioned in Retimlje/Retia and Drenovac/Drenoc villages.⁹¹⁴

338. As previously noted, the Trial Chamber views with scepticism the broad denials of many Kosovo Albanian witnesses concerning KLA activities near their homes. It finds the evidence of

⁹⁰⁴ See also Pavković Final Trial Brief, 28 July 2008 (public version), para. 558.

⁹⁰⁵ Isuf Zhuniqi, P2331 (witness statement dated 4 May 1999), p. 2, T. 4132 (27 September 2006); Sabri Popaj, P2446 (witness statement dated 14 June 1999), p. 2, T. 5691 (1 November 2006).

⁹⁰⁶ Joseph Maisonneuve, T. 11141 (7 March 2007).

⁹⁰⁷ Isuf Zhuniqi, P2331 (witness statement dated 4 May 1999), p. 7; see also Isuf Zhuniqi, T. 4119–4120, 4122, 4124, 4129–4131 (27 September 2006).

⁹⁰⁸ Isuf Zhuniqi, P2331 (witness statement dated 4 May 1999), p. 7.

⁹⁰⁹ Sabri Popaj, P2446 (witness statement dated 14 June 1999), p. 2, T. 5714 (2 November 2006).

⁹¹⁰ Sabri Popaj, T. 5694–5698 (1 November 2006), 5735 (2 November 2006); see also Sabri Popaj, T. 5743–5744, 5746, 5773–5775 (2 November 2006).

⁹¹¹ Sabri Popaj, P2446 (witness statement dated 14 June 1999), p. 2, T. 5742–5744 (2 November 2006).

⁹¹² Sabri Popaj, T. 5694–5698 (1 November 2006).

⁹¹³ Sabri Popaj, P2446 (witness statement dated 14 June 1999), p. 2; see also Sabri Popaj, T. 5714 (2 November 2006).

⁹¹⁴ Sabri Popaj, T. 5699 (1 November 2006), 5735 (2 November 2006).

Zhuniqi and Popaj to be examples of prevarication about the KLA, which clearly did have links with the area of Bela Crkva/Bellacërka.⁹¹⁵

339. Isuf Zhuniqi testified that nothing significant occurred in the village or its immediate surrounding area and that there were no “Serb forces” present there until the end of March 1999.⁹¹⁶ Popaj testified that a week before 25 March 1999 about 40 members of the MUP and VJ arrived in trucks and APCs and stayed in Bela Crkva/Bellacërka until the evening of 24 March 1999.⁹¹⁷ Some had light blue police uniforms and others had camouflage army uniforms.⁹¹⁸

340. Upon their arrival, they started to dig trenches/bunkers on a hill overlooking the village and installed a couple of anti-aircraft guns there.⁹¹⁹ They occupied the nearby house of Nahit Fetoshi, forcing him and 38 members of his family to leave.⁹²⁰ On 24 March 1999 Popaj saw a lot of movement and activity by the VJ and the MUP; they were driving their trucks and armoured vehicles between Zrze/Xërxa, a village which is two kilometres away from Bella Crkva/Bellacërka, and Orahovac/Rahovec.⁹²¹ Božidar Delić, who testified that Bela Crkva/Bellacërka was a “terrorist” stronghold, denied that there were any military positions close to the village. He also stated that there was no need for any trenches to be dug or military positions to be there.⁹²²

a. Attack on Bela Crkva/Bellacërka on 25 March 1999

341. Very early in the morning of 25 March 1999 Zhuniqi and Popaj both saw VJ tanks enter Bela Crkva/Bellacërka.⁹²³ Two of these tanks drove to the schoolyard and stayed there until 4 May. Three tanks drove towards the mosque and continued in the direction of the hill above Celina, where they took up positions.⁹²⁴ At 4:00 a.m. the VJ and the MUP started “shooting” towards the

⁹¹⁵ See also Pavković Final Trial Brief, 28 July 2008 (public version), paras. 386, 559.

⁹¹⁶ Isuf Zhuniqi, P2331 (witness statement dated 4 May 1999), p. 2, T. 4124 (27 September 2006).

⁹¹⁷ Sabri Popaj, T. 5653 (1 November 2006), T. 5759–5761 (2 November 2006), P2446 (witness statement dated 14 June 1999), p. 2.

⁹¹⁸ Sabri Popaj, T. 5653 (1 November 2006).

⁹¹⁹ Sabri Popaj, T. 5653 (1 November 2006), P2446 (witness statement dated 14 June 1999), p. 2.

⁹²⁰ Sabri Popaj, T. 5653 (1 November 2006), P2446 (witness statement dated 14 June 1999), p. 2, P2446 (addendum to the witness statement dated 5 June 2002).

⁹²¹ Sabri Popaj, P2446 (witness statement dated 14 June 1999), p. 2.

⁹²² Božidar Delić, T. 19355 (29 November 2007), 19724 (6 December 2007).

⁹²³ Isuf Zhuniqi, P2331 (witness statement dated 4 May 1999), p. 2, T. 4100–4102, 4112 (27 September 2006), P2332 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 6441; Sabri Popaj, P2446 (witness statement dated 14 June 1999), p. 3, T. 5652–5653 (1 November 2006).

⁹²⁴ Sabri Popaj, T. 5652–5653, 5692–5693, 5709 (1 November 2006), 5712–5713, 5768–5771 (2 November 2006), P2446 (witness statement dated 14 June 1999), p. 3; IC91 (Marked photograph of Bela Crkva/Bellacërka); IC100 (Marked aerial photograph of Bela Crkva/Bellacërka); IC101 (Marked aerial photograph of Bela Crkva/Bellacërka); Isuf Zhuniqi, P2331 (witness statement dated 4 May 1999), p. 2, T. 4100–4102, 4112 (27 September 2006), P2332 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 6441–6442; IC53 (Marked photograph of Bela

village from the bunkers on the hill.⁹²⁵ Popaj testified that he understood the shooting as a warning to leave their houses and the village.⁹²⁶ He saw the “Serb forces” entering the outskirts of the village and setting fire to houses using petrol and flame-throwers.⁹²⁷ That same morning police forces started to set the village on fire.⁹²⁸

342. On hearing the shooting, the villagers fled. Popaj accompanied his family as far as the village school, and then returned to his house.⁹²⁹ Zhuniqi and his family went to a hiding place in a field at the edge of the village. Many of his neighbours, totalling around 200 people, were also gathered there. From this position he saw the tanks move off out of the village in the direction of Celina. After the tanks left everybody returned to their homes.⁹³⁰

343. About 15 minutes later, Zhuniqi heard the sound of automatic gunfire coming from outside and could see flames coming from houses which were only about 200 metres from his own. He gathered his family again and took them out of the house.⁹³¹ They went to Belaja stream, which was located about 900 metres from his house and had steep, high banks that could conceal them. There were about 700 villagers gathered at the stream.⁹³² They walked about one kilometre in the direction of Rogovo/Rogova, occasionally taking cover from what seemed to be snipers aiming shots in their direction. As they walked they could hear the sounds of automatic gunfire and explosions coming from the village.⁹³³

344. Popaj returned to his compound to feed his cows, and heard crying from Belaja stream.⁹³⁴ He went there to investigate and found 14 people, six of whom were members of the Zhuniqi family, namely Clirim Zhuniqi, Lumturie Zhuniqi, and their two daughters, and two sons. There

Crkva/Bellacërka); *see also* IC99 (Marked exhibit P615, Kosovo Atlas); Sabri Popaj, T. 5716–5720, 5722–5723 (2 November 2006).

⁹²⁵ Sabri Popaj, P2446 (witness statement dated 14 June 1999), p. 3, T. 5720–5721 (2 November 2006).

⁹²⁶ Sabri Popaj, P2446 (witness statement dated 14 June 1999), p. 3, T. 5741 (2 November 2006).

⁹²⁷ Sabri Popaj, P2446 (witness statement dated 14 June 1999), p. 3, T. 5771–5772 (2 November 2006); IC102 (Marked aerial photograph of Bela Crkva/Bellacërka) (showing where the Serb forces entered the village and started to burn the houses).

⁹²⁸ Sabri Popaj, T. 5654 (1 November 2006).

⁹²⁹ Sabri Popaj, P2446 (witness statement dated 14 June 1999), p. 3.

⁹³⁰ Isuf Zhuniqi, P2331 (witness statement dated 4 May 1999), p. 2; Isuf Zhuniqi, T. 4112 (27 September 2006).

⁹³¹ Isuf Zhuniqi, T. 4111–4112 (27 September 2006), P2332 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 6450–6451.

⁹³² “River” and “stream” have been used by the witness interchangeably to refer to the Belaja river. *See* Isuf Zhuniqi, T. 4102 (27 September 2006), P2331 (witness statement dated 4 May 1999), p. 3.

⁹³³ Isuf Zhuniqi, P2331 (witness statement dated 4 May 1999), pp. 2–3, T. 4102–4103, 4113–4114 (27 September 2006); IC54 (Photograph of Belaja river with locations of hiding villagers and policemen); IC55 (Photograph of the village Bela Crkva/Bellacërka and Belaja river with stream and irrigation channel marked).

⁹³⁴ Sabri Popaj, P2446 (witness statement dated 14 June 1999), p. 3, T. 5662–5663 (1 November 2006); IC92 (Marked photograph of Bela Crkva/Bellacërka).

were also eight members of the Spahiu family from Opteruša/Opterususha.⁹³⁵ Popaj helped them to cross the stream and accompanied them along the side of the stream in the direction of Rogovo/Rogova. After about 600 metres they said they wanted to rest, and so he returned towards his house.⁹³⁶

345. On the way to his house, Popaj heard shooting from the snipers in the hills. He lay down, crawled about 100 metres, and hid in a hole. From this position he saw 12 policemen on his side of the stream and many more on the other side approaching from the Rogovo/Rogova direction. They were shooting in the air and towards the stream. Their uniforms were “mixed, blue in colour and army camouflage colour.”⁹³⁷ Most of them were wearing a coloured ribbon or sweat band/bandanna around their forehead. All of them were wearing tight-fitting white plastic type gloves, like those used by doctors.⁹³⁸ While Popaj explained that these policemen wore camouflage uniforms of “green” colour, he also described a blue curtain in the courtroom as “green”.⁹³⁹ Although the Trial Chamber notes this discrepancy, it finds that it can rely on Popaj’s identification of the group as being members of the police. In this regard the Chamber also considers the corroborating evidence from Isuf Zhuniqi (see below).

346. From his hiding place, which was about 120 metres away, Popaj saw the policemen approach the 14 people he had helped.⁹⁴⁰ He heard the police shouting at them, “Fuck your mother” and “Ask NATO for help now”. Then they opened fire on the people with their automatic rifles. The police on the other side of the stream joined in as well. The shooting lasted about one minute at most. Then the police continued walking alongside the stream.⁹⁴¹

347. Sabri Popaj continued to watch the police as they proceeded. After a short time he saw that the police on the opposite side of the stream had found an old man who was trying to hide. This was about 200 metres from his position. He heard a short burst of automatic gunfire and the police then moved on to the small railway bridge over the stream. The police on his side crossed over it to the other side and carried on in the direction of the main road between Prizren and

⁹³⁵ Spahiu family stayed with Zhuniqi’s family since their village had been destroyed by the “Serbs” in July 1998. Sabri Popaj, P2446 (witness statement dated 14 June 1999), p. 3.

⁹³⁶ Sabri Popaj, P2446 (witness statement dated 14 June 1999), p. 3.

⁹³⁷ Sabri Popaj, P2446 (witness statement dated 14 June 1999), p. 3, T. 5753 (2 November 2006). On re-examination, he explained that he used the expression “paramilitaries” for persons who kill and execute innocent people and children. He further explained that the men who he saw executing 74 people were “part of the *official police*”. T. 5765–5767 (2 November 2006) (emphasis added).

⁹³⁸ Sabri Popaj, P2446 (witness statement dated 14 June 1999), p. 3, T. 5657 (1 November 2006).

⁹³⁹ Sabri Popaj, T. 5657 (1 November 2006), T. 5727 (2 November 2006); *see also* Lukić Final Trial Brief, 7 August 2008 (public version), para. 837.

⁹⁴⁰ Sabri Popaj, P2446 (witness statement dated 14 June 1999), pp. 3–4, T. 5655 (1 November 2006), 5737 (2 November 2006).

Đakovica/Gjakova. He then left his hiding place and went to the place where he had seen the group of 14 people being shot. There was a lot of blood on their bodies and clothes, and bullet holes in their bodies. He went along his side of the stream until he could see the body of Halim Fetoshi, a 66 year old villager from Bela Crkva/Bellacërka, on the other side.⁹⁴² The Trial Chamber notes that this particular victim is not listed in Schedule B of the Indictment.⁹⁴³

348. Isuf Zhuniqi confirmed parts of the evidence given by Popaj and testified that, shortly after leaving the village and walking in the Belaja stream towards Rogovo/Rogova, he and his family came to a railway bridge. They took shelter under or behind the bridge, in an irrigation canal, and remained there for a few hours.⁹⁴⁴ At about 9:30 a.m. Zhuniqi saw a squad of 16 policemen coming towards them along both sides of the stream course, moving in the direction of the bridge.⁹⁴⁵ He recognised one of the policemen whom he had previously seen performing normal patrol duties in Orahovac/Rahovec.⁹⁴⁶ The policemen were dressed in greenish blue camouflage pattern uniforms, with badges on their sleeves. They all had white armbands and wore greenish helmets, and were armed with AK47 assault rifles and had long knives attached to their belts. Some of them also had pistols.⁹⁴⁷ The Trial Chamber is convinced by the description of both Popaj and Zhuniqi that the group were MUP forces and, as stated above, does not accept the Lukić Defence submission that armbands were not used by the police at the time.⁹⁴⁸

349. As the police were coming towards them, Zhuniqi noted a group of people from two families still walking along the stream course. These people had not yet reached their shelter point under the railway bridge. The policemen were just behind this group of people when one shouted “Shoot!” Three of them then opened fire with their assault rifles. Those killed immediately were Clirim Zhuniqi (Isuf Zhuniqi’s cousin, about the same age as he), his wife Lumnie Zhuniqi, his

⁹⁴¹ Sabri Popaj, P2446 (witness statement dated 14 June 1999), p. 4, T. 5655–5656 (1 November 2006).

⁹⁴² Sabri Popaj, P2446 (witness statement dated 14 June 1999), p. 4.

⁹⁴³ Sabri Popaj, T. 5656, 5687 (1 November 2006).

⁹⁴⁴ Isuf Zhuniqi, T. 4102–4103, 4114 (27 September 2006), P2331 (witness statement dated 4 May 1999), p. 3; IC54 (Photograph of Belaja river with locations of hiding villagers and policemen); IC55 (Photograph of the village Bela Crkva/Bellacërka and Belaja river with stream and irrigation channel marked); IC56 (Photograph of irrigation channel near Belaja river).

⁹⁴⁵ Isuf Zhuniqi, T. 4102, 4125 (27 September 2006), P2331 (witness statement dated 4 May 1999), p. 3; IC54 (Photograph of Belaja river with locations of hiding villagers and policemen).

⁹⁴⁶ Isuf Zhuniqi, T. 4107, 4124–4125 (27 September 2006), P2331 (witness statement dated 4 May 1999), p. 3; *see also* Isuf Zhuniqi, T. 4133–4134 (27 September 2006); P2335 (Responses to Prosecution Request for Assistance regarding individuals who might have served in the VJ or the MUP and those holding MUP reservist status, 31 July 2006), p. 4, request 1105.

⁹⁴⁷ Isuf Zhuniqi, P2331 (witness statement dated 4 May 1999), p. 3, T. 4106–4107, 4126–4128 (27 September 2006).

⁹⁴⁸ Lukić Final Trial Brief, 7 August 2008 (public version), para. 832. *See, e.g.*, Reshit Salihi, P2336 (witness statement dated 30 January 2002), p. 2–3, T. 4206 (28 September 2006); Mehmet Krasniqi, T. 4393–4394 (29 September 2006); K25, P2439 (witness statement dated 12 September 2001), p. 20; K73, T. 3306–3307 (13 September 2006) (closed session).

daughter Dardane (eight years old), his son Dardan (six years old), one other son (four years old), and all the members of Xhemal Spahiu's family: Xhemal, his wife, another woman, and four young children. He discovered much later that only Clirim's two-year-old son had survived the event. While this shooting was going on, there were also shots being fired at either side of the bridge, making it impossible for anybody in the main group with which Zhuniqi was hiding to escape.⁹⁴⁹

350. The police then split into two groups, taking up prone firing positions on the banks on either side of the stream. One of them ordered everyone hiding with Zhuniqi to put their hands behind their heads and to climb out of the stream on to the railway bridge. He ordered them to split into three groups, one of women and children on the bridge, and the other two to include all the men standing on the ground on either side of the bridge and stream. The men were then ordered to strip to their underwear.⁹⁵⁰

351. The policeman whom Zhuniqi knew from Orahovac/Rahovec took his passport out of his jacket and told him that "[he] might as well now be dead and that there was no life for [him] in Kosovo."⁹⁵¹ The policeman tore up his passport, identity card, and driver's licence and took 1,200 German Marks from Zhuniqi's jacket. The same happened to other men who were also ordered to take off their necklaces, watches, and rings and hand them over to the policemen. The leader of the policemen then ordered them to dress and form themselves into one group. He told the women and children to leave and follow the railway track in the direction of Zrze/Xërxa. A doctor from Bela Crkva/Bellacërka, Nisim Popaj, spoke to the leader of the group of policemen and said that they were simple farmers and not KLA members. In response, the police leader shot and killed him. He then turned his rifle on the doctor's nephew, Shendet Popaj, and fired one shot into his head, also killing him instantly.⁹⁵²

352. The 65 or so men in Zhuniqi's group were ordered to climb back down into the stream, at which point the police were ordered to open fire. All the policemen then opened fire with their automatic weapons. Zhuniqi was hit in the shoulder and fell down, with other men on top of him. He was able to remain conscious, but lay still and pretended to be dead. The shooting continued for about five minutes and then Zhuniqi heard a few times, "This one is still breathing", after each of

⁹⁴⁹ Isuf Zhuniqi, P2331 (witness statement dated 4 May 1999), p. 3, P2332 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 6455; *see also* P94 (Pre-conflict photographs of the individuals killed in Bela Crkva/Bellacërka).

⁹⁵⁰ Isuf Zhuniqi, P2331 (witness statement dated 4 May 1999), pp. 3–4.

⁹⁵¹ Isuf Zhuniqi, P2331 (witness statement dated 4 May 1999), p. 4; *see also* Isuf Zhuniqi, T. 4105 (27 September 2006).

⁹⁵² Isuf Zhuniqi, P2331 (witness statement dated 4 May 1999), p. 4.

which he would hear a single shot. A short while later he heard someone say, “Well, now everyone is dead, let’s go.”⁹⁵³ After another 20 minutes lying there, when he was sure the police had left, he got up.⁹⁵⁴ As he looked around, Zhuniqi identified a total of 41 dead people.⁹⁵⁵ In addition, there were 11 other dead men in the stream whose names he could not remember.⁹⁵⁶

353. Zhuniqi identified people in photographs shown to him in court as those killed in Bela Crkva/Bellacërka in this incident.⁹⁵⁷ The individuals in the photos generally correspond to the individuals listed in his witness statement. The names of two people in the photos, namely Rustem Halit Popaj and Dhurata Qlirim Zhuniqi, do not appear in the witness statement. However, Zhuniqi admitted that his list was not exhaustive because there were eleven men lying dead in the stream whom he did not recognise. Nonetheless, Dhurata Qlirim Zhuniqi, a nine-year old girl, could not have been one of the eleven men.

354. Zhuniqi’s account of the killing of the group of men in the Belaja stream was supported by Popaj, who testified that, after seeing the bodies of the two families and that of Halim Fetoshi, he saw six or seven policemen appear on the railway bridge about 200 metres away from him.⁹⁵⁸ With his binoculars he saw approximately 40 men assembled at the bridge by six or seven policemen who were pointing their guns at them.⁹⁵⁹ Popaj recognised his older son, Shendet Popaj, among these men. His wife later told him that his other son, his two brothers, and his nephew were also there.⁹⁶⁰ The policemen searched the men and took their valuables and documents. They also removed the jackets of some of the men and piled them up on the river bank and burned them. Afterwards, the policemen opened fire on the group with their automatic rifles.⁹⁶¹ Popaj explained that from his position he could not see that the men were killed, but he could hear the sound of gunfire.⁹⁶² There were some movements among those who had been shot, and the police opened fire again for a few seconds.⁹⁶³

⁹⁵³ Isuf Zhuniqi, P2331 (witness statement dated 4 May 1999), p. 4.

⁹⁵⁴ Isuf Zhuniqi, P2331 (witness statement dated 4 May 1999), pp. 4–5.

⁹⁵⁵ See Annex A.

⁹⁵⁶ Isuf Zhuniqi, P2331 (witness statement dated 4 May 1999), pp. 5–6.

⁹⁵⁷ Isuf Zhuniqi, T. 4104 (27 September 2006); P94 (Pre-conflict photographs of the individuals killed in Bela Crkva/Bellacërka).

⁹⁵⁸ Sabri Popaj, T. 5658, 5662 (1 November 2006); P2446 (witness statement dated 14 June 1999), p. 4; *see also* IC91 (Marked photograph of Bela Crkva/Bellacërka); IC92 (Marked photograph of Bela Crkva/Bellacërka).

⁹⁵⁹ Sabri Popaj, T. 5662–5664, (1 November 2006); P2446 (witness statement dated 14 June 1999), p. 4; *see also* IC93 (Marked photograph of Bela Crkva/Bellacërka).

⁹⁶⁰ Sabri Popaj, T. 5663 (1 November 2006); P2446 (witness statement dated 14 June 1999), pp. 4–5.

⁹⁶¹ Sabri Popaj, P2446 (witness statement dated 14 June 1999), p. 4.

⁹⁶² Sabri Popaj, T. 5665 (1 November 2006).

⁹⁶³ Sabri Popaj, T. 5663–5665 (1 November 2006); P2446 (witness statement dated 14 June 1999), p. 4.

355. The police moved off immediately after this incident. They followed a small channel that led away from the stream, towards Celina. After approximately five minutes Popaj heard the sound of more automatic gunfire, but could not see what had happened, because they were out of his view.⁹⁶⁴ However, as explained below, he later found out that six people were killed there, and found the bodies of these people lying about 85 metres from the place where the larger group was killed.⁹⁶⁵

356. Popaj joined his wife and parents on the railway tracks about 40 metres from the bridge and about 120 metres away from the scene of the killing.⁹⁶⁶ As noted above, his wife told him that, in addition to his son Shendet, there were also other members of his family among the men whom he saw being killed: his other son Agon (aged 14 years), his two brothers Nazmi (aged 43 years) and Nesim (aged 34 years), and the son of his brother, Remzi.⁹⁶⁷

357. On their way to Zrze/Xërxa, Popaj's wife decided to return to the stream. When she got back to Popaj and his parents about 20 minutes later, she told him that nine people had survived the shooting, namely Alban Popaj, Hysni Popaj, Feim Popaj, Defrim Zhuniqi, Sefer Popaj, Sezai Zhuniqi, Agron Zhuniqi, FNU Zhuniqi (son of Eshref), and Shukri Gashi.⁹⁶⁸ Together with his wife and his parents, Popaj walked to Zrze/Xërxa, where they saw that other women, children, and old men had arrived. When they told the villagers what had happened back at the stream, a group returned to the scene with a tractor and trailer and brought the survivors back to Zrze/Xërxa.⁹⁶⁹

358. Around 5:00 p.m. on 25 March 1999, Sefer Zhuniqi and Zenel Popaj came to the house where Sabri Popaj was staying in Zrze/Xërxa and told him that they had found a two-year old boy at the scene of the first killing incident that he had witnessed.⁹⁷⁰ Two of the survivors that had been brought to Zrze/Xërxa — Hysni Popaj and Alban Popaj— died soon thereafter.⁹⁷¹

359. Supporting these accounts of killings, Agim Jemini testified that, when he escaped from Celina to Zrze/Xërxa on 26 March 1999, he passed a murder scene near Bela Crkva/Bellacërka, at a

⁹⁶⁴ Sabri Popaj, P2446 (witness statement dated 14 June 1999), p. 4.

⁹⁶⁵ Sabri Popaj, T. 5661–5662, 5673–5674 (1 November 2006); *see also* IC92 (Marked photograph of Bela Crkva/Bellacërka); IC95 (Marked photograph of Belaja bridge).

⁹⁶⁶ Sabri Popaj, T. 5664 (1 November 2006), P2446 (witness statement dated 14 June 1999), pp. 4–5; *see also* IC93 (Marked photograph of Bela Crkva/Bellacërka).

⁹⁶⁷ Sabri Popaj, P2446 (witness statement dated 14 June 1999), p. 5, T. 5739 (2 November 2006).

⁹⁶⁸ Sabri Popaj, P2446 (witness statement dated 14 June 1999), p. 5.

⁹⁶⁹ Sabri Popaj, P2446 (witness statement dated 14 June 1999), p. 5, T. 5666–5667, 5669 (1 November 2006).

⁹⁷⁰ Sabri Popaj, P2446 (witness statement dated 14 June 1999), p. 5, P2446 (addendum to the witness statement dated 5 June 2002), T. 5649–5650 (1 November 2006).

⁹⁷¹ Sabri Popaj, P2446 (witness statement dated 14 June 1999), p. 5.

river bed near the railway line, where he saw a large number of dead people from Bela Crkva/Bellacërka wearing civilian clothes; altogether Jemini saw approximately 40 bodies.⁹⁷²

360. On 26 March 1999 Sabri Popaj returned to his house intending to release his animals into the fields. The house and that of his parents had been completely destroyed by fire, and all the houses in his compound had been looted.⁹⁷³ Shooting in the village continued for an entire month. During this time the “Serb forces” entered houses and looted them; they burned all the houses in the village.⁹⁷⁴ He stated that there was no fighting between the KLA and “Serb forces” in the village during the period from 25 March to 2 April 1999.⁹⁷⁵

361. Vlatko Vuković and SD1 denied having heard or seen anything at that time about the killing of Kosovo Albanian civilians in a river stream at the railway bridge. Vuković indeed testified that he is convinced that nothing like that happened, because he was in the area at the time.⁹⁷⁶

362. When the evidence of Zhuniqi and Popaj was put to Božidar Delić, he testified that his forces did not surround Bela Crkva/Bellacërka on 25 March 1999. He felt the need to explain that, in military terminology, to encircle, to surround, means to encircle a territory from all sides, and the village of Bela Crkva/Bellacërka was never encircled. He however confirmed the presence of his forces in the area and testified that on 25 March 1999, at around 5:00 a.m., Combat Group 2 from his brigade went through the village from the west to east, to the foot of the Amovac hill, where they took up positions from which they were to attack Retimlje/Retia.⁹⁷⁷ Delić conceded that three tanks passed through the village, but denied the tanks had been deployed in the schoolyard of the village, as stated by Popaj.⁹⁷⁸ He further stated that the army had not used flame-throwers since the Second World War.⁹⁷⁹ Delić also testified that his units followed the 23rd PJP detachment in their movement through the village of Bela Crkva/Bellacërka towards Celina.⁹⁸⁰ Delić personally passed through Bela Crkva/Bellacërka in the morning of 25 March 1999, saw his subordinate commander, and then continued to the location that he had decided would be his command post during the

⁹⁷² Agim Jemini, P2338 (witness statement dated 17 July 1999), p. 5, T. 4239–4241 (28 September 2006); *see also* IC61 (Marked exhibit P615, Kosovo Atlas).

⁹⁷³ Sabri Popaj, P2446 (witness statement dated 14 June 1999), pp. 5–6, P2446 (addendum to the witness statement dated 5 June 2002).

⁹⁷⁴ Sabri Popaj, T. 5741–5742 (2 November 2006), P2446 (witness statement dated 14 June 1999), pp. 5–6, P2446 (addendum to the witness statement dated 5 June 2002).

⁹⁷⁵ Sabri Popaj, T. 5752 (2 November 2006).

⁹⁷⁶ Vlatko Vuković, T. 21358 (30 January 2008); SD1, T. 20217–20218 (13 December 2007) (private session).

⁹⁷⁷ Božidar Delić, T. 19354–19355, 19358–19359 (29 November 2007), 19475–19476 (4 December 2007); IC150 (Map marked by Božidar Delić); *see also* SD1, T. 20188–20189 (13 December 2007) (private session).

⁹⁷⁸ Božidar Delić, T. 19356 (29 November 2007).

⁹⁷⁹ Božidar Delić, T. 19356 (29 November 2007).

⁹⁸⁰ Božidar Delić, T. 19474–19476 (4 December 2007); P1995 (Analysis of the operation of the 549th Motorised Brigade, 30 March 1999), p. 3; IC154 (Map marked by Božidar Delić).

combat activities from 25 until 28 March.⁹⁸¹ He passed through the village after 25 March up until the beginning of April and then again in May 1999, without noticing any damage there.⁹⁸²

363. Vuković confirmed that Combat Group 2 went through the village on 25 March and that there were no civilians there.⁹⁸³ He also confirmed that he met with Delić before passing through the village.⁹⁸⁴ Vuković stated that he went through the village with approximately 120 men, three combat vehicles with three 30-millimetre guns, of which two were mounted guns and four or five motor vehicles to take up their blockade line outside of the village.⁹⁸⁵ Delić, Vuković and SD1 denied that the VJ forces undertook any activity in the village itself at that point in time. The village was peaceful.⁹⁸⁶

364. Contrary to what is stated in the order from the 549th Brigade and the war diary of the 2nd Motorised Battalion regarding this action, Vuković testified that his units had no combat engagements in Bela Crkva/Bellacërka on 25 March 1999.⁹⁸⁷ His deputy “practically copied” the information in the war diary from the order.⁹⁸⁸ When shown the same war diary, stating that on 25 March the units “blocked and cleansed” the villages of Bela Crkva/Bellacërka, Celina, Nogavac/Nagafc, and a part of Velika Kruša/Krusha e Madhe, SD1 testified that the infantry “passed through” the village in combat formation without any resistance and without firing, and that they left the village.⁹⁸⁹ He also explained that in military jargon this can be described as “cleansing” the village.⁹⁹⁰

365. Vuković also stated that he was informed by the head security commander that they had not searched the village, since the 23rd PJP detachment had already done that.⁹⁹¹ He further stated that

⁹⁸¹ Božidar Delić, T. 19354–19355, 19358–19359 (29 November 2007), 19475–19476 (4 December 2007); IC150 (Map marked by Božidar Delić); *see also* SD1, T. 20188–20189 (13 December 2007) (private session). *But see* Vlatko Vuković, T. 21371–21373, 21380–21381 (30 January 2008), 5D1442 (witness statement dated 5 January 2008), para. 21.

⁹⁸² Božidar Delić, T. 19623 (5 December 2007).

⁹⁸³ Vlatko Vuković, 5D1442 (witness statement dated 5 January 2008), para. 22, T. 21379–21380 (30 January 2008).

⁹⁸⁴ Vlatko Vuković, T. 21372–21373 (30 January 2008), 5D1442 (witness statement dated 5 January 2008), para. 21; *see also* IC175 (Map marked by Vlatko Vuković); IC176 (Map marked by Vlatko Vuković).

⁹⁸⁵ Vlatko Vuković, T. 21381 (30 January 2008), 21459–21460 (31 January 2008); IC177 (Map marked by Vlatko Vuković); *see also* IC175 (Map marked by Vlatko Vuković); IC176 (Map marked by Vlatko Vuković); IC181 (Photograph marked by Vlatko Vuković, indicating the route his units took).

⁹⁸⁶ Božidar Delić, T. 19355 (29 November 2007), 19475, 19477 (4 December 2007); Vlatko Vuković, 5D1442 (witness statement dated 5 January 2008), para. 21; SD1, T. 20199, 20204 (13 December 2007) (private session).

⁹⁸⁷ Vlatko Vuković, T. 21331 (29 January 2008), 21360–21362 (30 January 2008), 5D1442 (witness statement dated 5 January 2008), paras. 23–24; P1981 (Order of the 549th Motorised Brigade, 23 March 1999), para 5.5; P2019 (War Diary of the 2nd Motorised Battalion of the 549th Motorised Brigade), p. 3 (under seal).

⁹⁸⁸ Vlatko Vuković, T. 21362–21363 (30 January 2008).

⁹⁸⁹ P2019 (War Diary of the 2nd Motorised Battalion of the 549th Motorised Brigade), p. 3 (under seal); SD1, T. 20220–20221, 20225–20226 (13 December 2007) (private session).

⁹⁹⁰ SD1, T. 20226–20227 (13 December 2007) (private session).

⁹⁹¹ Vlatko Vuković, 5D1442 (witness statement dated 5 January 2008), para. 21, T. 21357 (30 January 2008).

he first heard of the alleged crimes committed in the area of Bela Crkva/Bellacërka in 2001, and that the allegations are absolutely false.⁹⁹²

366. SD1 also explained that, when his units went through Bela Crkva/Bellacërka in the early morning of 25 March 1999, he did not see any damaged or burned houses, nor any PJP units; the village was deserted.⁹⁹³ After passing through the village, he positioned himself at an elevated point.⁹⁹⁴

b. Burying the bodies

367. Sabri Popaj testified that in the evening of 26 March he and his wife and neighbour returned to the scene and put the bodies on the bank of the stream. The following day they wrapped them in some plastic sheeting and blankets. In the evening, together with others from Bela Crkva/Bellacërka and Zrze/Xërxa, they started to bury them.⁹⁹⁵ There were 38 bodies in total. Popaj recalled that 35 were buried together in a mass grave located about 20 metres from the stream, close to where they were killed, near the railway bridge.⁹⁹⁶ Two others, Isuf Popaj and Mehmet Popaj, a father and a son, were buried separately a couple of metres away at the request of a member of their family.⁹⁹⁷ Hazer Popaj was also buried separately.⁹⁹⁸

368. Popaj wrote the names of approximately 17 of the dead on individual pieces of paper, which he placed in small glass bottles with the bodies. At the same time he made a list.⁹⁹⁹ Altogether 26 members of his family were killed.¹⁰⁰⁰

369. Popaj also assisted with the burial of the group of 13 people killed first, and six others including Sedat Popaj and Irfan Popaj. Sedat and Irfan Popaj were lying in the channel leading from the stream towards Celina. Popaj went to the scene around 3:00 a.m. on 28 March, with a small torch, and recognised the two bodies. He found the bodies of the four others close to a tree

⁹⁹² Vlatko Vuković, 5D1442 (witness statement dated 5 January 2008), para. 38; *see also* 6D2, 6D1631 (witness statement dated 12 April 2008), para. 60 (under seal); 6D2, T. 25379–25380 (15 April 2008) (closed session); 6D614 (MUP Overview of recorded criminal offences, 1 July 1998 to 20 June 1999), p. 84, para. 187.

⁹⁹³ SD1, T. 20215–20217, 20229 (13 December 2007) (private session).

⁹⁹⁴ SD1, T. 20205–20206, 20209, 20212 (13 December 2007) (private session); IC163 (Map marked by SD1); *see also* P1981 (Order of the 549th Motorised Brigade, 23 March 1999), para. 5.5.

⁹⁹⁵ Sabri Popaj, P2446 (witness statement dated 14 June 1999), p. 6.

⁹⁹⁶ *See* Sabri Popaj, T. 5673–5674 (1 November 2006), T. 5748–5749 (2 November 2006); IC94 (Marked photograph of Belaja bridge).

⁹⁹⁷ *See* Sabri Popaj, T. 5673–5674 (1 November 2006); IC94 (Marked photograph of Belaja bridge).

⁹⁹⁸ Sabri Popaj, P2446 (witness statement dated 14 June 1999), p. 6 and P2446 (addendum to the witness statement dated 5 June 2002).

⁹⁹⁹ *See* Annex A.

¹⁰⁰⁰ Sabri Popaj, P2446 (witness statement dated 14 June 1999), p. 7 and P2446 (addendum to the witness statement dated 5 June 2002).

nearby.¹⁰⁰¹ They were from Bela Crkva/Bellacërka; he knew them all very well: Hajrulla Begu (who was an imam), Hysni Zhuniqi, and his uncle's sons, Mehdi Zhuniqi and Agim Zhuniqi. He assumed that they had been killed when he heard the shooting five minutes after the initial killing.¹⁰⁰²

370. The six bodies were buried near to where they were found, some 70 metres from the mass grave.¹⁰⁰³ The 13 bodies Popaj had seen first were buried in a mass grave on Sabri Popaj's land only a few metres from the stream, again close to where they had been killed. Popaj made a list of the names of the six bodies and the order in which they were positioned in the grave. He also put their names on pieces of paper that he placed in a pocket of their clothes.¹⁰⁰⁴

371. After the burial of the six bodies, Popaj went to Celina. On a mountain there he came across the body of a young man, about 21 to 22 years old, named Agim, whose wife was from Bela Crkva/Bellacërka. Popaj noticed four bullet holes in his chest. At about 4:00 to 5:00 a.m. on 29 March he buried this body where it lay. He spent the rest of the day in the mountain with his in-laws because it was daylight and the "Serbs" were still around.¹⁰⁰⁵

372. Around the end of April 1999 Popaj also found the body of a girl about 21 to 22 years old in a ground-floor room of Nuri Kelmendi's house in Bela Crkva/Bellacërka. She was naked from the waist up; on her lower body she was wearing spotted trousers. There were knife wounds to her breasts. She had been shot in the back of the neck. There was also a bullet wound under her left breast. He buried her body with the help of two men.¹⁰⁰⁶ She was later identified as Hadije Spahiu from Orahovac/Rahovec.¹⁰⁰⁷ About three days later, he also found the body of a woman called Sadije Kabashi, about 90 years old, in a field on the land belonging to Nait Feroshi, on the way to Celina. There was a bullet hole in her hip. Sabri Popaj assumed that she had been killed by a sniper. He also buried her body with assistance from two men.¹⁰⁰⁸

c. Transfer to Albania

¹⁰⁰¹ Sabri Popaj, P2446 (witness statement dated 14 June 1999), p. 7.

¹⁰⁰² Sabri Popaj, P2446 (witness statement dated 14 June 1999), p. 8; *see also* Sabri Popaj, T. 5751–5752 (2 November 2006).

¹⁰⁰³ Sabri Popaj, P2446 (witness statement dated 14 June 1999), p. 8, T. 5674–5675 (1 November 2006); *see also* IC95 (Marked photograph of Belaja bridge).

¹⁰⁰⁴ Sabri Popaj, P2446 (witness statement dated 14 June 1999), p. 8; *see* Annex A.

¹⁰⁰⁵ Sabri Popaj, P2446 (witness statement dated 14 June 1999), p. 8.

¹⁰⁰⁶ Sabri Popaj, P2446 (witness statement dated 14 June 1999), pp. 11–12.

¹⁰⁰⁷ Sabri Popaj, P2446 (addendum to the witness statement dated 5 June 2002).

¹⁰⁰⁸ Sabri Popaj, P2446 (witness statement dated 14 June 1999), p. 12, P2446 (addendum to the witness statement dated 5 June 2002).

373. After the killings, Isuf Zhuniqi went to Zrze/Xërxa where he found his immediate family members and received first aid assistance. For the next four days he was very ill. However, when he was told that the police were in the vicinity of Zrze/Xërxa, he left his family behind and went into the mountains to hide. There he found about 40 villagers from Bela Crkva/Bellacërka who were also hiding there. They had left the village by a different route. He was told that the whole village had been destroyed and that only two houses had not been burned down.¹⁰⁰⁹

374. On the night of 31 March 1999 he went into Nogavac/Nagafc, where many displaced people from other villages had been ordered to gather. On 1 April he returned to Zrze/Xërxa to visit his family but did not dare to remain there because there was a police presence in the village. After one hour he made his way back to Nogavac/Nagafc. The events he experienced in Nogavac/Nagafc are recounted below.

375. Sabri Popaj returned to live in Bela Crkva/Bellacërka in May 1999. However, on 13 May he decided to leave Kosovo for Albania. In a group of around 85 people he walked towards Prizren and arrived at the Vrbnica/Vërbnica (Morina) border crossing at 5:00 p.m. There they were questioned by Serbian border guards who demanded their documents and identification papers. Only five people handed them over. The border guards threw these documents on to a fire before allowing them to cross into Albania.¹⁰¹⁰

d. Forensic evidence

376. The Trial Chamber received forensic evidence with regard to killings in Bela Crkva/Bellacërka from Dr. Eric Baccard, whose report includes a discussion of the Bela Crkva/Bellacërka site and its examination by a British forensic team consisting of Prof. Dr. Peter Vanezis, Head of the Department of Forensic Medicine and Science of the University of Glasgow, and Dr. Sue Black, Consultant Forensic Pathologist.¹⁰¹¹ Baccard's report is based on supporting documents consisting of a schedule of identification, statements, pathology investigations of buried remains from the site labelled BC001, and the report of the British Forensic Team.¹⁰¹² During the post-mortem examinations, a fluoroscopic screening and an external examination were carried out.¹⁰¹³

¹⁰⁰⁹ Isuf Zhuniqi, P2331 (witness statement dated 4 May 1999), p. 6.

¹⁰¹⁰ Sabri Popaj, P2446 (witness statement dated 14 June 1999), p. 12, P2446 (addendum to the witness statement dated 5 June 2002), T. 5753 (2 November 2006).

¹⁰¹¹ P1809 (Eric Baccard's overview report), p. 27; Eric Baccard, T. 10114–10115 (19 February 2007).

¹⁰¹² Eric Baccard, T. 10116 (19 February 2007); P1809 (Eric Baccard's overview report), p. 27; *see also* P97 (Exhumation report re Bela Crkva/Bellacërka).

¹⁰¹³ P1809 (Eric Baccard's overview report), p. 27.

377. The site in the village of Bela Crkva/Bellacërka was divided into seven zones: Zone 1 was the longest grave containing 33 bodies; Zone 2 was a smaller grave containing 3 bodies; Zone 3 was the whole area within the cordon excluding the river; Zone 4 was the river and river bed within the cordon; Zone 5 was a grave approximately 100 metres outside the cordon containing six bodies; Zone 6 was a grave containing 13 bodies, approximately 600 metres away from the river; Zone 7 was a grave containing one body also approximately 600 metres from the river.¹⁰¹⁴

378. According to the report of the British Forensic Team, prior to examination relatives identified the bodies; post-mortem examinations were commenced in a temporary mortuary set up in a grain store in Bela Crkva/Bellacërka.¹⁰¹⁵ For example, within the British team's report is a statement from a British policeman, Clive Donner, that he attended the mortuary with Sabri Popaj, a relative of the victims, to identify the bodies.¹⁰¹⁶ In his testimony Baccard explained that this was the normal process of identification.¹⁰¹⁷

379. From 30 June to 3 July 1999 the British Forensic Team performed 54 post-mortem examinations, concerning 42 identified victims and 12 unidentified victims, as discussed in Annex A.¹⁰¹⁸ Of 54 victims exhumed, 47 were male (including three children) and seven female (including four children).¹⁰¹⁹ Baccard's report concludes that more than 98 percent of the victims died as a result of gunshot wounds. The number of gunshot wounds was between one and 13 per victim, but the bulk of the victims sustained six or fewer injuries caused by gunshots.¹⁰²⁰ The most frequent point of entry of the gunshot wounds was to the front side of the trunk.¹⁰²¹

e. Findings

380. The Chamber again notes that an action was carried out by the VJ and the MUP in the area of Bela Crkva/Bellacërka at the time of the events described above. The Chamber accepts the very detailed and consistent eye-witness evidence from Zhuniqi and Popaj about these events. Deliç, Vuković and SD1 confirm the presence of VJ and MUP in and near Bela Crkva/Bellacërka at the time, but the specific events as described by the eye-witnesses are denied by them. By generally denying having seen or taken part in any of the events in the village, although admitting being

¹⁰¹⁴ P97 (Exhumation report re Bela Crkva/Bellacërka), e-court p. 37.

¹⁰¹⁵ P1809 (Eric Baccard's overview report), pp. 27–28.

¹⁰¹⁶ P97 (Exhumation report re Bela Crkva/Bellacërka), e-court pp. 48–49.

¹⁰¹⁷ Eric Baccard, T. 10117–10118 (19 February 2007).

¹⁰¹⁸ P1809 (Eric Baccard's overview report), pp. 15, 28; Eric Baccard, T. 10117 (19 February 2007).

¹⁰¹⁹ P1809 (Eric Baccard's overview report), p. 28.

¹⁰²⁰ P1809 (Eric Baccard's overview report), pp. 15, 29–30; Eric Baccard, T. 10116 (19 February 2007).

¹⁰²¹ P1809 (Eric Baccard's overview report), pp. 15, 31.

present in the area at the time, both Delić's and Vuković's credibility must be questioned and the Trial Chamber cannot, therefore, rely on them in relation to these events. The Chamber therefore finds that on 25 March 1999 VJ tanks entered Bela Crkva/Bellacërka and VJ and MUP forces started to shoot at the village, forcing the inhabitants to flee. Hundreds of villagers fled along the Belaja stream.

381. MUP forces killed at least 10 people at the stream, including women and children, while shouting insults at them. A two-year old child survived this incident. The Defence brought no direct evidence to explain the deaths of these people. The victims killed were Xhemal Spahiu, Marigona Spahiu, Iliriana Spahiu, Lirim Spahiu, Qamile Spahiu, Clirim Zhuniqi, Lumnie Zhuniqi, Dardan Zhuniqi, Dardane Zhuniqi, and Dhurata Zhuniqi.¹⁰²² The Prosecution has not established that Fiqriq Spahiu and Labinot Spahiu, who are mentioned as victims from Bela Crkva/Bellacërka in its Final Trial Brief, were killed by VJ or MUP forces on 25 March 1999.¹⁰²³

382. The police then ordered the remaining villagers at the streambed to split into three groups, one of women and children, and the other two to include all the men standing on the ground on either side of the bridge and stream. The police ordered the women and children to leave in the direction of Zrze/Xërxa. A doctor from Bela Crkva/Bellacërka spoke to the leader of the group of policemen and was shot and killed, as was his nephew. The men were then robbed of their valuables and forced into the stream where they were shot. The Trial Chamber finds that at least 42 men were killed in this incident, namely: Abdullah Begaj, Murat Berisha, Fadil Gashi, Musa Morina, Alban Popaj, Agon Popaj, Abdullah Popaj, Bedrush Popaj, Belul Popaj, Ethem Popaj, Hazer Popaj, Hysni Popaj, Isuf Popaj, Kreshnik Popaj, Lindrit Popaj, Mehmet Popaj, Mersel Popaj, Nazmi Popaj, Nisim Popaj, Rrustem Popaj, Sahid Popaj, Shendet Popaj, Vehap Popaj, Xhavit Popaj, Abein Zhuniqi, Bajram Zhuniqi, Bilall Zhuniqi, Destan Zhuniqi, Eshref Zhuniqi, Fatos Zhuniqi, Labinot Zhuniqi, Ibrahim Zhuniqi, Kasim Zhuniqi, Muhammet Zhuniqi, Muharrem Zhuniqi, Qamil Zhuniqi, Qemal Zhuniqi, Reshit Zhuniqi, Shemsi Zhuniqi, Ardian Fetoshi, Fatimir Fetoshi, and Hysni Fetoshi.¹⁰²⁴ Seven others were killed close to the stream by the police; Irfan Popaj, Sedat Popaj, Agim Zhuniqi, Hysni Zhuniqi, Medi Zhuniqi, Hajrulla Begu and Halim Fetoshi.¹⁰²⁵ Consequently, on the basis of the forensic and additional evidence relating to the events in Bela Crkva/Bellacërka discussed above, the Chamber finds that 59 people were killed there by MUP forces on 25 March 1999.

¹⁰²² See Annex A.

¹⁰²³ See Annex A.

¹⁰²⁴ See Annex A.

¹⁰²⁵ See Annex A.

5. Destruction of the mosques in Celina and Bela Crkva/Bellacërka

383. Sabri Popaj testified that the mosques in Celina, Bela Crkva/Bellacërka, and Rogovo/Rogova were all blown up on 28 March 1999, the Muslim holiday of Bajram.¹⁰²⁶ He explained that Celina and Bela Crkva/Bellacërka are only about one and a half kilometres apart.¹⁰²⁷ He first saw the Celina mosque being blown up, then the mosque in Bela Crkva/Bellacërka, and then the Rogovo/Rogova mosque.¹⁰²⁸ The Chamber has already dealt with the destruction of the Rogovo/Rogova mosque above in the section pertaining to Đakovica/Gjakova municipality.

a. Celina

384. Popaj testified that, on 28 March 1999, he saw a Pinzgauer/Landrover and an APC driving to the mosque in Celina. He was up in the hills and had a good view of Celina and its countryside. The vehicles stopped near the mosque and policemen dressed in blue camouflage uniforms disembarked and went into the mosque, where they stayed for about an hour.¹⁰²⁹

385. Popaj testified that there was then a loud explosion and the mosque was completely blown up.¹⁰³⁰ He identified the mosque in a photograph shown to him in the courtroom as the mosque in Celina.¹⁰³¹

386. Reshit Salihi and Agim Jemini confirmed that the mosque in Celina was destroyed; however, they did not see it at the time it happened. Salihi saw that it had been destroyed when he returned from Albania.¹⁰³² Jemini was on the periphery of the village when he heard the explosion that destroyed the mosque; the sound of the explosion was about one kilometre away. In the evening he went there and saw it totally destroyed.¹⁰³³

387. András Riedlmayer described the condition of the Celina mosque as completely destroyed.¹⁰³⁴ His report indicates that, according to the Islamic community, the mosque had been burned down and the ruins bulldozed by “Serbs”.¹⁰³⁵ Riedlmayer stated that the visual evidence

¹⁰²⁶ Sabri Popaj, T. 5650, 5678, 5685 (1 November 2006).

¹⁰²⁷ Sabri Popaj, T. 5679 (1 November 2006), P2446 (witness statement dated 14 June 1999), p. 11.

¹⁰²⁸ Sabri Popaj, T. 5650 (1 November 2006).

¹⁰²⁹ Sabri Popaj, P2446 (witness statement dated 14 June 1999), p. 11, T. 5685–5686 (1 November 2006).

¹⁰³⁰ Sabri Popaj, P2446 (witness statement dated 14 June 1999), p. 11, T. 5682 (1 November 2006).

¹⁰³¹ Sabri Popaj, T. 5680 (1 November 2006); *see also* P1800 (Photograph of the mosque in Celina).

¹⁰³² Reshit Salihi, T. 4208–4209 (28 September 2006).

¹⁰³³ Agim Jemini, T. 4242 (28 September 2006); *see also* P1800 (Photograph of the mosque in Celina).

¹⁰³⁴ P1773 (Extract from P1789 re Celina mosque); András Riedlmayer, T. 5466 (30 October 2006).

¹⁰³⁵ P1773 (Extract from P1789 re Celina mosque).

provided in the report “is consistent with” the assessment made by the Islamic community.¹⁰³⁶ He also explained that, when comparing a pre-destruction photograph of the mosque and the cadastral register concerning the mosque with the photograph of the destroyed mosque in his report, he could identify the remains depicted in the photograph as belonging to the Celina mosque.¹⁰³⁷ However, he could not draw any conclusions from these photographs whether the mosque had been burned or blown up before it was bulldozed.¹⁰³⁸

388. The joint Defence expert witness on cultural heritage, Branimir Jokić, was shown the two different photographs of the mosque in Celina, and stated that, based on those photographs, it was impossible to establish what building this was and that he could not say whether the photographs depicted the same building.¹⁰³⁹ Jokić also commented on the cadastral register used by Riedlmayer and stated that it was registered as a “house” and usually, if it was a mosque or a church, it would say “monument” or “religious building” in the register.¹⁰⁴⁰ Jokić, however, conceded that he did not consider himself an expert in the field of Muslim religious buildings.¹⁰⁴¹

389. The Trial Chamber recalls Božidar Delić’s evidence denying that his forces were in Celina on 28 March 1999 and denying that his forces destroyed the mosque in Celina, and notes that there is no evidence suggesting VJ involvement in its destruction.¹⁰⁴²

390. The Chamber finds, on the evidence of Sabri Popaj, which was partly corroborated by Agim Jemini, Reshit Salihi and András Riedlmayer, that the mosque in Celina was destroyed by MUP forces using some kind of explosive on 28 March 1999.

b. Bela Crkva/Bellacërka

391. Popaj also gave evidence of the destruction that same day of the mosque in Bela Crkva/Bellacërka. He was in the field, part of which is on a hill, between Celina and Bela Crkva/Bellacërka.¹⁰⁴³ Popaj explained that he was at the side of the hill overlooking the villages, when he heard an explosion. He looked towards his village and saw that the mosque was not there

¹⁰³⁶ András Riedlmayer, T. 5560–5561 (31 October 2006); *see also* IC89 (marking on P1800); IC90 (marking on P2445).

¹⁰³⁷ András Riedlmayer, T. 5463–5466 (30 October 2006); P2445 (Photograph of the mosque in Celina); P1800 (Photograph of the mosque in Celina); *see also* P2444 (Extract from cadastral register for Celina mosque); IC89 (marking on 1800); IC90 (marking on P2445).

¹⁰³⁸ András Riedlmayer, T. 5468 (30 October 2006); P1800 (Photograph of the mosque in Celina).

¹⁰³⁹ Branimir Jokić, T. 25863–25864, 25866 (22 April 2008); *see also* P2445 (Photograph of the mosque in Celina); P1773 (Extract from P1789 re Celina mosque).

¹⁰⁴⁰ Branimir Jokić, T. 25873–25874 (23 April 2008); P2444 (Extract from cadastral register for Celina mosque).

¹⁰⁴¹ Branimir Jokić, T. 25942–25943 (23 April 2008).

¹⁰⁴² Božidar Delić, T. 19383, 19391 (29 November 2007).

anymore.¹⁰⁴⁴ Popaj identified the mosque in a photograph shown to him in the courtroom as the mosque in Bela Crkva/Bellacërka.¹⁰⁴⁵

392. András Riedlmayer reported the condition of the mosque in Bela Crkva/Bellacërka as heavily damaged, and stated that the “[m]osque [was] damaged by shelling, minaret [was] blown up, [and] interior [was] burned out.”¹⁰⁴⁶ Riedlmayer explained that he considered the mosque to be “heavily damaged” because it had multiple damage, namely to the roof, to the interior, and to the external wall.¹⁰⁴⁷ Using a photograph depicting the mosque in Bela Crkva/Bellacërka, he concluded, on the basis of the remains of the minaret, the hole in the building, and the signs of falling rubble, that the minaret had been blown up.¹⁰⁴⁸

393. Riedlmayer explained, however, that he had not personally visited this mosque, but rather had photographs and information from multiple sources.¹⁰⁴⁹ The assessment in his report was made on the basis of the photographs and information he acquired from media sources.¹⁰⁵⁰ In his report he also referred to satellite photographs displayed on the NATO website showing Bela Crkva/Bellacërka before and after it was damaged.¹⁰⁵¹ On the first satellite photograph taken on 11 March 1999, he identified a mosque, tall minaret, a large dome, and a few small domes. On the second photograph taken on 2 April 1999, he observed that the minaret did not appear anymore.¹⁰⁵²

394. Branimir Jokić testified that he did not have access to the information he needed in order to be able to evaluate Riedlmayer’s conclusions with regard to the mosque in Bela Crkva/Bellacërka and it was not possible for him to visit the site.¹⁰⁵³

395. Delić, who testified that he passed through Bela Crkva/Bellacërka with his forces on 25 March 1999, stated that at that time the mosque with its minaret was intact. He passed by on the road from Orahovac/Rahovec some 300 to 500 metres from the mosque and the minaret was usually visible from that distance. He could not say with certainty that it was intact the other days

¹⁰⁴³ Sabri Popaj, T. 5679 (1 November 2006), 5730 (2 November 2006).

¹⁰⁴⁴ Sabri Popaj, T. 5679 (1 November 2006).

¹⁰⁴⁵ Sabri Popaj, T. 5678–5679 (1 November 2006); *see also* IC96 (Marked exhibit P1792, depicting the mosque of Bela Crkva/Bellacërka with missing minaret).

¹⁰⁴⁶ P1774 (Extract from P1789 re Bela Crkva/Bellacërka mosque).

¹⁰⁴⁷ András Riedlmayer, T. 5473 (30 October 2006).

¹⁰⁴⁸ András Riedlmayer, T. 5472–5473 (30 October 2006); P1792 (Photograph of the Bela Crkva/Bellacërka mosque).

¹⁰⁴⁹ András Riedlmayer, T. 5473 (30 October 2006), 5563 (31 October 2006).

¹⁰⁵⁰ András Riedlmayer, T. 5473 (30 October 2006), 5563 (31 October 2006).

¹⁰⁵¹ P1774 (Extract from P1789 re Bela Crkva/Bellacërka mosque); P98 (satellite photographs displayed on the NATO website depicting the mosque in Bela Crkva/Bellacërka); András Riedlmayer, T. 5523 (31 October 2006).

¹⁰⁵² András Riedlmayer, T. 5524 (31 October 2006); P98 (satellite photographs displayed on the NATO website depicting the mosque in Bela Crkva/Bellacërka).

¹⁰⁵³ Branimir Jokić, T. 25938–25939 (23 April 2008).

he passed by in April and May 1999, since he was not looking for damage to the mosque.¹⁰⁵⁴ Delić denied that his forces would have destroyed the mosque in Bela Crkva/Bellacërka.¹⁰⁵⁵ When shown a photograph of the village taken in June 1999, he conceded that, at that time, the minaret was not there.¹⁰⁵⁶

396. The Trial Chamber is satisfied that the mosque in Bela Crkva/Bellacërka was also blown up and, as a result, was heavily damaged. However, due to the lack of direct evidence as to the perpetrators, the Chamber cannot conclude beyond reasonable doubt that the mosque was damaged by FRY/Serbian forces.

6. Mala Kruša/Krusha e Vogël

397. In early 1999 Mala Kruša/Krusha e Vogël had about 70 houses with approximately 400 Kosovo Albanian residents and 23 houses with Serb residents.¹⁰⁵⁷ Mehmet Krasniqi (previously known as Mehmet Avdyli), a Kosovo Albanian resident of the village, testified that, apart from five people, the entire population of the village consisted of civilians.¹⁰⁵⁸ These five were in the KLA, but whenever they were at home they wore civilian clothing and Krasniqi had never seen them carry any firearms in the village.¹⁰⁵⁹ He further testified that the Serb and Kosovo Albanian villagers co-existed in relative harmony, and that the village was not attacked by any “Serb forces” until the NATO strikes began.¹⁰⁶⁰

a. Operations in the area of Mala Kruša/Krusha e Vogël

398. K25, a former police officer who was in the 23rd PJP Detachment in 1998 and 1999, testified about the co-ordinated operation in March 1999 in Orahovac/Rahovec and Prizren municipalities referred to above, in which he participated, specifically in Mala Kruša/Krusha e Vogël.¹⁰⁶¹

¹⁰⁵⁴ Božidar Delić, T. 19626, 19628 (5 December 2007), 19632–19633 (6 December 2007); IC155 (Photo marked by Božidar Delić).

¹⁰⁵⁵ Božidar Delić, T. 19391 (29 November 2007).

¹⁰⁵⁶ Božidar Delić, T. 19632–19633 (6 December 2007); IC155 (Photo marked by Božidar Delić).

¹⁰⁵⁷ Mehmet Krasniqi, T. 4384–4385 (29 September 2006), P2341 (witness statement dated 4 April 1999), e-court p. 8.

¹⁰⁵⁸ Mehmet Krasniqi, T. 4367–4368 (29 September 2006), P2341 (witness statement dated 4 April 1999), e-court p. 8, (witness statement dated 5 October 2001), e-court p. 2.

¹⁰⁵⁹ Mehmet Krasniqi, P2341 (witness statement dated 5 October 2001), e-court p. 2.

¹⁰⁶⁰ Mehmet Krasniqi, P2341 (witness statement dated 4 April 1999), e-court p. 8.

¹⁰⁶¹ K25, T. 4656–4657 (11 October 2006) (private session), T. 4706–4708 (12 October 2006), P2439 (witness statement dated 12 September 2001), pp. 8–19.

399. The forces participating in the action in the area of Mala Kruša/Krusha e Vogël and Velika Kruša/Krusha e Madhe included PJP, local MUP reservists, and local MUP units, with the support of the VJ.¹⁰⁶² Specifically, one VJ T-55 tank was in Velika Kruša/Krusha e Vogël and there were four VJ BOV armoured vehicles deployed at points along the road between Mala Kruša/Krusha e Vogël and Velika Kruša/Krusha e Madhe.¹⁰⁶³ The overall area of responsibility of the 23rd PJP Detachment was from Mala Kruša/Krusha e Vogël to Zrze/Xërxa and from Zrze/Xërxa to Bela Crkva/Bellacërka.¹⁰⁶⁴ The members of K25's unit were informed that they were to go to Mala Kruša/Krusha e Vogël with the objective to hold the blockade line from Rogovo/Rogova to Mala Kruša/Krusha e Vogël and to push the "terrorists" towards Mališevo/Malisheva. The plan was to direct the civilians towards Prizren.¹⁰⁶⁵

400. K25 described the ensuing action as a mop-up operation, meaning an operation to push the KLA towards Mališevo/Malisheva, and to gather up the civilian population as they came out of the area of operation and place them behind the line of blockade, to the south-west.¹⁰⁶⁶ The VJ wanted to establish complete control of the area.¹⁰⁶⁷ The task of K25's unit was to cover parts of the Prizren road and to maintain a presence there to prevent KLA infiltration into their lines and to gather any "refugees" that were coming out of the villages onto the road. The "refugees" were then to be handed over to the local MUP forces. K25 personally handed over more than 5,000 men, women, and children. The local MUP forces then separated the men from the women and children. Transport was organised for the women and children, whereas the men had to walk.¹⁰⁶⁸ SUP Prizren was responsible for organising the transportation of these people, and the trucks and buses used were civilian.¹⁰⁶⁹

401. K25 clarified that during the period between 25 and 29 March 1999 he never entered Mala Kruša/Krusha e Vogël and he noticed nothing that would alert him to the killing of a large group of men in the village on 26 March.¹⁰⁷⁰ During the time he stayed near the village he only saw two or

¹⁰⁶² K25, T. 4668–4674 (11 October 2006), P2439 (witness statement dated 12 September 2001), pp. 6–11.

¹⁰⁶³ K25, P2439 (witness statement dated 12 September 2001), p. 10.

¹⁰⁶⁴ K25, P2439 (witness statement dated 12 September 2001), pp. 8, 10, T. 4669 (11 October 2006); IC80 (Map P109 marked by K25 showing positions of his and other units in the Orahovac–Prizren operations).

¹⁰⁶⁵ K25, P2439 (witness statement dated 12 September 2001), pp. 7–8.

¹⁰⁶⁶ K25, P2439 (witness statement dated 12 September 2001), pp. 8–9, 11, T. 4744 (12 October 2006), P2527 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 7825, 7860–7862, 7867.

¹⁰⁶⁷ K25, P2439 (witness statement dated 12 September 2001), p. 11, P2527 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 7825, 7832.

¹⁰⁶⁸ K25, P2439 (witness statement dated 12 September 2001), p. 9, P2527 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 7826, 7834.

¹⁰⁶⁹ K25, P2439 (witness statement dated 12 September 2001), p. 12, P2527 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 7826–7827.

¹⁰⁷⁰ K25, T. 4698–4702, 4711–4712 (12 October 2006); IC83 (Map P99, marked by K25, showing what he could see of Mala Kruša/Krusha e Vogël from the Hajdari compound).

three houses burning.¹⁰⁷¹ He did not see any “refugees” coming from Mala Kruša/Krusha e Vogël on 26 March 1999.¹⁰⁷² K25 also confirmed during cross-examination that the VJ did not fire from their tanks located at Velika and Mala Kruša/Krusha e Vogël.¹⁰⁷³

b. Attack on Mala Kruša/Krusha e Vogël on 25 March 1999

402. Mehmet Krasniqi, who impressed the Chamber as a straightforward witness, testified that on 25 March 1999, at about 3:00 a.m., he was awoken by the noise of “military tanks”, armoured vehicles, Pragas, and heavy artillery in Mala Kruša/Krusha e Vogël. They were positioned along the Prizren–Đakovica/Gjakova road about 250 metres from his house.¹⁰⁷⁴ That day all the Kosovo Albanians in the village, including Krasniqi and his family, fled to the woods on the mountain.¹⁰⁷⁵ When it began to become light, the tanks fired towards the mountain. Mixed military and paramilitary forces using heavy artillery fired above the villagers’ heads in the direction of the woods.¹⁰⁷⁶ This lasted for about one hour, and then they started to burn down the village.¹⁰⁷⁷ Krasniqi also saw MUP forces taking away vehicles and tractors.¹⁰⁷⁸ Local Serb villagers participated in the attack along with the MUP and VJ.¹⁰⁷⁹

403. Lutfi Ramadani, also a Kosovo Albanian resident of Mala Kruša/Krusha e Vogël, impressed the Chamber as a credible witness who gave reliable evidence about events in his village at the end of March 1999. He confirmed that early in the morning of 25 March 1999 the village was surrounded by tanks, Pragas, anti–aircraft artillery weapons, and armoured cars/APCs.¹⁰⁸⁰ From his house, which was located on the outskirts of the village, he was able to observe the Prizren–Đakovica/Gjakova road and saw that it was full of tanks and artillery weapons.¹⁰⁸¹ The MUP then entered the village with the APCs and started shooting, entering houses, and setting them on

¹⁰⁷¹ K25, P2439 (witness statement dated 12 September 2001), p. 17, T. 4698–4702 (12 October 2006).

¹⁰⁷² K25, P2439 (witness statement dated 12 September 2001), p. 17.

¹⁰⁷³ K25, T. 4717 (12 October 2006).

¹⁰⁷⁴ Mehmet Krasniqi, P2341 (witness statement dated 4 April 1999), e-court p. 8, T. 4372–4373, 4382–4384 (29 September 2006); *see also* IC73 (Marking made by Mehmet Krasniqi on P99 containing the aerial photograph of Mala Kruša/Krusha e Vogël).

¹⁰⁷⁵ Mehmet Krasniqi, P2341 (witness statement dated 4 April 1999), e-court p. 8, T. 4372–4373 (29 September 2006).

¹⁰⁷⁶ Mehmet Krasniqi, P2341 (witness statement dated 4 April 1999), e-court p. 8, P2341 (witness statement dated 5 October 2001), e-court p. 2.

¹⁰⁷⁷ Mehmet Krasniqi, P2341 (witness statement dated 4 April 1999), e-court p. 8.

¹⁰⁷⁸ Mehmet Krasniqi, P2341 (witness statements dated 4 April 1999, 5 October 2001, and 7 March 2002), e-court p. 8.

¹⁰⁷⁹ Mehmet Krasniqi, T. 4393 (29 September 2006).

¹⁰⁸⁰ Lutfi Ramadani, T. 4284–4285, 4317 (28 September 2006).

¹⁰⁸¹ Lutfi Ramadani, T. 4284–4285 (28 September 2006), T. 4339–4340, 4354 (29 September 2006); IC68 (marking of the aerial photo of Mala Kruša/Krusha e Vogël P99); IC70 (marking of the aerial photo of Mala Kruša/Krusha e Vogël P99).

fire.¹⁰⁸² The MUP had guns on the APCs with which they opened fire on the village.¹⁰⁸³ The VJ did not use the artillery, but was “cleansing” the terrain.¹⁰⁸⁴ He saw forces wearing different types of uniforms: some of them wore black, and others wore multi-coloured camouflage uniforms. Ramadani explained that black uniforms were not quite black; nevertheless, he called them black.¹⁰⁸⁵

404. Local Serbs from the village were assisting to set the houses on fire. The local people were in the lead, giving information on where the houses of the Kosovo Albanians were. They also participated in the killings in the village.¹⁰⁸⁶ They wore the uniforms of the “militia”, but some were without uniforms. They had white and red bandannas on their heads, like ribbons tied around their heads.¹⁰⁸⁷ Ramadani further explained that the local Serbs had a variety of types of uniform, which they often changed; some had MUP, VJ, and “paramilitary” uniforms, and they also had army reservist uniforms.¹⁰⁸⁸

405. As for the MUP reservists, Ramadani stated that they sometimes wore their uniforms and sometimes did not; he also saw reservists in green uniforms.¹⁰⁸⁹ Ramadani named some of the local Serbs involved, including some who were fully employed by the regular MUP, such as Momčilo Nikolić, Sava Nikolić, and Đorđe Cvetković.¹⁰⁹⁰ A café owned by Dimitrije Nikolić was used by the Serbs, both civilians and uniformed, as a regular gathering place.¹⁰⁹¹ During the events on 25 March 1999 the MUP were stationed at Nikolić’s house.¹⁰⁹² The Trial Chamber notes that

¹⁰⁸² Lutfi Ramadani, T. 4285–4286, 4317 (28 September 2006). Ramadani used the expression “militia” to refer to the MUP (the police). See Lutfi Ramadani, T. 4334 (28 September 2006), T. 4343–4345, 4359–4360 (29 September 2006); see also IC71 (marking of the aerial photo of Mala Kruša/Krusha e Vogël P99); IC72 (marking of the aerial photo of Mala Kruša/Krusha e Vogël P99).

¹⁰⁸³ Lutfi Ramadani, T. 4344 (29 September 2006), 6D87 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 6721.

¹⁰⁸⁴ Lutfi Ramadani, T. 4344 (29 September 2006), 6D87 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 6721.

¹⁰⁸⁵ Lutfi Ramadani, T. 4285–4286 (28 September 2006), T. 4364 (29 September 2006).

¹⁰⁸⁶ Lutfi Ramadani, T. 4286–4287, 4325 (28 September 2006).

¹⁰⁸⁷ Lutfi Ramadani, T. 4286 (28 September 2006).

¹⁰⁸⁸ Lutfi Ramadani, T. 4287, 4321–4322, 4335 (28 September 2006), T. 4363–4365 (29 September 2006).

¹⁰⁸⁹ Lutfi Ramadani, T. 4320–4321 (28 September 2006).

¹⁰⁹⁰ Lutfi Ramadani, T. 4286–4287, 4320 (28 September 2006). He mentioned Dimitrije Nikolić, Ranko Nikolić, Momčilo Nikolić, Sava Nikolić, Sreto Thaqi, Zlatko Đorđević, Đorđe Cvetković, Ranko Petković, Čedomir Petković, Rasko Nikolić, Dragi Čvetković and Sveta Tasić.

¹⁰⁹¹ Lutfi Ramadani, T. 4321 (28 September 2006), T. 4360–4362 (29 September 2006); see also IC72 (marking of the aerial photo of Mala Kruša/Krusha e Vogël P99).

¹⁰⁹² Lutfi Ramadani, T. 4359–4361 (29 September 2006).

official information received from the MUP corroborates Ramadani's evidence in relation to local MUP members.¹⁰⁹³

406. Mehmet Krasniqi testified that he saw three types of uniforms in Mala Kruša/Krusha e Vogël at the time of the attack: paramilitaries wearing camouflage uniforms with yellow bands on the left side of the chest and white bands on the upper part of the left arm; military wearing a combination of green camouflage trousers and a plain green shirt; MUP wearing blue camouflage uniforms with yellow ribbons on their arms.¹⁰⁹⁴ Although he first stated that he saw the MUP wearing dark "yellow" colour uniforms with a pattern, it was later explained that he meant "blue" when he referred to "yellow".¹⁰⁹⁵ Krasniqi also confirmed that close to March 1999 many able-bodied Serb male villagers started to wear uniforms, either army reservist uniforms or other kinds of uniforms. These men used to carry weapons and drove around in private civilian cars rather than marked police cars.¹⁰⁹⁶ During the attack on the village, he saw them together with the VJ and the MUP.¹⁰⁹⁷

407. Ramadani testified that, when the MUP started shooting and setting houses on fire, the local people began to flee towards the woods.¹⁰⁹⁸ Most of the villagers, altogether about 500 or more, gathered in the woods. While hiding, Ramadani heard firing.¹⁰⁹⁹ At around 7:00 p.m., when it became cold, Ramadani and all of the other villagers, with the exception of two families who remained there, went to the house of Sejdi Batusha in the village, where they spent the night.¹¹⁰⁰

408. In the morning of 26 March the Serbs from the village, with the help of "other" Serbs wearing police uniforms, started to open fire, loot, and raid the houses, taking away the most

¹⁰⁹³ P2335 (Responses to Prosecution Request for Assistance regarding individuals who might have served in the VJ or the MUP and those holding MUP reservist status, 31 July 2006), p. 2, request 1098; Evidentiary Matters, T. 4408–4410 (29 September 2006). *See also* P2849 (MUP personnel record for Dimitrije Nikolić); P2850 (MUP personnel record for Zvezdan Nikolić); P2851 (MUP personnel record for Goran Nikolić); P2852 (MUP personnel record for Slaviša Petković); P2853 (MUP personnel record for Goran Petković); P2854 (MUP personnel record for Saša Grković); John Sweeney, T. 4826–4827, 4871–4872 (13 October 2006), P2383 (witness statement dated 24 January 2001), pp. 8, 11–12; P2327 (Handwritten list of names of Serbs that lived in Mala Kruša/Krusha e Vogël); P2384 (John Sweeney's video clips), video no. 4. *But see* Lukić Final Trial Brief, 7 August 2008 (public version), para. 871; Lutfi Ramadani, T. 4307 (28 September 2006); P2357 (a list of names provided by Lutfi Ramadani), p. 4.

¹⁰⁹⁴ Mehmet Krasniqi, P2341 (witness statement dated 5 October 2001), e-court p. 2, P2341 (witness statement dated 7 March 2002), e-court p. 5; *see also* Mehmet Krasniqi, T. 4373 (29 September 2006).

¹⁰⁹⁵ Mehmet Krasniqi, T. 4373 (29 September 2006).

¹⁰⁹⁶ Mehmet Krasniqi, T. 4388–4389 (29 September 2006).

¹⁰⁹⁷ Mehmet Krasniqi, T. 4393 (29 September 2006).

¹⁰⁹⁸ Lutfi Ramadani, T. 4287–4288, 4318 (28 September 2006); IC64 (marking of the aerial photo of Mala Kruša/Krusha e Vogël P99).

¹⁰⁹⁹ Lutfi Ramadani, T. 4288 (28 September 2006).

¹¹⁰⁰ Lutfi Ramadani, T. 4288–4290 (28 September 2006); IC65 (marking of the aerial photo of Mala Kruša/Krusha e Vogël P99).

valuable items, tractors, and cars. After removing all the valuables, they set fire to the houses.¹¹⁰¹ When a villager called Hysen Ramadani, also known as Hysen Kanjusha, went to set the cows free so that they could graze, he was killed by “Serbs” who shot him.¹¹⁰² Ramadani was not able to see who exactly shot him.¹¹⁰³

409. While setting houses on fire, the MUP approached Batusha’s compound. They took up positions in the house of Milaim Batusha.¹¹⁰⁴ They then ordered Aziz Shehu to collect the people who were still hiding in the woods and bring them back to the village. They ordered everybody out on to the main street. There they separated women and children from the men. The boys aged 13 and above were ordered to join the group of men.¹¹⁰⁵ The group of men included elderly men, about 14 teenagers, two mentally disabled men, and two paralysed men, namely Liman and Sait Hajdari.¹¹⁰⁶ A policeman in a “black police uniform” told the women to go to Albania. They took the road to the Drini river.¹¹⁰⁷

410. Krasniqi generally confirmed this evidence, testifying that in the morning of 26 March a group of about 15 policemen went to the woods where the local villagers were hiding. Krasniqi, who was himself within that group, observed three members of the MUP who were wearing white arm bands and were giving instructions. The policemen were wearing different kinds of uniforms.¹¹⁰⁸ The women and children were separated from the men and young boys and told to go to Albania. The group of approximately 110 men and boys,¹¹⁰⁹ including 13 year-old Mehmet Shehu, 13 year-old Xhelal Shehu, and the 72 year-old uncle of Mehmet Krasniqi, Bali Avdyl, were searched and their money, identity cards, and wallets taken away.¹¹¹⁰

411. Krasniqi and Ramadani both testified that, after the women left, the men were forced to kneel with their hands at the back of their heads.¹¹¹¹ The policemen in “black police uniforms”

¹¹⁰¹ Lutfi Ramadani, T. 4290–4291 (28 September 2006).

¹¹⁰² Lutfi Ramadani, T. 4291, 4316 (28 September 2006); IC67 (marking of the aerial photo of Mala Kruša/Krusha e Vogël P99).

¹¹⁰³ Lutfi Ramadani, T. 4292 (28 September 2006).

¹¹⁰⁴ Lutfi Ramadani, T. 4292 (28 September 2006).

¹¹⁰⁵ Lutfi Ramadani, T. 4292–4293 (28 September 2006).

¹¹⁰⁶ Lutfi Ramadani, T. 4296, 4299 (28 September 2006); Mehmet Krasniqi, P2341 (witness statement dated 4 April 1999), e-court p. 9, T. 4373–4374, 4397 (29 September 2006).

¹¹⁰⁷ Lutfi Ramadani, T. 4294, 4323, 4324 (28 September 2006).

¹¹⁰⁸ Mehmet Krasniqi, P2341 (witness statement dated 4 April 1999), e-court p. 8, T. 4393–4394 (29 September 2006).

¹¹⁰⁹ Lutfi Ramadani, T. 4299 (28 September 2006).

¹¹¹⁰ Mehmet Krasniqi, P2341 (witness statement dated 4 April 1999), e-court p. 8; Lutfi Ramadani, T. 4295 (28 September 2006).

¹¹¹¹ Mehmet Krasniqi, P2341 (witness statement dated 4 April 1999), e-court p. 8; Lutfi Ramadani, T. 4295 (28 September 2006).

then ordered the group to stand and line up in columns three abreast. The MUP assaulted any who raised their heads by kicking them.¹¹¹²

412. Members of the MUP then escorted the group of men to the barn/cowshed of an Albanian villager called “Haxhi Batusha” or “Qazim Batusha”, which was situated between the village and the forest.¹¹¹³ Ramadani saw several policemen, some of whom he knew, along the road where they were walking.¹¹¹⁴ The barn had two rooms and a corridor and was uninhabited and had no furniture.¹¹¹⁵ At about 11:00 a.m. the group of men was pushed into two small rooms of the barn.¹¹¹⁶

413. Krasniqi testified that the room that he was in had two windows on adjacent sides and a door to the corridor.¹¹¹⁷ He was at the far end away from the windows and door.¹¹¹⁸ Ramadani also testified that the policemen remained outside.¹¹¹⁹ These policemen then opened fire on the men without any warning.¹¹²⁰ Krasniqi immediately fell to the ground and was covered by bodies. The shooting came from the windows and continued for many minutes.¹¹²¹ Ramadani stated that one policeman then came in with a rifle and shot those who raised their heads.¹¹²²

414. While Krasniqi was on the ground he heard a man, Shefqet Shehu, calling out to one of the Serbs taking part in the shooting, Momčilo Nikolić, although Krasniqi did not see Nikolić at that time.¹¹²³ When the shooting stopped, the MUP put hay on the bodies and set it alight.¹¹²⁴ Krasniqi

¹¹¹² Mehmet Krasniqi, P2341 (witness statement dated 4 April 1999), e-court p. 8; Lutfi Ramadani, T. 4295, 4324 (28 September 2006).

¹¹¹³ Krasniqi called the place “Haxhi Batusha’s house” and explained: “When it was built, it was a two-room house with a corridor. When we were taken to that house, a part of it had hay inside. The part where I was, on the right side, it had hay inside. So that’s why we called it a barn and sometimes a house.” Mehmet Krasniqi, T. 4395–4396 (29 September 2006). Ramadani called it “Qazim Batusha’s barn”. Lutfi Ramadani, T. 4295 (28 September 2006), 4350 (29 September 2006); IC66 (marking of the aerial photo of Mala Kruša/Krusha e Vogël P99); IC69 (marking of the aerial photo of Mala Kruša/Krusha e Vogël P99); 3D121 (Photographs of the Mala Kruša/Krusha e Vogël area), p. 3 (depicting a photo of the yard of the Batusha’s house).

¹¹¹⁴ Lutfi Ramadani, T. 4299 (28 September 2006).

¹¹¹⁵ Mehmet Krasniqi, T. 4395 (29 September 2006); Lutfi Ramadani, T. 4298 (28 September 2006).

¹¹¹⁶ Mehmet Krasniqi, P2341 (witness statement dated 4 April 1999), e-court pp. 8–9, T. 4396 (29 September 2006); *see also* Mehmet Krasniqi, T. 4373–4374, 4397 (29 September 2006); Lutfi Ramadani, T. 4299 (28 September 2006).

¹¹¹⁷ Mehmet Krasniqi, P2341 (witness statement dated 4 April 1999), e-court p. 9; *see also* T. 4373–4374, 4397 (29 September 2006); Lutfi Ramadani, T. 4299 (28 September 2006).

¹¹¹⁸ Mehmet Krasniqi, P2341 (witness statement dated 4 April 1999), e-court p. 9; *see also* T. 4373–4374, 4397 (29 September 2006); Lutfi Ramadani, T. 4299 (28 September 2006).

¹¹¹⁹ Lutfi Ramadani, T. 4300, 4327 (28 September 2006).

¹¹²⁰ Mehmet Krasniqi, P2341 (witness statement dated 4 April 1999), e-court p. 9; *see also* T. 4373–4374, 4397 (29 September 2006); Lutfi Ramadani, T. 4300 (28 September 2006).

¹¹²¹ Mehmet Krasniqi, P2341 (witness statement dated 4 April 1999), e-court p. 9; *see also* T. 4373–4374, 4397 (29 September 2006).

¹¹²² Lutfi Ramadani, T. 4300, 4328 (28 September 2006).

¹¹²³ Mehmet Krasniqi, T. 4373–4375, 4396 (29 September 2006).

¹¹²⁴ Mehmet Krasniqi, P2341 (witness statement dated 4 April 1999), e-court p. 9, T. 4374–4376 (29 September 2006); Lutfi Ramadani, T. 4300, 4328 (28 September 2006).

was still at the bottom of the heap of dead and injured people. He pushed himself away from the bodies and struggled to his feet. He managed to escape by jumping through a side window, and ran to his uncle's house next door where he hid in the cellar.¹¹²⁵

415. Ramadani was not hit at all during the shooting, but was burned on the right side of his body and head.¹¹²⁶ He managed to escape through the entrance together with two other men, Bajram Zylfiu and "Agim".¹¹²⁷ He had to push away the body of Sait Hajdari, which was blocking the exit, in order to get out.¹¹²⁸ Ramadani's sons, Bajram (14 years) and Afrim (27 years), his brother, Murat Ramadani (54 years), and his nephew, Selajdin Ramadani (28 years), were among those killed.¹¹²⁹

416. Krasniqi testified that he later moved upstairs from the cellar where he had hidden in order to observe what was happening outside, because he wanted to escape to the hills. He saw members of the MUP in blue camouflage uniforms, with civilians, steal his uncle's white Mercedes car and crash another car into the house.¹¹³⁰ He also saw two Serb civilians not wearing police uniforms, Slaviša Petković and Ljubiša Stanković, placing dried maize stalks on top of the dead bodies to fuel the fire in the barn.¹¹³¹ Krasniqi then retreated to the forest where he remained until about midnight, observing the barn in which the men had been killed. The exercise of fuelling the fire continued until midnight. He remained for two days in the forest as he could still observe the events in the village from there and the MUP was still in the vicinity. The village continued to burn for the next few days.¹¹³²

417. When Ramadani escaped from the burning barn, he saw some policemen talking to each other and some Serbs from the village, including Boško Stanković, Stanko Nikolić, Rade Nikolić, and Boško Cvetković.¹¹³³ Ramadani and his companions fled along the dirt road towards Velika Kruša/Krusha e Madhe.¹¹³⁴ He stayed for ten days in the mountains near Mala Kruša/Krusha e

¹¹²⁵ Mehmet Krasniqi, P2341 (witness statement dated 4 April 1999), e-court p. 9, T. 4374–4376 (29 September 2006); *see also* P2343 (video taken during Mehmet Krasniqi's witness interview on 4 April 1999) (showing Krasniqi's injuries); Mehmet Krasniqi, T. 4368–4369 (29 September 2006).

¹¹²⁶ Lutfi Ramadani, T. 4301, 4313 (28 September 2006).

¹¹²⁷ Lutfi Ramadani, T. 4300–4301, 4305 (28 September 2006).

¹¹²⁸ Lutfi Ramadani, T. 4299–4300, 4311–4312 (28 September 2006); P101 (a photo of a wheelchair), p. 1.

¹¹²⁹ Lutfi Ramadani, T. 4302 (28 September 2006).

¹¹³⁰ Mehmet Krasniqi, P2341 (witness statement dated 7 March 2002), e-court p. 9, 16, 6D89 (Witness deposition by Mehmet Krasniqi), p. 2.

¹¹³¹ Mehmet Krasniqi, P2341 (witness statement dated 7 March 2002), e-court p. 9, 16, T. 4398–4399 (29 September 2006).

¹¹³² Mehmet Krasniqi, P2341 (witness statement dated 7 March 2002), e-court p. 9, T. 4375 (29 September 2006).

¹¹³³ Lutfi Ramadani, T. 4301 (28 September 2006); *see also* John Sweeney, T. 4827–4829 (13 October 2006), P2383 (witness statement dated 24 January 2001), p. 5; P2384 (John Sweeney's video clips), video no. 5.

¹¹³⁴ Lutfi Ramadani, T. 4302–4303 (28 September 2006).

Vogël. He then went towards the Drini river and stayed together with four other people in the woods in “Bjeshkat e Hasit” for another five weeks.¹¹³⁵

418. Before leaving for Albania, Krasniqi went to Nogavac/Nagafc village where he received medical attention.¹¹³⁶ On his way to Albania he was stopped at the Vrbnica/Vërbnica (Morina) border crossing by Serbian policemen who asked him how he came to be burned. He told them that his house was burning and that he was injured while trying to retrieve blankets. The policemen tied him to a heater that was attached to the wall, accused him of being a KLA member, and said that he sustained his injuries from one of their grenades. After about half an hour he was released.¹¹³⁷

419. Ramadani returned to Mala Kruša/Krusha e Vogël around 15 June 1999, and saw that all the Kosovo Albanian houses had been burned, while the houses belonging to Serbs and Roma remained in good condition.¹¹³⁸ He went to Batusha’s barn and saw that it had been blown up and bulldozed. He found some burned shoes, sleeves, and pieces of clothing.¹¹³⁹

420. Ramadani further testified that the following people stayed in their houses because they thought that nobody would harass them, but were then burned at home on 25 March 1999: Sali Shyqri Shehu, Reshat Shyqri Shehu, Dervish Shyqri Shehu, Raif Shyqri Shehu, Nexhat Shyqri Shehu, Sejdi Emerllahu, Nazmi Rashkaj, Demir Nazmi Rashkaj, and Isnija Rashka.¹¹⁴⁰ Ramadani testified that they found their burned skeletons which they buried.¹¹⁴¹ The Chamber notes that the names of these nine people are not in Schedule C of the Indictment, and that the Prosecution explained that it addressed them in order to present a complete picture of the evidence.¹¹⁴²

421. When Krasniqi returned on 26 June 1999, he went back to the barn together with other people from the village. They found some remains of a skull, of ribs and legs, and some shoes. According to Krasniqi, the “Serbs of the village” responsible for the massacre had cleaned the area and taken the remains to the Drini River.¹¹⁴³ Krasniqi and Ramadani testified that the following

¹¹³⁵ Lutfi Ramadani, T. 4304–4305 (28 September 2006).

¹¹³⁶ Mehmet Krasniqi, P2341 (witness statement dated 7 March 2002), e-court p. 9, 16, T. 4375–4376 (29 September 2006); Ali Hoti, T. 4148–4151 (27 September 2006).

¹¹³⁷ Mehmet Krasniqi, P2341 (witness statement dated 7 March 2002), e-court pp. 9–10.

¹¹³⁸ Lutfi Ramadani, T. 4310 (28 September 2006); *see also* John Sweeney, T. 4821–4823, 4835 (13 October 2006).

¹¹³⁹ Lutfi Ramadani, T. 4311 (28 September 2006); P100 (British forensic team site photographs of Batusha house), pp. 3–4; *see also* John Sweeney, P2383 (witness statement dated 24 January 2001), p. 5.

¹¹⁴⁰ Lutfi Ramadani, T. 4307–4310 (28 September 2006); P2357 (a list of names provided by Lutfi Ramadani), p. 4.

¹¹⁴¹ Lutfi Ramadani, T. 4308 (28 September 2006).

¹¹⁴² Lutfi Ramadani, T. 4308–4309 (28 September 2006).

¹¹⁴³ Mehmet Krasniqi, T. 4377–4379 (29 September 2006); *see also* P102 (photographs of gravesite near river Drini), p. 2.

people survived the massacre: Mehmet Krasniqi, Lutfi Ramadani, Agim Asllan, Petrit Rashkaj, Bajram Zylfiu, Qamil Haki Shehu, Mehmet Uke Krasniqi and Sefer Batusha.¹¹⁴⁴

422. Mehmet Krasniqi and Lutfi Ramadani identified the persons killed in the barn belonging to Haxhi Batusha.¹¹⁴⁵ The evidence in relation to each of these people is discussed in Annex A.

423. John Paul Sweeney, an investigative journalist, made two documentaries about the events in Mala Kruša/Krusha e Vogël.¹¹⁴⁶ Sweeney met survivors of the killing in the barn; Mehmet Krasniqi (Avdyli), Lutfi Ramadani, Bajram Zylfiu, and Qamil Shehu, and stated that they all gave very similar accounts of the incident. These accounts, described by Sweeney in his statement, correspond to the testimonies of Krasniqi and Ramadani, which are described above.¹¹⁴⁷

424. Qamil Shehu showed Sweeney the cowshed/barn where the killings took place, but there was just a crater where the barn used to stand. Qamil Shehu lost around 40 members of his family in the incident, including two of his sons, three brothers, and five nephews. The owner of the barn lost 22 relatives in the massacre, including his three brothers and his eldest son.¹¹⁴⁸

425. Sweeney also collected some photographs of local Serbs and showed them to Qamil Shehu and Mehmet Krasniqi (Avdyli), who recognised Sava Nikolić, Sveta Tasić, Momčilo Nikolić, and Dimitri Nikolić. They recognised Sava Nikolić as among the forces involved when the attack on the village began.¹¹⁴⁹ He also testified that Krasniqi told him that, while the group of men was being marched towards the barn, he turned around and saw Dimitri Nikolić, Zvezdan Nikolić, Sava Nikolić, Sveta Tasić, and Momčilo Nikolić.¹¹⁵⁰

426. Sweeney also testified that “witnesses” had told him that, prior to the massacre, they had seen Dimitri Nikolić, Zvezdan Nikolić, Sava Nikolić, Sveta Tasić, and Momčilo Nikolić assisting the “Serb troops” in rounding up the Kosovo Albanian villagers. They had been seen the previous

¹¹⁴⁴ Mehmet Krasniqi, P2341 (witness statement dated 7 March 2002), e-court p. 12, T. 4376–4377 (29 September 2006); Lutfi Ramadani, T. 4299, 4343 (29 September 2006), 6D87 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 6723; P2357 (a list of names provided by Lutfi Ramadani), p. 4.

¹¹⁴⁵ Mehmet Krasniqi, P2341 (witness statement dated 7 March 2002), e-court pp. 10–12, T. 4376–4377 (29 September 2006); Lutfi Ramadani, T. 4306 (28 September 2006); P2357 (a list of names provided by Lutfi Ramadani); José-Pablo Baraybar, P2794 (witness statement dated 1 November 2006), para. 31; P2798 (OMPF list of missing persons).

¹¹⁴⁶ John Sweeney, T. 4813–4814 (13 October 2006), P2383 (witness statement dated 24 January 2001), pp. 2, 10.

¹¹⁴⁷ John Sweeney, P2383 (witness statement dated 24 January 2001), pp. 2, 7–8, 10, T. 4813–4814, 4819 (13 October 2006).

¹¹⁴⁸ John Sweeney, T. 4823–4824 (13 October 2006), P2383 (witness statement dated 24 January 2001), pp. 7–8; P2384 (John Sweeney’s video clips), video no. 3.

¹¹⁴⁹ John Sweeney, T. 4827–4829 (13 October 2006), P2383 (witness statement dated 24 January 2001), p. 5; P2384 (John Sweeney’s video clips), video no. 5.

¹¹⁵⁰ John Sweeney, P2383 (witness statement dated 24 January 2001), p. 8.

day pointing out the Albanian houses which were subsequently set on fire.¹¹⁵¹ Ramadani also told him that he had seen “Zlatko Georgević” with this group.¹¹⁵²

427. The Trial Chamber finds that, although Sweeney’s evidence is based on hearsay to a great extent, it can rely on it since it corroborates other direct evidence concerning some of those involved in the attack.¹¹⁵³

428. Božidar Delić denied that his forces entered the village of Mala Kruša/Krusha e Vogël on 25 March 1999, because this village was not on the axis of his forces. However, he conceded that MUP units passed through and that fire was opened at the police there.¹¹⁵⁴

429. Delić was about five to six kilometres from Mala Kruša/Krusha e Vogël on 26 March 1999, but denied having heard that 105 Kosovo Albanians had been killed there that day. He only learned about it in 2000. He stated that, if he had heard that a MUP unit had been involved in such an incident, he would immediately have informed the chief of the SUP.¹¹⁵⁵ He did hear that a man called Blagojević was convicted for this incident and other crimes.¹¹⁵⁶ The Chamber has received no further evidence to support this claim.

c. Forensic evidence

430. The Trial Chamber unfortunately received no forensic evidence with regard to the killings in Mala Kruša/Krusha e Vogël from Dr. Eric Baccard. During Baccard’s cross-examination it turned out that the forensic evidence on which he based his report actually deals with Velika Kruša/Krusha e Madhe, wrongly given to him as relating to Mala Kruša/Krusha e Vogël.¹¹⁵⁷ As a consequence, information appearing in his forensic report on Mala Kruša/Krusha e Vogël is actually based on data concerning Velika Kruša/Krusha e Madhe.¹¹⁵⁸ The Chamber is, therefore, unable to rely on this report in relation to the killings in Mala Kruša/Krusha e Vogël.

¹¹⁵¹ John Sweeney, P2383 (witness statement dated 24 January 2001), p. 8.

¹¹⁵² John Sweeney, P2383 (witness statement dated 24 January 2001), p. 9.

¹¹⁵³ *But see* Pavković Final Trial Brief, 28 July 2008 (public version), para. 565.

¹¹⁵⁴ Božidar Delić, T. 19371–19372 (29 November 2007), 19724 (6 December 2007); IC151 (Map marked by Božidar Delić); *see also* 6D1013 (MUP Prizren Report, 13 March 1999), p. 4; 5D887 (Intelligence report from the 549th MBr, 14 April 1999).

¹¹⁵⁵ Božidar Delić, T. 19376–19378 (29 November 2007).

¹¹⁵⁶ Božidar Delić, T. 19379 (29 November 2007).

¹¹⁵⁷ Baccard based his report with regard to Mala Kruša/Krusha e Vogël on the report of Prof. Peter Vanezis and Dr. Sue Black. The report of Sue Black was admitted into evidence as P110. According to Baccard’s conclusions, the British forensic team performed autopsies of four victims; these human remains were skeletonised and burned and they were unidentified. It acted of one female and three males, one young adult and three adults. The status of these remains did not permit to determine the cause of death. P1809 (Eric Baccard’s overview report), p. 17.

¹¹⁵⁸ Eric Baccard, T. 10201–10207 (20 February 2007).

431. The Chamber also received some reports and photographs from the United Kingdom police. These documents are a series of individual reports of exhumation activities undertaken in Mala Kruša/Krusha e Vogël at different locations.¹¹⁵⁹ However, the reports do not identify any of the victims from the barn, but speak about bone fragments and other material that had been found at different locations along, and in the vicinity of, the Drini River.¹¹⁶⁰

d. Findings

432. The Trial Chamber finds, based on the consistent evidence of Mehmet Krasniqi and Lutfi Ramadani, whom the Chamber considered to be credible and reliable, partly supported by the documentary evidence stated above regarding joint actions in the area, as well as Delić's evidence, that the VJ and MUP along with other irregular forces, such as armed civilians, attacked the village of Mala Kruša/Krusha e Vogël on 25 March 1999. Although denying that his units were in the area, Delić confirmed that the MUP was engaged in the village. The Chamber finds that this is one of a number of examples of Delić trying to play down or deny the role of the VJ in incidents and again finds his denial of VJ presence not credible. The Chamber further finds that the VJ shelled the village, after which MUP forces entered and looted and burned houses. Kosovo Albanian villagers fled to the woods and thereafter hid in Sejdi Batusha's house. Further, the Chamber is convinced that the forces acting included local Serbs who were in the MUP, and other local Serb men. It finds that the following day police and armed Serbs continued to loot and raid and set houses on fire. Policemen ordered all people out on to the main street and separated the women and children from the men. The women were ordered to go to Albania. At least 111 men were grouped together, including teenagers, elderly, mentally and physically disabled men, and were assaulted, robbed of their valuables and identity documents and escorted to an empty barn belonging to an Albanian villager. Members of the MUP shot through the windows of the barn and killed almost all of the men inside, after which they set fire to their bodies. The Trial Chamber does not accept that Delić and SD1 would have no knowledge of this incident, although admitting being present in the area, or close by.

¹¹⁵⁹ Evidentiary Matters, T. 4882 (13 October 2006); P100 (British forensic team site photographs of Batusha house); P102 (photographs of gravesite near river Drini); P103 (photographs of gravesite near river Drini); P104 (photographs of gravesite near river Drini); P105 (photographs of the material found along the river Drini); P106 (photographs of various sites around Drini river and road side gravesites); P107 (photographs of Žur/Zhur village site and Drini river site); P110 (photographs (site KV011) of suspected gravesite at Drini river); P111 (British Forensic Team photographs of possible gravesites around Drini river); P112 (British Forensic Team Forensic and Crime Scene Report including photographs of gravesites on escape route from Batusha's house (sites KV004 and KV005) and descriptions of skeletal remains, personal effects and cartridge cases etc. found at these sites).

¹¹⁶⁰ Evidentiary Matters, T. 4882–4883 (13 October 2006).

433. The Trial Chamber finds, on the basis of eye-witness evidence from Mehmet Krasniqi and Lutfi Ramadani, which was partly supported by the hearsay evidence of John Sweeney, that the following 111 individuals were killed by members of the MUP and other armed Serbs, in the Batusha barn on 26 March 1999: Adem Asllani, Asim Asllani, Feim Asllani, Muharrem Asllani, Nexhat Asllani, Nisret Asllani, Perparim Asllani, Bali Avdyli, Enver Avdyli, Ahmet Batusha, Amrush Batusha, Asllan Batusha, Avdi Batusha, Bekim Batusha, Beqir Batusha, Burim Batusha, Enver Batusha, Feim Batusha, Mergim Batusha, Haxhi Batusha, Lirim Batusha, Milaim Batusha, Muharremi Batusha, Njazi Batusha, Osman Batusha, Sejdi Batusha, Skifer Batusha, Sulejman Batusha, Zaim Batusha, Abaz Hajdari, Abedin Hajdari, Halil Hajdari, Halim Hajdari, Marsel Hajdari, Nazim Hajdari, Qamil Hajdari, Rasim Hajdari, Sahit Hajdari, Selajdin Hajdari, Shani Hajdari, Vesel Hajdari, Zenun Hajdari, Avdyli Limoni, Limon Limoni, Luan Limoni, Nehbi Limoni, Afrim Ramadani, Asllan Ramadani, Bajram Ramadani, Sabit Ramadani, Murat Ramadani, Ramadan Ramadani, Selajdin Ramadani, Kadri Rashkaj, Refki Rashkaj, Adnan Shehu, Arben Shehu, Arif Shehu, Bekim Shehu, Burim Shehu, Destan Shehu, Din Shehu, Dritan Shehu, Fadil Shehu, Flamur Shehu, FNU Shehu (the son of Haziz), FNU Shehu (the son of Sinan), Haxhi Shehu, Haziz Shehu, Ismail Shehu, Ismet Shehu, Mehmet Shehu, Mentor Shehu, Myftar Shehu, Nahit Shehu, Nehat Shehu, Sahit Shehu, Sami Shehu, Sefer Shehu, Shani Shehu, Shefqet Shehu, Sinan Shehu, Veli Shehu, Vesel Shehu, Xhafer Shehu, Xhavit Shehu, Xhelal Shehu, Afrim Zylfiu, Halim Zylfiu, Hamdi Zylfiu, Hamit Zylfiu, Hysen Zylfiu, Njazim Zylfiu, Islam Batusha, Syle Batusha, Visar Batusha, Mehmet Berisha, Isni Hajdari, Anton Prenkaj, Nikolle Prenkaj, Halim Qollaku, Hamdi Qollaku, Hamit Qollaku, Xhelal Qollaku, Ajvaz Shehu, Kujtim Shehu, Nuredin Shehu, Selami Shehu, Shefqet Shehu, Visar Shehu and Cene Zylfiu.¹¹⁶¹

434. It has not been proved that the following people mentioned in Schedule C to the Indictment or in the Prosecution's Final Trial Brief were killed by FRY/Serbian forces in Mala Kruša/Krusha e Vogël on 26 March 1999: Hysni Hajdari, Hysen Ramadani, Demir Rashkaj, Nexhat Shehu, Sali Shehu, Xhelal Zylfiu, and Liman Hajdari.

7. Velika Kruša/Krusha e Madhe

435. The Indictment alleges that several mosques were destroyed in Orahovac/Rahovec municipality, including the mosque in Velika Kruša/Krusha e Madhe.¹¹⁶² It therefore includes only one charge relating to Velika Kruša/Krusha e Madhe, namely persecution by the destruction of the mosque. The Trial Chamber also heard evidence about the general situation in Velika

¹¹⁶¹ See Annex A.

¹¹⁶² Indictment, para. 72(a)(i).

Kruša/Krusha e Madhe, which is very close to Mala Kruša/Krusha e Vogël, as well as certain specific events there. Since none of that evidence relates to allegations in the Indictment, it will, therefore, not be dealt with in this section.

436. Ali Hoti, a doctor from the village, testified that on 25 March 1999, early in the morning, Velika Kruša/Krusha e Madhe was encircled from all sides by the “Serb military forces”. Hoti was observing this event from his house, which is about 50 to 60 metres from the main road connecting Prizren, Đakovica/Gjakova, and Orahovac/Rahovec. VJ vehicles, such as tanks, APCs, Pragas, and other escort vehicles, were moving along the main road of the village. The vehicles were manned by military forces wearing multi-coloured uniforms. On seeing the forces, the population fled the village out of fear and sought shelter in the hills nearby.¹¹⁶³

437. Deliç, who testified that Velika Kruša/Krusha e Madhe was a “terrorist” stronghold, denied that his forces had entered the village on 25 March 1999, because it was not on the axis of his forces. However, MUP units passed through it and fire was opened at the police there.¹¹⁶⁴

438. The Trial Chamber heard from András Riedlmayer about damage to the mosque in the village.¹¹⁶⁵ Riedlmayer’s report describes the condition of the mosque as “heavily damaged” and reports that the “[m]inaret [was] blown up, leaving a large hole in side wall of the mosque and structural damage. Interior of the mosque [was] vandalized and partially burned.”¹¹⁶⁶ Riedlmayer concluded that the destruction of the mosque was caused by a massive explosion.¹¹⁶⁷ Riedlmayer’s report also records that an Albanian human rights group had been informed that “Serb soldiers” had been seen burning the mosque.¹¹⁶⁸ Riedlmayer did not perform a personal assessment of the mosque, but reached his conclusions on the basis of the photographs and the supplementary information from the Albanian human rights group.¹¹⁶⁹

439. Witness 6D2 stated that he was informed about the destruction of the mosque in Velika Kruša/Krusha e Madhe, and an on-site investigation was carried out.¹¹⁷⁰ He also pointed out that

¹¹⁶³ Ali Hoti, T. 4141–4142, 4164 (27 September 2006).

¹¹⁶⁴ Božidar Deliç, T. 19371–19372 (29 November 2007), 19724 (6 December 2007); IC151 (Map marked by Božidar Deliç); *see also* 6D1013 (MUP Prizren Report, 13 March 1999), p. 4; 5D887 (Intelligence report from the 549th MBr, 14 April 1999).

¹¹⁶⁵ P1789 (András Riedlmayer’s Expert Report); *see also* András Riedlmayer, T. 5419–5420 (30 October 2006).

¹¹⁶⁶ P1776 (Extract from P1789 re Velika Kruša/Krusha e Madhe mosque), p. 1.

¹¹⁶⁷ András Riedlmayer, T. 5482 (30 October 2006); P1776 (Extract from P1789 re Velika Kruša/Krusha e Madhe mosque), p. 1; P1794 (photo of the destroyed Velika Kruša/Krusha e Madhe mosque).

¹¹⁶⁸ P1776 (Extract from P1789 re Velika Kruša/Krusha e Madhe mosque), p. 2.

¹¹⁶⁹ András Riedlmayer, T. 5565–5567 (31 October 2006).

¹¹⁷⁰ 6D2, 6D1631 (witness statement dated 12 April 2008), para. 53 (under seal).

the police did not have any equipment for effective shelling of buildings which would seriously damage or destroy them.¹¹⁷¹

440. Based on the evidence of 6D2 and Riedlmayer, the Trial Chamber finds that it has been established that the mosque in Velika Kruša/Krusha e Madhe was damaged. However, in light of the lack of direct evidence as to how the damage was caused and by whom, the charge in relation to the mosque is not proven.

8. Nogavac/Nagafc

441. Ali Hoti testified that on 25 March 1999 he fled Velika Kruša/Krusha e Madhe and went to a valley in the area of Nogavac/Nagafc.¹¹⁷² Hoti estimated that there were more than 20,000 people from several villages at this location.¹¹⁷³ He said nothing about forces surrounding people or ordering their displacement.

442. On 26 March 1999, in the morning, a group of people who were in the same valley began to move away. They were led by an old man who told Hoti that “somebody” had told them to go towards Albania. Because they were frightened, all of the people in the valley, including Hoti’s group, began moving towards Nogavac/Nagafc with the intention of going to Albania.¹¹⁷⁴ At the entrance to Nogavac/Nagafc, where the road separates, they met “Serbian forces” who told them to go to the centre of Nogavac/Nagafc and gather in the school yard, where they stayed for two hours.¹¹⁷⁵ When nothing happened for two hours, people began to take shelter in empty houses.¹¹⁷⁶

443. Hoti testified that on 28 March three men in camouflage uniforms caught him on the street and demanded money. He handed them about 700 to 800 German Marks. One of the uniformed men forced Hoti to take him to the house where he was staying, where there were about 80 people. He told Hoti to collect money from the men, while he collected money from the women and children.¹¹⁷⁷ Apart from that incident, there were no soldiers in Nogavac/Nagafc during the time Hoti was there.¹¹⁷⁸

¹¹⁷¹ 6D2, 6D1632 (witness statement dated 12 April 2008), para. 62.

¹¹⁷² Ali Hoti, T. 4142–4143, 4196 (27 September 2006); IC57 (Ali Hoti’s marking of the village of Velika Kruša/Krusha e Madhe on exhibit P615, Kosovo Atlas).

¹¹⁷³ Ali Hoti, T. 4143–4144 (27 September 2006); IC57 (Ali Hoti’s marking of the villages in Orahovac/Rahovec municipality on exhibit P615, Kosovo Atlas).

¹¹⁷⁴ Ali Hoti, T. 4144–4145 (27 September 2006).

¹¹⁷⁵ Ali Hoti, T. 4145 (27 September 2006).

¹¹⁷⁶ Ali Hoti, T. 4146 (27 September 2006).

¹¹⁷⁷ Ali Hoti, T. 4158–4159, 4170 (27 September 2006).

¹¹⁷⁸ Ali Hoti, T. 4170–4171 (27 September 2006).

444. Partly confirming the evidence from Hoti, Vlatko Vuković stated that he met a group of about 200 civilians of Albanian ethnicity, who were hiding at the Hoča river bed, close to Nogavac/Nagač, and told them to go back to their village after the army had passed through it.¹¹⁷⁹ He was later informed by his fire group commander that the group went to the village of Celina.¹¹⁸⁰

445. Delić confirmed the presence of his forces and stated that between 25 and 28 March 1999 they passed through the village of Nogavac/Nagač. In the evening of 25 March, he personally went through part of the village around 7:00 p.m. He denied, however, having heard that anyone had surrounded thousands of people close to Nogavac/Nagač.¹¹⁸¹

446. Hoti stayed in Nogavac/Nagač until 2 April 1999, when he was awakened at 2:00 a.m. by the sound of an aircraft flying very low. The aircraft bombed and set Nogavac/Nagač on fire. Some houses collapsed, and people hid in their basements. Some people were wounded. At the house where Hoti was, the roof collapsed, and the window panes broke. Hoti did not see the aircraft because it was dark at the time, but he heard a loud noise and saw a big light and fire coming from the plane. While he had seen NATO planes every night since 24 March, he had never seen them flying this low and the noise was different. For that reason Hoti concluded that the plane bombing Nogavac/Nagač was not a NATO plane.¹¹⁸² However, he could not confirm that it belonged to the forces of the FRY and Serbia.¹¹⁸³

447. After the attack, Hoti went from house to house and treated the injured. In the first house, he saw five wounded people and one person who had died. In another, he found wounded people, including a little girl with an injured leg. About 50 people were killed.¹¹⁸⁴

448. Sabri Popaj also testified that one night around the beginning of April, at about 1:30 a.m., while staying in Celina, which is very close to Nogavac/Nagač, he heard the sound of a low flying jet overhead. A few seconds later he heard four large explosions. The next morning he and 11 other men from Celina went to investigate the explosions. In Nogavac/Nagač, which was deserted,

¹¹⁷⁹ Vlatko Vuković, 5D1442 (witness statement dated 5 January 2008), para. 30, T. 21389–21390 (30 January 2008); IC178 (Map marked by Vlatko Vuković); *see also* Božidar Delić, T. 19382 (29 November 2007), 19440 (4 December 2007).

¹¹⁸⁰ Vlatko Vuković, 5D1442 (witness statement dated 5 January 2008), para. 30, T. 21392 (30 January 2008) (private session).

¹¹⁸¹ Božidar Delić, T. 19375–19376, 19382 (29 November 2007).

¹¹⁸² Ali Hoti, T. 4153–4155 (27 September 2006).

¹¹⁸³ Ali Hoti, T. 4172 (27 September 2006), 4D25 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 3610.

¹¹⁸⁴ Ali Hoti, T. 4154, 4156 (27 September 2006).

they saw that one house was destroyed, and about four others badly damaged. The roof tiles and windows of most of the houses in the village had been broken by the explosion.¹¹⁸⁵

449. About four to five days later, Popaj heard that there were bodies in the destroyed house in Nogavac/Nagafc, and so he returned there and was present when three bodies of young children were brought out of the destroyed house. He was later told that a total of eight children and three women had been found in that house. Sabri Popaj's aunt, Sanije Kastrati, was also found dead in another house in Nogavac/Nagafc.¹¹⁸⁶

450. According to Popaj, the plane responsible for the air attack belonged to the FRY/Serbian forces, because "Serb planes" flew low, whereas NATO planes flew much higher.¹¹⁸⁷ Popaj further testified that fragments of a bomb with Cyrillic writing were found in the courtyard of Feim Elshani's house in Nogavac/Nagafc.¹¹⁸⁸ He did not know which Cyrillic letters were on the fragments.¹¹⁸⁹ In June 1999 members of KFOR or investigators inspected the fragment and the letters in Cyrillic and took photographs of them.¹¹⁹⁰

451. Isuf Zhuniqi also testified that on 31 March 1999, when he went to Nogavac/Nagafc, he saw a lot of displaced people from other villages who had been ordered by "the Serbs" to gather there. A day or two later, at 2:00 a.m., there was bombing from an aircraft.¹¹⁹¹ Zhuniqi stated that MiG aircraft belonging to the VJ had been used.¹¹⁹² He heard three large explosions in three different places in Nogavac/Nagafc, one of which was quite close to him. He started running but he was hit on the head and knocked out. When he woke up on 3 April, he had been taken to Kukes in Albania.¹¹⁹³ Zhuniqi also confirmed that German KFOR found the bombs with Cyrillic letters on them and that he himself saw fragments of the bombs with Cyrillic letters when he returned to Nogavac/Nagafc.¹¹⁹⁴

452. Following the testimony of Popaj and Zhuniqi, the Prosecution requested NATO assistance in providing reports, photographs, or information concerning any possible KFOR inspections or

¹¹⁸⁵ Sabri Popaj, P2446 (witness statement dated 14 June 1999), p. 10, T. 5756 (2 November 2006).

¹¹⁸⁶ Sabri Popaj, P2446 (witness statement dated 14 June 1999), p. 10.

¹¹⁸⁷ Sabri Popaj, P2446 (witness statement dated 14 June 1999), p. 10.

¹¹⁸⁸ Sabri Popaj, T. 5702–5704 (1 November 2006), T. 5756–5757 (2 November 2006).

¹¹⁸⁹ Sabri Popaj, T. 5758 (2 November 2006).

¹¹⁹⁰ Sabri Popaj, T. 5703 (1 November 2006), 5754–5755 (2 November 2006).

¹¹⁹¹ Isuf Zhuniqi, P2331 (witness statement dated 4 May 1999), p. 6.

¹¹⁹² Isuf Zhuniqi, T. 4121 (27 September 2006), P2332 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 6457–6458.

¹¹⁹³ Isuf Zhuniqi, P2331 (witness statement dated 4 May 1999), p. 6, T. 4122 (27 September 2006).

¹¹⁹⁴ Isuf Zhuniqi, T. 4122–4123 (27 September 2006), P2332 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 6459.

seizures of bomb/shell fragment in the village of Nogavac/Nagafc around July 1999. NATO responded that it was not in possession of any relevant material to support this specific investigation.¹¹⁹⁵ Following the Trial Chamber's request for further information on the bomb fragments, the Prosecution sent an investigator to Nogavac/Nagafc who met Elshani and made inquiries. Elshani informed him that he was no longer in the possession of any bomb fragments since he had handed them to three German KFOR officers who visited Nogavac/Nagafc in July 1999. The investigator then inquired of Agim Krasniqi whose house is located opposite to Elshani's. Krasniqi provided the investigator with a small fragment of the bomb which he said hit his house in 1999. The investigator took photographs of this fragment, but these do not show any Cyrillic letters. The Prosecution also undertook a review of its in-house artefacts in order to verify whether any fragments from Nogavac/Nagafc would be available from its archives. While some bomb fragments were found in its collection of artefacts, these did not show any Cyrillic language on them, nor were they recorded as originating from Nogavac/Nagafc.¹¹⁹⁶

453. Spasoje Smiljanić, commander of the VJ Air Force and Air Defence in 1999, was shown a videoclip taken by the Radio Television Serbia, allegedly showing the destruction from the bombing of Nogavac/Nagafc.¹¹⁹⁷ He concluded, judging by the damage, that a high-pressure weapon which creates a high atmospheric pressure and a large-scale explosion, such as an oxygen bomb or a fragmentation missile like a cluster bomb, must have been used.¹¹⁹⁸ He testified that the video-clip showed the rocket engine of a HARM 88 missile, which in his opinion was the one used, in addition to other weapons, to create the damage. His own air force did not have any crews trained for this sort of attack, nor did they have weapons or planes to do this. Further, his forces were not able to carry out an attack by night.¹¹⁹⁹

454. Delić, who was shown the same videoclip, testified that it is not possible that the VJ bombed the village of Nogavac/Nagafc, because the air force was not flying in the air-space above Kosovo at that time. The VJ aircraft used in the beginning of the war were mostly active in the skies above Belgrade. He further stated that these were fighter planes carrying missiles designed to engage enemy aircraft; their aircraft did not carry bombs. In any event, it was impossible for their

¹¹⁹⁵ 3D515 (NATO's response to the Prosecution inquiry regarding any possible KFOR inspections or seizure of bomb/shell fragments in Nogavac/Nagafc, 7 February 2007).

¹¹⁹⁶ Prosecution Report on Physical Evidence of Bomb Fragments with Annex A, 30 November 2006, pp. 1–3.

¹¹⁹⁷ 5D1242 (Video clips); Spasoje Smiljanić, T. 15759–15760 (17 September 2007). The Chamber notes that Smiljanić was shown a videoclip with the exhibit number 3D710, which was not admitted into evidence but contains the same footage as in 5D1242. *See also* Božidar Delić, T. 19385–19386 (29 November 2007).

¹¹⁹⁸ Spasoje Smiljanić, T. 15759 (17 September 2007).

¹¹⁹⁹ Spasoje Smiljanić, T. 15760 (17 September 2007).

planes to take off, since NATO had absolute supremacy over the air-space.¹²⁰⁰ He further asserted that in the morning of 2 April 1999 NATO aviation bombed Nogavac/Nagač and that a number of houses were destroyed, a lot of civilians were killed, and those who were wounded were treated in the Prizren hospital. The following day the Prizren SUP carried out an on-site investigation and established the facts.¹²⁰¹ The Trial Chamber did not receive this report. Delić stated that he was not in Nogavac/Nagač that morning, but that he learned of this incident later from the chief of the SUP, and that he was shown the video on that same day.¹²⁰² He saw from the videoclip that the remains of an anti-radar missile used by NATO were visible, but conceded that the damage was not caused by those alone. The bombs that were dropped, most often MK-82s, did not leave remains or traces except for stabilizer fins.¹²⁰³

455. Witness SD2 stated that on 2 April 1999 11 dead bodies, victims of NATO bombardment, were found in the village of Nogavac/Nagač.¹²⁰⁴ Further, a MUP report dated 3 April 1999 stated that NATO bombed the village of Nogavac/Nagač on 2 April 1999 at around 2:00 a.m. Eleven people were killed in the attack, of whom four were identified.¹²⁰⁵

456. Hoti also testified that the day after the attack the remaining people left Nogavac/Nagač because they feared another attack. They set off on their tractors towards Velika Kruša/Krusha e Madhe and further on towards Albania.¹²⁰⁶ In Landovica village they were harassed by “Serbian forces”. The “Serbian forces” took away the traditional white hats, which some of the elderly wear, and played with them. They also told them, “You have to go to Albania. Kosovo is not yours. You don’t have to come back. This is Serbian land.”¹²⁰⁷

457. When they reached the Albanian border, policemen in blue clothes took their documents before they crossed the border to Albania on 3 April 1999. While on the road, they saw military forces with camouflage uniforms. At the border they were forced to take off the license plates from the vehicles and had to hand over all their personal and identity documents. They were told by the policemen that the reason for this was that they did not need them anymore because they would never come back to Kosovo and would live in Albania. They were told that this act was a present from NATO and Clinton, that this was what they wanted, and this was what they got. They said

¹²⁰⁰ 5D1242 (Video clips); Božidar Delić, T. 19383–19385 (29 November 2007).

¹²⁰¹ Božidar Delić, T. 19383–19384 (29 November 2007).

¹²⁰² Božidar Delić, T. 19385 (29 November 2007).

¹²⁰³ Božidar Delić, T. 19386 (29 November 2007).

¹²⁰⁴ 6D2, 6D1632 (witness statement), para. 61.

¹²⁰⁵ 6D1239 (MUP Summary of security events registered between 2 and 3 April 1999, 3 April 1999), p. 1.

¹²⁰⁶ Ali Hoti, T. 4155–4157 (27 September 2006).

¹²⁰⁷ Ali Hoti, T. 4156–4157 (27 September 2006).

that Kosovo is Serbian land. The policemen at the border also seized the nicer cars from among those belonging to the people crossing the border.¹²⁰⁸

a. Findings

458. The Trial Chamber notes that Popaj, Zhuniqi, and Hoti were not direct eye-witnesses to the bombing of Nogavac/Nagafc, but heard the sound of the bombs. Although witnesses claim to have seen Cyrillic letters on the remains of the bombs, the Chamber was not able to confirm that matter. In light of the contradicting evidence given by Spasoje Smiljanić, Božidar Delić and SD2, whom the Chamber finds it cannot disregard in relation to this event, the Chamber does not accept that the evidence presented shows that FRY/Serbian forces were responsible for the bombing of the village on 2 April 1999.¹²⁰⁹

459. In relation to the alleged displacements from a mountain near Nogavac/Nagafc on 25 March 1999, the Trial Chamber notes that the only eye-witness evidence heard in relation to these charges is from Hoti. The evidence from Zhuniqi, Delić and Vuković partly corroborates Hoti's, but Hoti gave no evidence of having been surrounded by FRY/Serbian forces or having been ordered by these forces to leave for nearby villages, as alleged in the Indictment.¹²¹⁰ The Chamber therefore finds that these allegations have not been proven.

460. However, based on Hoti's evidence, it has been established beyond reasonable doubt that the people who left the village after 2 April were harassed on the way to the Albanian border by unidentified Serbian forces and their identification documents and other belongings were seized by the police at the border.

9. Brestovac/Brestoc

461. Riedlmayer's report describes the condition of the mosque in Brestovac/Brestoc as "almost destroyed". The mosque was burned out completely and the minaret was destroyed above its balcony. He reported that, according to the "Islamic community", the destruction occurred on 25 March 1999. A photograph in his report depicts the damage to the mosque.¹²¹¹

¹²⁰⁸ Ali Hoti, T. 4157 (27 September 2006).

¹²⁰⁹ See Pavković Final Trial Brief, 28 July 2008 (public version), paras. 377, 396, 561.

¹²¹⁰ See Lukić Final Trial Brief, 7 August 2008 (public version), para. 851.

¹²¹¹ P1775 (Extract from P1789 re Brestovac/Brestoc mosque); P1793 (Photograph of the mosque); Andrés Riedlmayer, T. 5481 (30 October 2006).

462. Since that is the only evidence relating to the mosque, the Trial Chamber cannot conclude that the mosque was damaged or destroyed by forces of the FRY and Serbia, as alleged in the Indictment.

F. SUVA REKA/SUHAREKA

1. Charges in Indictment

463. The factual averments relating to Suva Reka/Suhareka municipality deal with events said to have taken place there from 25 March to April 1999. The underlying offences of deportation and forcible transfer, charged under Counts 1 and 2 respectively, are described in paragraph 72(d) of the Indictment as follows:

On the morning of 25 March 1999, forces of the FRY and Serbia surrounded the town of Suva Reka/Suharekë. During the following days, police officers went from house to house, threatening, assaulting and killing Kosovo Albanian residents, and removing many of the people from their homes at gunpoint. Many houses and shops belonging to Kosovo Albanians were set on fire and a mosque in Suva Reka/Suharekë was damaged. The women, children and elderly were sent away by the police and then a number of the men were killed by the forces of the FRY and Serbia. The Kosovo Albanians were forced to flee, making their way in trucks, tractors and trailers towards the border with Albania. While crossing the border, many had their identification documents and money taken away by forces of the FRY and Serbia.

(i) By 31 March 1999, approximately 80,000 Kosovo Albanians displaced from villages in the Suva Reka/Suharekë municipality gathered near Belanica/Bellanicë. The following day, forces of the FRY and Serbia shelled Belanica/Bellanicë, forcing the displaced persons to flee toward the Albanian border. Prior to crossing the border, their identification documents were taken away by forces of the FRY and Serbia.

464. The Accused are also charged with murder, under Counts 3 and 4, in relation to an incident described in paragraph 75(d) of the Indictment which avers:

On or about 26 March 1999, in the morning hours, forces of the FRY and Serbia surrounded the vicinity of the BERISHA family compound in the town of Suva Reka/Suharekë (Suva Reka/Suharekë municipality). Tanks were positioned close to, and pointing in the direction of, the houses. The forces of the FRY and Serbia ordered the occupants out of one of the houses. Men were separated from women and children and six members of the family were killed. The remaining family members were herded towards a coffee shop by forces of the FRY and Serbia. Those family members were herded, along with three extended BERISHA family groups, into the coffee shop. Forces of the FRY and Serbia then opened fire on the persons inside. Explosives were also thrown into the shop. At least 44 civilians were killed and others seriously wounded during this action. The bodies of the victims were placed in the rear of a truck, which was then driven in the direction of Prizren. Three injured persons, thrown in among the dead bodies, jumped out of the truck *en route* to Prizren. Human remains of the BERISHA killings have since been recovered at two locations; the first at a firing range site in Prizren municipality and the second being a mass grave site at the SAJ training centre at Batajnica, near Belgrade, Serbia. (Those persons killed who are known by name are set forth in Schedule D, which is attached as an appendix to this indictment.)

465. Under Count 5 the Accused are also charged with persecution with regard to the allegation of killings contained in paragraph 75(d) and the “wanton destruction or damage of Kosovo Albanian religious sites,” including a mosque in Suva Reka/Suhareka, as described in paragraphs 72(d) and 77(d) of the Indictment.

2. The principal witnesses

466. A number of witnesses were led by both the Prosecution and the Defence to speak about both the specific crimes alleged to have been committed in the municipality of Suva Reka/Suhareka, and the prevailing situation there in 1998 and 1999. In making its findings with respect to the charged killings in, and displacements from, Suva Reka/Suhareka town, the Chamber has relied upon evidence given by the following Prosecution witnesses: local villagers Halit Berisha, Hysni Berisha, and Shyhrete Berisha, as well as the local MUP reservist, K83. The Chamber notes that none of these witnesses was extensively challenged by the Defence, nor did the Defence bring further evidence to contradict their accounts. Shefqet Zogaj, a journalist from Belanica, was also led by the Prosecution to give evidence relating to events in Suva Reka/Suhareka town. However, the Chamber found his testimony often vague and internally inconsistent, and accordingly places little reliance on it insofar as it relates to Suva Reka/Suhareka town.¹²¹²

467. As for the displacement of persons from the village of Belanica alleged in the Indictment, the two main eye-witnesses led by the Prosecution were Shefqet Zogaj and Hamide Fondaj. Given the close connection between these two witnesses and the KLA, along with their reluctance to admit certain facts concerning the KLA’s presence and activities in the area,¹²¹³ the Chamber has scrutinised their evidence with particular care. This is especially so with respect to Zogaj, whose evidence on cross-examination revealed not only that he was a member of the KLA, but also that he was prone to exaggeration and to changing his testimony resulting in a number of internal inconsistencies. The evidence of both of these witnesses often contradicted more reliable evidence, such as that given by Bislim Zyrapi whom the Chamber considers to be a reliable and credible witness. As a result the Chamber accepts the evidence of Zogaj or Fondaj only where that evidence is supported by other evidence or amounts to an uncontroversial concession.

¹²¹² See, e.g., Shefqet Zogaj, T. 5856–5859 (3 November 2006), P2322 (witness statement dated 26 April 1999), p. 2. See also Shefqet Zogaj, T. 3781, 3803–3804 (22 September 2006), T. 5897–5898 (6 November 2006), P2322 (witness statement dated 26 April 1999), p. 3.

¹²¹³ Shefqet Zogaj, T. 5896–5897, 5906 (6 November 2006); Hamide Fondaj, T. 3826, 3844–3846, 3849 (25 September 2006), P2283 (witness statement dated 9 June 2001), p. 2.

468. The Chamber heard from a number of witnesses called by the Defence, such as Božidar Delić and Ljubivoje Joksić, assistant co-ordinator of the RDB in Kosovo, whose testimony countered certain aspects of the evidence of the witnesses led by the Prosecution in relation to Suva Reka/Suhareka. While the Chamber did not accept all that they said, it did consider parts of their evidence reliable as set out below.

469. The Chamber also heard evidence from VJ soldiers, K54 and K82, led by the Prosecution, regarding their participation in VJ/MUP actions in Suva Reka/Suhareka municipality at the end of March 1999 and the killings of civilians by the VJ, including those perpetrated by K82 himself, in the village of Trnje/Tërm.¹²¹⁴ Since these killings are not specifically charged as murders in the Indictment, the Chamber need not make detailed findings in relation to them. Indeed, as stated by the Chamber on several occasions in the course of the trial, the evidence of these two witnesses is primarily relevant to the identification of forces that were operating in Suva Reka/Suhareka municipality at the relevant time, and to its assessment of the situation in the municipality.¹²¹⁵

470. The Chamber notes that K54 and K82 were cross-examined at length, and their evidence extensively challenged by the Defence.¹²¹⁶ As part of their attack on the credibility of K54 and K82, the Lazarević Defence called Pavle Gavrilović, who contradicted them on major points.¹²¹⁷ However, despite these challenges, the Chamber found the evidence of K54 and K82 to be generally reliable. Their accounts were largely consistent *inter se* and partially corroborated by VJ documents confirming the presence of their unit in the area at the time.¹²¹⁸ In addition, the Chamber found the willingness of K82 to admit to shooting and killing Kosovo Albanian civilians to be a good indication of his honesty, despite his conviction for an unrelated offence. As a result, the Chamber finds the evidence of K54 and K82 generally reliable. On the other hand, having carefully examined the evidence of Pavle Gavrilović against the compelling evidence of these two witnesses, the Chamber finds it unconvincing and unreliable.

¹²¹⁴ K82, T. 11734–11812 (15 March 2007), P2863 (witness statement); K54, T. 10477–10550 (26 February 2007), 10551–10636 (27 February 2007), P2883 (witness statement).

¹²¹⁵ Decision on Joint Defence Motion to Exclude Witness K54 from giving Evidence in Trial, 15 February 2007; Decision on Prosecution Motion Requesting Reconsideration of Trial Chamber “Decision on Evidence Tendered Through Witness K82,” Issued 3 October 2006, and Leave to Re-call Witness K82, and Final Decision on Evidence Tendered Through Witness K54, 13 March 2007. *See also* K54, T. 10477–10490 (26 February 2007).

¹²¹⁶ K82, T. 11754–11755 (open session), 11757–11759 (open session), 11761–11775 (15 March 2007) (private session), P2315 (witness statement), paras. 42–43 (under seal). *See also* 5D132 (under seal); K82, 5D133 (witness statement) (under seal). K54, T. 10527–10534, 10545–10548 (26 February 2007).

¹²¹⁷ Pavle Gavrilović, T. 21181–21238 (28 January 2008).

¹²¹⁸ P1981 (Order of the 549th Motorised Brigade, 23 March 1999), p. 4; P1995 (Analysis of the operation of the 549th Motorised Brigade, 30 March 1999), p. 5.

471. Some of the evidence of K79, a member of a PJP unit, also related to the Suva Reka/Suhareka municipality. The Chamber had reservations about parts of his evidence and thus placed limited reliance on it, confined to such parts as were corroborated by other evidence.

3. Background

472. Suva Reka/Suhareka is a large municipality located in the south-central part of Kosovo bordering *inter alia* Orahovac/Rahovec, Prizren, Klina, and Uroševac/Ferizaj municipalities.¹²¹⁹ In the early 1990s the municipality had about 50,000 to 60,000 inhabitants, 95 per cent of whom were Kosovo Albanians and the remaining five per cent of whom were Serbs and Roma.¹²²⁰ Suva Reka/Suhareka town was the largest town in the municipality with some 8,000 inhabitants,¹²²¹ and its own Department of Interior (OUP).¹²²² The villages Reštane/Reshtan, Studenčane/Studenčan, Trnje/Tërm, Dobrodeljane/Dobërdolan, and Pećane/Peqan, which feature prominently in this section, lie to the east of the town, while Belanica, Dulje/Duhël, and Blace/Bllaca are in the northern part of the municipality.¹²²³

473. K83 testified that from 1998 onwards the situation in Suva Reka/Suhareka municipality deteriorated. The KLA was located north and east of the town, towards Mališevo/Malisheva, Budakovo/Budakova, and Gornja Krušica/Krushicë e Epërme, and the police did not have enough personnel to control many of these areas.¹²²⁴ MUP patrols were frequently attacked and on many occasions policemen were wounded or killed.¹²²⁵ As a result of police shortages, K83 had to work as a full time officer throughout the whole of 1998. He patrolled the town and the villages around it. The patrols were usually conducted using a Russian-make, bullet-proof vehicle, called a “Gazik”. There were police checkpoints along the roads in order to prevent KLA attacks and to control traffic.¹²²⁶ “Battles” with the KLA would take place three to five kilometres from the Suva Reka/Suhareka OUP building, on the road to Reštane/Reshtan, but not in the very centre of the

¹²¹⁹ P615 (Kosovo Atlas), pp. 11, 18.

¹²²⁰ Halit Berisha, T. 3605 (20 September 2006). *See also* K83, T. 3979 (26 September 2006).

¹²²¹ Halit Berisha, T. 3605 (20 September 2006).

¹²²² Miloš Vojnović, T. 24228–24229 (13 March 2008), 6D1532 (witness statement dated 5 March 2008), para. 3.

¹²²³ P615 (Kosovo Atlas), p. 11.

¹²²⁴ K83, T. 3978–3979 (26 September 2006). *See also* Miloš Vojnović, T. 24172 (12 March 2008), 6D1532 (witness statement dated 5 March 2008), paras. 27–28; 6D787 (Official note of meeting between Sreten Lukić and KVM representatives, 24 February 1999).

¹²²⁵ K83, T. 3978 (26 September 2006).

¹²²⁶ K83, T. 3928–3930 (25 September 2006), T. 3975, 3999 (26 September 2006).

town. K83 also stated that army and police reinforcements came from Serbia and were stationed in the town and surrounding villages.¹²²⁷

474. Halit Berisha, a Kosovo Albanian resident of Suva Reka/Suhareka town, recalled that two mortars were positioned in front of the police station from April 1998.¹²²⁸ The army was not permanently stationed in the town, but rather in nearby Birač and the Dulje/Duhel pass, and would only pass through the town.¹²²⁹ John Crosland testified that during his visit to Suva Reka/Suhareka in either September or December of 1998 there was a heavy MUP and VJ presence there, as well as in the area of Blace/Bllaca and Dulje/Duhël to the north of Suva Reka/Suhareka. These two positions were separated by KLA held territory.¹²³⁰

475. Božidar Delić also testified that from June 1998 the KLA controlled villages in the Suva Reka/Suhareka-Prizren-Orahovac/Rahovec triangle, including Studenčane/Studenčan, Samodraža/Samodrezha, Mačitevo/Maçiteva, and Budakovo/Budakova, as well as the area around the town of Suva Reka/Suhareka.¹²³¹ The situation did not improve in 1999 despite the presence of the KVM observers, and the KLA in fact extended its control in the area.¹²³² As a result, in February 1999 Delić drafted a report to the Priština Corps Command on the security situation, informing it that traffic on the Suva Reka/Suhareka-Orahovac/Rahovec road was completely disrupted, that parts of the road were under complete control of the KLA, and that the KLA was controlling almost the entire area between Prizren, Suva Reka/Suhareka, and Mališevo/Malisheva, especially the mountainous area of Mount Milanovac.¹²³³

476. According to Bislim Zyrapi, Suva Reka/Suhareka municipality, among others, belonged to the Paštrik zone, or operational zone two of the KLA, where several KLA brigades were active at the end of March 1999.¹²³⁴ Paštrik zone was not only the largest KLA zone at the time, but was

¹²²⁷ K83, T. 3929–3930, 3986 (25 September 2006).

¹²²⁸ Halit Berisha, T. 3606–3607 (20 September 2006); IC40 (Map indicating positions of mortars). *See also* Halit Berisha, P2326 (witness statement dated 17 August 2001), p. 2.

¹²²⁹ Halit Berisha, T. 3661 (20 September 2006).

¹²³⁰ John Crosland, T. 10051 (9 February 2007). *See also* Karol John Drewienkiewicz, T. 7828–7829 (4 December 2006).

¹²³¹ Božidar Delić, T. 19275–19277 (28 November 2007). *See also* Sections VI.B and VI.C.

¹²³² Božidar Delić, T. 19276 (28 November 2007). *See, e.g.*, 5D251 (Letter from Lazarević to VJ General Staff, 23 February 1999); Vladimir Lazarević, T. 17939–17940 (8 November 2007).

¹²³³ Božidar Delić, T. 19276–19278 (28 November 2007), T. 19367 (29 November 2007); 5D878 (Report by 549th Motorised Brigade to PrK command on security situation in its zone of responsibility, 15 February 1999), p. 1. *See also* Miloš Vojnović, 6D1532 (witness statement dated 5 March 2008), paras. 31, 41.

¹²³⁴ Bislim Zyrapi, T. 5934, 5967 (6 November 2006), T. 6258 (10 November 2006); P2469 (map showing different KLA operational zones); P2465 (KLA Order issued by Paštrik/Pashtrik operative zone, 7 March 1999); P2447 (map showing KLA positions); P2468 (certificate of receipt of orders by the Paštrik/Pashtrik zone brigades, 10 January 1999); P2459 (Template of a combat order used by KLA showing Paštrik/Pashtrik Brigades). *See also* Joseph Maisonneuve, T. 11133 (6 March 2007), P2772 (witness statement dated 10 March 2000), para. 15, attachment MM2/B. *See also* Section VI.B.

also the location of the KLA's General Headquarters according to U.S. KDOM reports.¹²³⁵ Zyrapi further testified that from November 1998 to April 1999 KLA units were located on the periphery of Suva Reka/Suhareka town, but not in the town itself. This was confirmed by Božidar Delić whose units were in the area at the time.¹²³⁶ Halit and Hysni Berisha, residents of Suva Reka/Suhareka town, acknowledged that there was a KLA presence two to three kilometres away, namely in Dobrodeljane/Dobërdolan and Reštane/Reshtan, but maintained that it did not extend to the centre of the town.¹²³⁷ However, K83 gave evidence that even the town was considered dangerous for the police, and 6D2 testified that nearly the whole town, as well as the territory around it, was in the hands of the KLA.¹²³⁸ In light of the other evidence referred to in this paragraph the Chamber considers that 6D2 exaggerated the extent of KLA influence in the town.

477. According to a report compiled by the Prizren RDB Centre in January 1999, most villages in the territory of Suva Reka/Suhareka municipality were under control of the KLA, including Belanica, Ladrovac/Lladroc, Samodraža/Samodrezha, Studenčane/Studenčan, Dobrodeljane/Dobërdolan, Blace/Blaca, Pećane/Peqan, Semetište/Semetishta, and Nišor/Nishor.¹²³⁹ The report claimed that all these villages provided a belt securing the KLA Main Staff in Brešance/Bresana village, thereby protecting it from attack.¹²⁴⁰ By March 1999, according another RDB document, the Main Staff in Brešance/Bresana had a large number of KLA members under its command, deployed in groups in 40 villages throughout the municipality. The KLA had fortified positions north and north-west of Suva Reka/Suhareka town.¹²⁴¹ The Chamber notes that many RDB documents refer to several thousand KLA soldiers in the municipality. However, even though it accepts that the KLA had a substantial presence throughout Suva Reka/Suhareka, the Chamber cannot determine accurately the numbers of these forces in the area because different RDB documents give varying figures.

¹²³⁵ 6D1635 (U.S. KDOM Report on KLA, February 1999), e-court p. 8.

¹²³⁶ Bislim Zyrapi, T. 6265 (10 November 2006); Božidar Delić, T. 19439 (4 December 2007). Delić also explained that in some villages, such as Retimlje/Retia, the civilian population was moved as early as February 1999. The village was then used by a KLA Brigade as its command post, including a KLA hospital. Božidar Delić, T. 19441–19442 (4 December 2007).

¹²³⁷ Halit Berisha, T. 3713 (21 September 2006); Hysni Berisha, T. 4028 (26 September 2006). Note that Božidar Delić testified that the closest KLA checkpoint was in Raštane/Reshtan, one to two kilometers away from the centre of Suva Reka/Suhareka town. Božidar Delić, T. 19439 (4 December 2007).

¹²³⁸ K83, T. 3979 (26 September 2006); 6D2, 6D1631 (witness statement dated 12 April 2008), para. 58 (under seal).

¹²³⁹ 6D1008 (Prizren RDB Centre Report on activities of KLA in Suva Reka/Suhareka, 8 January 1999), p. 1; Ljubivoje Joksić, 6D1491 (witness statement dated 28 January 2008), para. 62. *See also* 6D1010 (Prizren RDB Centre Report on activities of KLA in Suva Reka/Suhareka, 11 January 1999); 6D1635 (U.S. KDOM Report on KLA, February 1999), e-court p. 8. The U.S. KDOM report refers to Ladrovac/Lladroc and Semetište/Semetishta as KLA command posts in Suva Reka/Suhareka municipality.

¹²⁴⁰ 6D1008 (MUP Prizren Report, 8 January 1999), p. 2. *See also* 6D1010 (MUP Prizren Report, 11 January 1999), p. 1; 6D1014 (MUP Prizren Report, 20 January 1999).

¹²⁴¹ 6D1013 (MUP Prizren Report, 13 March 1999), pp. 1–2.

4. Events charged in Suva Reka/Suhareka town

478. As will be discussed in further detail in Section VII.P below, when a mass grave was discovered in Batajnica, near Belgrade, in 2001, and the bodies found therein exhumed, identification of the corpses indicated that some were members of the Berisha family from Suva Reka/Suhareka town. This, in turn, led to an investigation into the killings of members of this family. Several witnesses give evidence in this case about the manner in which a significant number of members of the Berisha family perished in late March of 1999 in Suva Reka/Suhareka town. This evidence is outlined below.

a. Suva Reka OUP

479. K83 testified that within the OUP in Suva Reka/Suhareka in early 1999 his immediate superior was Nenad Jovanović.¹²⁴² Two officers from the RDB were also present in the OUP station, one of whom was Milorad (Miško) Nišavić, who owned the Boss Hotel in the nearby village of Široko/Shiroko.¹²⁴³ However, K83 was clear that the RDB and the RJB had separate hierarchies, computer databases, and information channels within the OUP.¹²⁴⁴ Thus, according to K83, the head of the OUP had no authority over the RDB officers.¹²⁴⁵ Ljubivoje Joksić confirmed that the RDB had a “local branch” in Suva Reka/Suhareka town. He also confirmed that the RDB had its own independent management systems and that no one from the RJB had authority over anyone in the RDB.¹²⁴⁶

480. K83 told the Chamber that the majority of people working in the OUP building were locals from the municipality. Nišavić himself was from Suva Reka/Suhareka and was well-known in the town where he owned a number of businesses in addition to his hotel. On 12 September 1998 a projectile was launched at his hotel. On another occasion in 1998 he was shot at and wounded.¹²⁴⁷ K83 did not provide any information about who might have carried out these attacks or the reason for them.

¹²⁴² K83, T. 3932 (25 September 2006), T. 3991–3992 (26 September 2006).

¹²⁴³ K83, T. 3931–3932 (25 September 2006). The Chamber notes the discrepancy between the name used by Shyrete Berisha in reference to the owner of the Boss Hotel (“Mišković”) and the name used by other witnesses (“Miško Nišavić”). The Chamber is satisfied that this man is, in fact, Milorad (Miško) Nišavić and that Ms. Berisha is mistaken as to his real name. For that reason, the references in Ms. Berisha’s testimony to “Mišković” are to be understood as references to Milorad (Miško) Nišavić.

¹²⁴⁴ K83, T. 3968 (26 September 2006).

¹²⁴⁵ K83, T. 3992–3993 (26 September 2006).

¹²⁴⁶ Ljubivoje Joksić, T. 21941–21942 (8 February 2008). *See also* Miloš Vojnović, T. 24228–24229 (13 March 2008), 6D1532 (witness statement dated 5 March 2008), paras. 3–4.

¹²⁴⁷ K83, T. 3969, 3972–3973 (26 September 2006).

481. The Suva Reka OUP fell under the authority of the Prizren SUP and, as such, reported to it.¹²⁴⁸ However, for four or five days in late March 1999 communication between the two offices was disrupted after the SUP building in Prizren was bombed and heavily damaged by NATO. It remained possible to drive between the two towns, and communication was maintained in that way. In addition, certain types of radio equipment continued to function.¹²⁴⁹

b. Events in Suva Reka/Suhareka town immediately before and on 25 March 1999

482. When the KVM verifiers arrived in the town, they first stayed in the Boss Hotel owned by Nišavić. Later they moved to a house belonging to the family of Shyrete Berisha, where, until then, she had lived together with her husband Nexhat, their four children, Nexhat's sister-in-law Fatime, and Fatime's family.¹²⁵⁰ K83 testified that soon after the verifiers arrived they began to be perceived by the local Serb population as siding with the KLA and helping them rather than pacifying the situation.¹²⁵¹ On 20 March 1999 the KVM verifiers left Kosovo, including their posts in Suva Reka/Suhareka municipality. Upon their departure, Shyrete Berisha and her family were able to return to their house.¹²⁵²

483. There is evidence that on 22 March 1999 a Serb by the name of Bogdan Lazić was killed in a shop in Suva Reka/Suhareka town. There is also evidence that this was followed by the killings of approximately ten Kosovo Albanian residents of the town.¹²⁵³ The Chamber admitted into evidence parts of a MUP document listing a number of registered criminal offences in Kosovo and measures taken in relation thereto during the period from 1 July 1998 to 20 June 1999, where such a part was put to a witness on the stand and where that witness was able to give *viva voce* evidence

¹²⁴⁸ K83, T. 3969 (26 September 2006). See also Miloš Vojnović, T. 24228–24229 (13 March 2008), 6D1532 (witness statement dated 5 March 2008), paras. 3–4.

¹²⁴⁹ K83, T. 3982–3984, 4003–4004 (26 September 2006).

¹²⁵⁰ K83, T. 3980–3981 (26 September 2006); Shyrete Berisha, T. 3871, 3873–3874 (25 September 2006); P2346 (Berisha family tree). Shyrete Berisha confirmed the testimony of K83 that the KVM representatives, when they first arrived in Suva Reka/Suhareka, had offices in the Boss Hotel, owned by the man she referred to during her oral testimony as “Mišković”, but that they later, at the end of 1998, moved to her house. During cross-examination, Shyrete Berisha denied knowledge of a quarrel between her husband and “Mišković” due to the KVM moving to the Berisha house. To the contrary, her husband's brother was friends with “Mišković” and Mišković's brother. Shyrete Berisha, T. 3911–3912, 3923 (25 September 2006). See also Joseph Maisonneuve, T. 11178 (7 March 2007).

¹²⁵¹ K83, T. 3980 (26 September 2006).

¹²⁵² Shyrete Berisha, T. 3875 (25 September 2006); Hysni Berisha, P2282 (witness statement dated 20 August 2001), p. 2.

¹²⁵³ Halit Berisha, T. 3707–3710 (21 September 2006); Hysni Berisha, P2282 (witness statement dated 20 August 2001), p. 2; K83, T. 3985 (26 September 2006).

relating to its contents.¹²⁵⁴ This document records the killing of Bogdan Lazić by unknown KLA members, but makes no mention of further killings of Kosovo Albanians.¹²⁵⁵

484. Bislim Zyrapi testified that on 24 March 1999, the day the NATO bombing commenced, the “Serb forces” launched an artillery attack on KLA positions in the municipality.¹²⁵⁶ Confirming this testimony is an order of the Joint Command dated 23 March 1999, discussed above in the Section dealing with Prizren and Orahovac/Rahovec municipalities.¹²⁵⁷ Božidar Delić then issued an order to the units of the 549th Motorised Brigade to destroy, in co-operation with the PJP, the “ŠTS” in the sector of Retimlje/Reti village, to lift the blockade of the Suva Reka/Suhareka-Orahovac/Rahovec road, and to establish control of the territory.¹²⁵⁸ The order noted the positions of the “ŠTS” in the general area of Retimlje/Reti, Mount Milanovac, Studenčane/Studenčan, Samodraža/Samodrezha, Dobrodeljane/Dobërdolan, and Pagaruša/Pagarusha, and then listed several tasks for various units. Neither of the orders envisaged participation of local OUP members in the action. Among others, Combat Group 5 of the 549th Motorised Brigade was to lift the blockade from the road connecting the villages of Raštane/Reshtan, Studenčane/Studenčan, and Samodraže/Samodrezha. The PJP participation included the 37th Niš Detachment.¹²⁵⁹ The order also provided for treating “correctly” the “loyal civilian population, especially fleeing refugees and people’s property”, and instructed the forces to “open fire only on features used by [the KLA] to engage you”.¹²⁶⁰ Miloš Vojnović, who was chief of Prizren SUP at the time, testified that he knew of this action and that he met with Delić and a commander of the 37th PJP Detachment, Radoslav Mitrović, whose code-name was “Čegar One”, on a daily basis to discuss its progress.¹²⁶¹ At that time Mitrović and parts of his detachment were stationed in Suva Reka/Suhareka town, in the Balkan Hotel.¹²⁶²

485. As a result of these developments the movement of police and other “Serb forces” in Suva Reka/Suhareka town increased.¹²⁶³ Halit Berisha testified that these forces carried AK-47 rifles and

¹²⁵⁴ See Decision on Lukić 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, 2 July 2008, paras. 30–31.

¹²⁵⁵ 6D614 (MUP Overview of recorded criminal offences, 1 July 1998 to 20 June 1999), e-court pp. 692–693.

¹²⁵⁶ Bislim Zyrapi, T. 5991–5992 (7 November 2006). See also Miloš Vojnović, T. 24172 (12 March 2008).

¹²⁵⁷ P2015 (Joint Command order, 23 March 1999). See also Miloš Vojnović, T. 24177–24179 (12 March 2008).

¹²⁵⁸ Božidar Delić, T. 19678–19679 (6 December 2007); P1981 (Order of the 549th Motorised Brigade, 23 March 1999).

¹²⁵⁹ P1981 (Order of the 549th Motorised Brigade, 23 March 1999), pp. 1–3.

¹²⁶⁰ P1981 (Order of the 549th Motorised Brigade, 23 March 1999), p. 6.

¹²⁶¹ Miloš Vojnović, T. 24178–24179 (12 March 2008), T. 24241–24242 (13 March 2008); Ljubinko Cvetić, T. 8110 (7 December 2006); P1052 (communications centre plan showing code names).

¹²⁶² K83, T. 3938–3939 (26 September 2006).

¹²⁶³ Halit Berisha, P2326 (witness statement dated 17 August 2001), p. 2, T. 3646–3647, 3654–3655 (20 September 2006); Hysni Berisha, P2282 (witness statement dated 20 August 2001), p. 2.

wore different uniforms, namely, blue or green camouflage uniforms, or plain black clothes with different coloured bandanas on their heads.¹²⁶⁴ They were joined by local Serb civilians who also wore uniforms and carried weapons.¹²⁶⁵ According to Hysni Berisha, these forces were first stationed in the local school building, but later moved to a “Technical school” situated near the road to Reštane/Reshtan.¹²⁶⁶ Shyrete Berisha gave evidence of buses full of “soldiers” and “policemen” wearing different uniforms, both green and blue camouflage, as well as solid green uniforms. Some were better behaved and more serious than others who had bandanas on their heads and would shout and fire their guns into the air.¹²⁶⁷

486. In the early morning of 25 March 1999 Delić’s forces passed through Suva Reka/Suhareka and were seen by Halit Berisha. Both Delić and K83 testified that there were no VJ forces actually stationed in the town at that time.¹²⁶⁸

487. Around 6:30 a.m. on 25 March, 20 to 30 members of the Berisha family, who lived in the centre of the town, passed by Halit Berisha’s house, located behind the municipal building, and told him that people had been killed and robbed near their houses and that they were fleeing from the Serbian police and the army.¹²⁶⁹ Halit Berisha confirmed that on that day there were skirmishes between the KLA and the “Serb forces” in the area west of Suva Reka/Suhareka, between Velika Kruša/Krusha e Madhe and Raštane/Reshtan.¹²⁷⁰ He instructed his immediate family to gather their belongings and go to the village of Savrovo/Savrova, but he stayed behind with his wife and his brother, Jashar Berisha, who worked as a manager at the petrol station in the town centre.¹²⁷¹

488. According to Bislim Zyrapi, on 25 March 1999 “Serb forces” attacked the villages of Nogovac/Nagač and Hoča/Hoçë in Orahovac/Rahovec municipality, and Nišor/Nishor in Suva Reka/Suhareka municipality, from the direction of Orahovac/Rahovec. After this attack had started Zyrapi issued an order for the inhabitants of those villages to move out, and the KLA, together with

¹²⁶⁴ Halit Berisha, P2326 (witness statement dated 17 August 2001), p. 2, T. 3646–3647, 3654–3655 (20 September 2006).

¹²⁶⁵ Halit Berisha, T. 3654–3656 (20 September 2006). *See also* Tomislav Mitić, T. 20840–20841 (22 January 2008), 5D1390 (witness statement dated 27 December 2007), paras. 25–26.

¹²⁶⁶ Hysni Berisha, P2282 (witness statement dated 20 August 2001), p. 2.

¹²⁶⁷ Shyrete Berisha, T. 3877–3878 (25 September 2006). *See also* P189 (Aerial photograph of Suva Reka/Suhareka), p. 1.

¹²⁶⁸ Halit Berisha, T. 3661 (20 September 2006); Božidar Delić, T. 19391 (29 November 2007). *See also* K83, T. 3998–3999 (26 September 2006); Tomislav Mitić, 5D1390 (witness statement dated 27 December 2007), paras. 29–30.

¹²⁶⁹ Halit Berisha, T. 3609–3610 (20 September 2006), P2326 (witness statement dated 17 August 2001), pp. 2–3. On cross-examination, Mr. Berisha was shown his statement in which he had said that these people were running away from “the Serbs”. P2326 (witness statement dated 17 August 2001), p. 3. He was also confronted with the evidence he gave in the *Milošević* case where he said they were fleeing “Serbian police”. He remained adamant, however, that the army and the police were acting together. Halit Berisha, T. 3657–3662 (20 September 2006).

¹²⁷⁰ Halit Berisha, T. 3713 (21 September 2006).

¹²⁷¹ Halit Berisha, P2326 (witness statement dated 17 August 2001), p. 3.

the local residents, began to withdraw.¹²⁷² Both the KLA and the civilians eventually moved to the territory of Dobrodeljane/Dobërdolan village. The civilians moved further north to Pagaruša/Pagarusha, whereas the KLA withdrew into the mountainous area between Orahovac/Rahovec and Suva Reka/Suhareka towns, namely the hills above the village of Dobrodeljane/Dobërdolan and encompassing the village of Semetište/Semetishta.¹²⁷³ In addition, Delić's post-operation analysis dated 30 March 1999 refers to the actions of 25 March, and states that the KLA withdrew along the Samodraže/Samadrëxhë-Dobrodeljane/Dobërdolan and Pagaruša/Pagarusha road. This document also indicated that, while strong resistance was put up "along the direction of Suva Reka-Studençane", before nightfall the KLA was finally "routed" from the village of Reštane/Reshtan.¹²⁷⁴

489. Shyrete Berisha testified that in the morning of 25 March 1999 she and her husband were visited at their home, the former KVM office, by three "policemen" wearing green camouflage uniforms, whom she did not recognise.¹²⁷⁵ These policemen searched the former KVM office, beat up Ms. Berisha's husband, asking him where his "father Clinton" was, and demanded more than 1,000 German Marks.¹²⁷⁶ While all of this was happening, a truck was parked in front of the house and members of the police were loading it with television sets, heaters, computers, and other equipment belonging to the KVM and the Berishas.¹²⁷⁷ Ms. Berisha also described what she called a "tank", but which was most likely an APC, parked in front of Agron Berisha's house, adjacent to her own, at this time.¹²⁷⁸

490. When the policemen left, the Berishas went to Vesel Berisha's house which was located behind their own. Vesel Berisha was Nexhat's uncle; he lived with his wife, Hava, his three adult sons, Sedat, Bujar, and Nexhemedin, his sons' families, and his father and mother. In total, 25 members of the Berisha family spent the night of 25 to 26 March 1999 in Vesel Berisha's house; Vesel Berisha himself was not there at the time.¹²⁷⁹ According to Shyrete Berisha, they could hear gunfire throughout the night.¹²⁸⁰

¹²⁷² Bislim Zyrapi, T. 5991–5992 (7 November 2006).

¹²⁷³ Bislim Zyrapi, T. 5992–5994 (7 November 2006); P2447 (map showing KLA positions, the line between positions A and B denoting the location where the KLA withdrew).

¹²⁷⁴ P1995 (Analysis of the operation of the 549th Motorised Brigade, 30 March 1999), p. 4. *See also* Bislim Zyrapi, T. 5992–5994 (7 November 2006).

¹²⁷⁵ Shyrete Berisha, T. 3879, 3914–3915 (25 September 2006).

¹²⁷⁶ Shyrete Berisha, T. 3879–3882, 3884 (25 September 2006).

¹²⁷⁷ Shyrete Berisha, T. 3882–3883 (25 September 2006).

¹²⁷⁸ Shyrete Berisha, T. 3885–3886 (25 September 2006); IC46 (Photo marked by Ms. Berisha showing the position of the "tank").

¹²⁷⁹ Shyrete Berisha, T. 3886–3887 (25 September 2006); P2346 (Berisha family tree).

¹²⁸⁰ Shyrete Berisha; T. 3915 (25 September 2006).

491. The Chamber has heard no evidence and there were no submissions by the Defence indicating that any of the people hiding in Vesel Berisha's house on 25 to 26 March 1999 were combatants. According to the evidence of Shyrete Berisha, which was not challenged by the Defence and which the Chamber considers to be reliable, the following 25 people were present in the house: Shyrete Berisha, Nexhat Berisha (Ms. Berisha's husband), Majlinda Berisha (Ms. Berisha's 15 year old daughter), Herolinda Berisha (Ms. Berisha's 13 year old daughter), Altin Berisha (Ms. Berisha's 11 year old son), Redon Berisha (Ms. Berisha's one and a half year old son), Fatime Berisha (Nexhat's sister-in-law), Faton Berisha (Fatime's son), Sherine Berisha (Faton's 17 year old sister), Sebahate Berisha (Faton's wife), Ismet Berisha (Faton's three year old son), Eron Berisha (Faton's ten month old son), Hava Berisha (Vesel's wife), Sedat Berisha (Vesel's son), Bujar Berisha (Vesel's son), Nexhemedin Berisha (Vesel's son), Flora Berisha (Bujar's wife), Lirije Berisha (Nexhemedin's eight months pregnant wife), Vjollca Berisha (Sedat's wife), Dafina Berisha (Sedat's 15 year old daughter), Drilon Berisha (Sedat's 13 year old son), Gramoz Berisha (Sedat's eight year old son), Vlorjan Berisha (Bujar's 17 year old son), Edon Berisha (Bujar's 14 year old son), and Dorentina Berisha (Bujar's four year old daughter).

c. Killings in Suva Reka/Suhareka town on 26 March 1999

492. On 26 March 1999 Shyrete Berisha could see two tanks positioned in the hills behind the house she was in, pointing towards the house. She could also see large movements of policemen and vehicles in the town. As a result the Berishas felt unable to leave the house or escape.¹²⁸¹ At around noon Ms. Berisha saw a large number of policemen exiting the police station. They were wearing "different" uniforms and carrying automatic rifles. A few were wearing civilian clothes, but were armed nonetheless. Some Roma were also present. They started moving towards the house.¹²⁸² Ms. Berisha then heard one of them, Zoran Petković, call out Bujar's name. Bujar's mother Hava went out, but Petković kept asking for Bujar while shouting how they were going to kill all Albanians. Soon after Bujar finally went out, curses and gunshots were heard. Having heard the shots, the Berishas, some barefoot, started screaming and running towards the courtyard exit.¹²⁸³ While running with her children and Sedat's daughter, Dafina, Ms. Berisha saw Zoran Petković whose voice she had recognised earlier.¹²⁸⁴ A moment later, in front of Agron Berisha's

¹²⁸¹ Shyrete Berisha, T. 3887–3889 (25 September 2006).

¹²⁸² Shyrete Berisha, T. 3889–3891, 3919–3920 (25 September 2006).

¹²⁸³ Shyrete Berisha, T. 3891–3893 (25 September 2006).

¹²⁸⁴ Shyrete Berisha, T. 3894 (25 September 2006). Shyrete Berisha was asked during cross-examination about her knowledge of the incident involving the KVM and Zoran Petković's mother Vera, who was allegedly hit and injured by a KVM vehicle. Shyrete Berisha acknowledged that she had heard of this incident. Shyrete Berisha, T. 3917–3918 (25 September 2006).

house, she saw her husband, Nexhat, with “Mišković” who was wearing black civilian clothes.¹²⁸⁵ “Mišković” was shouting at Nexhat. Faton was grabbed by another policeman. A moment later she saw “Mišković” shoot Nexhat. Faton’s mother, who was standing near him, grabbed Faton’s hand and told the policeman holding him to take her instead of her son. Ms. Berisha also saw Sedat being grabbed by yet another policeman.¹²⁸⁶ She recognised some other people who were present.¹²⁸⁷ It appeared to her that Zoran Petković and “Mišković” were the leaders of this operation.¹²⁸⁸

493. Ms. Berisha heard someone shouting “shoot at them, shoot at them” and then saw Nexhmedin, who was near her, fall down. Realising that they would all be killed, she urged her children to divide into two groups and run. Ms. Berisha started running with Herolinda towards the petrol station, while Majlinda (holding Redon), Dafina, and Altin ran off in another direction.¹²⁸⁹ At the petrol station Ms. Berisha and Herolinda came across Jashar Berisha. Ms. Berisha quickly told him what had happened, and then continued to run until she reached a nearby pizzeria where she found the rest of the family.¹²⁹⁰ She talked to Avdi Berisha who told her that they had all gathered there because the police had told them to do so. Soon thereafter the rest of Ms. Berisha’s children arrived, as did Lirije. At that moment a number of policemen came and ordered the whole group, now including many other Berisha family members, to get inside the pizzeria.¹²⁹¹

494. Once inside the Berisha family were told by the Serbian policemen to sit down. The police then started shooting and threw hand grenades into the pizzeria. When the shooting stopped, they entered the building and started lifting bodies, checking whether anyone was still alive and shooting them. Shyrete Berisha had been wounded by bullets and shrapnel, and was then shot one more time. Nevertheless, she and two others, Vjollca and Gramoz, survived the attack.¹²⁹² The bodies of all of the people inside the pizzeria, including those of the three survivors, were then loaded on to a

¹²⁸⁵ Shyrete Berisha, T. 3894–3895, 3921 (25 September 2006); IC46 (Photograph marked by Shyrete Berisha, showing Agron Berisha’s house).

¹²⁸⁶ Shyrete Berisha, T. 3895–3896, 3913–3914 (25 September 2006).

¹²⁸⁷ Shyrete Berisha, T. 3921 (25 September 2006).

¹²⁸⁸ Shyrete Berisha, T. 3918 (25 September 2006).

¹²⁸⁹ Shyrete Berisha, T. 3896–3897 (25 September 2006); IC45 (Photograph showing the direction in which Ms. Berisha and her children ran).

¹²⁹⁰ Shyrete Berisha, T. 3898 (25 September 2006). This building is variously described in the evidence, and in the Indictment, as a café, a coffee shop, and a pizzeria. The Trial Chamber is satisfied that all of these terms are used to describe the same location, and will use the term “pizzeria” to refer to it, even where witnesses use different terminology. Shyrete Berisha, T. 3900 (25 September 2006); P117, pp.1–2 (photographs of the pizzeria).

¹²⁹¹ Shyrete Berisha, T. 3899–3900 (25 September 2006). *See also* P2346 (Berisha family tree); P117, pp.1–2 (photographs of the pizzeria).

¹²⁹² Shyrete Berisha, T. 3900–3903 (25 September 2006).

truck and transported in the direction of Prizren.¹²⁹³ Ms. Berisha, Vjollca, and Gramoz were able to escape from the truck along the way; they were then picked up by someone who took them to a nearby village where Ms. Berisha's injuries were treated.¹²⁹⁴

495. Halit Berisha also gave evidence about these events on 26 March 1999. He testified that on that morning his brother Jashar went to work as usual, despite his urging him to stay at home. Mr. Berisha stayed at home. Around noon Jashar called him and said that he should leave as people were being killed in the centre of the town. Halit Berisha then gathered around 200 of his neighbours and family members and they all went to hide in the bushes near the town's river. At around 2:30 p.m. he went to a friend's house and called his brother at the petrol station. Jashar told him that Sedat, Nexhat, and Bujar Berisha had been killed by the police and that their families had been "massacred" in the town's shopping centre. Halit Berisha urged Jashar to leave, but Jashar said that he would be home at 5:00 p.m. as he felt safe at work. Mr. Berisha spoke to his brother again at 4:30 p.m. After 5:30 p.m. he returned home in order to see if Jashar was there, but could not find him. The next morning he visited a local Serb family to see if they knew anything about Jashar's whereabouts, but they did not.¹²⁹⁵

496. Halit Berisha described the clothes that his brother wore to work on 26 March, and explained that in July 1999 he found fragments of these clothes attached to a part of his brother's leg in a mass grave located at the firing range in Prizren. Jashar's body, however, was not found at that time.¹²⁹⁶ It was found later in a mass grave in Batajnica, and identified in September 2006 using a blood sample that he provided.¹²⁹⁷

497. Hysni Berisha also testified that on the morning of 26 March 1999 "the Serbs" started shelling the areas around Suva Reka/Suhareka town from the hill behind it. This is confirmed by Božidar Delić and Bislim Zyrapi who testified, as stated above, to the fighting that took place between the VJ/MUP forces and the KLA in the vicinity of the town. At around 7:00 a.m. Hysni Berisha saw from his house a number of policemen leaving the police station and moving towards the houses opposite to it. Two to three hours later he heard gunfire coming from the vicinity of

¹²⁹³ Shyrete Berisha, T. 3903 (25 September 2006). During cross-examination, Ms. Berisha explained that at one point, the truck had stopped and she could hear what she thought was the voice of Vera Petković saying: "Son, did you finish the job?" Shyrete Berisha, T. 3918–3919 (25 September 2006).

¹²⁹⁴ Shyrete Berisha, T. 3903–3908 (25 September 2006). *See also* P2344 (Photographs of some of the victims present in the pizzeria).

¹²⁹⁵ Halit Berisha, P2326 (witness statement dated 17 August 2001), p. 3.

¹²⁹⁶ Halit Berisha, T. 3612 (20 September 2006), T. 3712 (21 September 2006); P133, (Photograph of clothes found in Batajnica and belonging to Jashar Berisha), p. 6, KRA 1072. *See* Section VII.P.

¹²⁹⁷ Halit Berisha, T. 3611–3614, 3636 (20 September 2006).

Sedat Berisha's house and could see flames and smoke rising from the area. Since this continued until the evening, he and his family remained in their house terrified.¹²⁹⁸

498. In addition to the testimony of these members of the Berisha family, the Chamber heard compelling evidence concerning the killings in Suva Reka/Suhareka town from policeman K83, who participated in the attack. K83 testified that on the morning of 26 March 1999, he, Nenad Jovanović, Radovan Tanović, Slađan Čukarić, and Miki Petković were in a field patrolling the village of Đinovci/Gjinofc. When they returned to the OUP building in Suva Reka/Suhareka, they saw two trucks parked in front of it. Policemen from the 37th PJP Detachment, known as the "Čegar" unit, were getting out of the truck and moving on foot towards the road to Reštane/Reshtan. Their commanding officer, Radoslav Mitrović, code-named "Čegar One," then arrived in his land rover.¹²⁹⁹ There were around 40 men of the Čegar unit there wearing green camouflage uniforms with military camouflage vests, which had the word "policija" written in white letters on the back.¹³⁰⁰

499. K83 testified that Mitrović then walked over to Jovanović and started shouting at him and the others to stop watching, but rather "get going" and follow the unit. Jovanović and the others were surprised, but started following the Čegar unit towards the first houses in the area, and to the house where "the OSCE had been previously".¹³⁰¹ Čukarić told the others to stop on the left and the right side of the house so that no one would shoot at "them".¹³⁰² The men from the Čegar unit were positioned next to the houses around the Berisha houses, but were not with K83 and his group. However, K83 confirmed that there was a certain "division of labour" or "joint operation" taking place since the actions of K83's group ensured that all houses in the area were now surrounded by police forces. Indeed, looking at the picture K83 drew of the movements of the Čegar unit, it is obvious that they swarmed the area in question, surrounding it completely.¹³⁰³

500. The Čegar unit started shooting, although K83 did not give any detail about who they were shooting at, or if there was any return fire. The Čegar unit moved further along the Reštane road. K83 stated that he was scared because "shooting was coming from all sides" and he could not find

¹²⁹⁸ Hysni Berisha, P2282 (witness statement dated 20 August 2001), p.2.

¹²⁹⁹ K83, T. 3939–3941 (26 September 2006); IC47 (Marked aerial photograph of Suva Reka/Suhareka (P2349) indicating the position of the trucks (A), the land rover (B), and the OUP building). *See also* Ljubinko Cvetić, T. 8110 (7 December 2006); P1052 (communications centre plan showing code names).

¹³⁰⁰ K83, T. 3933–3935 (25 September 2006), T. 3938 (26 September 2006).

¹³⁰¹ K83, T. 3940–3941 (26 September 2006).

¹³⁰² K83, T. 3942 (26 September 2006); IC47 (Marked aerial photograph of Suva Reka/Suhareka (P2349) indicating the position of K83 next to the house of Vesel Berisha (D)).

¹³⁰³ K83, T. 3987, 4000–4001 (26 September 2006); IC50 (Marked IC47 showing movements of the Čegar unit).

anywhere to hide.¹³⁰⁴ There is no specific evidence of anyone firing upon the MUP personnel. Once the shooting started, Jovanović ran away and left K83, Čukarić, Tanović, and Petković by themselves.¹³⁰⁵ At that moment K83 saw women and children running out of Vesel Berisha's house and fleeing towards the shopping centre. He went over to Tanović and Čukarić, who were standing behind Shyrete Berisha's house and checking the identity papers of four men.¹³⁰⁶ The four men were lined up, facing a wall. K83 was instructed to follow the women, the children, and the elderly and report on their location. He then saw Čukarić and Tanović shoot the four men.¹³⁰⁷

501. K83 set off towards the bus station and the shopping centre, as instructed. At the bus station he saw a man and an elderly woman with leg wounds lying on the pavement.¹³⁰⁸ He went towards the alleyway in which the pizzeria was located.¹³⁰⁹ He could see approximately 35 to 40 women and children who appeared to have locked themselves inside the pizzeria.¹³¹⁰ K83 went back and met up with Čukarić and Tanović, informing them of the whereabouts of these people. He was told by them to go to the closest bar and get a drink. On the way he again passed by the wounded man and woman lying on the ground. He took two one-litre bottles of liquor from the bar. While still there, he heard shots being fired. Returning towards the pizzeria, he saw that the two had been shot in the head and were now dead. Slađan Čukarić was standing close to their bodies, holding a rifle.¹³¹¹

502. K83, Čukarić (who was using his Motorola radio), Tanović, and Petković quickly drank the two bottles of liquor.¹³¹² Čukarić then took out a hand grenade, told the others to take cover, and started moving towards the pizzeria. K83 could not see the pizzeria from where he was standing, but he heard the sound of a window being smashed and then heard an explosion. While waiting for the smoke to clear, Čukarić and Tanović took turns to shoot into the pizzeria. Tanović then threw in another hand grenade and the two men continued shooting. K83 testified that he was asked to participate, but said he was in no condition to do so and the others did not insist.¹³¹³

¹³⁰⁴ K83, T. 3943 (26 September 2006).

¹³⁰⁵ K83, T. 3988 (26 September 2006).

¹³⁰⁶ K83, T. 3942–3945 (26 September 2006); IC47 (Marked aerial photograph of Suva Reka/Suhareka (P2349) indicating positions of Tanović and Čukarić (E)).

¹³⁰⁷ K83, T. 3945, 3988 (26 September 2006).

¹³⁰⁸ K83, T. 3946 (26 September 2006); IC47 (Marked aerial photograph of Suva Reka/Suhareka (P2349) indicating the location of two wounded persons (F)).

¹³⁰⁹ IC47 (Marked aerial photograph of Suva Reka/Suhareka (P2349) indicating the route taken by K83 to the pizzeria). *See also* P117, page 2 (Photograph of the pizzeria).

¹³¹⁰ K83, T. 3947–3948 (26 September 2006).

¹³¹¹ K83, T. 3948–3951 (26 September 2006); IC48 (Marked IC47 showing the pizzeria).

¹³¹² K83, T. 3951, 3955, 4005 (26 September 2006).

¹³¹³ K83, T. 3951–3954 (26 September 2006); IC49 (Marked aerial photograph of Suva Reka/Suhareka (P2349) indicating the position of K83).

503. Eventually the men stopped shooting and the pizzeria was silent. Čukarić instructed Petković to stay at the top of the alleyway and K83 to move to its bottom in order to prevent people from coming near.¹³¹⁴ Fifteen to twenty minutes later, Boban Vuksanović, the commander of the local civil protection unit, and (FNU) Đorđević, the commander of the “Territorial Defence”, arrived.¹³¹⁵ Half an hour later a civilian truck with four men inside also arrived from the direction of Prizren. Vuksanović called a group of men from the civil protection unit, mostly young boys of approximately 15 years of age and men who were around 50 or 60 years old. Čukarić told them that they would be killed if they did not do as they were told and load the bodies on to the truck. Once the truck had been loaded, it drove off in the direction of Prizren. Immediately after that another empty truck arrived, and the men continued loading the rest of the bodies into it.¹³¹⁶

504. While the second truck was being loaded with bodies, K83 saw Jashar Berisha being brought to the pizzeria from the direction of the police station and the petrol station.¹³¹⁷ He was brought in a vehicle, accompanied by several policemen, one of whom was Todor Jovanović. As he got out of the vehicle, the truck and the corpses being loaded on to it were in plain view. He was then dragged towards the pizzeria while struggling to get away. Jashar said to Vuksanović that he did not deserve this. Čukarić then grabbed his arm, pushed him towards the pizzeria, and shot him with his automatic rifle. According to K83, many people witnessed this event. Jashar’s body was then added to those already in the truck. Once all the bodies were loaded, the truck drove off in the direction of Prizren.¹³¹⁸ K83 stayed behind and saw Čukarić order the civil protection team to place sand and soil into the pizzeria in order to cover all the blood stains. However, this was not possible as there was no sand in the vicinity. When Čukarić left, Tanović stayed behind to set fire to the curtain next to the pizzeria window. That had little effect since everything inside was made of metal which would not burn.¹³¹⁹

505. The next day K83 was instructed to show the “civil defence” team the remaining bodies scattered around the town so that they could be collected. An investigation was carried out by a team of investigators from Prizren SUP before the bodies were moved and buried in the cemetery, individually and under codes, which was the standard operating procedure for crime scene investigation and for burial.¹³²⁰ The team included Todor Jovanović, the man who had brought

¹³¹⁴ K83, T. 3954–3955 (26 September 2006); IC49 (Marked aerial photograph of Suva Reka/Suhareka (P2349) indicating Petković’s and K83’s positions, (A) and (B) respectively).

¹³¹⁵ Both men were later killed by the KLA. K83, T. 3968 (26 September 2006).

¹³¹⁶ K83, T. 3956–3959 (26 September 2006).

¹³¹⁷ K83, T. 3959–3960, 3989–3990 (26 September 2006).

¹³¹⁸ K83, T. 3959–3961 (26 September 2006).

¹³¹⁹ K83, T. 3961–3962 (26 September 2006).

¹³²⁰ K83, T. 3962–3963, 3970–3971 (26 September 2006).

Jashar Berisha to the pizzeria the previous day. K83 went with the team to the Berisha houses where they found the bodies of the four men shot the previous day, but the team was never taken to the pizzeria.¹³²¹ After having visited the Berisha houses, they continued on to the police building and then towards Reštane/Reshtan, following the route the Čegar unit had taken the day before. They found other corpses in various houses, most of whom were men and all of whom had been shot. K83 informed the Chamber that many of these corpses were civilians.¹³²² While they were on the road to Reštane/Reshtan, the team, wearing regular MUP uniforms and driving regular MUP vehicles, was shot at. K83 was not asked, however, who carried out this attack.¹³²³ He recalled that when they returned to the scene of the Berisha houses on 28 March 1999, they found a woman's body. She was around 50 or 60 years old and her leg and part of her arm were burned. K83 could not explain how the woman's body came to be there one day after the other four corpses were collected. In light of the fact that the team never went to the pizzeria, despite including Jovanović and being guided by K83, who were both aware of the killings there, the Chamber considers that, overall, this investigation was not conducted in accordance with normal procedure.

506. K83 confirmed that there was no VJ presence in the town at the time of the killing in the pizzeria.¹³²⁴ The VJ was positioned outside of Suva Reka/Suhareka town, in a strategically important position on the mountain nearby, a place called Dulje/Duhel, where it was regularly attacked by the KLA.¹³²⁵ This fits with the evidence of Halit Berisha and Božidar Delić.

507. K83 further asserted that in the morning of 26 March 1999, prior to the killings, he was briefed by his shift leader, in accordance with usual practice, but this briefing did not include orders to kill anyone or to go to Berisha houses.¹³²⁶ He had no knowledge of any order or command given to his patrol to kill anyone.¹³²⁷ He also acknowledged that, when he had been questioned about the Berisha family incident by the Belgrade authorities and asked about the Berisha family, he had said that the Berishas were hot-tempered and that Čukarić and Tanović possibly disliked them because the family was close to the KVM monitors, which meant that nobody could touch them.¹³²⁸ He confirmed that the residents of Suva Reka/Suhareka talked about the Berisha incident after the event, and that he himself talked about it with his co-workers and colleagues. He did not know

¹³²¹ K83, T. 3970, 4001 (26 September 2006).

¹³²² K83, T. 3963–3966, 4003 (26 September 2006).

¹³²³ K83, T. 3970–3971 (26 September 2006).

¹³²⁴ K83, T. 3967 (26 September 2006).

¹³²⁵ K83, T. 3998–3999 (26 September 2006).

¹³²⁶ K83, T. 3975, 3999–4000 (26 September 2006).

¹³²⁷ K83, T. 3989 (26 September 2006).

¹³²⁸ K83, T. 3996–3997 (26 September 2006).

whether any of these conversations reached his superior officers, although he believed that his immediate superior, Jovanović, became aware of the incident afterwards.¹³²⁹

d. Mosque in Suva Reka/Suhareka

508. Halit Berisha testified that, at around 11:55 a.m. on 28 March 1999, the Muslim holiday Bajram, he heard an explosion and could no longer see the mosque minaret from his backyard.¹³³⁰ He called his neighbours who lived “very close” to the mosque and they told him that they had seen the collapse of the minaret. They also told him that they saw “soldiers in uniforms” and a “Gazik” vehicle travelling in the direction of Birač, which is three kilometres from Suva Reka/Suhareka and is where the army was stationed. The Chamber notes that this is also the direction of the Suva Reka OUP.¹³³¹ Several minutes later Mr. Berisha also saw this vehicle travelling in the same direction.¹³³²

509. Among the sites discussed in the expert report of András Riedlmayer was the mosque in Suva Reka/Suhareka, which the report described as “lightly damaged”, meaning that it had not sustained damage that seriously compromised it structurally.¹³³³ Riedlmayer testified that its minaret was demolished as a result of a blast from within the minaret itself.¹³³⁴ He visited the site personally and took photos of the damaged mosque. He also talked to a local person who told him that the minaret was destroyed by “the Serbs” on 28 March 1999, the Muslim holiday of Bajram.¹³³⁵

510. Božidar Delić testified that his forces did not destroy the mosque in Suva Reka/Suhareka.¹³³⁶ On the MUP side, Witness 6D2 testified that the MUP did not have the type of artillery, namely mines or explosives, that could be used to produce serious damage or destruction

¹³²⁹ K83, T. 4002–4004 (26 September 2006).

¹³³⁰ P1807 (Photos of the mosque). Halit Berisha, T. 3614–3615 (20 September 2006). Hysni Berisha also heard a loud explosion on that day. Hysni Berisha, P2282 (witness statement dated 13 March 2002), p.2.

¹³³¹ IC47 (Photograph of Suva Reka/Suhareka).

¹³³² Halit Berisha, T. 3615, 3662–3669 (20 September 2006), T. 3698–3701 (21 September 2006), P2325 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 7456.

¹³³³ András Riedlmayer, T. 5425 (30 October 2006); P1779 (Extract from P1789 re Suva Reka/Suhareka mosque); P1807 (photograph of Suva Reka/Suhareka mosque taken by Riedlmayer).

¹³³⁴ András Riedlmayer, T. 5460–5461 (30 October 2006). The Chamber notes that the Defence expert witness on cultural property, Branimir Jokić, did not mention the Suva Reka/Suhareka mosque specifically, but simply challenged the methods used by Riedlmayer in general.

¹³³⁵ András Riedlmayer, T. 5462 (30 October 2006); P1779 (Extract from P1789 re Suva Reka/Suhareka mosque).

¹³³⁶ Božidar Delić, T. 19391 (29 November 2007).

of a large object. Furthermore, he claimed that the mosque was not damaged until 25 April 1999, although he does not appear to have been an eyewitness on that date.¹³³⁷

e. Displacement from Suva Reka/Suhareka town

511. The Chamber heard from Hysni Berisha that on 27 March 1999, following the killings, there was a large movement of police forces throughout Suva Reka/Suhareka town. That afternoon Hysni Berisha observed the police setting houses to the south of his own on fire. He later left his home with his family and stayed in the basement of a neighbour's house with about 70 to a 100 people. At about 3:00 a.m. the next morning they moved to another home about two kilometres away, where they stayed until 3 April 1999.¹³³⁸ On 3 April, when that house was approached by forces wearing blue camouflage uniforms whom Hysni Berisha described as "paramilitaries", the family fled to a nearby field.¹³³⁹ He testified that these forces were shooting at everything, and that he saw them, as well as members of the police and the army, setting fire to houses in the area using flame-throwers.¹³⁴⁰ He and the others who were hiding with him in the field were eventually surrounded by the "paramilitaries", their money and valuables were taken, and they were ordered to go to Albania.¹³⁴¹ Mr. Berisha then joined a convoy travelling in the direction of Albania. More and more people joined it until, by the time it reached Koriša/Korisha (Prizren municipality), it was approximately five kilometres long. In Koriša/Korisha the convoy was stopped and had to remain there for two days. Shortly after midnight on 4 April 1999 two jeeps carrying "paramilitaries" arrived. Five of them went from vehicle to vehicle in the convoy robbing people, including Hysni Berisha. They left, but returned in the morning demanding more money. At this time Mr. Berisha also saw a continuous flow of police and army forces moving in tanks and Pragas from Prizren towards Suva Reka/Suhareka. He could hear shelling somewhere nearby. As the forces passed by the convoy they mistreated people in a number of ways, including by shooting at them.¹³⁴² When the convoy was allowed to move on from Koriša/Korisha, it was stopped once again at the entrance to Prizren town. According to Mr. Berisha, Milan Šipka, a former police commander from Suva Reka/Suhareka who had been transferred to the MUP in Prizren, ordered the people in the convoy

¹³³⁷ 6D2, T. 25342–25343 (15 April 2008), 6D1632 (witness statement), para. 62.

¹³³⁸ Hysni Berisha, P2282 (witness statement dated 20 August 2001), p. 3.

¹³³⁹ Mr. Berisha clarified that he refers to these people as "paramilitaries" because they were not regular police and did not come from the area. Hysni Berisha, P2282 (witness statement dated 20 August 2001), p.3. *See also* Hysni Berisha, T. 4017–4018 (26 September 2006).

¹³⁴⁰ Hysni Berisha, P2282 (witness statement dated 20 August 2001), p. 3, T. 4034–4035 (26 September 2006).

¹³⁴¹ Hysni Berisha, P2282 (witness statement dated 20 August 2001), p. 3.

¹³⁴² Hysni Berisha, P2282 (witness statement dated 20 August 2001), pp. 3–4.

to return to their homes because the border was closed.¹³⁴³ Mr. Berisha and his family went straight back to their house in Suva Reka/Suhareka, which had been looted but not burned.¹³⁴⁴ The Chamber notes that on 5 April 1999 an order was issued by the MUP Staff instructing all Kosovo SUPs and PJP Detachments to prevent civilians from leaving their places of residence and to ensure their safety.¹³⁴⁵

512. On 7 May 1999 another group of paramilitaries came to Suva Reka/Suhareka town in various types of jeeps and started burning and looting houses in the town. Eventually a number of them came to Hysni Berisha's house, armed with automatic weapons and wearing green and blue camouflage uniforms with black or white bandanas on their heads. They wanted Mr. Berisha to give them food and candles, and they threatened him with knives. These forces left the town two days later.¹³⁴⁶

513. Hysni Berisha left Suva Reka/Suhareka town again on 21 May 1999 when "paramilitaries" came to his house and ordered him and his family to go to Albania. He recognised these men as locals, one of whom worked for the regular police, and they were all wearing blue camouflage uniforms and carrying automatic weapons.¹³⁴⁷ He and his wife then left the town, and managed to catch up with two buses under police escort, which appeared to him to be carrying prisoners. That evening Mr. Berisha and his family arrived at his wife's aunt's house in Prizren town, where he remained until 13 June 1999 when he again returned to Suva Reka/Suhareka.¹³⁴⁸

514. Halit Berisha testified that on 28 March 1999 at around 6:00 p.m. his Serb neighbour, who was a reserve policeman, warned him that he had to go to Albania or he would be killed.¹³⁴⁹ As a result he and his wife left their house at around 7:00 p.m. and first went to the village of Savrovo/Savrova, and then the following day to the village of Bužalja/Buzhalla, where they stayed

¹³⁴³ Hysni Berisha, P2282 (witness statement dated 20 August 2001), p. 4. *See also* Hysni Berisha, T. 4036–4037 (26 September 2006).

¹³⁴⁴ Hysni Berisha, P2282 (witness statement dated 20 August 2001), pp. 4–5.

¹³⁴⁵ 6D778 (MUP Staff Order signed by Sreten Lukić, 15 April 1999).

¹³⁴⁶ Hysni Berisha, P2282 (witness statement dated 20 August 2001), p. 5.

¹³⁴⁷ Hysni Berisha, P2282 (witness statement dated 20 August 2001), p. 5. Mr. Berisha explained that sometime before 21 May 1999, the Albanians who had vehicles were ordered by these men to join a convoy of about 5,000 people. Those who did not had to gather at the shopping centre where buses were waiting to transport them to Albania. However, at that time, Mr. Berisha decided not to join the convoy and instead went to stay at another house. During the night, he saw a large movement of the "police" and realised that it was too dangerous to stay. The following morning, the morning of 21 May 1999, he returned to his own house to get some food, but was caught by the same men who had ordered everyone to leave. One of the men, Andrejević, asked him why he had not left as instructed. The men were then required to leave urgently, so Mr. Berisha was able to return to his wife. P2282 (witness statement dated 20 August 2001), p. 6.

¹³⁴⁸ Hysni Berisha, P2282 (witness statement dated 20 August 2001), p. 6.

¹³⁴⁹ Halit Berisha, T. 3648–3653 (20 September 2006).

in a house with 130 other people.¹³⁵⁰ On 3 April 1999 they all moved again, this time to Prizren, but were told by the police to go back to Savrovo/Savrova, which they did. They eventually went back to Suva Reka/Suhareka to stay with Mr. Berisha's aunt, and on 7 April Mr. Berisha went into hiding in the woods with his two sons. On 2 May 1999 he moved back to his aunt's house. During this period his wife would go to their home, which had been looted, and collect food. On 21 May 1999, at around 10:00 or 10:30 a.m., six members of the police came to his aunt's house. One of them, the same person who expelled Hysni Berisha, said to the family that they had 15 minutes to get ready to leave for Albania and they would "never see this land again". The family, in two vehicles, joined a convoy consisting of around 2,000 people. Those who did not have their own transport reported to the centre of Suva Reka/Suhareka town where two buses and two trucks were arranged to carry them. The convoy travelled towards Prizren and Žur/Zhur, and eventually reached the Albanian border at Morina.¹³⁵¹ The border police took their identification documents, including their driving licences, and the registration plates from their vehicles. Mr. Berisha testified that, once he and his family reached Kukes in Albania, they realised that their convoy must have grown to around 5,000 people. He did not return to Suva Reka/Suhareka until 23 June 1999.¹³⁵²

515. For a month following the killing of her family in the pizzeria in Suva Reka/Suhareka town, Shyrete Berisha lived in the mountains and then moved around Kosovo in a convoy of displaced Kosovo Albanian people.¹³⁵³ They passed the villages of Vranić/Vraniq, Sopina/Sopine, and Bukoš/Bukosh in Suva Reka/Suhareka municipality. On one occasion their tractors were stopped at the Bukoš/Bukosh school by "Serbs" in uniform who separated the men from the women. They then proceeded to take valuables and money from the women, and took away the men. According to Ms. Berisha, the men, except for the elderly, never returned.¹³⁵⁴ On 6 May 1999 Ms. Berisha reached the Albanian border in the convoy. The uniformed men on the Serbian side of the border demanded money, gold, and identity documents from them. Once the women gave them what they had, the convoy was allowed to cross into Albania.¹³⁵⁵

516. Confirming the evidence of the displaced from Suva Reka/Suhareka town, K79, a PJP member, testified that sometime around 2 or 3 April 1999 he observed a long column of refugees

¹³⁵⁰ Halit Berisha, P2326 (witness statement dated 17 August 2001), p. 4.

¹³⁵¹ Halit Berisha, P2326 (witness statement dated 17 August 2001), p. 4. Note that Lizane Malaj testified that the crossing is called Vrbnica by Serbs, and Qafa e Morinë by Albanians. Lizane Malaj, T. 1384 (10 August 2006). According to P615 (Kosovo Atlas), p. 14, the border is called Vrbnica/Vërmicë on the Serbian side and Morina on the Albanian side.

¹³⁵² Halit Berisha, T. 3618–3619 (20 September 2006), P2326 (witness statement dated 17 August 2001), p. 4.

¹³⁵³ Shyrete Berisha, T. 3908 (25 September 2006).

¹³⁵⁴ Shyrete Berisha, T. 3908–3909 (25 September 2006).

on the Prizren-Suva Reka/Suhareka road. The column was “about 30 kilometres” long and contained vehicles, tractors, and trucks full of people, all moving in the direction of Prizren.¹³⁵⁶

f. Investigations regarding events in Suva Reka/Suhareka town

517. Upon his return to Suva Reka/Suhareka in June 1999, Hysni Berisha commenced an investigation into the killings that had occurred during the conflict and visited all the relevant sites, including the pizzeria, Shyrete Berisha’s house, and Vesel Berisha’s house.¹³⁵⁷ He also visited the Berisha cemetery and saw 34 new graves. He originally commenced these investigations on a voluntary basis, but during August 1999, when the Interim Government was formed in Suva Reka/Suhareka by the political party of the KLA,¹³⁵⁸ his position was acknowledged by that Government.¹³⁵⁹ His duties consisted of terrain and field work relating to identification of civilian victims.¹³⁶⁰ He compiled a list of Kosovo Albanian civilians from Suva Reka/Suhareka municipality who were either killed or missing.¹³⁶¹

518. In August 1999 Hysni Berisha accompanied a British Forensic team and assisted them with identification of clothing and artefacts found near Prizren, the location of a firing range.¹³⁶² On 19 September 1999 a number of items, including clothing, shoes, and a variety of other objects, were found at the site. All were photographed by the British Forensic team and shown to surviving members of the Berisha family. Many of these items were recognised as belonging to missing family members, namely to Hanumshahe Berisha (81), Musli Berisha (63), Hamdi Berisha (54), Zelihe Berisha (50), Afrim Berisha (24), Violeta Berisha (22), Merita Berisha (10), Mirat Berisha (10), Jashar Berisha, Sofije Berisha (50), and Vesel Berisha (55).¹³⁶³ The remains of all but three of these people, namely Violeta Berisha, Mirat Berisha, and Zelihe Berisha, were later found and identified in the mass grave at Batajnica.

¹³⁵⁵ Shyrete Berisha, T. 3910–3911 (25 September 2006).

¹³⁵⁶ K79, T. 9653–9655 (1 February 2007).

¹³⁵⁷ Hysni Berisha, P2282 (witness statement dated 20 August 2001), p. 6. Hysni Berisha testified to having no formal training in investigative activities. Hysni Berisha, T. 4019 (26 September 2006).

¹³⁵⁸ This Interim Government was established by Hasim Thaqi, was a political party of the KLA, and was dismantled by UNMIK in October 1999. Hysni Berisha, T. 4020 (26 September 2006).

¹³⁵⁹ Hysni Berisha, P2282 (witness statement dated 20 August 2001), p. 2.

¹³⁶⁰ Hysni Berisha, T. 4021 (26 September 2006).

¹³⁶¹ Hysni Berisha, T. 4021–4023 (26 September 2006), P2282 (witness statement dated 20 August 2001), p. 8; P2351 (List of killed/missing persons in 1998 and 1999).

¹³⁶² Hysni Berisha, P2282 (witness statement dated 20 August 2001), pp. 8–9.

¹³⁶³ Hysni Berisha, T. 4010–4015 (26 September 2006), P2282 (witness statement dated 20 August 2001), pp. 8–9; P120 (Photograph of VJ firing range); P122, P123, P133, P134 (Various photographs of items found in the mass grave site at the firing range); P125 (Photographs of members of Berisha family), picture 18. The Trial Chamber notes that the Vesel Berisha named in this list is not the Vesel Berisha in whose house Ms. Berisha and 24 others were hiding on the night of 25 March 2006. Rather, this is a different person by the same name; he is Sofije Berisha’s husband.

519. Halit Berisha provided information, which he had access to as a member of an Albanian organisation for missing and killed persons, about the number of people who had been killed or who had disappeared from the municipality. According to this information, the total number of civilians killed in the municipality throughout the conflict was 561, of which 176 were unidentified and 152 were never found. Of the 152 missing people, 31 were from the Berisha family.¹³⁶⁴

520. The Chamber also admitted into evidence a MUP document listing all registered criminal offences in Kosovo, and measures taken in relation thereto, during the period from 1 July 1998 to 20 June 1999. According to this document, on 30 March 1999 eight bodies were found in one street of Suva Reka/Suhareka town, in what is termed “the KLA zone of activity”. Four of those, three men and one woman, were found in the yard of one house, while three were located in front of another house, and one was found in a carpenter’s shop. According to the document, the perpetrators of these killings were unknown.¹³⁶⁵ In light of the eye-witness evidence, the position of the four bodies in the yard suggests that they were members of the Berisha family.

g. Forensic Evidence

521. It was the evidence of K83 that only a small number of people from the Berisha family who were killed on 26 March 1999 were buried in Suva Reka/Suhareka cemetery, while the majority were first transported to Prizren, and later moved to Batajnica. The Chamber received forensic evidence from two different sources: materials relating to bodies exhumed in Suva Reka/Suhareka, and other materials dealing with bodies exhumed in Batajnica, near Belgrade. With respect to the first category, the Chamber heard from Dr. Eric Baccard whose report contains a section discussing forensic evidence gathered from the Suva Reka/Suhareka cemetery in September of 1999 by the experts of a British forensic team.¹³⁶⁶ Baccard’s report is based on the following material: forensic anthropology report of Dr. Sue Black from 2 November 1999,¹³⁶⁷ two autopsy reports prepared by Dr. Yvonne Milewski on 31 January 2000,¹³⁶⁸ three anthropological summaries prepared by Dr. Black on 6 September 1999,¹³⁶⁹ and anthropological reports of Julie Roberts from 5 January 2000.¹³⁷⁰ According to Baccard, the remains of at least 18 individuals, the majority of them male

¹³⁶⁴ Halit Berisha, T. 3716–3717 (21 September 2006).

¹³⁶⁵ 6D2, 6D1632 (witness statement), para. 91; 6D614 (MUP Overview of recorded criminal offences, 1 July 1998 to 20 June 1999), e-court p. 62, para. 104. The document also notes that the investigative judge was provided with a report.

¹³⁶⁶ P1809 (Eric Baccard’s overview report), pp. 74–78.

¹³⁶⁷ P1809 (Eric Baccard’s overview report), pp. 74–75.

¹³⁶⁸ P129 (Autopsy Report: SCG/27/SR); P130 (Autopsy Report: SCG/28/SR).

¹³⁶⁹ P136 (British Forensic Team Anthropological Report); P137 (Anthropological Summary: SCG/33/SR); P2682 (Anthropological Summary: SCG/27/SR and SCG/28/SR).

¹³⁷⁰ P2683 (Anthropology Reports: analysis of SCG/33/SR).

and elderly, were among those recovered from the Suva Reka/Suhareka cemetery.¹³⁷¹ Three of those were identified as Berishas, namely, Faton Berisha, Fatime Berisha, and Sedat Berisha, all of whom have also been identified by Shyrete Berisha as having been killed on 26 March 1999 in Suva Reka/Suhareka town.¹³⁷²

522. The second source consisted of numerous reports and witness testimony from those who attended, supervised, and participated in the exhumations and identification of bodies from the mass graves in Batajnica, from 2001 onwards, as described in Section VII.P below; namely, Dušan Dunjić, Branimir Aleksandrić, William Fulton, Jon Sterenberg, and Jose-Pablo Barayabar. The results of their work and the identifications they made of Suva Reka/Suhareka victims are analysed in Annex A of the Judgement.

523. The Chamber also heard from Antonio Alonso, an expert in genetic identification, who analysed the samples from some of the remains found in Batajnica. In the course of 2001 he received 56 skeletal remains from Dunjić and 13 blood reference samples of family members of people allegedly killed in Suva Reka/Suhareka from the ICMP for genetic analysis.¹³⁷³ Having conducted the analysis, Alonso provided four reports setting out the results.¹³⁷⁴ He positively identified 21 victims of whom a number are named in Schedule D of the Indictment, namely: Sofije Berisha, Vesel Berisha, Hava Berisha, Drilon Berisha, Redon Berisha, Melinda and/or Herolinda Berisha, Musli Berisha, Fatmire Berisha, Besim Berisha, Granit and/or Genc Berisha, Nexhmedin Berisha, Lirije Berisha who was pregnant, Afrim Berisha, Hamdi Berisha, one of

¹³⁷¹ P136, (British Forensic Team Anthropological Report), p. 1; P1809 (Eric Baccard's overview report), p. 75. The term "minimal number of victims" is used in the report when the bones of a number of individuals are commingled and it is consequently difficult to identify both the identity of the victims and the number of victims. Two different bones might be from the same victim or two different victims, and this creates the risk of overestimating the number of victims at a site. Thus, Baccard in his report refers to "the minimum number of victims, realising that this is the lower limit below which one cannot go." In other words, it represents the lowest possible number of victims at that site. See Eric Baccard, P2747 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 5281–5283.

¹³⁷² Eric Baccard, T. 10138 (19 February 2007); P1809 (Eric Baccard's overview report), p. 76; P2682 (Anthropological Summary: SCG/27/SR and SCG/28/SR); P2683 (Anthropology Reports: analysis of SCG/33/SR); P136 (British Forensic Team Anthropological Report), p. 1. The remains referenced in these reports are as follows: Faton Berisha—SCG/27/SR, Fatime Berisha—SCG/28/SR, and Sedat Berisha—SCG/33c/SR. SCG/33/SR consisted of a collection of co-mingled, partially burnt, skeletal remains, contained within one body bag. Since the anthropological analysis indicated that the remains of a minimum number of four individuals were present, the exhibit was further separated into four groups of skeletal remains, analysed by Black, and then subjected to re-analysis by Roberts. However, it is noted in Baccard's report that there are discrepancies between the reports prepared by Black and Roberts, notably that it is unclear whether case SCG/33c/SR in Black's report corresponds to case SCG/33/SR in Robert's report. Due to this discrepancy, only SCG/27/SR and SCG/28/SR were included in Baccard's report and their cause of death established. P1809 (Eric Baccard's overview report), p. 76. Nevertheless, since Sedat Berisha was identified by the shoe found on a left foot (see P136), the Chamber accepts that one of the four commingled remains belongs to Sedat Berisha.

¹³⁷³ Antonio Alonso, T. 6664–6665 (16 November 2006).

¹³⁷⁴ Antonio Alonso, T. 6665–6666 (16 November 2006); P2486 (Report of the Biology Service, 17 November 2004).

Hamdi Berisha's four daughters, and Jashar Berisha.¹³⁷⁵ All but one of these victims, namely Afrim Berisha, were identified by Shyrete Berisha as people she saw in the course of the events of 26 March 1999 in Suva Reka/Suhareka town.¹³⁷⁶

5. Displacement from Belanica

524. As stated above in paragraph 467, the two witnesses who gave evidence about displacement of people from Belanica were Shefqet Zogaj, a journalist from Belanica,¹³⁷⁷ and Hamide Fondaj, a housewife from Pećane/Peqan.¹³⁷⁸ Both testified that around 20 or 21 March an attack was launched on Pećane/Peqan and nearby villages by "Serb forces". The attack was mounted from the east, from the direction of Suva Reka/Suhareka town, Široko/Shiroko, Dulje Pass/Qafa e Duhles, and Birač/Biraq.¹³⁷⁹ As a result, the population began moving *en masse* to villages to the north, such as Nišor/Nishor, Belanica, and Banja.¹³⁸⁰ However, they both also conceded that the area under attack was controlled by the KLA. For example, almost every household in Pećane/Peqan had a family member in the KLA, including Fondaj's, whose husband was a KLA commander.¹³⁸¹

525. On cross-examination of these witnesses, it emerged that the population of Pećane/Peqan was ordered to leave the village by Fondaj's husband, and that some days later, on 28 March, due to fighting with the FRY/Serbian forces, the KLA withdrew to Belanica.¹³⁸² Vladimir Marinković, who was head of the security organ for the 15th Armoured Brigade, confirmed that at the end of March 1999 his brigade encountered about 1,000 displaced people who were leaving Banja accompanied by armed KLA members wearing uniforms. When the unit reported what it saw, the order came for it to return to its area of deployment without engaging the KLA.¹³⁸³

¹³⁷⁵ The Chamber notes that two of the 21 identifications were based on a technique with a lower discriminating ability and thus referred to by Alonso as "preliminary identifications". Antonio Alonso, T. 6668–6669, 6674–6678 (16 November 2006).

¹³⁷⁶ See Annex A.

¹³⁷⁷ Shefqet Zogaj, P2322 (witness statement dated 26 April 1999), p. 2.

¹³⁷⁸ Hamide Fondaj, T. 3823–3865 (25 September 2006), P2283 (witness statement dated 9 June 2001).

¹³⁷⁹ Hamide Fondaj, P2283 (witness statement dated 9 June 2001), p. 3; Shefqet Zogaj, P2322 (witness statement dated 26 April 1999), p. 2.

¹³⁸⁰ Shefqet Zogaj, T. 5879–5880 (3 November 2006), P2322 (witness statement dated 26 April 1999), p. 2.

¹³⁸¹ Hamide Fondaj, T. 3826–3827, 3844–3846, 3849 (25 September 2006), P2283 (witness statement dated 9 June 2001), p. 2; Shefqet Zogaj, P2322 (witness statement dated 26 April 1999), p. 2. See also 6D1013 (MUP Prizren Report, 13 March 1999), pp. 1–2; 6D1017 (MUP Prizren Report, 28 January 1999), p. 6.

¹³⁸² Shefqet Zogaj, T. 3781–3787 (22 September 2006), T. 5881–5882 (3 November 2006), P2323 (witness statement dated 18 June 2001), p. 3, P2324 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 3668–3669; Hamide Fondaj, T. 3846–3848, 3852–3854, T. 3862–3865 (25 September 2006), P2283 (witness statement dated 9 June 2001), p. 3; 6D76 (excerpts from Ylmet Fondaj's statement dated 28 August 2001).

¹³⁸³ Vladimir Marinković, T. 20262–20263 (14 December 2007).

526. On 28 March Fondaj and her family arrived in Belanica and saw that “thousands and thousands of people” had gathered there.¹³⁸⁴ Zogaj testified that altogether around 100,000 people had gathered in the three villages of Belanica, Guncat/Ngucac, and Ldrović/Lldroviq.¹³⁸⁵ When Zogaj was confronted with the evidence of Halit Berisha that the whole population of the municipality of Suva Reka/Suhareka was 60,000 and the suggestion that it was impossible for 100,000 people to gather in three villages unless the entire population of both Suva Reka/Suhareka and the Mališevo/Malisheva municipality gathered there, he responded that his estimate was accurate.¹³⁸⁶

527. As discussed above in relation to Prizren and Orahovac/Rahovec municipalities, on 28 March 1999, Priština Corps units were ordered by the Joint Command to support MUP forces in destroying the “ŠTS” in the general area of Mališevo/Malisheva. According to that order, the responsibility for Suva Reka/Suhareka municipality was divided between the 243rd Mechanised Brigade and the 549th Motorised Brigade.¹³⁸⁷ On the same date the Priština Corps Command issued an order instructing the forces, including the 549th Motorised Brigade, to prepare for operations in the “general area” of Mališevo/Malisheva.¹³⁸⁸ As a result, on 29 March Delić issued a corresponding order to his units instructing them to support MUP forces in the Orahovac/Rahovec area and near the village of Dobrodeljane/Dobërdolan. This order also noted that other units, such as the 243rd Mechanised Brigade, were to support MUP units in the Suva Reka/Suhareka area, including the villages of Dulje/Duhel, Belanica, Semetište/Semetishta, and Banja, located in the north of the municipality. The action was to begin on 30 March.¹³⁸⁹

528. In the early morning hours of 1 April 1999 the KLA line was broken by the combined forces of the FRY.¹³⁹⁰ Following that, Zyrapi issued an order for several KLA brigades to withdraw further to the north-west through Belanica and into the Berisha mountains, which are

¹³⁸⁴ Hamide Fondaj, T. 3827–3828 (25 September 2006), P2283 (witness statement dated 9 June 2001), p. 3.

¹³⁸⁵ Shefqet Zogaj, T. 3779, 3787–3790, 3802–3803 (22 September 2006), T. 5859–5861 (3 November 2006), T. 5900, 5922 (6 November 2006), P2322 (witness statement dated 26 April 1999), p. 4, P2323 (witness statement dated 18 June 2001), pp. 2–3. *See also* IC44 (map of Suva Reka/Suhareka municipality on which Zogaj marked the location of the three villages in question); P2345 (photograph taken by Zogaj showing people gathering in Belanica on 28 March 1999), e-court p. 11.

¹³⁸⁶ Shefqet Zogaj, T. 5900–5903, 5910–5911 (6 November 2006).

¹³⁸⁷ P1969 (Joint Command Order, 28 March 1999).

¹³⁸⁸ 5D339 (PrK Command order, 28 March 1999).

¹³⁸⁹ P2000 (Order of the 549th Motorised Brigade, 29 March 1999), pp. 2–4. *See also* Krsman Jelić, T. 18849 (22 November 2007); 5D1284 (Order for defence of 243rd Mechanised Brigade, 26 March 1999), p. 3; P2021 (War Diary of 243rd Mechanised Brigade), pp. 7–10.

¹³⁹⁰ Following this action, Delić prepared a report analyzing it and noting that the “ŠTS” were destroyed in the Mališevo/Malisheva-Pagaruša/Pagarusha-Blace/Blace area, that Dobrodeljane/Dobërdolan and Semetište/Semetishta were seized by the combined forces, and that the action relieved the pressure by the KLA on the towns of Orahovac/Rahovec and Suva Reka/Suhareka. Božidar Delić, T. 19561–19562 (5 December 2007); P2002 (Analysis of operations of 549th Motorised Brigade, 30 March [sic] 1999); 4D371 (PrK Command Combat Report, 1 April 1999).

situated above the village.¹³⁹¹ Zyrapi also ordered that the civilian population be moved, for safety reasons, from Belanica to Guncat/Ngucat and the Berisha mountains. However, the main part of the population did not obey the order and chose to remain in Belanica.¹³⁹² When asked by the Chamber why it was safer for the population to move together with the KLA rather than be left on its own, Zyrapi responded that the KLA wanted to remove the population from the frontline, and said that this was a regular KLA procedure.¹³⁹³

529. On 1 April 1999, at around 11:45 a.m., the FRY/Serbian forces started shelling the outskirts of Belanica.¹³⁹⁴ At around 1:00 p.m. the police and paramilitaries, the latter wearing ribbons, scarves, and beards, entered Belanica while the VJ surrounded it.¹³⁹⁵ Zogaj went from house to house telling people to get into their cars and tractors and on to the road. However, according to Zogaj, the “Serb forces” entered Belanica and started burning houses, killing livestock, and shooting at the people who were departing.¹³⁹⁶ It was put to Zogaj during cross-examination that, rather than the Serb forces, he was the one telling people to leave, pursuant to Bislim Zyrapi’s order mentioned above. Zogaj denied this proposition.¹³⁹⁷

530. While moving slowly in the convoy that was formed, Zogaj was abused by a number of different “policemen” and had money taken from him.¹³⁹⁸ Members of the “police” taunted the Kosovo Albanians in the convoy, shouting “you go to daddy Clinton” and “go to Albania”. Although they guided the convoy in two directions, namely west, in the Mališevo/Malisheva - Orahovac/Rrahovec direction, and south, in the Blace/Bllaca – Suva Reka/Suhareka direction, both groups ultimately passed through Prizren. Zogaj went in the Blace/Bllaca – Suva Reka/Suhareka

¹³⁹¹ Bislim Zyrapi, T. 5995–6001, 6004 (7 November 2006), 6151–6153 (8 November 2006); P2447 (map showing KLA positions, the line between positions B and C denoting the location of the second KLA withdrawal); P2457 (Order issued by Bislim Zyrapi, 1 April 1999); IC106 (map of Suva Reka/Suhareka marked by Zyrapi showing Berisha mountains as well as the route the KLA used to the Berisha mountains). *See also* Shefqet Zogaj, T. 3781–3787 (22 September 2006), P2323 (witness statement dated 18 June 2001), p. 3.

¹³⁹² P2457 (Order issued by Bislim Zyrapi, 1 April 1999); Bislim Zyrapi, T. 6005–6006 (7 November 2006), T. 6150–6151 (8 November 2006).

¹³⁹³ Bislim Zyrapi, T. 6001–6003 (7 November 2006).

¹³⁹⁴ Shefqet Zogaj, T. 5912–5914, 5921 (6 November 2006), P2322 (witness statement dated 26 April 1999), p. 4, P2323 (witness statement dated 18 June 2001), p. 4; P2457 (KLA order, 1 April 1999).

¹³⁹⁵ Shefqet Zogaj, T. 3791–3793 (22 September 2006), T. 5861, 5866–5873 (3 November 2006), T. 5898–5899 (6 November 2006), P2322 (witness statement dated 26 April 1999), p. 4, P2323 (witness statement dated 18 June 2001), pp. 2–4; P1325 (vehicles in photos 5, 6, 7, and 8 identified by Zogaj as having been used in Belanica); IC103 (photograph taken by Zogaj in 1997 showing the type of the vehicle used by the police in Belanica). On cross-examination, however, the earlier identification by Zogaj of the green camouflage tank in photograph 5 as a police vehicle turned out to be inconsistent with Zogaj’s later evidence and his own photograph (IC103). *See* Shefqet Zogaj, T. 5873–5877 (3 November 2006). *See also* Hamide Fondaj, T. 3829 (25 September 2006), P2283 (witness statement dated 9 June 2001), p. 3.

¹³⁹⁶ Shefqet Zogaj, P2322 (witness statement dated 26 April 1999), pp. 4–5, P2323 (witness statement dated 18 June 2001), pp. 4–5.

¹³⁹⁷ Shefqet Zogaj, T. 5914–5915 (6 November 2006); P2457 (KLA order, 1 April 1999).

direction and, as he left Belanica, saw troops and tanks pointing their guns towards the village.¹³⁹⁹ When Zogaj's part of the convoy reached the village of Ljubižda/Lubizhdë, near Prizren town, they were taunted again by Serb men wearing standard army and police uniforms who were yelling "go to NATO", "go to Albania", "Kosovo has been and will be Serbian soil", and other similar remarks. Some of these men wore black uniforms and masks and had knives on their belts. At the border crossing at Morina the licence plates of Zogaj's truck, as well as the identity cards, passports, and driver's licences belonging to him and his family members, were seized by the Serbian police. Zogaj and his family crossed the border at around 5 p.m. on 2 April 1999. They were told by a "Serb border policeman" that they would never see Kosovo again. Zogaj returned to Belanica on 21 June 1999, at which point 70 per cent of the village had been burnt, including his own house.¹⁴⁰⁰

531. Hamide Fondaj described her departure from Belanica in broadly similar terms. On 1 April, while in the centre of the village with her family and many others, word spread that they should all get on their tractors. A number of men dressed in black and wearing black masks then went from one tractor to another, extorting money. That night, around 2:00 or 3:00 a.m., Fondaj saw the flames resulting from NATO bombs hitting targets in the surrounding areas.¹⁴⁰¹ The following morning "policemen" wearing all types of uniforms and with painted faces and bandanas came into the village. They went from tractor to tractor asking for money. Around 20 of them, wearing masks, approached Fondaj's tractor and demanded money from her and the two elderly men on her tractor. Although they all handed over money, the elderly men were still beaten.¹⁴⁰² Soon thereafter the people on tractors started moving out of Belanica, heading in the direction of Suva Reka/Suhareka town. They were stopped some ten times and continually harassed for money. While leaving the village, Fondaj observed VJ soldiers waving goodbye to the convoy. At a checkpoint the VJ directed them not to go to Suva Reka/Suhareka town, but rather in the opposite direction toward Mališevo/Malisheva and Orahovac/Rahovec.¹⁴⁰³ Outside Oštrozub/Astrazup they were stopped at a VJ checkpoint where one of the soldiers demanded 100 German Marks from Fondaj. Once that was provided, they were allowed to continue with the convoy. Fondaj observed "soldiers", whose age she was unable to estimate and whose insignia she could not see, going into

¹³⁹⁸ Shefqet Zogaj, T. 3793–3794 (22 September 2006), T. 5863–5865, 5885–5887 (3 November 2006), T. 5903–5904 (6 November 2006), P2322 (witness statement dated 26 April 1999), pp. 5–6.

¹³⁹⁹ Shefqet Zogaj, T. 3795–3796 (22 September 2006), P2322 (witness statement dated 26 April 1999), pp. 6–7, P2323 (witness statement dated 18 June 2001), pp. 5–6.

¹⁴⁰⁰ Shefqet Zogaj, T. 3795–3798 (22 September 2006), P2322 (witness statement dated 26 April 1999), pp. 8–9, P2323 (witness statement dated 18 June 2001), pp. 6–7; P2345 (photographs taken by Zogaj showing his burned house).

¹⁴⁰¹ Hamide Fondaj, T. 3829–3831, 3858 (25 September 2006), P2283 (witness statement dated 9 June 2001), p. 3.

¹⁴⁰² Hamide Fondaj, T. 3830–3833 (25 September 2006), P2283 (witness statement dated 9 June 2001), p. 4.

¹⁴⁰³ Hamide Fondaj, T. 3833 (25 September 2006), P2283 (witness statement dated 9 June 2001), p. 4.

Oštrozub/Astrazup and using flame throwers to set houses on fire.¹⁴⁰⁴ She also testified that at one point the “Serb soldiers” took off the traditional Plis hats worn by the Kosovo Albanian men in the convoy and threw them on the ground. The men were then ordered to drive over them.¹⁴⁰⁵ The convoy went to Mališevo/Malisheva, then travelled back down to Orahovac/Rahovec, and then to Prizren town. Before arriving at the village of Žur/Zhur, it was stopped for seven to eight hours. Fondaj stated that she frequently saw military forces along the road to the border. Eventually the convoy reached the border, and at 2:00 a.m. on 4 April 1999 it crossed into Albania. According to Fondaj the border police told them that it was because of Ibrahim Rugova and NATO that they had to leave. The convoy was not searched and was simply allowed to cross. One of the policemen said that he was sorry.¹⁴⁰⁶ While waiting to move on further into Albania, she was able to observe the next convoy come into Albania, and saw that the people in it were beaten and that all their identification documents were being taken from them.¹⁴⁰⁷

532. Partially supporting these accounts of the movement of the population on 3 April 1999 is a report sent by Božidar Delić to the Priština Corps command regarding the situation in his zone of responsibility. He noted that, with the start of the NATO campaign, the situation had deteriorated rapidly. In addition to the fighting with the KLA’s 124th Brigade in the area of Prizren-Orahovac/Rahovec-Suva Reka/Suhareka, there was now a problem of a large number of “refugees”. According to Delić, “the very incidence of refugees, especially in that number, came as a surprise”. He then listed a number of reasons for their movement, including fear of being caught in the fighting, fear of KLA recruitment, fear of VJ/MUP forces as well as “Arkan’s troops”, and fear of NATO bombing.¹⁴⁰⁸ Delić also noted that local authorities had given him their views regarding high refugee numbers, namely the “pre-arranged scenario of ‘Humanitarian Catastrophe’”, and moving away to allow NATO to bomb freely and indiscriminately.¹⁴⁰⁹ He also mentioned that the members of the 5th PJP company and the soldiers of the 15th Armoured Brigade were “joined in Belanica village, where they evacuated and cared for some 30,000 refugees.”¹⁴¹⁰ Miloš Vojnović, who was chief of the Prizren SUP at the time, denied any knowledge that the PJP cared for “refugees” in Belanica and testified that caring for displaced civilians was “something

¹⁴⁰⁴ Hamide Fondaj, T. 3838–3839 (25 September 2006), P2283 (witness statement dated 9 June 2001), p. 4.

¹⁴⁰⁵ Hamide Fondaj, P2283 (witness statement dated 9 June 2001), p. 4.

¹⁴⁰⁶ Hamide Fondaj, T. 3834–3835 (25 September 2006), P2283 (witness statement dated 9 June 2001), pp. 4–5.

¹⁴⁰⁷ Hamide Fondaj, T. 3861 (25 September 2006), P2283 (witness statement dated 9 June 2001), p. 5.

¹⁴⁰⁸ 5D885 (Report of 549th Motorised Brigade to PrK Command, 3 April 1999), pp. 1, 2. Note that Aleksandar Vasiljević testified that at a 17 May meeting attended by Milošević, Šainović, Ojdanić, Rade Marković, Farkaš, Pavković, Gajić, and Vasiljević himself, Radomir Marković admitted presence of Scorpions, as well as some members of “Arkan’s troops”, in Kosovo. Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), paras. 65–67, P2589 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 15999–16004.

¹⁴⁰⁹ 5D885 (Report of 549th Motorised Brigade to PrK Command, 3 April 1999), p. 3.

¹⁴¹⁰ P2002 (Analysis of operations of 549th Motorised Brigade, 30 March [sic] 1999), p. 3.

that regular policemen dealt with”. However, he also testified that he did see “many thousands of refugees” on the Suva Reka/Suhareka-Prizren road.¹⁴¹¹

533. General Krsman Jelić, who was the commander of the 243rd Mechanised Brigade stationed in Dulje/Duhel at the time, also addressed the evidence of Hamide Fondaj and Shefqet Zogaj during his testimony. Jelić testified that his forces never shelled Belanica and did not force any civilians to move towards Albania via the Suva Reka/Suhareka road. He clarified that this would have meant forcing people to walk towards the VJ forces instead of in the opposite direction, which would have been absurd. Jelić did concede that there was an action in the area, pursuant to an order dated 28 March 1999, to remove the KLA blockade of the road connecting Suva Reka/Suhareka to Mališevo/Malisheva, and passing through Belanica. According to Jelić, this area was a KLA stronghold and his units were unable to reach Belanica itself.¹⁴¹²

6. Findings

a. Berisha family killings in Suva Reka/Suhareka town

534. The Prosecution argues that both VJ and MUP personnel were responsible for the killing of the Berisha family, since the crime took place during a joint VJ/MUP action.¹⁴¹³ The Pavković and Lazarević Defences, on the other hand, argue that the evidence clearly points to the fact that no VJ soldiers were involved in these killings.¹⁴¹⁴ The Lukić Defence, in turn, concedes that members of the police killed the Berishas but argues that the killings were committed for purely personal reasons, by intoxicated individuals, and were then covered up in a rushed manner, keeping both the chief of the Suva Reka OUP, and chief of the Prizren SUP, in the dark. This meant, according to the Lukić Defence, that neither the MUP Staff nor the RDB had any information relating to the crime.¹⁴¹⁵

535. Having carefully considered the evidence, the Chamber is satisfied that there was no KLA activity in the town at the time the 37th PJP Detachment, together with local policemen, mounted its action. Accordingly, the Chamber finds that these forces directed their activities against civilians, which is confirmed by K83’s evidence of scattered corpses in civilian clothing found on

¹⁴¹¹ Miloš Vojnović, T. 24239–24241 (13 March 2008).

¹⁴¹² Krsman Jelić, T. 18951–18953 (23 November 2007), T. 19026–19032 (26 November 2007); IC144 (Map marked by Jelić indicating movement of his unit); P1969 (Joint Command order, 28 March 1999).

¹⁴¹³ Prosecution Final Trial Brief, 29 July 2008 (public version), paras. 388–389.

¹⁴¹⁴ Pavković Final Trial Brief, 28 July 2008 (public version), paras. 571–572; Lazarević Final Trial Brief, 29 July 2008 (public version), paras. 109–112.

¹⁴¹⁵ Lukić Final Trial Brief, 7 August 2008 (public version), paras. 897–901; Lukić Closing Argument, T. 27335–27336 (26 August 2008).

Reštane/Reshtan road, which is the direction in which the PJP was seen to go. The Chamber is also satisfied that local Suva Reka/Suhareka policemen killed 45 members of Berisha family on 26 March 1999 in the vicinity of Shyrete Berisha's home, a nearby bus station and shopping centre, and inside a pizzeria. Since these killings took place during the PJP action, the Chamber is of the view that the members of the 37th PJP Detachment were instrumental in triggering this action by members of the local police. There is no evidence, however, that any VJ forces were involved.

536. The Chamber does not accept the Lukić Defence suggestion that the chiefs of the Suva Reka OUP and Prizren SUP had no knowledge of the killings, which took place a short distance from the OUP building. The number of people involved in the removal of a large number of bodies from the pizzeria meant that many in the town knew of the killings. In addition, K83 confirmed that residents of Suva Reka/Suhareka talked about the Berisha incident after the event, and that he talked about it with his co-workers and colleagues. He also believed that his immediate superior, Jovanović, became aware of the incident afterwards. Finally, as stated above, the flawed investigation conducted by the Prizren SUP team nevertheless discovered a number of dead bodies in civilian clothing, including that of an elderly woman, scattered throughout Suva Reka/Suhareka, and would have put the authorities on notice. Thus, the Chamber is of the view that the chief of the Suva Reka OUP and the chief of the Prizren SUP must have had notice of the events that took place there on 26 March 1999. The fact that the Berishas were later exhumed from Prizren and moved to Batajnica in a large scale clandestine operation conducted by the MUP, as described below,¹⁴¹⁶ also suggests that the high level MUP officials must have been told of the killings.

537. A description of the forensic and other evidence relating to individual victims from Suva Reka/Suhareka is contained in Annex A to the present Judgement. On the basis of this evidence, along with the testimony of Shyrete Berisha, Hysni Berisha, Halit Berisha, and K83, the Chamber finds that 45 people were killed in Suva Reka/Suhareka town on 26 March 1999, as a result of being either shot, or as a direct consequence of an explosion within the enclosed space where they were located.

538. Six persons, namely Nexhat Berisha, Fatime Berisha, Faton Berisha, Bujar Berisha, Sedat Berisha, and Nexhmedin Berisha, were killed, without any provocation or justification, in the vicinity of the Berisha compound on 26 March 1999, as testified to by Shyrete Berisha, and as confirmed by the various forensic experts. Five of them were buried in the Suva Reka/Suhareka cemetery, while Nexhmedin Berisha's remains were found in the mass grave in Batajnica.

¹⁴¹⁶ See Section VII.P.

539. Shyrete Berisha also placed a number of other Berisha family members in the pizzeria where the killings took place on that day, and witnessed them being killed. From this evidence the Chamber can conclude that these persons all died a violent and unprovoked death. Those victims were: Shyrete Berisha's four children, Majlinda, Herolinda, Altin, and Redon Berisha; Avdi Berisha; Besim Berisha; Dafina Berisha; Dorentina Berisha; Drilon Berisha; Edon Berisha; Eron Berisha; Fatime Berisha; Fatmire Berisha; Flora Berisha; Genci Berisha; Granit Berisha; Hajdin Berisha; Hanumusha Berisha; Hava Berisha; Ismet Berisha; Kushtrin Berisha; Lirije Berisha; Mevlude Berisha; Mihrije Berisha; Musli Berisha; Sebahate Berisha; Sherine Berisha; Sofije Berisha; Vesel Berisha; and Vlorjan Berisha. In addition, as outlined above in relation to half of these victims, the Chamber also has in evidence a significant amount of medical material identifying remains found in Batajnica as theirs.

540. The Chamber notes that two of the victims, namely Afrim Berisha and Hamdi Berisha, were not identified by Shyrete Berisha as being present in the pizzeria on the day of the incident, but their remains were found in Batajnica together with the remains of the other Berisha family members killed on that day. The Chamber is satisfied that these two men were also killed together with the other Berishas on 26 March 1999, and that their killing was unprovoked and without any legal justification.

541. The Chamber is also satisfied that the evidence of Shyrete Berisha about seeing two of Hamdi Berisha's daughters in the pizzeria, as well as the DNA evidence identifying a number of remains as belonging to Hamdi Berisha's daughters, indicates that the other two sisters were also forced into the pizzeria on 26 March and were killed there. This is confirmed by the OMPF list of missing persons which includes all four girls. Thus, the Chamber is satisfied that Arta Berisha, Hanumusha Berisha, Merita Berisha, and Zana Berisha were all killed on 26 March 1999 in Suva Reka/Suhareka.

542. The Chamber further notes that Hysni Berisha testified that the girls' mother, Zelihe Berisha, was also killed on that day. Although Zelihe Berisha was not seen by Shyrete Berisha in the pizzeria at the time of the killing and her remains were not found in Batajnica, she has been missing since that date, at least two of her daughters were identified by Shyrete Berisha as in the pizzeria on that day, and the Chamber has found that all four of her daughters were killed at that time. Similarly, although there is no eyewitness or forensic evidence relating to Mirat Berisha, the ten year old son of Zelihe Berisha, his sweater was found in the mass grave in Prizren and he remains missing. There is no evidence to indicate that either Zelihe or Mirat Berisha may not have suffered the same fate as others in their family. On the basis of the evidence presented, the

Chamber finds the only reasonable inference is that they were among the victims on 26 March 1999 in Suva Reka/Suhareka.

543. The Chamber is also satisfied, relying on the evidence of Shyrete and Hysni Berisha, as well as the DNA identification of his remains in Batajnica, that Jashar Berisha was killed on 26 March 1999 in Suva Reka/Suhareka, without any provocation or legal justification.

544. Given the paucity of evidence in relation to two of the victims in Schedule D, namely Nefije Berisha and Sait Berisha, the Chamber is not satisfied beyond reasonable doubt that these two persons were killed in Suva Reka/Suhareka on 26 March 1999.

b. Displacement from Suva Reka/Suhareka town

545. The Prosecution argues that the police went from house to house in Suva Reka/Suhareka town threatening and expelling people at gunpoint, as well as looting and burning their houses.¹⁴¹⁷ The Pavković Defence, on the other hand, argues that Hysni Berisha's evidence contradicts the allegation that there was a plan to deport people from Kosovo, as he stayed in Prizren and was neither forcibly displaced nor deported. In addition, he was told to return home on more than one occasion.¹⁴¹⁸ The Lukić Defence presents the same argument, and suggests that his evidence shows that the SUP Prizren was urging Kosovo Albanians to return to their homes.¹⁴¹⁹

546. The Chamber is satisfied that the Berishas, together with other residents of the town, were forced to leave their homes and go to either Albania or some other location in late March and early April of 1999. Hysni Berisha, who ended up in Prizren rather than Albania, testified that local policemen and "paramilitaries" were the main forces involved in expelling people from Suva Reka/Suhareka town. Halit Berisha's evidence also implicated the same local policemen in his expulsion from Suva Reka/Suhareka town, which eventually led to him going to Albania. Shyrete Berisha was driven out of the town as a result of the killings of her family, which were, as found, triggered by the PJP and committed by the town's local policemen.

547. The Chamber is also satisfied that many homes in Suva Reka/Suhareka town were burned and looted by the police as testified to by these witnesses. In addition, K83 addressed the issue of looting and testified that, during the period from March through May 1999, a number of "civilians"

¹⁴¹⁷ Prosecution Final Trial Brief, 29 July 2008 (public version), paras. 380–382.

¹⁴¹⁸ Pavković Final Trial Brief, 28 July 2008 (public version), paras. 416–417.

¹⁴¹⁹ Lukić Final Trial Brief, 7 August 2008 (public version), paras. 902–907.

were detained and arrested for looting homes in Suva Reka/Suhareka town and were then imprisoned in Prizren. The majority of these persons, according to K83, were ethnic Serbs.¹⁴²⁰

c. Damage to the mosque in Suva Reka/Suhareka town

548. The Prosecution argues, relying on Halit Berisha and András Riedlmayer, that the minaret of the mosque in Suva Reka/Suhareka was dynamited by “soldiers”, and suggests that there was no legitimate military purpose for this destruction.¹⁴²¹ The Lazarević Defence, disputing any VJ involvement, argues that the VJ was not stationed in the town and notes that the vehicle seen by Halit Berisha following the destruction of the minaret was used by members of police.¹⁴²² In addition, the Lukić Defence challenges Halit Berisha’s evidence on the basis that he did not see how the minaret was destroyed, and argues that the MUP could not have done it as it did not have the necessary equipment.¹⁴²³

549. The Chamber is satisfied that the minaret of the mosque in Suva Reka/Suhareka was destroyed on 28 March 1999, as testified to by Halit Berisha who heard the explosion, noticed that the mosque’s minaret was gone, and then saw a “Gazik” vehicle travelling in the direction of Birač/Biraq, which is also the direction of the OUP building. The Chamber also accepts the evidence given by Riedlmayer, who personally went to Suva Reka/Suhareka town and photographed the damage, to the effect that this damage was caused by an explosion from within the minaret itself. On the basis of all the evidence about the mosque, the Chamber is convinced that it was members of the MUP that damaged it.

d. Displacements from Belanica

550. The Prosecution argues that the crimes in Belanica took place during a joint VJ/MUP action and states that the forces entering the village, having just forced the KLA out of the area, were either “part of the advancing Serb lines or forces that were there as part of a tactical manoeuvre to secure the area”. The Prosecution concedes that the KLA gave orders to the population to move with the KLA, but notes that this was done for security reasons and that the population chose to stay anyway.¹⁴²⁴ The Lazarević Defence argues that the fighting in Belanica was part of a legitimate action against the KLA, and challenges the evidence of both Zogaj and Fondaj on the

¹⁴²⁰ K83, T. 3985 (26 September 2006).

¹⁴²¹ Prosecution Final Trial Brief, 29 July 2008 (public version), paras. 382, 392.

¹⁴²² Lazarević Final Trial Brief, 29 July 2008 (public version), para. 109.

¹⁴²³ Lukić Final Trial Brief, 7 August 2008 (public version), paras. 908–909.

¹⁴²⁴ Prosecution Final Trial Brief, 29 July 2008 (public version), para. 393.

basis of bias. It also refers to the KLA instructing the population to leave the area.¹⁴²⁵ The Pavković Defence argues that the evidence of Shefqet Zogaj should be disregarded in its entirety, due to internal inconsistencies, as well as his bias and hostility. In addition, it points to the Zyrapi order for movement of the population as evidence that the KLA was using the civilian population as a shield.¹⁴²⁶ The Lukić Defence argues that the events in Belanica were a result of KLA activity, and that the aim of the joint VJ/MUP action was to respond to that activity. With respect to the movement of people, the Lukić Defence relies on Delić's combat report and argues that this was not deportation, but rather an evacuation of the population. The Lukić Defence also points to the fact that Fondaj was never told to go to Albania and that the documents of the people in her convoy were not taken away.¹⁴²⁷

551. As stated earlier, the Chamber does not find Shefqet Zogaj's evidence relating to Belanica to be entirely reliable, due to its vagueness on many matters and several internal inconsistencies.¹⁴²⁸ On the other hand, the Chamber accepts the evidence of Bislim Zyrapi that the KLA was withdrawing through Belanica on 1 April 1999, and that it told the local population to move out of the village. The Chamber also accepts his testimony to the effect that some of the population disregarded this order and decided to stay, but is unable to determine the number of the people who remained in Belanica at that time. Given that the whole municipality had 50,000 to 60,000 inhabitants, the Chamber does not accept Zogaj's testimony that some 80,000 people gathered in Belanica. Hamide Fondaj testified that there were thousands of people in Belanica, while a post-operation analysis prepared by Božidar Delić refers to the VJ encountering 30,000 displaced people in that village.¹⁴²⁹ Accordingly, the Chamber finds that the number, although in tens of thousands, was significantly less than the 80,000 referred to by Zogaj.

552. With respect to the shelling of Belanica, the Chamber does not accept Zogaj's claim that the thousands of people who gathered there were shelled by mixed forces of the FRY, since there is no evidence of the extensive casualties one would expect. Indeed, during cross-examination, Zogaj eventually conceded that what was shelled were the outskirts of the village. Even though he denied that this was because of the KLA presence, the Chamber here accepts the evidence of Bislim Zyrapi, together with the order he issued on that day, that the KLA was attacked and was withdrawing through Belanica and into the Berisha mountains which overlook the village. The

¹⁴²⁵ Lazarević Final Trial Brief, 29 July 2008 (public version), paras. 113–124.

¹⁴²⁶ Pavković Final Trial Brief, 28 July 2008 (public version), paras. 419–425.

¹⁴²⁷ Lukić Final Trial Brief, 7 August 2008 (public version), paras. 914–923.

¹⁴²⁸ See para. 467 above.

¹⁴²⁹ P2002 (Analysis of operations of 549th Motorised Brigade, 30 March [sic] 1999), p. 3.

shelling heard by Zogaj and Fondaj on that day could have been connected to fighting between the FRY/Serbian forces and the KLA. This is supported by Božidar Delić's post-operation analysis.

553. As far as the displacements from Belanica are concerned, the Chamber notes that both Zogaj and Fondaj referred to forces consisting of VJ soldiers, policemen, and paramilitaries in and surrounding the village. The Chamber finds that both the VJ and the MUP were present in the area on that day, as confirmed by Delić's order of 29 March 1999,¹⁴³⁰ and his report of 3 April 1999.¹⁴³¹ Indeed, in the latter he mentioned that members of the 5th PJP company and the soldiers of the 15th Armoured Brigade were "joined in Belanica village, where they evacuated and cared for some 30,000 refugees."¹⁴³² The Chamber is unable, however, to conclude whether any paramilitaries were present in the village on that day.

554. Furthermore, the Chamber notes that neither Zogaj nor Fondaj was explicitly told to leave by these forces. Zogaj decided to do so on his own, and even instructed others to do so, while Fondaj testified that the "word spread" that they should all start moving. This is in line with Delić's contemporaneous description of the evacuation of the people from Belanica. However, the Chamber also notes that both Zogaj and Fondaj testified about being robbed by policemen while moving out of Belanica, and is satisfied that such robberies did indeed happen and were committed by members of the police. There is insufficient evidence to conclude that VJ soldiers were involved in this particular activity.

555. The Chamber is thus unable to conclude, beyond a reasonable doubt, that the Kosovo Albanians who were present in Belanica on 1 April 1999 fled the area due to shelling by forces of the FRY and Serbia as alleged in the Indictment. The Chamber is in no doubt, however, that large numbers of Kosovo Albanians moved in groups from and through that location, and that these people were the targets of threats, insults, and robbery committed by police forces operating in the area. In addition, many of them had their identification papers seized from them as they crossed the border into Albania.

G. SRBICA/SKENDERAJ

1. Charges in Indictment

556. The Indictment charges the Accused with responsibility for four different categories of crimes against humanity allegedly committed in the municipality of Srbica/Skenderaj: deportation,

¹⁴³⁰ P2000 (Order of the 549th Motorised Brigade, 29 March 1999).

¹⁴³¹ P2002 (Analysis of operations of 549th Motorised Brigade, 30 March [sic] 1999), p. 3.

¹⁴³² P2002 (Analysis of operations of 549th Motorised Brigade, 30 March [sic] 1999), p. 3.

forcible transfer, murder, and persecution. The alleged murders are also charged as violations of the laws or customs of war.

557. The factual averments are set out in paragraphs 72(c) and 75 (f) of the Indictment, which read as follows:

Beginning on or about 25 March 1999, forces of the FRY and Serbia attacked and destroyed the villages of Vojnikë/Vocnjak, Leocina/Lecine, Kladernica/Klladernicë, Turicevac/Turiçec and Izbica/Izbicë by shelling and burning. Many of the houses, shops and mosques were destroyed, including the mosque in the centre of the village of Cirez/Qirez. Some women and children were taken away by members of the forces of the FRY and Serbia and held in a barn in Cirez/Qirez. The women were subjected to sexual assault, and their money and property were stolen. At least eight of the women were killed after being sexually assaulted, and their bodies were thrown into three wells in the village of Cirez/Qirez. On or about 28 March 1999, at least 4,500 Kosovo Albanians from these villages gathered in the village of Izbica/Izbicë where members of the forces of the FRY and Serbia demanded money from these Kosovo Albanians and separated the men from the women and children. A large number of the men were then killed. The women and children were forcibly moved as a group towards Klina/Klinë, Đakovica/Gjakovë and eventually to the Albanian border.¹⁴³³

On or about 27 March 1999, forces of the FRY and Serbia shelled the village of Izbica/Izbicë (Srbica/Skenderaj municipality) with heavy weapons systems. At least 4,500 villagers from Izbica/Izbicë and surrounding villages took refuge in a meadow in Izbica/Izbicë. On 28 March 1999, forces of the FRY and Serbia surrounded the villagers and approached them, demanding money. After the forces of the FRY and Serbia stole the villagers' valuables, the men were separated from the women and small children. The men were then further divided into two groups, one of which was sent to a nearby hill, and the other was sent to a nearby streambed. The forces of the FRY and Serbia then fired upon both groups of men and at least 116 Kosovo Albanian men were killed. Also on 28 March 1999, the women and children gathered at Izbica/Izbicë were forced to leave the area and walk towards Albania. Two elderly disabled women were sitting on a tractor-trailer unable to walk. Forces of the FRY and Serbia set the tractor-trailer on fire and the two women were burned to death. (Those persons killed at Izbica/Izbicë who are known by name are set forth in Schedule F, which is attached as an appendix to this indictment.)¹⁴³⁴

558. The charged persecution is alleged to have taken the form of the killings at Izbica contained in paragraph 75(f),¹⁴³⁵ sexual assault as referenced in paragraph 72(c),¹⁴³⁶ and the “wanton destruction or damage of Kosovo Albanian religious sites” including a mosque in Cirez/Qirez as described in paragraphs 72(c) and 77(d) of the Indictment.

2. The principal witnesses

¹⁴³³ Indictment, para. 72(c).

¹⁴³⁴ Indictment, para. 75(f).

¹⁴³⁵ Indictment, para. 76.

¹⁴³⁶ Indictment, para. 77(c).

559. A number of witnesses were led by both the Prosecution and the Defence to speak about both the specific crimes alleged to have been committed in Srbica/Skenderaj and the prevailing situation there in 1998 and 1999. In making its findings with respect to the charged killings in Izbica the Chamber considered evidence from three survivors, namely Milazim Thaqi, Mustafa Draga, and Sadik Januzi, as well as from Dr. Liri Loshi who attended the scene after the killings had taken place. Although there were certain differences in their accounts, in particular in respect of their description of the forces involved in the incident, the evidence of the survivors was consistent on the significant elements and the Chamber finds it to be generally reliable.

560. The Chamber notes that Sadik Januzi died before he had the opportunity to give oral evidence but that his two written statements were admitted into evidence.¹⁴³⁷ His account of the killings was largely consistent with that given by Thaqi and Draga and was thus used as corroboration of the events described by them. Januzi's statements also provide an account of his displacement to Albania following the Izbica killings. However, given that this part of his evidence is not corroborated by any other evidence, the Chamber is unable to make any findings adverse to the accused on the basis thereof.

561. Dr. Liri Loshi admitted to being a member of the KLA and was often evasive when asked about the KLA presence in certain areas of the municipality. Accordingly, the Chamber finds his evidence unsatisfactory in relation to KLA activities in the area. However, as far as the burial of bodies in Izbica is concerned, Loshi's evidence is considered to be reliable, confirmed, as it is, by the video footage of the burial and the large volume of forensic material relating to the Izbica killings.

562. Direct evidence relating to the charges of sexual assault in the village of Ćirez/Qirez around mid-April 1999 was given by two eye-witnesses, namely Xhevahire Rrahmani and K24. Their testimony was largely unchallenged and, aside from some discrepancies in the identification of uniforms of the perpetrators of these offences, generally consistent. The Chamber also admitted into evidence certain forensic information relevant to the fate of some of the alleged victims which is consistent with the evidence of Rrahmani and K24. The Chamber, therefore, accepts their evidence.

563. Two witnesses testified about their displacement from villages in Srbica/Skenderaj municipality, namely Hadije Fazliu and Abdullah Salihu. The evidence of Fazliu relates to a different period from the evidence of Salihu. Salihu also testified about the destruction of the

¹⁴³⁷ Decision on Prosecution Motion for Admission of Evidence Pursuant to Rule 92 *quater*, issued on 16 February 2007.

mosque in Ćirez/Qirez. The Chamber finds both to be generally reliable with respect to the events they described.

564. The Chamber also heard from a number of other witnesses who were VJ or MUP personnel, such as Ljubiša Diković, Slađan Pantić, Petar Damjanac, Nebojša Bogunović, and Dragan Živanović, and whose testimony countered certain aspects of the evidence of the witnesses led by the Prosecution in relation to Srbica/Skenderaj. Those parts of their evidence deemed reliable are set out below.

3. Background

565. Srbica/Skenderaj is a large municipality located in central Kosovo.¹⁴³⁸ It forms a part of the geographical region of Drenica, which consists of the triangular area encompassing the municipalities of Srbica/Skenderaj, Klina, and Glogovac/Gllogoc.¹⁴³⁹ The great majority of the population of Srbica/Skenderaj municipality was of Kosovo Albanian ethnicity.¹⁴⁴⁰

566. The main town of the municipality, also called Srbica/Skenderaj, is located roughly in the centre of the municipality. The villages of Izbica, Broćna/Buroja, and Turićevac/Turiçec lie to the west and south-west of the town,¹⁴⁴¹ whereas Ćirez/Qirez is in the eastern part of the municipality, close to Vuçitrn/Vushtrria and Glogovac/Gllogoc municipalities.¹⁴⁴² The area known as the Čičavica/Qiqavica mountains is partially in the eastern part of Srbica/Skenderaj municipality.¹⁴⁴³

567. The Chamber heard evidence that in 1998 and early 1999 the KLA was particularly active in the Drenica operational zone, which covered all of Srbica/Skenderaj and Glogovac/Gllogoc municipalities.¹⁴⁴⁴ Indeed, in 1998 parts of Srbica/Skenderaj had been the site of significant clashes between the KLA and FRY/Serbian forces¹⁴⁴⁵ and, according to Petar Damjanac, chief of Glogovac

¹⁴³⁸ P39 (map of Srbica/Skenderaj).

¹⁴³⁹ Ljubinko Cvetić, T. 8088 (7 December 2006); P39 (map of Srbica/Skenderaj).

¹⁴⁴⁰ Helge Brunborg, P1960 (Report on the size and ethnic composition of the population of Kosovo, 14 August 2002), p. 9.

¹⁴⁴¹ Hadije Fazliu testified that Turićevac/Turiçec is roughly twelve kilometres from Srbica/Skenderaj town. Hadije Fazliu, P2241 (witness statement dated 21 October 2001), p. 2. Milazim Thaqi testified that Izbica is about 5-6 kilometres from Broćna/Buroja. Milazim Thaqi, P2246 (witness statement dated 12 November 1999), p. 3.

¹⁴⁴² P39 (map of Srbica/Skenderaj).

¹⁴⁴³ Abdullah Salihu testified that the Čičavica mountains are located some three kilometres from his village of Baks. Abdullah Salihu, T. 1987 (21 August 2006).

¹⁴⁴⁴ Bislim Zyrapi, T. 5934, 5967 (6 November 2006), T. 6258 (10 November 2006); P2469 (map showing different KLA operational zones). *See also* Dragan Živanović, T. 20440 (17 January 2008); Slađan Pantić, T. 23674–23676 (5 March 2008); P950 (Vladimir Lazarević interview with the Prosecution), e-court pp. 189–190.

¹⁴⁴⁵ *See* Sections VI.B and VI.C. *See also* Slađan Pantić, T. 23675–23676 (5 March 2008); Petar Damjanac, T. 23719–23738 (5 March 2008); 6D1114 (List of civilian victims of terrorism in Kosovo in 1998); 6D1108 (List of police victims of terrorism in Kosovo); 6D1113 (List of missing policemen in Kosovo); 6D202 (RDB Intelligence Report, 6 January 1999), p. 2.

OUP at the time, around 90 per cent of Glogovac/Gllogoc municipality was then under KLA control, including most major roads such as the Srbica/Skenderaj-Glogovac/Gllogoc road.¹⁴⁴⁶ By the end of October 1998 most of the areas held by the KLA had been brought under the control of the FRY/Serbian forces, coinciding with the arrival of the KVM verifiers.¹⁴⁴⁷ Thereafter the KLA re-established control over some of their previously held areas.¹⁴⁴⁸ It was thus particularly concentrated in the area of Drenica,¹⁴⁴⁹ with a number of brigades operating in Gradica, Likovac/Likoc, Donje Prekaze/Prekaz i Poshtëm, Glogovac/Gllogoc, Srbica/Skenderaj town, and Voćnjak/Vojnika.¹⁴⁵⁰ Bislim Zyrapi confirmed that by late March 1999 the KLA was in control of almost the entire Srbica/Skenderaj municipality, including Izbica, Turićevac/Turićec, Kladernica/Klladernica, and Ćirez/Qirez, and that the “frontline” between the KLA and the FRY/Serbian forces ran through Izbica.¹⁴⁵¹ The same villages were also referred to as KLA strongholds by Nebojša Bogunović, the deputy chief of Kosovska Mitrovica SUP responsible for the OUP in Srbica/Skenderaj, who testified that the MUP could not enter this area long before the NATO campaign began.¹⁴⁵² This is further confirmed by a KVM report, which provides that on 4 March 1999 the KLA informed the verifiers that it would not accept a police presence in the territory it controlled, namely the area between Srbica/Skenderaj and Glogovac/Gllogoc, and that it would attack any police convoy attempting to pass through it.¹⁴⁵³

568. The Chamber also heard evidence about the positioning and movement of the FRY/Serbian forces in Srbica/Skenderaj municipality prior to the NATO bombing. PJP reinforcements from Serbia were stationed in the Feronikel factory in Glogovac/Gllogoc already from May 1998, and VJ and MUP forces were concentrated near the village of Poljance/Polac, which is close to Srbica/Skenderaj town.¹⁴⁵⁴ According to the Accused Lazarević, joint operations between the VJ

¹⁴⁴⁶ Petar Damjanac, T. 23738 (5 March 2008).

¹⁴⁴⁷ Bislim Zyrapi, T. 5940–5941 (6 November 2006), T. 6020 (7 November 2006); Slađan Pantić, T. 23674–23675, 23692 (5 March 2008). *See also* Petar Damjanac, T. 23738–23739 (5 March 2008); Dragan Paunović, T. 21873–21881 (7 February 2008), T. 21908–21911 (8 February 2008); 6D700 (Order of the PrK, 24 September 1998).

¹⁴⁴⁸ Klaus Naumann, T. 8263–8266, 8277–8280 (13 December 2006), P1767 (notes of OTP interviews), para. 28. *See also* Petar Damjanac, T. 23740–23742 (5 March 2008), T. 23779–23780 (6 March 2008).

¹⁴⁴⁹ Radojko Stefanović, T. 21648–21650 (5 February 2008); 4D332 (3rd Army Order, 27 January 1999), e-court p. 2.

¹⁴⁵⁰ P2808 (Order of the PrK, 16 February 1999), p. 3; 5D1178 (125th Motorised Brigade Order, 21 February 1999), p. 1. According to John Crosland, who was the Defence Attache at the U.K. Embassy at the time, the KLA had headquarters in Voćnjak/Vojnike and Likovac/Likoc. Crosland also testified that “the Serbs” had good intelligence on the KLA. John Crosland, T. 9898–9899 (8 February 2007), P2645 (witness statement dated 31 October 2006), para. 22.

¹⁴⁵¹ Bislim Zyrapi, T. 5990–5991 (7 November 2006), T. 6242–6244 (9 November 2006); P2447 (map showing KLA positions). *See also* IC105 (Map marked by Zyrapi indicating KLA positions).

¹⁴⁵² Nebojša Bogunović, T. 25128 (10 April 2008), 6D1614 (witness statement dated 2 April 2008), para. 84.

¹⁴⁵³ 6D112 (OSCE’s Background report on compliance by parties, 12 March 1999), p. 2. *See also* Petar Damjanac, T. 23770–23771 (6 March 2008).

¹⁴⁵⁴ Abdullah Salihu, T. 1990 (21 August 2006), P2255 (witness statement dated 24 October 2000), p. 3; Ljubiša Diković, T. 19907, 19957 (10 December 2007); Petar Damjanac, T. 23742–23744 (5 March 2008), T. 23807–23810,

and MUP in 1999 were far smaller in scope than they had been in 1998, and were in KLA “hotbeds”, such as the Drenica area and the wider area of the Čičavica/Qiqavica mountains. In those actions the MUP directly engaged the KLA, while the VJ gave “manoeuvre, movement, and fire support”.¹⁴⁵⁵

569. Ljubiša Diković, who was the commander of the 37th Motorised Brigade of the VJ, whose area of responsibility encompassed Drenica, testified that one combat group from his brigade, Combat Group 37, arrived there on 7 March 1999, while the rest of the brigade, boosted by some 100 to 150 volunteers, joined them by early April.¹⁴⁵⁶ The Combat Group was initially tasked with carrying out intensive combat training in and around its barracks in Kosovska Mitrovica/Mitrovica. Since the combat group was attacked by the KLA from the moment it arrived, it was ordered by the Priština Corps Command to respond.¹⁴⁵⁷

570. Dragan Živanović, the commander of the 125th Motorised Brigade which was also in the area at the time, testified that in the second half of March 1999 the intensity of KLA attacks on the VJ forces in the Drenica region increased.¹⁴⁵⁸ On 18 March 1999 the Accused Lazarević issued a plan of action to defeat the KLA in the sector of northern Drenica and Podujevo/Podujeva.¹⁴⁵⁹ On 19 March a Joint Command order was issued instructing the units of the 37th Motorised Brigade, together with units from the 125th Motorised Brigade, and PJP units from Kosovska Mitrovica/Mitrovica and Peć/Peja, to attack the KLA along the axis of Mikušnica/Mikushnicë, Donje Prekaze/Prekaz i Poshtëm, Poljance/Polac villages, some three kilometres from Ćirez/Qirez.¹⁴⁶⁰ According to Diković’s daily operations report of 20 March 1999, the units of the 37th Motorised Brigade were engaged in “suppressing terrorism along the Balinci village-Ljubovac village-Poljance village axis ... on the order of the PrK commander”.¹⁴⁶¹ The joint forces arrived in the area sometime around 20 or 21 March 1999. They did not see any civilians at this time. Six tanks were used in the operation in order to destroy KLA trenches and other fortified firing points.¹⁴⁶² Units of the 125th Motorised Brigade were to establish a command post in a firearms factory in Srbica/Skenderaj and, in co-ordinated action with the 37th Motorised Brigade and the

23820 (6 March 2008). *See also* P3116 (OUP Glogovac plan to prevent terrorism, 4 December 1998), p. 4; 6D1416 (PrK plan of action, 18 March 1999).

¹⁴⁵⁵ P950 (Vladimir Lazarević interview with the Prosecution), e-court pp. 218–220.

¹⁴⁵⁶ Ljubiša Diković, T. 19870–19872 (10 December 2007), T. 19987–19995 (11 December 2007). *See also* 3D680 (Order of the General Staff for Resubordination of 37th Mtbr/2nd Army, 6 March 1999).

¹⁴⁵⁷ Ljubiša Diković, T. 19926–19931, 19939–19940 (10 December 2007); P2039 (37th Motorised Brigade Operations Report, 20 March 1999).

¹⁴⁵⁸ Dragan Živanović, T. 20460–20461 (17 January 2008); 5D1241 (Video footage of KLA ceremony).

¹⁴⁵⁹ 6D1416 (PrK plan of action, 18 March 1999), p. 1. *See also* P2808 (Order of the PrK, 16 February 1999).

¹⁴⁶⁰ P3049 (Joint Command Order, 19 March 1999), p. 4.

¹⁴⁶¹ P2039 (37th Motorised Brigade Operations Report to PrK, 20 March 1999), p. 2.

MUP forces, were to unblock the axis Klina-Srbica/Skenderaj and Srbica/Skenderaj town. They were then to continue the action of breaking up the KLA forces in the areas of Donje Prekaze/Prekaz i Poshtëm and Poljance/Polac.¹⁴⁶³

4. Evidence of charged crimes

571. There are two major, discrete incidents charged in the Indictment, namely the alleged killings in Izbica in March 1999, and sexual assaults, with associated killings not charged, allegedly committed in Ćirez/Qirez in April 1999. In addition, the Indictment charges forcible displacement crimes with respect to alleged attacks on Vočnjak/Vojnika, Leočina/Leqina, Kladernica/Klladernica, Turićevac/Turiçec, Izbica, and Ćirez/Qirez.

a. Izbica killings

572. As stated in paragraph 559, the Chamber heard evidence about the incident in Izbica described in paragraph 75(f) of the Indictment from three survivors, namely Milazim Thaqi, Mustafa Draga, and Sadik Januzi. As for the aftermath of the killings, the Chamber heard from Dr. Liri Loshi, and also received a large volume of forensic material. The Chamber also has in evidence a number of VJ documents relating to the area in question. As described below in Section VII.P and Annex A, the corpses of some of those killed in Izbica on 28 March 1999 were found in a mass grave in Petrovo Selo, eastern Serbia.

i. Eyewitness accounts

573. In early 1999 Milazim Thaqi, 53 years of age at the time, lived in Broćna/Buroja with his wife and children. According to him, on 25 March 1999 the police set up checkpoints near Jošanica/Jashanica, roughly three kilometres from Broćna/Buroja. The next morning Thaqi and his family went with the other villagers to Izbica because they feared what “the Serbs would do” in the absence of the KVM verifiers.¹⁴⁶⁴ Thaqi denied that they went to Izbica because they were so instructed by the KLA.¹⁴⁶⁵ The Chamber is not persuaded by this denial in light of Bislim Zyrap’s

¹⁴⁶² Ljubiša Diković, T. 19947–19951 (10 December 2007).

¹⁴⁶³ P3049 (Joint Command Order, 19 March 1999), p. 4; Dragan Živanović, T. 20565–20568 (18 January 2008).

¹⁴⁶⁴ Milazim Thaqi, T. 2293 (24 August 2006), P2246 (witness statement dated 12 November 1999), p. 2. *See also* Sadik Januzi, P2525 (witness statement dated 23 April 1999), e-court p. 6.

¹⁴⁶⁵ Milazim Thaqi, T. 2331–2332 (24 August 2006).

testimony confirming the KLA presence in Izbica at the time and its practice of moving the civilian population with its fighters.¹⁴⁶⁶

574. Mustafa Draga, 61 years of age in 1999, was from the village of Leočina/Leqina, which lies north-west of Srbica/Skenderaj town.¹⁴⁶⁷ He testified that on 25 March 1999 his and the nearby villages were shelled, but he did not see those responsible for it. Other evidence in this case, however, would point to the VJ.¹⁴⁶⁸ The next day the shelling commenced before dawn and the villagers decided to go to Izbica because, according to Draga, they felt they would be safe there.¹⁴⁶⁹ On cross-examination Draga denied that there were many KLA fighters in the mountains and the woods in this period, but did accept that there were a few. He also denied that there was a KLA presence in Izbica.¹⁴⁷⁰ However, in light of Zyrapi's evidence referred to above, the Chamber is not persuaded by Draga's denial of the KLA presence in the village.

575. On 26 March both men saw a large number of displaced people gathered in a field on the outskirts of Izbica. The people in the field had come from different villages in the municipality and were mostly children, women, and elderly men. Young men, including Draga's sons, had gone into the mountains because they thought that they would be killed if they stayed. Shelling and shooting could be heard for the next two nights. Thaqi denied that that was the result of fighting between the KLA and the FRY/Serbian forces. He also testified that he could hear "the sound of Serbs in the woods" as they started to surround the village. They came from the direction of Jošanica/Jashanica and Belica on foot. On 27 March Draga saw that the villages around Izbica, namely, Broćna/Buroja, Voćnjak/Vojnika, Donja Klina/Klina e Poshtme, Jošanica/Jashanica, and Ozrim were on fire.¹⁴⁷¹

576. On the morning of 28 March 1999 Thaqi saw three "paramilitaries" wearing black uniforms setting fire to a haystack about 150 metres away from the field where he and the other villagers were gathered. The paramilitaries then came over to them and demanded money.¹⁴⁷² Moments later around 80 more men, whom Thaqi described in court as policemen, VJ soldiers, and paramilitaries acting together, approached on foot and surrounded the people in the field. All were armed with automatic guns and many had hand grenades and knives hanging from their uniforms.

¹⁴⁶⁶ Bislim Zyrapi, T. 5990–5991, 6002–6003 (7 November 2006), T. 6242–6244 (9 November 2006); P2447 (map showing KLA positions). *See also* IC105 (Map marked by Zyrapi indicating KLA positions).

¹⁴⁶⁷ Mustafa Draga, T. 2345 (25 August 2006), P2244 (witness statement dated 13 November 1999), p. 2.

¹⁴⁶⁸ *See paras.* 594–600 below.

¹⁴⁶⁹ Mustafa Draga, T. 2347–2348 (25 August 2006), P2244 (witness statement dated 13 November 1999), pp. 2–3.

¹⁴⁷⁰ Mustafa Draga, T. 2376–2380 (25 August 2006).

¹⁴⁷¹ Milazim Thaqi, T. 2293, 2321 (24 August 2006), P2246 (witness statement dated 12 November 1999), p. 3; Mustafa Draga, T. 2350 (25 August 2006), P2244 (witness statement dated 13 November 1999), p. 3.

¹⁴⁷² Milazim Thaqi, T. 2294, 2334 (24 August 2006), P2246 (witness statement dated 12 November 1999), p. 3.

Thaqi could hear more men in the woods around the field.¹⁴⁷³ In his written statement, taken earlier for the purposes of the *Milošević* trial, Thaqi referred to the three men, as well as the other forces involved, as policemen. He also said that many of them wore blue camouflage uniforms and then continued to refer to the forces involved as the police.¹⁴⁷⁴ In the *Milošević* trial, Thaqi was not asked who the forces were.¹⁴⁷⁵ Given that his testimony in court was the first time he mentioned VJ soldiers in this context, Thaqi was cross-examined on this aspect of his evidence but was adamant that he had been consistent throughout.¹⁴⁷⁶

577. Draga described the same moment, and said that he saw approximately 200 to 300 “Serb forces” advancing towards the field on foot, surrounding the people, and demanding money from them. A “policeman” demanded money from Draga who denied having any and was then hit with a gun.¹⁴⁷⁷ Draga’s statement records him as saying that some of these forces wore green camouflage uniforms whereas others wore blue camouflage uniforms, but that all had the words “Milicija” on their uniform sleeves, near the shoulder, and that they were all members of the police.¹⁴⁷⁸ While giving his evidence in court, however, Draga stated that these forces were police and army forces, but that he and the people around him did not dare look at them. When questioned further by the Prosecution, he said that the men closest to him, those he could see, wore green camouflage uniforms.¹⁴⁷⁹ On cross-examination, he stated that he did not know what was written in the statement and that he had simply said that the forces in question were police forces.¹⁴⁸⁰

578. After money had been taken from the people in the field, the men were separated from the women and children and were made to sit on the road in four rows. The women were told that they were all going to Albania. Thaqi was kicked, and he saw a young man being struck with the butt of a gun. Of the total of over 150 men sitting on the road Thaqi was among the youngest, as the others

¹⁴⁷³ Thaqi said that 25 of the 80 men wore blue camouflage uniforms, while others were dressed like “paramilitaries”, that is, they had a “head-piece with a visor”. There was a third group, according to him, wearing regular VJ uniforms. He also mentioned another group of men who wore black scarves around their necks. Milazim Thaqi, T. 2295–2296, 2325 (24 August 2006).

¹⁴⁷⁴ Milazim Thaqi, P2246 (witness statement dated 12 November 1999), pp. 3–4.

¹⁴⁷⁵ P2447 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T).

¹⁴⁷⁶ Milazim Thaqi, T. 2325 (24 August 2006).

¹⁴⁷⁷ Mustafa Draga, T. 2352–2353 (25 August 2006), P2244 (witness statement dated 13 November 1999), pp. 3–4.

¹⁴⁷⁸ Mustafa Draga, P2244 (witness statement dated 13 November 1999), p. 3. The Chamber notes earlier evidence that the uniforms with the word “Milicija”, which means “police”, were phased out in 1997 and replaced with uniforms that used the word “Policija”. However, the Chamber also notes that it received evidence that the old uniforms continued to be used in 1998 and even in 1999. *See* Section VI.A.3.

¹⁴⁷⁹ Mustafa Draga, T. 2351–2352 (25 August 2006).

¹⁴⁸⁰ Mustafa Draga, T. 2399–2400 (25 August 2006).

were aged 50 and upwards.¹⁴⁸¹ A man who appeared to be in charge was walking up and down and issuing orders to others. At other times he would mock them, asking them “Where is NATO now? Where is Clinton?” He also ordered the men to take their traditional *plis* hats off, throw them on the ground, and then put the muddy *plis* hats back on their heads. They were also forced to give the Serb three fingered sign. One of the policemen put a knife to his throat saying it was a good knife for cutting throats.¹⁴⁸² According to Thaqi’s statement, this man was a “policeman” who was around 27 years of age and was wearing a green or olive coloured camouflage uniform. He had insignia on the sleeve of each arm, near the shoulder, and was carrying a gun. He also had two radios on his chest and was talking continuously into them.¹⁴⁸³ While recounting the description of this man in court, Thaqi said that the insignia was one the “Yugoslav soldiers” wore. When asked why he failed to mention this in his earlier statements, and instead identified this individual as a “policeman”, Thaqi responded that this person was wearing Yugoslav colours and was not a policeman. He then said that he did not know who this man was but that he spoke Serbian and must have been a soldier.¹⁴⁸⁴ Draga, on the other hand, when describing the same man in his statement, said that he was slightly older than the rest of the forces, and wore a blue camouflage uniform with a blue helmet.¹⁴⁸⁵ In his oral testimony he stated that the men who separated them wore green camouflage uniforms and that one of them had a black uniform. In addition, he repeated that he was afraid to look at the men in question and that he did not pay attention to their uniforms.¹⁴⁸⁶ He was asked further questions about the man during cross-examination and said that he did not look at him or his uniform properly. He repeated the same for the forces in Izbica generally, but was nevertheless adamant that the forces consisted of the army and police.¹⁴⁸⁷

579. This man in charge then counted the Kosovo Albanian men, split them into two groups, and sent them off in two directions, telling his men that they knew their “duty”. Thaqi was in the smaller of the two groups, consisting of some 33 men, while Draga and Januzi were in the larger group of approximately 70 men. Draga remembered the names of 14 other men who were in his group, namely Rustem Draga, Hajriz Draga, Ali Draga, Cen Draga, Murat Draga, Ismet Draga, Idriz Shala, Zymer Shala, Sali Shala, Halim Shala, Kutim Shala, Smajl Çela, Metush Çela, and

¹⁴⁸¹ Milazim Thaqi, P2246 (witness statement dated 12 November 1999), p. 3; Mustafa Draga, T. 2351–2354 (25 August 2006), P2244 (witness statement dated 13 November 1999), pp. 3–4.

¹⁴⁸² Milazim Thaqi, P2246 (witness statement dated 12 November 1999), pp. 3–4; Mustafa Draga, T. 2352, 2355 (25 August 2006), P2244 (witness statement dated 13 November 1999), p. 4. *See also* Sadik Januzi, P2525 (witness statement dated 23 April 1999), e-court pp. 6–7.

¹⁴⁸³ Milazim Thaqi, P2246 (witness statement dated 12 November 1999), p. 4.

¹⁴⁸⁴ Milazim Thaqi, T. 2297, 2313–2317 (24 August 2006).

¹⁴⁸⁵ Mustafa Draga, P2244 (witness statement dated 13 November 1999), p. 4.

¹⁴⁸⁶ Mustafa Draga, T. 2355 (25 August 2006).

¹⁴⁸⁷ Mustafa Draga, T. 2386–2387 (25 August 2006).

Rexh Çela.¹⁴⁸⁸ With the exception of Kutim Shala, all are listed in Schedule F of the Indictment.¹⁴⁸⁹

580. Thaqi's group was told that they were going to Peć/Peja. They were then led off, two abreast, escorted by one of the "policemen" wearing a green camouflage uniform and black gloves. He had a machine gun and knives and an axe attached to his uniform. After about 200 metres they came alongside a water channel and the "policeman" ordered the group to stop and kneel down, which they did in two lines. Thaqi was in the first line, with a row of men behind him. They all faced the woods which were only metres away. The "policeman" then started shooting at the men, firing three bursts from his machine gun.¹⁴⁹⁰

581. Two men behind Thaqi fell against him and knocked him to the ground, eventually landing on top of him and covering him completely. One was his cousin, Uke Uka, aged 74 from Broćna/Buroja, and the other was 63 year old Isuf Shala, also from Broćna/Buroja. Both are listed victims in the Indictment. Thaqi testified that he later discovered bullet holes in his own clothes but that he was neither hit nor injured.¹⁴⁹¹ Several minutes later he heard moaning coming from a man he recognised as Demush Asllani from Izbica, who died shortly after. Sheqir Halil from Voćnjak/Vojnika then told Thaqi to stay calm, which he did for another half an hour. During that time Thaqi could hear the sound of automatic gunfire coming from the direction in which the other group of men had been taken.¹⁴⁹² At around 11:30 a.m., he, Halil, and another survivor made their way into the woods from where they could see approximately 100 policemen about 100 metres away.¹⁴⁹³

¹⁴⁸⁸ Milazim Thaqi, P2246 (witness statement dated 12 November 1999), p. 4; Mustafa Draga, T. 2353–2354 (25 August 2006), P2244 (witness statement dated 13 November 1999), p. 4; Sadik Januzi, P2525 (witness statement dated 23 April 1999), e-court p. 7. The Chamber notes that Draga's statement also lists names of "Sofie Draga" and "Zhde Draga" amongst the group of men who were with him when they were executed. However, those two names refer to two women both of whom, according to Draga and other evidence, were killed on the day but were not amongst the group of men taken with Draga. As will be seen below, Draga himself testified that he saw the corpse of a "Zade Dragaj" later on, while the Chamber has received other evidence about Sofije Draga. Accordingly, the Chamber is of the view that the inclusion of two female names amongst the group of men was most likely a mistake made by those taking the statement from Draga.

¹⁴⁸⁹ The Chamber notes here the discrepancy between the Albanian version of Draga's statement, which refers to "Smajl Cela" and the English version which refers to "Smajc Çela". Given that "Cela" is sometimes spelled as "Qelaj", and that the Albanian version of the statement is probably more accurate, the Chamber is of the view that the reference to "Smajl Cela" is actually a reference to the scheduled victim "Ismajl Qelaj". For the same reasons, "Metush Çela" and "Rexh Çela" are scheduled victims "Metush Qelaj" and "Rexhep Qelaj".

¹⁴⁹⁰ Milazim Thaqi, T. 2297–2298 (24 August 2006), P2246 (witness statement dated 12 November 1999), pp. 4–5.

¹⁴⁹¹ Milazim Thaqi, P2246 (witness statement dated 12 November 1999), p. 5; P227 (Photographs of Thaqi's shirt and bullet holes).

¹⁴⁹² Milazim Thaqi, T. 2299–2304 (24 August 2006), P2246 (witness statements dated 12 November 1999), p. 5, P2246 (witness statement dated 20 October 2001), pp. 2–3; P244 (Aerial photograph showing different locations of execution of more than 150 men).

¹⁴⁹³ Milazim Thaqi, T. 2298–2300 (24 August 2006), P2246 (witness statement dated 12 November 1999), p. 5.

582. The second group of men, including Draga and Januzi, walked some 500 metres up the hill, from where Draga could see tanks close by in the woods. There was approximately one policeman for every five of the captured men. One of the policemen shouted for the men to stop and face him. When he turned around, Draga saw approximately 30 policemen standing about three metres away, who opened fire. Draga was somewhere in the middle of the group; Hajriz Draga was to his right. As soon as the shooting started, he dropped to the ground and Hajriz Draga fell on top of him. The automatic gunfire continued for some two minutes. Once it stopped, Draga, who remained uninjured, lay still for 20 to 30 minutes, during which time he heard automatic gunfire some distance away and saw “the police” setting fire to houses in Izbica. He heard Hajriz Draga, who was wounded and died some time later, asking for water.¹⁴⁹⁴ Januzi recounted the same event in his witness statement and explained that he survived because he fell on the ground before being shot and because three bodies fell on top of him.¹⁴⁹⁵

583. When they felt it was safe to do so, both Draga and Januzi crawled to the woods and met up with other survivors. Januzi specifically mentioned seeing Draga and, two days later, Thaqi as well. The “police” left Izbica on 30 March. The following morning people came to bury the dead. In addition to the men who had been executed in this way, the bodies of two old men and two old women were found in the field near the tractors. According to Draga, they were killed because they could not walk. One was a 70 year old woman by the name of Zoje Osmana, who was found burnt on a trailer.¹⁴⁹⁶ Draga also identified Shaban Muslia and Zeqir Salihi, and testified that the fourth body was that of a woman from Voćnjak/Vojnika. He also referred to two other female victims whom he saw, namely Zade Dragaj and Ashe Dragaj who, he said, were “killed en route”.¹⁴⁹⁷ The combined evidence of all three survivors indicates that, altogether, 14 men survived this incident.¹⁴⁹⁸

584. From his hiding place in the woods Thaqi could see fires in a village about two to three kilometres away, and assumed that these had been started by the policemen whom they had seen in the woods. At 7:00 p.m. that night he and Halil set off to Halil’s house in Voćnjak/Vojnika. While passing Izbica school they saw policemen in and around it. When they arrived in Voćnjak/Vojnika,

¹⁴⁹⁴ Mustafa Draga, T. 2355–2358 (25 August 2006), P2244 (witness statement dated 13 November 1999), pp. 4–5.

¹⁴⁹⁵ Sadik Januzi, P2525 (witness statement dated 23 April 1999), e-court p. 7.

¹⁴⁹⁶ Mustafa Draga, T. 2359–2360 (25 August 2006), P2244 (witness statement dated 13 November 1999), p. 5; Sadik Januzi, P2525 (witness statement dated 23 April 1999), e-court p. 7.

¹⁴⁹⁷ Mustafa Draga, T. 2360 (25 August 2006).

¹⁴⁹⁸ The 14 men include Thaqi, Draga, and Januzi, as well as other 11 men.

Halil's house was on fire. The village was completely deserted with the exception of two elderly women.¹⁴⁹⁹

585. On 31 March Thaqi learned that "the Serbs" had left Izbica and that the burial of the victims, organised by the KLA, was taking place there. He went, therefore, to Izbica to assist. He saw about 150 to 200 people digging graves and moving bodies.¹⁵⁰⁰ This was filmed by a friend of Liri Loshi.¹⁵⁰¹ Altogether, according to Thaqi and Draga, 144 to 147 people were buried at the site, while other bodies were taken elsewhere by their families.¹⁵⁰² A detailed list of the dead was made by Sadik Xhemajli.¹⁵⁰³ The graves were each marked by a numbered wooden stake.¹⁵⁰⁴ When asked whether he saw any younger men among the dead, Draga responded that there were some young people there but that none were KLA members.¹⁵⁰⁵ Following the burial those who remained went to the mountains. According to Draga, on 10 May 1999 more men were killed in Izbica by "the Serbs". They were buried at the same site as the earlier victims. Additional bodies brought from other locations were also buried in that location over a period of several months.¹⁵⁰⁶

586. Draga and hundreds of others remained in the woods near Izbica for several weeks. Sometimes they went without food for days.¹⁵⁰⁷ Although he did not see it himself, Draga testified that he knew that on 28 May 1999 the exhumation of bodies from the gravesite was started by the "Serbian police and army" and lasted some four to five days. Once it was over, Draga went to the location and saw that none of the bodies remained, although he did find traces such as clothing and a severed hand.¹⁵⁰⁸ He and the others left the woods in June 1999 when the NATO forces arrived in Kosovo. Upon returning to his village he found that his house had been burned. His family joined him some time later, and told him that it had taken them 12 days to walk to Albania.¹⁵⁰⁹

587. Thaqi and his family were reunited in Tušilje/Tushila on 7 April 1999. He learned from them that they had spent six days walking towards Albania before being turned back by "the Serbs"

¹⁴⁹⁹ Milazim Thaqi, P2246 (witness statement dated 12 November 1999), pp. 5–6.

¹⁵⁰⁰ Milazim Thaqi, P2246 (witness statement dated 12 November 1999), p. 6.

¹⁵⁰¹ Liri Loshi, P2436 (Rule 92 *bis* package), e-court p. 13.

¹⁵⁰² Mustafa Draga, P2244 (witness statement dated 13 November 1999), p. 5; Milazim Thaqi, P2246 (witness statement dated 12 November 1999), p. 6.

¹⁵⁰³ Draga's statement provides that Sadik Xhemajli was a local KLA commander. However, during cross-examination, Draga stated that this must have been a mistake because he had never said that this individual was a local KLA commander. Mustafa Draga, T. 2371–2372 (25 August 2006), P2244 (witness statement dated 13 November 1999), p. 5.

¹⁵⁰⁴ Milazim Thaqi, T. 2292–2293, 2304–2305, 2311 (24 August 2006), P2246 (witness statement dated 12 November 1999), p. 6; Mustafa Draga, T. 2361–2362 (25 August 2006), P2244 (witness statement dated 13 November 1999), p. 5.

¹⁵⁰⁵ Mustafa Draga, T. 2404–2405 (25 August 2006).

¹⁵⁰⁶ Mustafa Draga, T. 2362, 2388 (25 August 2006), P2244 (witness statement dated 13 November 1999), p. 5.

¹⁵⁰⁷ Mustafa Draga, P2244 (witness statement dated 13 November 1999), p. 5.

¹⁵⁰⁸ Mustafa Draga, T. 2362–2364, 2389–2390, 2405, 2407–2408 (25 August 2006).

and made to walk for six days back to Kladernica/Klladernica. They returned to Broćna/Buroja in mid-June to find their house burnt and their property destroyed.¹⁵¹⁰ Shortly thereafter Thaqi was visited by journalists from the BBC. He took them to Izbica to show them the burial site but, once there, discovered that the bodies had been exhumed and removed. However, some body parts and bones remained. Several weeks later a man told Thaqi that he was on the mountain above the burial site around 28 May 1999 and that he saw “the police and the army” removing the bodies.¹⁵¹¹

588. The survivors’ accounts of the killings at Izbica were confirmed by Liri Loshi, who was not present when they took place, but who, together with his friend, filmed the bodies and their burial. According to Loshi, on 25 March 1999 people from Srbica/Skenderaj municipality started to concentrate in the Izbica valley, and by 26 March about 25,000 people were gathered there. He also explained, however, that, on the day when the men were separated from the women, this number was somewhere between 3,500 and 4,000, as many had already decided to go to the nearby village of Tušilje/Tushila. Loshi was in Tušilje/Tushila around that time and found approximately 30,000 displaced people there, “99 % civilians but also some KLA soldiers”.¹⁵¹²

589. Loshi testified that he had heard about the killings at Izbica on the day that they happened from women and children who came to Tušilje/Tushila and reported what had occurred. On 29 March, sometime in the evening, when the “Serbian forces” approached Tušilje/Tushila, he decided to move to the nearby village of Gornji Obilić/Kopiliq i Eperm. While hiding in the mountains above the village, he observed “green coloured Serbian army trucks and tanks” at “Vojnik hill”. In the evening of 30 March Tušilje/Tushila was shelled. That same evening Loshi went to Izbica with Shaban Dragaj, who was a commander of the 112th KLA brigade. They were met on arrival by Naim Rexhepi, a “leader of the village of Izbica”, who took them to the scene of the killings. Because it was late in the evening, they decided to come back the next morning and record the burial with Sefedin Thaqi’s video camera.¹⁵¹³

590. The following morning Loshi returned to Izbica valley and saw many dead bodies scattered around two different locations. While Loshi attended to the people in the area, Sefedin Thaqi filmed the bodies at the sites where they had been killed and filmed them again when they were brought to the graveside. He walked from body to body, followed by the relatives of the victims

¹⁵⁰⁹ Mustafa Draga, T. 2364–2365 (25 August 2006), P2244 (witness statement dated 13 November 1999), p. 5.

¹⁵¹⁰ Milazim Thaqi, T. 2292 (24 August 2006), P2246 (witness statement dated 12 November 1999), p. 6.

¹⁵¹¹ Milazim Thaqi, T. 2312, 2326–2329, 2336 (24 August 2006).

¹⁵¹² Liri Loshi, P2436 (Rule 92 *bis* package), e-court p. 13, P2437 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 9448–9450.

¹⁵¹³ Liri Loshi, T. 5355–5357 (26 October 2006), P2436 (Rule 92 *bis* package), e-court p. 13, P2437 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 9457.

and others who could identify each one. He then, where possible, said the name, age, and place of residence of the victims. Milazim Thaqi was also interviewed and explained what had happened to him. In all, the video was recorded over a period of two days. This video, supporting Loshi's account, was partly shown in the courtroom and admitted into evidence.¹⁵¹⁴ In addition, a list of the victims was prepared by Afrim Xhemajli and passed on to Loshi. Of the 127 entries on that list, 111 relate to victims named in Schedule F.¹⁵¹⁵

591. According to Loshi, the dead men were mostly elderly, with the average age somewhere between 60 and 70 years. The injuries they sustained were mostly caused by bullets, as a result of which their faces were disfigured. Loshi observed that there were some 60 to 70 corpses in the first location and that he recognised many of them, although he did not know all their names. He named Ilaz Bajra, Metush Qelaj, and referred to Ilaz Bajra's cousins. Among the second group of corpses Loshi recognised three of his own relatives: 82 year old Selman Loshi; Selman's son, 50 year old Jashari Loshi; and Jashari's son, 25 year old Sami Loshi. Loshi also saw the corpse of one female who appeared to have been burnt on a tractor.¹⁵¹⁶

592. Loshi testified that the people in charge of the burial were Naim Rexhepi, Afrim Xhemajli, and Sadik Xhemajli.¹⁵¹⁷ He also confirmed the presence of KLA members, but was adamant that none of the men killed on 28 March was in the KLA. The bodies were buried in 127 graves dug very close to the valley in which the displaced people had congregated before the FRY/Serbian forces arrived. A few additional corpses found in other locations within Izbica, including two KLA soldiers (Ajet Beqiri and Zaim Bajrami) killed on 27 March 1999, were among the 127 buried. Loshi estimated the total number of victims from the two execution sites to be somewhere between 110 and 120.¹⁵¹⁸

¹⁵¹⁴ Liri Loshi, T. 5355–5359 (26 October 2006), P2436 (Rule 92 *bis* package), e-court pp. 13–38, P2437 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 9441, 9451; P232 (tape showing bodies and burial); P230 (still photographs of bodies found in Izbica created from the video); P231 (still photographs of bodies found in Izbica).

¹⁵¹⁵ P2436 (Rule 92 *bis* package), e-court pp. 8–9.

¹⁵¹⁶ Liri Loshi, T. 5360–5363 (26 October 2006), P2437 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 9428–9429, 9482–9483.

¹⁵¹⁷ Liri Loshi, P2436 (Rule 92 *bis* package), e-court p. 15.

¹⁵¹⁸ Liri Loshi, T. 5364–5369, 5392–5394 (26 October 2006), P2436 (Rule 92 *bis* package), e-court p. 37, P2437 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 9438–9439. According to Loshi, only Ajet Beqiri, one of the two KLA men killed on 27 March and buried at the site, was wearing a KLA uniform when he was buried. When confronted with his statement which contains a table with descriptions of all the bodies and, more specifically, a description of two bodies which were wearing clothes that could be described as parts of a uniform, Loshi explained that he did not write the descriptions himself but that these were done by the investigator who viewed the tape, as explained in his statement, and that he could not say whether the clothes the two men were wearing were indeed a uniform. Liri Loshi, T. 5397–5403 (26 October 2006); P2436 (Rule 92 *bis* package), e-court p. 34, P2437 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 9478–9479, 9483. The Chamber has carefully analysed the said footage and notes that both descriptions refer to one body, that of an elderly man with a green overcoat, which does not appear to be a uniform. In addition, the man in question is too old to be a KLA fighter.

593. Loshi remained in Izbica for another month following the burial. He left the village on 3 May 1999 and went to Albania via Montenegro. Once there he distributed copies of the video to the Temporary Government of Kosovo and a CNN representative in Tirana. On 19 May 1999 he gave the original video-tape to a Tribunal investigator whom he met in Tirana.¹⁵¹⁹ When Loshi returned to Izbica in June 1999, he found neither graves nor bodies. He was told that FRY/Serbian forces had removed the bodies before the NATO forces entered Kosovo.¹⁵²⁰

ii. VJ/MUP activities in the area at the time of the killings

594. A number of VJ orders and combat reports in evidence confirm that a joint VJ/MUP action was proceeding in Srbica/Skenderaj municipality during the time the Izbica killings took place. On 22 March 1999 the Joint Command issued a “decision” to destroy the “ŠTS” in the sector of Lower Drenica. The “decision” anticipated an attack in the eastern part of Srbica/Skenderaj, on the axis of Poljance/Polac-Trstenik/Tërstenik-Prelovac/Prelloc-Likošane/Likoshan villages. The VJ forces involved in this attack in Srbica/Skenderaj municipality were to be the 37th Motorised Brigade and the 125th Motorised Brigade. Also participating in this action were seven PJP companies, two of which were to co-ordinate with the 37th Motorised Brigade.¹⁵²¹

595. On 24 March 1999 another order was issued by the Joint Command for VJ units to provide support to the MUP in defeating and destroying the “ŠTS” in the Drenica sector (“Operation Drenica”). According to the order, the objective was to seal off the “ŠTS” in the general sector of a number of villages, including Kladernica/Klladernica, Turičevac/Turičec, Voćnjak/Vojnika, and Broćna/Buroja.¹⁵²² Diković acted upon this order, moving his command post to the area of Rudnik/Runik, a village in the northwest of Srbica/Skenderaj municipality. He also engaged his combat group along the axis of Rudnik/Runik, Vitak, Kladernica/Klladernica, Voćnjak/Vojnika, and Broćna/Buroja villages, as recorded in the order and in the brigade’s daily operations reports.¹⁵²³ The combat group was in the area for a number of days and stopped at a point

¹⁵¹⁹ Liri Loshi, P2436 (Rule 92 *bis* package), e-court pp. 14–15.

¹⁵²⁰ Liri Loshi, T. 5369–5370 (26 October 2006).

¹⁵²¹ Ljubiša Diković, T. 19879, 19955–19960, 19964–19966 (10 December 2007), T. 20018–20020 (11 December 2007); P2031 (Joint Command Decision, 22 March 1999), pp. 2–4; 5D276 (PrK Command Plan of Action, 22 March 1999), p. 1; P2042 (37th Motorised Brigade Operations Report to PrK, 23 March 1999); P2043 (37th Motorised Brigade Operations Report to PrK, 25 March 1999); 5D463 (125th Motorised Brigade Operations Report to PrK, 24 March 1999); IC159 (Map marked by Diković indicating movement of his and other VJ forces and the line reached during the action); IC160 (Map marked by Diković indicating KLA positions); IC161 (Map marked by Diković indicating KLA positions in relation to the line reached by Diković’s unit).

¹⁵²² Ljubiša Diković, T. 19981 (11 December 2007); P1968 (Joint Command Order, 24 March 1999).

¹⁵²³ Ljubiša Diković, T. 19969–19972 (10 December 2007); P1968 (Joint Command Order, 24 March 1999), pp. 4–5; P2043 (37th Motorised Brigade Operations Report to PrK, 25 March 1999); P2045 (37th Motorised Brigade Operations Report to PrK, 27 March 1999).

overlooking Voćnjak/Vojnika.¹⁵²⁴ Diković testified that the combat group engaged the KLA in the designated area in support of the MUP and had probably used tanks to destroy the KLA firing points established on the axis of the attack.¹⁵²⁵

596. According to the same order, the other VJ units which had a significant presence in the area during “Operation Drenica” were the 125th Motorised Brigade and the 15th Armoured Brigade. The former was to support the MUP forces on the axis of Gornja Klina/Klina e Epërme-Lauša/Llausha-Turićevac/Turiçec-Kruševac/Krushec-Rezala/Rrezalla-Donji Obilić/Kopiliq i Poshtëm villages, that is located south of Izbica.¹⁵²⁶ Živanović testified that two of his combat groups reached the village of Rezala/Rrezalla but stopped there, after which they returned to their starting point in the Gornja Klina/Klina e Epërme area. According to Živanović, during this action KLA forces were present in, among others, the villages of Izbica, Voćnjak/Vojnika, Broćna/Buroja, Lauša/Llausha, and Tušilje/Tushila. At that stage the total number of the KLA forces outnumbered the 700 VJ and MUP troops in the area.¹⁵²⁷

597. According to the 37th Motorised Brigade’s daily operations report of 27 March 1999, during this action Combat Group 37 was fired upon mostly from the north-western part of Drenica, which was the area controlled by the KLA, including from Izbica.¹⁵²⁸ The daily operations report of 28 March stated that in the previous 24 hours the combat group had been fired upon by the KLA throughout the area of movement, and that the strongest fire came from Voćnjak/Vojnika.¹⁵²⁹ Diković explained that the general objective was to neutralise the KLA and not capture or attack any villages. However, he explained that, if the KLA was launching attacks from villages, his units would open fire in order to neutralise them. The artillery firing positions were always outside of populated areas as that was the only way in which they could function.¹⁵³⁰ Diković denied ever entering Izbica and Voćnjak/Vojnika with his unit and also denied that his unit opened fire on Izbica. They stopped at least one kilometre away from Izbica, in a position from which they could not see the village.¹⁵³¹

¹⁵²⁴ Ljubiša Diković, T. 19887–19888 (10 December 2007); IC157 (Map marked by Diković indicating movements of his brigade).

¹⁵²⁵ Ljubiša Diković, T. 19971–19977 (10 December 2007).

¹⁵²⁶ P1968 (Joint Command Order, 24 March 1999), p. 5.

¹⁵²⁷ Dragan Živanović, T. 20467–20470 (17 January 2008); IC164 (Map marked by Živanović indicating the positions of the forces of 125th Motorised Brigade and the KLA); P2033 (125th Motorised Brigade Operations Report to PrK, 28 March 1999).

¹⁵²⁸ Ljubiša Diković, T. 19884–19887 (10 December 2007); P2045 (37th Motorised Brigade Operations Report to PrK, 27 March 1999), p. 1; IC156 (Zyrapı’s map marked by Diković to indicate KLA controlled area around Izbica).

¹⁵²⁹ P2046 (37th Motorised Brigade Operations Report to PrK, 28 March 1999), p. 1.

¹⁵³⁰ Ljubiša Diković, T. 19953–19954 (10 December 2007), T. 19981–19983, 20005–20007 (11 December 2007).

¹⁵³¹ Ljubiša Diković, T. 20016–20017 (11 December 2007).

598. The report of 28 March also recorded that “in the forthcoming operations in the Voćnjak village sector, we expect to encounter shelters with several thousand civilian refugees”.¹⁵³² Thus, Diković asked for instruction on “what to do with them because the unit has neither the force nor the means to seal off the shelters and escort the refugees outside the zone of [combat operations]”.¹⁵³³ He explained that he was simply expressing a possibility which he thought was real given the large size of the KLA forces in the area and their strategy of using civilians as a shield.¹⁵³⁴ As a result of this request, an officer from the Priština Corps was sent and told Diković that, if any civilians were to appear, his unit was to stop its activities and send them along a secure axis towards a safe area. The MUP would be in charge of doing this and assisting the civilians. When asked if this had ever happened, he first said that his combat group never encountered civilians in the area.¹⁵³⁵ However, he later stated that in Izbica itself, “we stopped our firing and took people out” and then added that a MUP unit was in front of him at the time.¹⁵³⁶ He confirmed this contact with civilians again later, by saying that he stopped the action because the forces came across civilians in the area of Izbica and that, for that reason, he turned back towards Srbica/Skenderaj instead of moving forward to Broćna/Buroja, as envisaged.¹⁵³⁷

599. Slađan Pantić, a policeman from the village of Rudnik/Runik in the north-western part of the municipality, confirmed Diković’s evidence at least so far as some of the VJ forces not entering Voćnjak/Vojnika nor going to Broćna/Buroja is concerned. Pantić was given an assignment by his chief to act as a guide for the PJP and VJ forces during the action.¹⁵³⁸ On 25 March 1999 he and one PJP company, together with one VJ tank and its crew of VJ soldiers, set off from Rudnik/Runik in the direction of Turićevac/Turičec to the south.¹⁵³⁹ The PJP company had approximately 100 members wearing green camouflage uniforms with clearly visible “police” insignia. However, Pantić was unable to say which PJP unit it was, and also had no specific knowledge of the brigade to which the VJ tank crew belonged.¹⁵⁴⁰ Pantić chose the best route after learning of their destination from a PJP platoon commander. He could not remember the name of the officer in question nor did he know how this officer communicated with the VJ members participating in the action.¹⁵⁴¹ When asked by the Chamber who had overall command, Pantić first stated that he could

¹⁵³² P2046 (37th Motorised Brigade Operations Report to PrK, 28 March 1999), p. 2.

¹⁵³³ P2046 (37th Motorised Brigade Operations Report to PrK, 28 March 1999), p. 2.

¹⁵³⁴ Ljubiša Diković, T. 19888–19889 (10 December 2007), T. 19983–19984 (11 December 2007).

¹⁵³⁵ Ljubiša Diković, T. 19890–19891 (10 December 2007), T. 19984–19985 (11 December 2007).

¹⁵³⁶ Ljubiša Diković, T. 19984–19986 (11 December 2007).

¹⁵³⁷ Ljubiša Diković, T. 20016 (11 December 2007).

¹⁵³⁸ Slađan Pantić, T. 23676, 23683 (5 March 2008).

¹⁵³⁹ Slađan Pantić, T. 23676–23677 (5 March 2008).

¹⁵⁴⁰ Slađan Pantić, T. 23684, 23687, 23693–23694 (5 March 2008).

¹⁵⁴¹ Slađan Pantić, T. 23683–23685 (5 March 2008).

not remember. When pressed further, he stated that there were three platoon commanders within this PJP company, but could not say which one had overall command, except that the platoon commander who communicated with him generally led the way and was followed by the rest. Pantić also explained that at first the tank travelled parallel to the infantry forces, as the road was wide enough to allow for that. Later on, during the second and the third day, the tank lagged behind the forces.¹⁵⁴²

600. Having entered Kostrc/Kosterc village, some 700 to 800 metres from Rudnik/Runik, the forces encountered “trenches and communicating trenches”, and were then attacked by the KLA. They returned fire, and the fighting lasted between one and three hours. Once it stopped, Pantić and the rest of the forces continued and set up a camp at Derviša Mahala for the night. The next day they moved towards Kladernica/Klladernica. On reaching the outskirts they turned towards Leočina/Leqina and were joined by a VJ squad numbering some seven to ten men.¹⁵⁴³ Even though shooting could be heard around them, they saw little action that day. In the morning of 27 March they were attacked from the direction of Izbica; they returned fire and moved to a better position on a hill nearby. Once that attack ended they pressed ahead towards Voćnjak/Vojnika and encountered a column of civilians moving to the south. Pantić could not say how many civilians were there, but explained that they could only see one stretch of the road, and thus only a part of the column; nevertheless, even that part contained around 1,000 people. Just before entering Voćnjak/Vojnika the VJ squad and the tank turned back, while Pantić and the PJP company continued further toward the village. Having passed through Voćnjak/Vojnika, the group then reached Broćna/Buroja and spent the night there. The next day they were taken by buses to Klina where Pantić’s role as a guide ended.¹⁵⁴⁴ When asked during cross-examination if the forces he was with ever entered Izbica, he responded in the negative, explaining that they used the higher route between Izbica and Kladernica/Klladernica, some 800 metres away from Izbica itself, which is why they could observe the civilians walking towards the Izbica valley. He also stated that the tank was not used on 27 March when they were attacked.¹⁵⁴⁵

iii. Investigations by FRY/Serbian authorities

601. Diković, who was with his unit in the general area of Izbica on 27 and 28 March 1999, was asked whether he or his forces ever participated in removing the Izbica bodies from the graves, and whether he ever took part in an investigation surrounding them. He responded that he had no

¹⁵⁴² Slađan Pantić, T. 23694–23697 (5 March 2008).

¹⁵⁴³ Slađan Pantić, T. 23676–23678, 23684–23685 (5 March 2008).

¹⁵⁴⁴ Slađan Pantić, T. 23678–23679, 23687–23689 (5 March 2008).

knowledge of a mass grave in Izbica and that he never engaged in any investigative activities concerning such a mass grave, nor was he ever authorised to do so.¹⁵⁴⁶

602. The Accused Lazarević was asked about the Izbica incident during his interview with the Prosecution. He said that it was first mentioned as a problem by the foreign media in early April 1999. As discussed below in Section VIII.G, he instructed the 125th Motorised Brigade, to investigate the allegations together with the MUP and the civilian authorities. Since the wider area of Drenica was still the subject of intense combat activities, the brigade was instructed to secure the location and enable the civilian authorities to investigate the area.¹⁵⁴⁷

603. Nebojša Bogunović, deputy chief of Kosovska Mitrovica SUP, and Gvozden Gagić, who headed the department for murder and sex-related criminal offences in the crime police administration of the MUP, both testified that they found out about the graves in Izbica from the media. As a result an investigating team from the Kosovska Mitrovica SUP was sent to the village on 27 May 1999. When the team arrived, it encountered VJ soldiers who knew nothing about the mass grave, but told the investigators that there was a new graveyard in the village. When the team reached the site, it was shot at and had to leave. The public prosecutor and an investigative judge were subsequently informed about this and ordered that the bodies be exhumed. According to the report of the Kosovska Mitrovica SUP team, 101 bodies were exhumed at the site. For reasons unknown to the Chamber, this number is less than the number of victims allegedly killed in Izbica, as described by the eye-witnesses. They were externally examined by the experts from the Military Medical Academy (VMA), as discussed below, and then buried in a number of cemeteries in Kosovska Mitrovica/Mitrovica and Vučitrn/Vushtrria municipalities.¹⁵⁴⁸

604. After the NATO airstrikes ended Stanimir Radosavljević, a military prosecutor in Niš, prepared a report for the 3rd Army Commander in which he outlined the information on criminal offences committed in Kosovo in the period from 1 March 1998 to June 1999.¹⁵⁴⁹ This document included a reference to an investigation into the “discovery of 144 fresh graves in the Izbica village sector on 29 May 1999” and recorded that “the files do not contain any reliable evidence on the

¹⁵⁴⁵ Slađan Pantić, T. 23680–23682 (5 March 2008).

¹⁵⁴⁶ Ljubiša Diković, T. 19986–19987 (11 December 2007).

¹⁵⁴⁷ P950 (Vladimir Lazarević interview with the Prosecution), e-court pp. 484–487.

¹⁵⁴⁸ Nebojša Bogunović, T. 25128–25129 (10 April 2008), 6D1614 (witness statement dated 2 April 2008), para. 83; Gvozden Gagić, T. 24447–24450, 24483–24484 (18 March 2008); 6D613 (SUP Kosovska Mitrovica document regarding Izbica). *See also* 6D116 (MUP Report on the forensic examination of the site in Izbica, 2 June 1999); 6D115 (MUP Note re visit to Izbica site, 27 May 1999).

¹⁵⁴⁹ Stanimir Radosavljević, 4D502 (witness statement dated 29 September 2007), para. 24; 4D171 (Information on Criminal Proceedings for Offences Committed in Kosovo, 6 April 2001).

circumstances in which these persons were killed”.¹⁵⁵⁰ Radosavljević confirmed that this was the case and that, at the time he prepared the report, he did not have any evidence indicating how these people lost their lives or that the VJ was responsible for it. For that reason, he referred the case to the civilian jurisdiction.¹⁵⁵¹

iv. Evidence identifying the victims

605. The Chamber received a large volume of forensic materials relevant to the identity of the individuals killed at Izbica. This evidence was prepared at different times and in different locations, due to the removal of the bodies from the gravesite in Izbica. These reports also indicate that a number of the 118 Izbica victims named in Schedule F, and one victim not listed, ended up in Petrovo Selo, while the rest were buried in Kosovska Mitrovica/Mitrovica cemetery. The analysis of all this evidence specific to each individual listed victim can be found in Annex A to the Judgement.

606. Loshi’s witness statement provides a list of names of people identified through the videotape made by Sefedin Thaqi. They are as follows: Hetem Tahi, Brahim Bajra, Bajram Osman Dervishi, Selman Loshi, Ilaz Bajra, Isuf Shala, “Tahir R...?”, Metush Qelaj, Rexhe Qelaj, Fazli Bajra, Hamdi Doqi, Beqir Shpati, Brahim Krasniqi, Brahim Shabani, “FNU (Milaim?) Kadria”, Sadik Hoti, “Muharrem (?) Thaqi”, Hysen Shala, Hamzi Qupeva, Bajram Hasan Bajra, Qazim Sadik Bajrami, “FNU Dragaj (?)”, Muhamet Refat Hoti, Pajazit LNU, Selman Loshi, Jashar Loshi, and Sami Loshi.¹⁵⁵² Eighteen of those are listed in the Schedule and some were identified by survivors as having been amongst the men and women killed in Izbica on 28 March 1999.

607. The Chamber also has in evidence a number of stills of bodies prepared from the video.¹⁵⁵³ Several of these show bodies at the burial site, with name tags on them. Loshi’s statement then lists the persons who had name tags placed on their bodies as follows: Brahim (R) Bajra, Ilaz (S) Bajra, Bajram (S) Bajra, Fazli (S) Bajra, Asllan (H) Bajra, Bajram (H) Bajra, Rrustem (B) Dragaj, Cen (A) Dragaj, Ali (Z) Dragaj, Murat (S) Dragaj, Hajriz (J) Dragaj, Sofie (H) Dragaj, “Halim (J) Shala (?)”, “Isuf LNU”, Zymer (J) Shala, Ali (I) Shala,¹⁵⁵⁴ Muje Shala, Sali (H) Dervishi, Bajram (M)

¹⁵⁵⁰ 4D171 (Information on Criminal Proceedings for Offences Committed in Kosovo, 6 April 2001), p. 8.

¹⁵⁵¹ Stanimir Radosavljević, T. 17494–17495 (23 October 2007); Đura Blagojević, T. 21559, 21574–21583 (1 February 2008); 6D115 (MUP Note re visit to Izbica site, 27 May 1999).

¹⁵⁵² Liri Loshi, P2436 (Rule 92 *bis* package), e-court pp. 17–28, 36.

¹⁵⁵³ P231 (still photographs of bodies found in Izbica).

¹⁵⁵⁴ The Chamber notes that Loshi inserted a comment into the table stating that he believed this man’s name was Sali Idriz Shala and that he was killed in the mountains.

Bajra, Sami (G) Bajra, Ilaz (SH) Dervishi, Rexhep (I) Qelaj, Metush Qelaj, and Ajet (H) Beqiri.¹⁵⁵⁵ Of those named in his statement, 17 are victims listed in the Schedule. The Chamber notes that some of these victims overlap with those listed in the previous paragraph. This is not surprising as the tags were placed on the bodies once they were brought to the burial site. Accordingly, some bodies were filmed twice. The Chamber also notes that some of these victims with name tags were also identified by survivors as having been amongst the men and women executed in Izbica on 28 March 1999.

608. As stated earlier, a list of victims was prepared during the burial in Izbica by Afrim Xhemajli and passed on to Loshi. It contains the names of 111 victims named in Schedule F.¹⁵⁵⁶

609. Dr. Gordana Tomašević, a forensic medicine specialist employed by the VMA in Serbia,¹⁵⁵⁷ gave evidence about 101 autopsies she performed on bodies from Izbica. Confirming the evidence of Gagić and Bogunović above, Tomašević's team received an official order from the District Court in Kosovska Mitrovica/Mitrovica, dated 31 May 1999, which related to grave mounds in Izbica village and ordered the exhumation of the bodies for the purpose of forensic examination by the team, with a view to establishing the time and the cause of death. The order also provided that the bodies were to be reburied following the examination.¹⁵⁵⁸ 101 bodies in individual body bags were brought on a truck by civilian workers. The post-mortems were attended by the civilian police. The examination of the bodies was conducted in Kosovska Mitrovica/Mitrovica over a period of three days, between 3 and 5 June 1999. Because the team did not have the necessary equipment to conduct full pathological examination, the autopsies were confined to external examination alone. Tomašević completed a full report.¹⁵⁵⁹

610. The bodies were in a similarly advanced state of decomposition, and months rather than years had passed from the time of death. Tomašević concluded that all but one of these people were probably killed by projectiles fired from hand-held fire-arms. She also noted that some of the bodies had wooden grave markers on them showing their names. Most were dressed in civilian

¹⁵⁵⁵ Liri Loshi, P2436 (Rule 92 *bis* package), e-court pp. 29–33. According to Loshi, Beqiri was a KLA soldier killed after the Izbica incident and Sami Bajra was not killed during the incident. The initials between the first name and the surname refer to the first initial of the father's name.

¹⁵⁵⁶ Liri Loshi, P2436 (Rule 92 *bis* package), e-court pp. 8–9.

¹⁵⁵⁷ Gordana Tomašević, P2490 (witness statement dated 5 March 2003), para. 1.

¹⁵⁵⁸ Gordana Tomašević, T. 7028–7029 (21 November 2006); P2496 (District Court of Kosovska Mitrovica order re Izbica graves).

¹⁵⁵⁹ Gordana Tomašević, T. 7028–7030, 7032–7034 (21 November 2006), P2490 (witness statement dated 5 March 2003), paras. 50, 52–53, P2507 (witness statement dated 25 July 2006), e-court pp. 2–3; P248 (Gordana Tomašević's autopsy reports).

clothes but “several bodies” were in a “black KLA uniform”.¹⁵⁶⁰ The report identified five persons named in Schedule F of the Indictment via either the grave markers mentioned above or documents found on the corpses, namely Beqir Musliu, Ali Dragaj, Azem Osmani, Idriz Xhemajli, and Zymer Shala.¹⁵⁶¹ As will be seen below, of those five none ended up in Petrovo Selo, which is in line with the order that the bodies be buried in Kosovska Mitrovica/Mitrovica. That, and other evidence regarding the numbers of bodies, suggests that bodies found in Petrovo Selo had not been taken to Tomašević.

611. The Chamber heard from expert witness Dr. Eric Baccard that from 28 to 30 June 1999 a French Forensic Mission went to Izbica in order to conduct an investigation of the site.¹⁵⁶² The French team prepared several reports dealing with the burial site, as well as three execution sites.¹⁵⁶³ In the report dealing with the burial site, the team noted that the site was a field and that grave plots could be made out. The team gathered clothing, some human remains, and some ammunition, but no bodies.¹⁵⁶⁴ As for the execution sites, the team recorded that there were three different sites, as well as the collection point for victims’ clothes, blankets, and grave markers, which were left behind following the exhumation of the bodies.¹⁵⁶⁵ The final report deals with the 28 human remains from burial sites, which included bone fragments, body parts, and hair tufts, as well as 84 bullet fragments. The conclusion in the report, that the victims were either shot in the back with large-calibre bullets fired in multiples at short range, or machine-gunned from a greater range, was criticised by Baccard as will be seen in the next paragraph. The Chamber recalls here that the use of a machine gun during the Izbica incident was recounted by Milazim Thaqi. Finally, the report makes no mention of any DNA testing being performed on the remains found.¹⁵⁶⁶

612. Baccard himself analysed these reports, in conjunction with Liri Loshi’s videotape, and provided his own conclusions in a separate report. He noted the samples taken by the French team, but concluded that, given the scarcity of the material found, it was difficult to establish in an exhaustive and unquestionable way the cause of death of the victims. From the recovered clothing items and the video-footage, however, Baccard was able to determine that the traumatic lesions visible on the bodies appeared to be connected to gunshots in a number of cases and that the head

¹⁵⁶⁰ Gordana Tomašević, T. 7031–7034, 7051–7052 (21 November 2006), P2490 (witness statement dated 5 March 2003), p. 9, P2507 (witness statement dated 25 July 2006), e-court p. 3.

¹⁵⁶¹ Gordana Tomašević, T. 7036–7037 (21 November 2006); P248 (Gordana Tomašević’s autopsy reports), bodies labeled S-55/99/1, S-83/99/1, S-84/99/1, S-88/99/1, and S-93/99/1 respectively.

¹⁵⁶² Eric Baccard, T. 10123 (19 February 2007); P1809 (Eric Baccard’s overview report), p. 16.

¹⁵⁶³ P207 (Inventory – Izbica Burial Site), P208 (Inventory – Izbica Execution Sites), P209 (Izbica autopsies conducted by French Forensic Mission).

¹⁵⁶⁴ P207 (Inventory – Izbica Burial Site), p3.

¹⁵⁶⁵ P208 (Inventory – Izbica Execution Sites), e-court p. 3.

¹⁵⁶⁶ P209 (Izbica autopsies conducted by French Forensic Mission), pp. 15–16.

seemed to be the most frequently injured anatomical region. He was able to observe from the video-footage 36 visible injuries to the head, two to the neck, two to the trunk, 11 to the upper limbs, and six to the lower limbs. These wounds were consistent with projectiles of 7.62 or 12 millimetre calibre. Baccard also noted that, despite the small sample size, “from ballistic observation made on collected clothes, the shootings were often carried out in the back, sometime at close range, even in certain cases at contact range”.¹⁵⁶⁷

613. Since a number of the victims from the Izbica killings were found in Petrovo Selo, the Chamber also had access to numerous reports and testimony of those who attended, supervised, and participated in the exhumations and identification of bodies from the mass grave there, as described in Section VII.P. The persons involved were William Fulton, Jon Sterenberg, and Jose-Pablo Barayabar. In addition, the Chamber admitted into evidence autopsy reports prepared by the Niš Institute of Forensic Medicine relevant to the remains exhumed from the mass graves in Petrovo Selo. These were later subjected to DNA analysis, the results of which were recorded in the OMPF list of missing persons.¹⁵⁶⁸ They confirm the death of the following persons who are named in Schedule F:¹⁵⁶⁹ Fatmir Osmanaj,¹⁵⁷⁰ Jashar Loshaj,¹⁵⁷¹ Hamdi Temaj,¹⁵⁷² Sami Ijashaj,¹⁵⁷³ Dibran Pani,¹⁵⁷⁴ Halit Haliti,¹⁵⁷⁵ Mehmet Hajraj,¹⁵⁷⁶ Rexhe Duraku,¹⁵⁷⁷ Qerim Hoti,¹⁵⁷⁸ Zoje Osmani,¹⁵⁷⁹ Bajram Dervishi,¹⁵⁸⁰ Metush Qelaj,¹⁵⁸¹ Hajzer Kotorri,¹⁵⁸² Muhamet Behrami,¹⁵⁸³ Zada Dragaj,¹⁵⁸⁴ Hajrullah Fetahu,¹⁵⁸⁵ Selman Loshi,¹⁵⁸⁶ Iljaz Musliu,¹⁵⁸⁷ and Muhamet Emra.¹⁵⁸⁸ Similarly, they

¹⁵⁶⁷ P1809 (Eric Baccard’s overview report), pp. 44–48.

¹⁵⁶⁸ P2798 (OMPF List of missing persons). *See also* Prosecution’s Third Request for Admission of Exhibits From the Bar Table, 6 March 2007, pp. 8, 9.

¹⁵⁶⁹ The Chamber purposefully does not refer to Zenel Veliqi. The explanation for that can be found in Annex A to the Judgement where the evidence relating to this individually named victim is discussed in detail. The Chamber also notes that there are minor discrepancies between the spelling of the names in these reports and the spelling in Schedule F. These are, however, minor and can be explained away by the fact that this was the Serbian spelling of Albanian names.

¹⁵⁷⁰ P213 (death certificate for Fatmir Osmanaj); P214 (autopsy report for PS/II-18).

¹⁵⁷¹ P217 (death certificate for Jashar Loshaj); P218 (autopsy report for PS/II-25).

¹⁵⁷² P219 (death certificate for Hamdi Temaj); P220 (autopsy report for PS/II-32).

¹⁵⁷³ P221 (death certificate for Sami Ijashaj); P222 (autopsy report for PS/II-34).

¹⁵⁷⁴ P223 (death certificate for Dibran Pani); P224 (autopsy report for PS/II-20).

¹⁵⁷⁵ P225 (death certificate for Halit Haliti); P226 (autopsy report for PS/II-15).

¹⁵⁷⁶ P2419 (autopsy report for PS/II-1 and PS/II-4), pp. 1–4, 16–19.

¹⁵⁷⁷ P2419 (autopsy report for PS/II-2), pp. 7–10; P2604 (autopsy report for PS/II-6).

¹⁵⁷⁸ P2428 (autopsy report for PS/II-9).

¹⁵⁷⁹ P2429 (autopsy report for PS/II-13).

¹⁵⁸⁰ P2431 (autopsy report for PS/II-30).

¹⁵⁸¹ P2433 (autopsy report for PS/II-45).

¹⁵⁸² P2605 (autopsy report for PS/II-22).

¹⁵⁸³ P2606 (autopsy report for PS/II-27).

¹⁵⁸⁴ P2607 (autopsy report for PS/II-29).

¹⁵⁸⁵ P2608 (autopsy report for PS/II-33).

¹⁵⁸⁶ P2609 (autopsy report for PS/II-39).

confirm the death of one other victim, namely, Sofija/Sofia Dragoj, whose body was recorded on the video by Liri Loshi's friend.¹⁵⁸⁹

614. A large number of Izbica victims were buried in Kosovska Mitrovica/Mitrovica rather than in Petrovo Selo. Jon Sterenberg, Head of Excavation and Examination Division of the ICMP, testified that the remains of persons buried in Kosovo were also examined for DNA identification by the ICMP. The samples of remains were provided to the ICMP by UNMIK to enable them to carry out a DNA comparison with samples from relatives for the purpose of identification.¹⁵⁹⁰ The comparison of the samples resulted in the identification of a number of Izbica victims.

615. The Chamber notes also that Dr. Zoran Stanković, a specialist in forensic medicine who was called as a witness for all the Accused, challenged various aspects of the forensic and testimonial evidence in relation to the Izbica killings.¹⁵⁹¹ For example, he challenged Milazim Thaqi's evidence about his clothing being damaged by bullets, while he remained uninjured, arguing that this was impossible as the holes in Thaqi's shirt were not caused by the weapons he described and the person firing the weapon would have had to have been standing at a very "awkward angle". In addition, if his story was accurate, Thaqi's body would also have been grazed by the bullets. Stanković did concede, however, that his analysis was based only on photographs of the shirt.¹⁵⁹²

616. The Chamber acknowledges that Thaqi's evidence about being grazed by bullets is peculiar. However, for the reasons outlined earlier,¹⁵⁹³ the Chamber believes that Thaqi was an eye-witness to, and the survivor of, the killings in Izbica. It acknowledges that the holes in Thaqi's shirt are not in fact bullet holes. Indeed, it regards his explanation for the existence of these holes as not credible. It is possible that Thaqi has rationalised the cause of the damage to his shirt due to the traumatic experience he endured. He may even have tried to embellish his evidence.

617. Thaqi's evidence about men being shot by a burst of machine-gun fire was also challenged by Stanković, who testified that it was inconsistent with Gordana Tomašević's findings that none of the bodies examined by her had injuries and wounds characteristic of a machine-gun type. In addition, if there was intensive machine-gun fire, more than one body would have to have covered Thaqi in order to save his life. Finally, having watched Liri Loshi's video footage of the bodies,

¹⁵⁸⁷ P2610 (autopsy report for PS/II-42).

¹⁵⁸⁸ P2611 (autopsy report for PS/II-46).

¹⁵⁸⁹ P215 (death certificate for Sofija Dragoj); P216 (autopsy report for PS/II-8A).

¹⁵⁹⁰ Jon Sterenberg, T. 8217, 8227 (11 December 2006).

¹⁵⁹¹ *See also* Lukić Final Brief, paras. 1392–1407.

¹⁵⁹² Zoran Stanković, T. 26157, 26197–26198 (14 May 2008); 6D670 (Zoran Stanković's Expert Report on Izbica), para. 8.

¹⁵⁹³ *See* para. 559.

Stanković pointed out that there were no cartridge cases anywhere near the bodies, thereby contradicting the testimony about bursts of machine-gun fire. Stanković conceded that he did not analyse Thaqi's, or anybody else's oral testimony, but rather only their statements and reports.¹⁵⁹⁴

618. Stanković also testified that it was obvious that the bodies in the video footage had been moved from the site where they died. He also pointed out that the video does not show grouped bodies, contrary to the evidence of Mustafa Draga, and that there were not significant quantities of blood in the area surrounding the bodies, all indicating that they had been moved. Finally, Stanković described several scenes of the video footage which clearly indicated that the bodies had been, or were being, moved, and also stated that it is impossible from that footage to ascertain the victims' positions at the time of death.¹⁵⁹⁵

619. The Chamber has watched the video footage in question and notes that it clearly shows grouped bodies at the execution sites. It would also appear that they had indeed been moved as testified to by Stanković. However, rather than being brought into the location from somewhere else, the Chamber is of the view that they were simply turned over, where necessary, so that each victim could be identified, and his or her face recorded. The fact that no cartridge cases can be seen in the video, which was filmed three days after the killings, does not undermine the consistent eye-witness evidence of the survivors concerning the event. Between the killings and the filming of the video any cartridge cases could have been removed from the site.

620. Stanković also pointed out that it was not possible, on the basis of the findings made by Gordana Tomašević who was able only to examine the bodies externally, to establish the positions of the attackers and the victims, and whether the victims were shot by one or more persons. He also noted that the external examination of the bodies did not identify injuries suggestive of abuse before death.¹⁵⁹⁶ Finally, like Baccard, he was concerned about the ability of the French Forensic Mission to establish the cause and the manner of death of the victims on the basis of only 28 human remains they found at the burial site.¹⁵⁹⁷

621. Having analysed the extensive forensic evidence described above, as well as the various challenges posed to it, the Chamber finds that this evidence can be relied upon for purposes of identification of people who died in or around Izbica on 28 March 1999, although, as discussed

¹⁵⁹⁴ Zoran Stanković, T. 26156, 26171 (14 May 2008); 6D670 (Zoran Stanković's Expert Report on Izbica), p. 9.

¹⁵⁹⁵ Zoran Stanković, T. 26157–26163 (14 May 2008); 6D670 (Zoran Stanković's Expert Report on Izbica), paras. 5–6; 6D1663 (Excerpts from Liri Loshi's video analysed by Zoran Stanković).

¹⁵⁹⁶ 6D670 (Zoran Stanković's Expert Report on Izbica), paras. 1–4.

¹⁵⁹⁷ Zoran Stanković, T. 26164–26165 (14 May 2008); P209 (Izbica autopsies conducted by French Forensic Mission), p. 16.

below, it does not assist in identifying which of these people were killed in the incidents charged in the Indictment. The Chamber, however, does not rely on the conclusions of the French Forensic Mission with respect to cause of death of these victims, as both Eric Baccard and Zoran Stanković had concerns in relation to those. The Chamber instead relies upon the generally consistent eyewitness testimony of the survivors referred to above, the video footage recorded by Liri Loshi's friend, and Baccard's conclusions which were based on that footage. It also relies on the reports prepared by Gordana Tomašević and the causes of death established therein. In doing so, it concludes that approximately 93 of the 118 individuals listed in Schedule F of the Indictment were killed by fire-arms on 28 March 1999 in Izbica. The details of those so killed can be found in Annex A to this Judgement.

b. Ćirez/Qirez sexual assaults

622. Direct evidence relating to the charges of sexual assault in the village of Ćirez/Qirez around mid-April 1999 was given by two witnesses, namely Xhevahire Rrahmani and K24. Although consistent on the events that took place in that village, the two women were not consistent when it came to the identification of the forces involved, as will be outlined below. The Chamber also received certain forensic information relevant to the fate of some of the women who are alleged to have been sexually assaulted.

i. *Eyewitness accounts*

623. On 26 March 1999 Xhevahire Rrahmani and her family went from their home in the village of Dubovac/Duboc, Vučitrn/Vushtrria municipality, to a relative's house in the village of Kozica/Kozhica, in Srbica/Skenderaj municipality.¹⁵⁹⁸ They had been there for three nights when "Serb forces" started shelling the village from Ćirez/Qirez, as a result of which all men, including Rrahmani's husband, went to hide in Čičavica/Qiqavica mountain. On cross-examination Rrahmani denied that there was a KLA presence in Kozica/Kozhica.¹⁵⁹⁹ She also explained that the men's departure went unnoticed by the "soldiers" because the mountain was very close to where they were staying. She further denied any knowledge of the mountain being a well-known KLA stronghold.¹⁶⁰⁰ However, in light of the voluminous documentary and testimonial evidence outlined above which refers to the wider area of Drenica and Čičavica/Qiqavica mountains as a well-known KLA stronghold, as well as K24's evidence that her husband fought with the KLA on

¹⁵⁹⁸ Xhevahire Rrahmani, T. 1818–1819 (17 August 2006), P2239 (witness statement dated 11 June 2001), p. 2.

¹⁵⁹⁹ Xhevahire Rrahmani, T. 1862 (17 August 2006), P2239 (witness statement dated 11 June 2001), p. 2.

¹⁶⁰⁰ Xhevahire Rrahmani, T. 1863–1864 (17 August 2006).

the Čičavica/Qiqavica mountain at the time, the Chamber is not persuaded by Rrahmani's evidence in relation to the KLA presence in the area.

624. On or around 29 March 1999 some 300 people from Kozica/Kozhica, including Rrahmani and her children, gathered in the yard of one house. A shell fell into the yard killing and injuring several people. Around 30 "soldiers" dressed in green uniforms, some wearing red ribbons on their upper arm, then came to the yard and started taking care of the injured and dressing their wounds.¹⁶⁰¹ Rrahmani saw a mentally disabled man being shot by the soldiers. The soldiers then started torching the houses in the village using petrol. They also searched the villagers and demanded their valuables.¹⁶⁰²

625. Eventually Rrahmani and the others were told by the "soldiers" to leave the village because of the "fighting", and to go to Srbica/Skenderaj town. They did as instructed, followed by soldiers on trucks. The next day, at the police checkpoint at the entrance to Srbica/Skenderaj, they were instructed to go to Glogovac/Gllogoc. On their way they saw the army moving back and forth in their trucks. Rrahmani spent ten days in Glogovac/Gllogoc town at a family member's house, and then she and her family went back to Kozica/Kozhica in search of food. Here she met up with her husband again. The village was empty and the houses were burnt. This was sometime in April 1999.¹⁶⁰³

626. Rrahmani testified that from Kozica/Kozhica, which is situated high up on a hill overlooking Ćirez/Qirez, she could see a tank and three or four lorries stationed in Ćirez/Qirez. On her third day in Kozica/Kozhica shelling started again and the men fled to the mountains once more. She went to Xhafer Daka's house with her three children, as did K24. Both women testified that a number of other women and children from Kozica/Kozhica did the same. In the meantime, K24's father and brothers went to the mountains to hide, while her husband was fighting with the KLA on Čičavica/Qiqavica mountain.¹⁶⁰⁴

¹⁶⁰¹ Xhevahire Rrahmani, T. 1819–1820 (17 August 2006), P2239 (witness statement dated 11 June 2001), p. 2.

¹⁶⁰² Xhevahire Rrahmani, T. 1820–1821, 1828, 1864 (17 August 2006), P2239 (witness statement dated 11 June 2001), p. 2, P2240 (Transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 4589. During cross-examination, Rrahmani was asked why she made no mention of the killing of the mentally disabled man in her statement but rather raised it for the first time in court. She responded that she forgot to tell the investigators about the incident. Xhevahire Rrahmani, T. 1873 (17 August 2006).

¹⁶⁰³ Xhevahire Rrahmani, T. 1821–1822, 1827–1829 (17 August 2006), P2239 (witness statement dated 11 June 2001), pp. 2–3.

¹⁶⁰⁴ Xhevahire Rrahmani, P2239 (witness statement dated 11 June 2001), p. 3; K24, P2548 (witness statement dated 22 November 1999), pp. 2–3. *See also* K24, P2529 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 8172–8173.

627. Both K24 and Rrahmani then testified that they were removed from Daka's house by police or VJ forces and moved into another house where they spent two to three days. However, the two women gave inconsistent evidence on the identification of the personnel who removed them from the house and the way in which this was done. Rrahmani testified that half an hour after the shelling started the women in Daka's house could hear shooting. Then "soldiers" wearing plain green as well as black and brown uniforms appeared in the yard. These soldiers sent a boy to tell the women to go to another house, which they did, under escort by "soldiers" wearing black and brown uniforms. Once there they were searched by other soldiers in plain green uniforms. More women were brought in so that, altogether, there were approximately 60 women and children in the house.¹⁶⁰⁵ However, K24 stated that this happened the next day, at around 7:00 a.m., when six or seven "Yugoslav army soldiers" came to the house shouting at the women to go to Ćirez/Qirez. These soldiers were wearing "green with yellow" camouflage uniforms, red ribbons on their sleeves, and camouflage hats with "big round peaks". They searched the women and took money, jewellery, and identification documents from them.¹⁶⁰⁶

628. Both women testified that, once in the house, they were treated well and given food, water, clothes, and medicine. After the second or third night, a number of women were told that they had to go to Ćirez/Qirez and hide in its mosque in order to avoid being killed by NATO and because an offensive was about to start. Another soldier, according to K24, told one of the women who could speak Serbian that they had to go to Ćirez/Qirez because "[t]hey are asking for a group of you".¹⁶⁰⁷ They were escorted to Ćirez/Qirez by three "soldiers" in green camouflage uniforms.¹⁶⁰⁸

629. The Chamber notes that there are some inconsistencies in the evidence of the two witnesses as to the number of women taken to Ćirez/Qirez. Rrahmani testified about a group of 27 women and included K24 on that list.¹⁶⁰⁹ However, according to K24's witness statement, altogether 22 women from Kozica/Kozhica were escorted to Ćirez/Qirez. K24 then named 16 of these women in her statement, but this list did not include Rrahmani.¹⁶¹⁰ During cross-examination, K24 was asked if Rrahmani was with her and responded: "Yes, she was with me for some time, but later on we

¹⁶⁰⁵ Xhevahire Rrahmani, T. 1829–1833 (17 August 2006), P2239 (witness statement dated 11 June 2001); pp. 3–4.

¹⁶⁰⁶ K24, P2548 (witness statement dated 22 November 1999), p. 3.

¹⁶⁰⁷ K24, P2548 (witness statement dated 22 November 1999), p. 4, P2529 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 8174–8176; Xhevahire Rrahmani, T. 1866–1867 (17 August 2006), P2239 (witness statement dated 11 June 2001); pp. 4–5, P2240 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 4590.

¹⁶⁰⁸ Xhevahire Rrahmani, T. 1830 (17 August 2006), P2239 (witness statement dated 11 June 2001), pp. 4–5; K24, P2548 (witness statement dated 22 November 1999), p. 4.

¹⁶⁰⁹ Xhevahire Rrahmani, P2239 (witness statement dated 11 June 2001); p. 4, P2240 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 4591–4592.

¹⁶¹⁰ K24, P2548 (witness statement dated 22 November 1999), pp. 2–3.

were separated. She was not with me at a later stage.”¹⁶¹¹ The Chamber is of the view that the small discrepancy in the number of women taken does not in any way diminish the reliability of the evidence of K24 and Rrahmani. The fact that K24 did not name Rrahmani among the 16 women listed in her statement does not necessarily mean that Rrahmani was not there, since, according to K24, 22 women were in fact escorted to Ćirez/Qirez. In addition, K24 confirmed during her oral evidence that Rrahmani was with her but that they were separated later. Thus, the Chamber is of the view that both women are credible and their evidence relating to the events in Ćirez/Qirez reliable.

630. The women were handed over to another group of men and then taken to a barn in Ćirez/Qirez. According to K24 they were handed over to three men wearing camouflage uniforms with a blend of dark green, yellow, and red marks, and with tiger badges on their sleeves, who took them to the barn.¹⁶¹² Rrahmani, however, testified that they were handed over to a group of men, two of whom then took them to the barn, while the third appeared later. The two men were older, with beards, and were wearing black and brown uniforms.¹⁶¹³

631. Both K24 and Rrahmani were relatively consistent in their accounts of the events that took place in and outside of the barn. According to Rrahmani, once they all entered the barn the two soldiers ordered the women to hand over their money, jewellery, and identification documents, and started taking women out of the barn, in succession. The first woman to come back told Rrahmani that she was forced to take her clothes off. When Rrahmani was taken out, she was searched, asked about the whereabouts of her husband, and then told to lift her blouse and her bra up. The soldier searching her touched her breasts and taunted her with sexual comments. About 20 minutes later she was told to go back into the barn. A third soldier arrived, who, according to Rrahmani, was very tall and blonde and could speak Albanian. In the next two hours or so all women, except for two elderly ones, were taken out of the barn one by one and searched in the same manner. Some, mainly the younger ones, were repeatedly taken out.¹⁶¹⁴

632. K24 also stated that a tall man with blonde hair took the women out of the room and searched them one by one, forcing them to take their clothes off. Eventually, over a period of two hours, he took out five young girls a number of times. These girls were: the three sisters, Antigona, Bukurije, and Mirishahe Dibrani; Lumnie Zymeri; and Zahide Xhema. They went out one by one

¹⁶¹¹ K24, T. 4792 (13 October 2006) (closed session).

¹⁶¹² K24, T. 4774, 4777–4778, 4784–4786 (closed session) (12 October 2006), P2548 (witness statement dated 22 November 1999), p. 4; P390 (various photographs of the barn and the surrounding location), pp. 12, 15; P1323 (pictures of various insignia), K24 identified pictures 3 (eagle) and 8 (tiger) as the insignia she saw these men wearing.

¹⁶¹³ Xhevahire Rrahmani, T. 1830–1834, 1868 (17 August 2006), P2239 (witness statement dated 11 June 2001), p. 5.

¹⁶¹⁴ Xhevahire Rrahmani, P2239 (witness statement dated 11 June 2001), pp. 5–7.

and came back with their clothes in disorder, terrified and not willing to speak about what had happened. One said that they were stripped naked.¹⁶¹⁵ At one point K24 was also taken outside, where she saw the other two men with tiger badges. The blonde man ordered her to take her clothes off and dropped his trousers to his knees. He started touching her breasts and vagina, at which point she fainted. When she regained consciousness she realised that she had not been raped. She was then told to get up and start walking to the barn. Just before entering the barn, the soldier escorting her told her to sit down and rest. Some five minutes later he told her to follow him and ordered her to take off her clothes. He took off his trousers and his underwear and started touching her. The man then threatened her with a knife, but soon after lost patience and told her to go back to the barn, which she did.¹⁶¹⁶ Both women testified that, throughout their ordeal, the men taunted them verbally, making statements such as “[s]o, you want a republic, you want independence” and “you are asking for NATO, for Thaqi and Rugova”.¹⁶¹⁷

633. The last time the five young girls were taken out, the soldiers tied the barn doors with wire. A short time later the blonde soldier came back and instructed Miridije Dibrani, Tahire Shalaku (Rrahmani’s mother), and Fahrije Ademi to come with him. They did as instructed, the door was closed, and both K24 and Rrahmani heard three shots. None of the eight women was ever seen alive again.¹⁶¹⁸ Rrahmani testified that approximately 15 minutes later a previously unseen soldier, wearing the same type of black and brown uniform, came into the barn and told the women to go back to Kozica/Kozhica.¹⁶¹⁹ According to K24, however, the person letting the women out of the barn was a policeman, wearing a dark blue camouflage uniform, who told them to go quickly.¹⁶²⁰

634. Rrahmani testified that, when the women got back to Kozica/Kozhica, they told the “Serb forces” what happened and were then asked if the people who did this were the “Black Hand”. Among the “soldiers” present in Kozica/Kozhica, Rrahmani briefly saw the soldier who had escorted the group to Ćirez/Qirez earlier.¹⁶²¹ A few hours later the soldiers in solid green uniforms took the women back to Ćirez/Qirez to investigate what had happened to the eight women. Rrahmani showed them the barn and they said that they were aware of it.¹⁶²² K24 added that, when

¹⁶¹⁵ K24, P2548 (witness statement dated 22 November 1999), pp. 4-6.

¹⁶¹⁶ K24, P2548 (witness statement dated 22 November 1999), pp. 6-7.

¹⁶¹⁷ Xhevahire Rrahmani P2239 (witness statement dated 11 June 2001), p. 6; K24, P2548 (witness statement dated 22 November 1999), pp. 4-5.

¹⁶¹⁸ Xhevahire Rrahmani, P2239 (witness statement dated 11 June 2001), p. 7; K24, P2548 (witness statement dated 22 November 1999), p. 7.

¹⁶¹⁹ Xhevahire Rrahmani, T. 1868 (17 August 2006), P2239 (witness statement dated 11 June 2001), p. 7.

¹⁶²⁰ K24, P2548 (witness statement dated 22 November 1999), p. 7.

¹⁶²¹ Xhevahire Rrahmani, T. 1868-1869 (17 August 2006), P2239 (witness statement dated 11 June 2001), p. 7.

¹⁶²² Xhevahire Rrahmani, T. 1839-1841 (17 August 2006), P2239 (witness statement dated 11 June 2001), pp. 7-8.

they returned to Ćirez/Qirez with these soldiers, the women were put up in another house, were given food and other necessities, and told not to go outside “because of the paramilitaries”.¹⁶²³

635. The women stayed in Ćirez/Qirez for a number of days.¹⁶²⁴ From time to time a commander wearing a green camouflage uniform and a red ribbon, with a plain green cap, would come to obtain more information from K24 about the assaults. He even said once that he was sorry about what had happened.¹⁶²⁵ Rrahmani testified that they were treated well. Regular soldiers would bring them food and flour, as well as nappies for the children.¹⁶²⁶ The women were then told to go to Glogovac/Gllogoc as an offensive was about to start in Ćirez/Qirez; in Glogovac/Gllogoc they would be able to get on buses to Macedonia. They did as instructed; they were not escorted and no one maltreated them.¹⁶²⁷ Petar Damjanac denied any knowledge of organised buses taking Kosovo Albanians to Macedonia from Glogovac/Gllogoc.¹⁶²⁸

636. The bodies of the eight women were found in three wells near the barn in Ćirez/Qirez and examined by the French Forensic Mission sometime in July 1999. They were first buried in Ćirez/Qirez and then later in the “Martyrs cemetery” in Likošan/Likoshan.¹⁶²⁹

ii. VJ/MUP activities in the area

637. A number of VJ orders and combat reports confirm that a joint VJ/MUP action was being conducted in Srbica/Skenderaj municipality up to and during the time that the sexual assaults in Ćirez/Qirez took place. On 22 March 1999 the 37th Motorised Brigade was instructed to set up a command post in the village of Krasalić/Krasaliq, on the border between Vučitrn/Vushtrria and Srbica/Skenderaj municipalities, and was then to attack on the axis of Krasalić/Krasaliq-Kozica/Kozhica-Likošan/Likoshan villages, all of which are villages neighbouring Ćirez/Qirez. It was ordered to then join with the units of the 15th Armoured Brigade in Glogovac/Gllogoc.¹⁶³⁰ The 125th Motorised Brigade was instructed to attack in the area to the west of Ćirez/Qirez and then to

¹⁶²³ K24, P2548 (witness statement dated 22 November 1999), pp. 7–8, P2529 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 8176–8178.

¹⁶²⁴ K24 testified that they stayed there for 10 days, whereas Rrahmani testified that it was three weeks. In light of the circumstances they were in at the time, the Chamber does not consider this difference in their evidence to be material.

¹⁶²⁵ K24, P2548 (witness statement dated 22 November 1999), p. 8.

¹⁶²⁶ Xhevahire Rrahmani, T. 1870–1871 (17 August 2006), P2239 (witness statement dated 11 June 2001), p. 8.

¹⁶²⁷ Xhevahire Rrahmani, T. 1841 (17 August 2006), P2239 (witness statement dated 11 June 2001), p. 8.

¹⁶²⁸ Petar Damjanac, T. 23823–23826 (6 March 2008).

¹⁶²⁹ K24, T. 4779 (12 October 2006) (closed session), P2548 (witness statement dated 22 November 1999), p. 9; Xhevahire Rrahmani, P2239 (witness statement dated 11 June 2001), p. 8; IC85 (a picture of the location of the barn marked by K24 and showing the barn, the place where she was sexually assaulted, and the well).

¹⁶³⁰ Ljubiša Diković, T. 19955–19960 (10 December 2007); P2031 (Joint Command Decision, 22 March 1999), pp. 3–4.

connect with the units of the 15th Armoured Brigade in Glogovac/Gllogoc municipality.¹⁶³¹ Also participating in this action were seven PJP companies, two of which were co-ordinating with the 37th Motorised Brigade.¹⁶³² In essence this meant that Ćirez/Qirez was surrounded by VJ and PJP forces in late March. Diković testified that between 22 and 23 March his combat group reached Ćirez/Qirez, where it encountered civilians. The combat group stayed there until 24 March, when it moved on to the area of Vučitrn/Vushtrria municipality.¹⁶³³ With respect to police presence in Ćirez/Qirez, Nebojša Bogunović testified that police forces were not present in the village from 24 to 28 March 1999.¹⁶³⁴ From 28 March the 37th Motorised Brigade was to concentrate its troops in the direction of Bročna/Buroja-Turićevac/Turiçec-Lauša/Llausha and also had the task of securing the Srbica/Skenderaj-Glogovac/Gllogoc and Srbica/Skenderaj-Klina roads.¹⁶³⁵ According to the brigade's daily report of 29 March, "the unit" was to occupy the Srbica/Skenderaj-Kruševac/Krushec-Donje Prekaze/Prekaz i Poshtëm sector the next day.¹⁶³⁶ However, even though Kruševac/Krushec and Donje Prekaze/Prekaz i Poshtëm are villages in the vicinity of Ćirez/Qirez, on cross-examination Diković denied that his forces were in Ćirez/Qirez on 29 March 1999.¹⁶³⁷

638. In the period from 30 March to 18 April 1999 the rest of the 37th Motorised Brigade arrived and was deployed in the Drenica sector. The brigade now numbered 4,500 men and 31 tanks, and was boosted by some 100 to 150 volunteers. It was to co-ordinate its actions with the MUP.¹⁶³⁸ On 1 April 1999 one combat group of the 125th Motorised Brigade was positioned in the territory of Gornja and Donja Klina/Klina e Poshtme and Gornje Prekaze/Prekaz i Epërm villages.¹⁶³⁹ On 2

¹⁶³¹ P2031 (Joint Command Decision, 22 March 1999), pp. 2–3. Diković explained that joining up with the 15th Armoured Brigade troops did not mean that the two commanders should eventually meet face to face but that rather they should come to a safe distance of of each other from which they could then control the area in front of them with fire. Ljubiša Diković, T. 19964 (10 December 2007). *See also* 5D463 (125th Motorised Brigade Operations Report to PrK, 24 March 1999).

¹⁶³² Ljubiša Diković, T. 19959 (10 December 2007); P2031 (Joint Command Decision, 22 March 1999).

¹⁶³³ Ljubiša Diković, T. 19964–19967 (10 December 2007), T. 20018–20020 (11 December 2007); P2042 (37th Motorised Brigade Operations Report to PrK, 23 March 1999); P2043 (37th Motorised Brigade Operations Report to PrK, 25 March 1999); IC159 (Map marked by Diković indicating movement of his and other VJ forces and the line reached during the action); IC160 (Map marked by Diković indicating KLA positions); IC161 (Map marked by Diković indicating KLA positions in relation to the line reached by Diković's unit). *See also* Petar Damjanac, T. 23761–23763 (6 March 2008).

¹⁶³⁴ Nebojša Bogunović, 6D1614 (witness statement dated 2 April 2008), para. 97.

¹⁶³⁵ Ljubiša Diković, T. 19996–20000 (11 December 2007); P1969 (Joint Command Order, 28 March 1999), p. 8; 5D339 (Preparation order of the PrK, signed by Lazarević, 28 March 1999); P2047 (37th Motorised Brigade Operations Report to PrK, 29 March 1999); P2048 (37th Motorised Brigade Supplement to the Operations Report, 29 March 1999). *See also* P2616 (War Diary of the 125th Motorised Brigade), pp. 8–9, which confirms that the brigade was implementing the Joint Command order relating to the Drenica sector.

¹⁶³⁶ P2048 (37th Motorised Brigade Supplement to the Operations Report, 29 March 1999), p. 2.

¹⁶³⁷ Ljubiša Diković, T. 19897–19898 (10 December 2007). *See also* P2049 (37th Motorised Brigade Operations Report to PrK, 30 March 1999).

¹⁶³⁸ Ljubiša Diković, T. 19870–19872 (10 December 2007), T. 19987–19995, 20001–20003 (11 December 2007). *See also* 3D680 (Order of the General Staff for Resubordination of 37th Mtbr/2nd Army, 6 March 1999); 5D1027 (Order of the 37th Motorised Brigade, 1 April 1999).

¹⁶³⁹ P2038 (125th Motorised Brigade Combat Report to PrK, 1 April 1999).

April the Accused Lazarević signed a Priština Corps order instructing the 37th Motorised Brigade to introduce its units in the zone of “village of-Obrinje-Glogovac-Vučitrn-Kosovska Mitrovica (up to and excluding)”.¹⁶⁴⁰ Thus on 4 April Diković issued an order to his unit instructing it to, in co-ordination with the 252nd and 15th Armoured Brigades, as well as the MUP forces, destroy the “ŠTS” in the Drenica area, including Gornje Prekaze/Prekaz i Epërm, Likovac/Likoc, and Donje Obrinje/Abri e Poshtme. One of the brigade’s battalions was to set up a command post at the entrance to the village of Ćirez/Qirez.¹⁶⁴¹

639. On 13 April 1999 Diković issued an “order for defence” in which he instructed the second motorised battalion of his brigade to secure and protect the sector of Likovac/Likoc village as well as some of the villages in the Glogovac/Glogoc municipality near the edge of Srbica/Skenderaj municipality.¹⁶⁴² The 37th Reconnaissance Company was to carry out reconnaissance and control of the territory on the axis of Likovac/Likoc and Rezala/Rrezalla village, south of Srbica/Skenderaj town and west of Ćirez/Qirez and Baks villages.¹⁶⁴³ On 18 April 1999 Diković issued an order to set up checkpoints at various locations in his zone of responsibility, one of which included a checkpoint in the “Kraljica sector”, not too far away from Ćirez/Qirez.¹⁶⁴⁴ According to the brigade’s regular combat report of 19 April, NATO carried out air strikes on 18 April on its units in the area of Ćirez/Qirez; the brigade units were deployed in the Čičavica/Qiqavica sector, and the PJP were carrying out operations in the northern parts of Mount Drenica.¹⁶⁴⁵

640. On 20 April 1999 Diković issued an order for his units to protect civilians and prevent “movement or spillover”; the order also stated that, if civilians find themselves in the area of “combat operations”, or if they are in danger of NATO bombing, to evacuate them to the most suitable locations where their presence would not affect combat activities; finally, the order demanded that a report be sent “immediately” to the brigade command on the measures undertaken and the best possible locations for civilians.¹⁶⁴⁶ On the same day he also sent a request to the Priština Corps Command, asking for humanitarian aid to be distributed to the local population in co-operation with the Red Cross of Srbica/Skenderaj and Glogovac/Glogoc municipalities.¹⁶⁴⁷ On

¹⁶⁴⁰ P2030 (PrK Order, 2 April 1999).

¹⁶⁴¹ P2813 (37th Motorised Brigade Order, 4 April 1999).

¹⁶⁴² 5D1029 (37th Motorised Brigade Order, 13 April 1999), p. 4.

¹⁶⁴³ 5D1029 (37th Motorised Brigade Order, 13 April 1999), p. 8; 5D1055 (37th Motorised Brigade Combat Report, 16 April 1999).

¹⁶⁴⁴ 5D1031 (Order of the 37th Motorised Brigade’s Order, 18 April 1999).

¹⁶⁴⁵ 5D1023 (37th Motorised Brigade’s Combat Report, 19 April 1999); 5D1411 (PrK Command Combat Report sent to 3rd Army Command, 19 April 1999), p. 2.

¹⁶⁴⁶ 5D1033 (37th Motorised Brigade Order, 20 April 1999).

¹⁶⁴⁷ Ljubiša Diković, T. 19908–19910 (10 December 2007); 5D1034 (Request from 37th Motorised Brigade to PrK for humanitarian aid, 20 April 1999). *See also* 5D1059 (37th Motorised Brigade Combat Report, 5 May 1999), p. 2.

21 April, according to another report to the Priština Corps Command sent by Diković, the 3rd motorised battalion of the 37th Motorised Brigade was located in the area of Ćirez/Qirez. This report also referred to the fact that the MUP forces in the area did not participate in any actions and did nothing to control the territory, but instead were busy “slaughtering animals and gathering war booty.”¹⁶⁴⁸

641. On 25 April Diković reported to the Priština Corps command that his units were unable to establish full control in the area of Mount Čičavica/Qiqavica and Mount Drenica. He also stated that the MUP support was inappropriate and inadequate, and referred to the MUP forces as “squatters”.¹⁶⁴⁹ On the same date he also provided an analysis of actions in the areas of Čičavica/Qiqavica and Kosmač, in which he listed a number of weaknesses and flaws, including: absence of communication, co-operation, and co-ordination between the VJ and the MUP units; the fact that the number of units and troops engaged in these actions was inappropriate as the actions covered large areas but had “relatively limited” effects; lack of training on the part of the VJ reserve forces in carrying out “mopping up” of “populated places, forests, blockades, searches, etc”; engagement of “relatively large forces to fight small terrorist groups (‘using an elephant to kill a fly’)”; lack of comprehensive and timely intelligence on the situation and the strength of the “ŠTS” in specific regions; and inappropriate and unproductive use of MUP units who, in Čičavica action, for example, simply “took a walk around Čičavica without achieving anything.”¹⁶⁵⁰

642. On 29 April Lazarević sent an order to Priština Corps Commanders, and thus to the 37th Motorised Brigade Commander, in which he described an “uncontrolled movement by troops in an aimless and most unsoldierly manner” as being a daily occurrence, despite efforts of the Priština Corps Command to the contrary, and referred to the 37th Motorised Brigade as an example of such behaviour, as well as some other brigades. He, therefore, ordered that commanders insist “uncompromisingly” on the “proper appearance of all members of the Corps”, and that they prevent any form of “wilful behaviour” of individuals or groups.¹⁶⁵¹ Diković acted on this order and issued a more strongly worded order to his units requiring them, in addition to the above, to “energetically prevent all crime, looting and abuse of the civilian population and submit documented criminal reports against those responsible of such incidents.”¹⁶⁵²

¹⁶⁴⁸ 5D1087 (37th Motorised Brigade Report to PrK Command, 21 April 1999).

¹⁶⁴⁹ 5D1088 (37th Motorised Brigade Report to PrK Command, 25 April 1999).

¹⁶⁵⁰ P2591 (Analysis of the operation of 37th Motorised Brigade, 25 April 1999).

¹⁶⁵¹ 5D385 (PrK Command Order to PrK Commanders, 29 April 1999). *See also* 5D384 (PrK Command document signed by Lazarević regarding actions of 37th Motorised Brigade, 29 April 1999).

¹⁶⁵² 5D1020 (37th Motorised Brigade Order, 1 May 1999).

643. On 3 May 1999 Diković sent a report to Priština Corps Command complaining that the MUP forces in his area of responsibility were still not subordinated to him, and that the KLA was still active in the area. He stated that, as a result, he was unable to control the whole zone successfully with the available units.¹⁶⁵³ On 4 May he reported to Lazarević that all civilians in the zone of responsibility of the brigade were “assigned accommodation in suitable buildings and nobody is in the open”; “civilians have been put under the control of units, people have been registered They are treated humanely.”¹⁶⁵⁴ The report also stated that there were 23,000 civilians in the zone of responsibility of the brigade and that food reserves were running out.¹⁶⁵⁵

644. Diković conceded that, despite all the measures he took, some of his soldiers committed crimes in the first half of April. Priština Corps records show that from 10 to 15 April a number of individuals from Diković’s unit participated in the killings of Kosovo Albanian men in the area of Gornja Klina/Klina e Epërme, and then disposed of the corpses by throwing them into wells. The records also show that another individual, a volunteer from Diković’s unit, killed a number of Kosovo Albanian men and took away women from refugee columns in and around the village of Krasimirovac/Krasimirofc, not too far from Ćirez/Qirez.¹⁶⁵⁶

iii. Evidence identifying the victims

645. The French Forensic Mission went to Ćirez/Qirez sometime in July 1999. It excavated the three wells, and performed a thorough examination of eight bodies found therein. The clothes were inventoried and then shown to people who knew the victims. Following identification the bodies were returned to the villagers who buried them at the local cemetery.¹⁶⁵⁷ The report prepared by the Mission identified the women as Lumnije Zymeri, Bukurije Dibrani, Antigona Dibrani, Merishahe Dibrani, Xhema Zahide, Fahrije Ademi, Miradije Dibrani, and Tahire Shalaqu. The first four were found in one well, the fifth was found in the second well, and the remaining three were found in the third well.¹⁶⁵⁸ The autopsies showed that all women died as a result of drowning, and must have been pushed into the wells while still alive. No ante-mortem wounds were found on their bodies. Two bodies, that of Lumnije Zymeri and that of Bukurije Dibrani, showed signs

¹⁶⁵³ 5D1080 (37th Motorised Brigade Report requesting MUP subordination, 3 May 1999), also admitted as 4D302.

¹⁶⁵⁴ 4D303 (37th Motorised Brigade Report to the PrK Command, 4 May 1999).

¹⁶⁵⁵ 4D303 (37th Motorised Brigade Report to the PrK Command, 4 May 1999).

¹⁶⁵⁶ Ljubiša Diković, T. 20012–20016 (11 December 2007); 5D726 (List of Criminal Reports filed against PrK soldiers, not dated), pp. 8–9. This exhibit also records investigations into killings in the village of Tica committed by the volunteers from the 37th Motorised Brigade, 5D726 (List of Criminal Reports filed against PrK soldiers, not dated), pp. 4–5. See also 4D171 (Information on Criminal Proceedings for Offences Committed in Kosovo, 6 April 2001); P830 (Report on Criminal Proceedings for Offences Committed by VJ, 9 April 2002), pp. 1–2.

¹⁶⁵⁷ P383 (Site and Autopsy Report – Ćirez), e-court p. 3; P384 (Eric Baccard’s Addendum Report).

¹⁶⁵⁸ P383 (Site and Autopsy Report – Ćirez), e-court pp. 4–7; P384 (Eric Baccard’s Addendum Report).

suggesting sexual assaults.¹⁶⁵⁹ It was estimated that all of the bodies had been in the water for approximately two and a half months, thus indicating that the incident took place sometime in mid-April.¹⁶⁶⁰ The Chamber notes that the fact that no ante-mortem gunshot wounds were found on the eight women shows that none of them was in fact killed by the shots heard by K24 and Rrahmani.

c. Displacements from villages in Srbica/Skenderaj

646. In early 1999 Hadije Fazliu lived with her family in Turićevac/Turiçec. She testified that in March 1999 there was a KLA presence in the village and some of the villagers were members. The KLA headquarters were situated at the village school. Fazliu could not say exactly how many KLA members were present in the village as “people were joining all the time”.¹⁶⁶¹ Liri Loshi, who worked in Turićevac/Turiçec, testified that on 20 March 1999 the town of Srbica/Skenderaj was attacked and much of its population dispersed in different directions, with a large group of people coming to Turićevac/Turiçec. Loshi treated and comforted many of those people and found out that 16 had been killed in different houses in the town, including his former professor.¹⁶⁶² This evidence is partially supported by the 19 March Joint Command order directing the 125th Motorised Brigade, as well as some PJP units, to unblock the town of Srbica/Skenderaj.¹⁶⁶³ In addition, according to Loshi, on 24 March 1999 the nearby village of Kladernica/Klladernica was shelled and three people died as a result.¹⁶⁶⁴

647. Fazliu gave evidence that on the morning of 26 March 1999, because “Serb forces” started shelling Turićevac/Turiçec from the direction of Broćna/Buroja, she and her family decided to leave.¹⁶⁶⁵ The presence of VJ and PJP troops in the area around that date is confirmed by a Joint Command order of 24 March 1999, and by the evidence of Diković.¹⁶⁶⁶ People from the village formed a convoy which moved towards Tušilje/Tushila, roughly three kilometres from Turićevac/Turiçec. Upon arrival in Tušilje/Tushila they saw that many others had gathered there, including people from Srbica/Skenderaj, Klina, and Glogovac/Gllogoc municipalities. On 28 March, in the evening, a convoy of women from Izbica arrived. Fazliu met some of them and they told her that there had been a “massacre” in Izbica. She also heard that the convoy of women

¹⁶⁵⁹ P383 (Site and Autopsy Report – Ćirez), e-court pp. 56–71; P384 (Eric Baccard’s Addendum Report).

¹⁶⁶⁰ P383 (Site and Autopsy Report – Ćirez), e-court p. 74; P384 (Eric Baccard’s Addendum Report).

¹⁶⁶¹ Hadije Fazliu, T. 1968, 1971 (18 August 2006), P2241 (witness statement dated 21 October 2001), p. 2.

¹⁶⁶² Liri Loshi, P2436 (Rule 92 *bis* package), e-court p. 12.

¹⁶⁶³ P3049 (Joint Command Order, 19 March 1999), p. 4.

¹⁶⁶⁴ Liri Loshi, P2436 (Rule 92 *bis* package), e-court p. 13, P2437 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 9481.

¹⁶⁶⁵ Hadije Fazliu, T. 1952–1954 (18 August 2006), P2241 (witness statement dated 21 October 2001), p. 2.

¹⁶⁶⁶ P1968 (Joint Command Order, 24 March 1999).

had been shelled and had split into two parts, one of which had come to Tušilje/Tushila, and that one woman and two children had been killed as a consequence.¹⁶⁶⁷

648. According to Fazliu, on 29 March 1999 at around 8:00 a.m., “Serb forces” came to Tušilje/Tushila on foot and surrounded the people gathered there. The police came first and the army arrived later in tanks and other vehicles. These combined forces approached the village from the direction of Klina and Srbica/Skenderaj towns, and started shooting at the people in the village. Fazliu saw many people injured and one who was bloodstained. The forces then kept the people surrounded for two hours, during which time they abused them verbally.¹⁶⁶⁸ The presence of VJ troops in the area, securing the Srbica/Skenderaj-Klina road on which Tušilje/Tushila is located, is confirmed by the 37th Motorised Brigade’s daily operations report of 30 March, recording that the unit completed the introduction of forces into the general area of Srbica/Skenderaj “where it took features suitable for inspection of the territory and axes leading from Glogovac and Glina [sic] towards Srbica and Kosovska Mitrovica”.¹⁶⁶⁹

649. At 10:00 a.m. the convoy was “allowed” to move in the direction of Klina town. Fazliu acknowledged that nobody told her to leave and that towards Klina was the only direction in which the convoy could move. As they were leaving, the men were separated from the women. Fazliu later learned from her brother that more than 1,500 men were sent to Srbica/Skenderaj school, where they were questioned, and that eight of those men were killed.¹⁶⁷⁰ Given that these murders are not charged in the Indictment, the Chamber will not make any findings in respect of them.

650. While travelling in the direction of Klina, Fazliu could see a large number of soldiers with tanks and armoured vehicles on the main road. She also saw the bodies of the woman and two children she had heard about earlier. When the convoy passed Turićevac/Turićec, she and other female family members decided to go back home. They had to stay in the garage because their house had been burned. They remained in the village for about two days without food.¹⁶⁷¹

651. On 1 April 1999 the “police” came to Turićevac/Turićec in civilian cars. As soon as they realised that it was the police, Fazliu and the other remaining villagers fled towards the woods and were shot at. She later heard that three men were killed that day, and she saw their bodies when she

¹⁶⁶⁷ Hadije Fazliu, T. 1952–1957 (18 August 2006), P2241 (witness statement dated 21 October 2001), pp. 2–3.

¹⁶⁶⁸ Hadije Fazliu, T. 1954, 1972 (18 August 2006), P2241 (witness statement dated 21 October 2001), p. 3. According to Fazliu, the police wore dark blue camouflage uniforms while the soldiers wore green camouflage uniforms; both were carrying heavy weapons. Some policemen had bandanas on their heads and paint on their faces.

¹⁶⁶⁹ P2049 (37th Motorised Brigade Combat Report to PrK, 30 March 1999), p. 2.

¹⁶⁷⁰ Hadije Fazliu, T. 1959–1960, 1972–1975 (18 August 2006), P2241 (witness statement dated 21 October 2001), p. 3.

¹⁶⁷¹ Hadije Fazliu, T. 1957–1960 (18 August 2006), P2241 (witness statement dated 21 October 2001), p. 3.

subsequently returned to the village. She was in a group of 40 women who were caught by some policemen who insulted them and then told them to go towards the road to Klina. They first went to the Turićevac/Turiçec school where a large number of women and children had already gathered. Since the police would not let them go to their houses, they all started walking towards the main road. They passed through the village of Broćna/Buroja and then headed in the direction of Klina town.¹⁶⁷²

652. From Broćna/Buroja the group moved on to the village of Jošanica/Jashanica in Klina municipality. There were more than 1,000 women and children, and two elderly men, in the convoy. Fazliu saw a number of dead bodies along the way. She also saw “the forces” looting and burning houses and livestock in the villages that they passed through. The convoy spent the night in Jošanica/Jashanica and next day, 2 April 1999, went back to Broćna/Buroja because of fear that they would be sent to a factory which would then be bombed. There the “forces” in the village again sent them back towards Klina.¹⁶⁷³

653. In Klina they were told by “police” to board trucks which took them to Volujak/Volljaka, roughly five kilometres south of the town. Along the road to Volujak/Volljaka Fazliu saw members of the army in tanks. From Volujak/Volljaka the convoy walked in the direction of Đakovica/Gjakova. On the night of 4 April 1999 they arrived at the border crossing of Čafa Prušit/Qafa e Prushit. Fazliu testified that, because the military and the police were afraid that NATO was going to bomb the area, they let the convoy pass through without demanding documents or money. That night she and her family members crossed into Albania.¹⁶⁷⁴

654. The second witness who gave evidence about displacements in Srbica/Skenderaj municipality was Abdullah Salihu, who resided in Baks, one or two kilometres west of Ćirez/Qirez. He was 44 years old at the time. According to him, sometime in March 1999, following the KVM withdrawal, the “Serbian army” as well as “paramilitaries” came to the neighbouring village of Ćirez/Qirez.¹⁶⁷⁵ They came in buses and trucks and brought heavy armaments, including tanks and

¹⁶⁷² Hadije Fazliu, T. 1959–1960 (18 August 2006), P2241 (witness statement dated 21 October 2001), p. 3.

¹⁶⁷³ Hadije Fazliu, T. 1961–1962 (18 August 2006), P2241 (witness statement dated 21 October 2001), pp. 3–4; IC11 (Map from P615, page 17, showing Turićevac/Turiçec, Tušilje/Tushila, and Klina).

¹⁶⁷⁴ Hadije Fazliu, T. 1962–1964 (18 August 2006), P2241 (witness statement dated 21 October 2001), pp. 4–5; IC12 (Map taken from P615, page 22, showing the town of Đakovica/Gjakova and the village of Volujak/Volljaka); P18 (Map showing the route Fazliu took to get to the border).

¹⁶⁷⁵ Salihu gave evidence that during the war he saw three different types of uniforms. The regular VJ soldiers wore camouflage green uniforms and were usually young. The VJ reservists had grey uniforms. Finally, the paramilitaries had camouflage green uniforms as the regular VJ forces but would also wear bandanas and arm bands in different colours (red, blue, yellow). They were usually older, anywhere from 35 to 50 years of age, and would have long hair and long beards. Abdullah Salihu, T. 1988–1990 (21 August 2006).

artillery weapons. Salihu's own village was full of "paramilitaries" who wore scarves on their heads and had painted faces. He and the other villagers sought shelter in a nearby forest.¹⁶⁷⁶

655. While still hiding in the woods with ten male relatives, on 28 April 1999 Salihu observed the bombing by NATO of the Feronikel factory in Glogovac/Gllogoc, which was occupied by the PJP.¹⁶⁷⁷ On 29 April another "Serb" offensive started in the area. That morning the "Serb forces" started shelling the area where Salihu was hiding. He saw tanks arrive while infantry forces approached and surrounded him and his companions. They were captured by a "paramilitary" unit consisting of some 30 to 40 men with painted faces, wearing green camouflage uniforms and scarves or coloured arm bands, and insignia with a blue coloured eagle on it. This uniform indicated to him that they were Šešelj's men. Most also had long hair and beards and Salihu was told that some of them were local Serbs.¹⁶⁷⁸

656. After capture they were ordered to walk to a meadow where they were searched and beaten with rifles and pieces of wood. All their valuables and identification documents were taken. Salihu was forced to give up 600 German Marks as well as his wristwatch. The men were then marched to Ćirez/Qirez with their hands behind their heads, escorted by 15 "soldiers" who did not mistreat them. Another group of captured men joined them; altogether the group then consisted of approximately 55 men.¹⁶⁷⁹

657. Once in Ćirez/Qirez Salihu could see a large number of "forces" everywhere, inside and outside of houses; almost every house was occupied by "the military". It was around 3:00 p.m. when the men arrived in front of the village mosque, which had been burned but the walls of which were still standing. The men were handed over to a group of 30 to 40 "paramilitaries", who then used rifle butts to beat them. The paramilitaries cut a cross into the forehead of one of the men. This ill-treatment continued for an hour inside the yard of the mosque. The captured men were then forced into the burnt-out mosque to be counted. Two other groups of captured men were brought during the afternoon. They then numbered 176 men. On cross-examination Salihu conceded that he had heard that the KLA was fighting the FRY/Serbian forces in the area, but he

¹⁶⁷⁶ Abdullah Salihu, T. 1988, 1990 (21 August 2006), P2255 (witness statement dated 24 October 2000), p. 3.

¹⁶⁷⁷ See para. 568 above.

¹⁶⁷⁸ Abdullah Salihu, T. 1990–1993, 2005–2006 (21 August 2006), P2255 (witness statement dated 24 October 2000), p. 4; IC13 (map of the Srbica/Skenderaj municipality marked by the witness and showing the area where he was hiding with other men).

¹⁶⁷⁹ Abdullah Salihu, T. 2006 (21 August 2006), P2255 (witness statement dated 24 October 2000), p. 4.

maintained that all the captured men were civilians, as KLA members would “much rather get killed than fall into their hands.”¹⁶⁸⁰

658. The next morning, 30 April 1999, four unmarked “military jeeps” arrived, three of which were of “green VJ colour” and one was white. The three green jeeps had military plates, while the white jeep had no marks and no registration plates. All the detained men were instructed to leave the mosque and line up facing the wall. As they were leaving the mosque, four or five soldiers from the jeeps stood at the gate and beat them. The “paramilitary” in charge had long black hair and a rank on his chest pocket. He said that he was looking for a KLA fighter by the name of Mirsad. After observing the men, he became convinced that Salihu was Mirsad and took him out of the line. Three soldiers then started beating Salihu until he fainted. They dragged him to a tap and poured water over him. One of the soldiers then put a gun against Salihu’s neck and threatened to kill him. Eventually the soldiers went back to the line of men and took out seven other men who received similar treatment.¹⁶⁸¹

659. After some time three small “military trucks” came to the mosque. The captured men had to get into them. Salihu boarded the third truck, which contained a total of 20 men and three soldiers. The man in charge ordered the drivers to drive in the direction of Glogovac/Gllogoc. The trucks stopped when they arrived at a “place called Shavarina” near Staro Čikatovo/Qikatova e Vjetër. Salihu could see that a “military jeep” was leading the convoy. The first truck was emptied and some 27 to 30 people were lined up into three lines, next to a pit, facing the soldiers. On each side and in front of the lines was a group of four to five soldiers with automatic guns. The man in charge ordered the three gunmen in front of the lines of men to open fire. They did so and Salihu saw people falling over the edge into the pit. As soon as this was done, another “military jeep” arrived from the direction of Glogovac/Gllogoc. A “member of the regular army” jumped out of the jeep, had a 20-minute conversation with the man in charge of the executions, following which the two remaining trucks filled with men continued travelling in the direction of Glogovac/Gllogoc.¹⁶⁸² The Chamber notes that Gordana Tomašević, while in Kosovo, examined 12 burnt bodies in a house in Staro Čikatovo/Qikatova e Vjetër.¹⁶⁸³ In the absence of any other link, however, it is not possible for the Chamber to conclude that these 12 bodies belonged to the

¹⁶⁸⁰ Abdullah Salihu, T. 1993–1995, 2020–2021, 2027 (21 August 2006), P2255 (witness statement dated 24 October 2000), pp. 4–5; P1801 (photograph of Ćirez/Qirez mosque).

¹⁶⁸¹ Abdullah Salihu, T. 2037–2038 (21 August 2006); P2255 (witness statement dated 24 October 2000), p. 5.

¹⁶⁸² Abdullah Salihu, T. 1995–1996, 1999 (21 August 2006), P2255 (witness statement dated 24 October 2000), pp. 5–6; IC14 (map of the area marked by Salihu and showing the area where the execution took place).

¹⁶⁸³ Gordana Tomašević, P2490 (witness statement dated 5 March 2003), paras. 17–22.

men who were executed in Salihu's presence. In addition, these murders are not charged in the Indictment. Accordingly, the Chamber will not make a finding relating to them.

660. When they arrived in Glogovac/Gllogoc, the men from the first truck were ordered into a cinema hall, whereas people from the second truck, including Salihu, were left in police hands in the police station yard across the street. The "soldiers" left at this stage and the "police" took over. Salihu heard from his brother, who was in the other group, that an hour or so after their arrival the other group was sent to the police in Priština/Prishtina. Salihu and his companions were beaten until evening, when they were brought into the cinema building and were guarded by a policeman in a camouflage uniform.¹⁶⁸⁴

661. The next day a "paramilitary", who was wearing a green camouflage uniform and was about 50 years old, came to the cinema carrying a bottle of liquor in one hand and an automatic gun in the other. He talked to the policeman in charge and asked to be given a man who "belonged" to him. The policeman told the paramilitary to select whomever he wanted. The paramilitary then pointed to Rahman Topilla, separated him from the rest of the men, and shot him with four single shots. Salihu and the other men were then told by the policeman that they would all be killed in this way.¹⁶⁸⁵ Petar Damjanac, chief of the Glogovac OUP, was asked whether he knew or had heard of this incident, but denied any knowledge of it.¹⁶⁸⁶

662. Salihu and the men remained there for another six days, and were beaten every day. No food was provided. On the third day Salihu was interrogated by a police inspector whom he knew and named, and whose assistant beat Salihu on the legs and the feet with a police stick.¹⁶⁸⁷ Damjanac was asked about this inspector, and testified that no such person existed in his OUP or in the Priština SUP.¹⁶⁸⁸ He further denied any mistreatment of suspected KLA members, who, he conceded, were detained in Glogovac/Gllogoc throughout the whole of 1998 and up to May 1999.¹⁶⁸⁹

663. On the seventh day three "military trucks" collected the men from the cinema building. Salihu's truck stopped in Vukovce/Vukofci, where the men were kept until the FRY/Serbian forces

¹⁶⁸⁴ Abdullah Salihu, T. 1996, 2027–2028 (21 August 2006), P2255 (witness statement dated 24 October 2000), p. 6.

¹⁶⁸⁵ Abdullah Salihu, T. 1996–1998, 2002, 2008–2009, 2029–2032 (21 August 2006), P2255 (witness statement dated 24 October 2000), pp. 6–7.

¹⁶⁸⁶ Petar Damjanac, T. 23769–23770 (6 March 2008).

¹⁶⁸⁷ Abdullah Salihu, T. 1998 (21 August 2006), P2255 (witness statement dated 24 October 2000), p. 7.

¹⁶⁸⁸ Petar Damjanac, T. 23769–23770 (6 March 2008).

¹⁶⁸⁹ Petar Damjanac, T. 23811–23813, 23817–23818 (6 March 2008). When cross-examined further, Damjanac also denied any knowledge of the incident in Gornje Obrinje in September 1998, even though this village fell under Glogovac OUP's jurisdiction. Damjanac explained this by saying that the OUP's resources were stretched and the area was too dangerous for his policemen to go there; Petar Damjanac, T. 23813–23817 (6 March 2008).

withdrew some 37 to 40 days later. They were forced to work for VJ reserve forces, who wore “plain dirty yellow coloured” uniforms, by digging trenches. They were accommodated in a half-burned house and were supplied with food and cigarettes. They were generally treated well by the VJ reservists, with the exception of four “paramilitaries”.¹⁶⁹⁰ The day the FRY/Serbian forces withdrew from Kosovo, they were all brought to a school in Krajkovo/Krajkova and from there walked home to Baks.¹⁶⁹¹

664. Partially confirming Salihu’s evidence about the detention of over 170 men is Diković’s combat report of 1 May 1999, in which he reported to the Priština Corps Command that “the operation to break up and destroy ŠTS” within the brigade’s zone of responsibility had been carried out on 30 April. The action covered the area between Mount Čičavica/Qiqavica and the Srbica/Skenderaj-Glogovac/Gllogoc “communication line”, including the village of Kraljica near Ćirez/Qirez and Baks. Diković also noted in his report that 148 KLA members were liquidated and “172 persons” were captured to be “duly processed” by the VJ security organs.¹⁶⁹²

665. A number of witnesses called by the Defence addressed the issue of large movements of civilians in Srbica/Skenderaj municipality and surrounding areas in this period. For example, Petar Damjanac testified that the KLA had managed to spread so much fear among the local Kosovo Albanian population that the latter felt that they had to obey the former. Thus, when the KLA ordered civilians to create the appearance of a humanitarian catastrophe, people did as they were told. This, coupled with the NATO air-strikes, meant that these people had to move from village to village, into the woods and hilly areas, or anywhere they thought that they would be safer from the NATO attacks. Damjanac further testified that he had “orders from upstairs” to try to convince people to stay in their homes, which he attempted to do; he was successful only in relation to the residential areas of Glogovac/Gllogoc.¹⁶⁹³ He later stated that there were no large group departures from Glogovac/Gllogoc, but mainly what he called “individual departures” by people who would use their private vehicles to leave.¹⁶⁹⁴

666. Another witness who testified about this was Diković, who stated that the population started moving during the NATO campaign, not only because of the NATO air-strikes, but also because the KLA wanted to have as many civilian moving through the area as possible, to provide cover for the KLA, whose members would conceal weapons, mix with the civilian population, and fire on the

¹⁶⁹⁰ Abdullah Salihu, T. 1998–1999, 2006, 2010–2011 (21 August 2006), P2255 (witness statement dated 24 October 2000), p. 7; IC14 (map marked by Abdullah Salihu showing the village where the men worked in the trenches).

¹⁶⁹¹ Abdullah Salihu, P2255 (witness statement dated 24 October 2000), p. 7.

¹⁶⁹² 5D1036 (37th Motorised Brigade Report to PrK Command, 1 May 1999), p. 1.

¹⁶⁹³ Petar Damjanac, T. 23755–23757 (6 March 2008).

FRY/Serbian forces.¹⁶⁹⁵ Nebojša Bogunović testified that it was normal for people to be leaving villages in or near KLA strongholds, such as Voćnjak/Vojnika, Ćirez/Qirez, and Turićevac/Turiçec, due to constant fighting between the FRY/Serbian forces and the KLA. He also stated that the KLA retained control of that area until the end of the NATO bombing.¹⁶⁹⁶

d. Destruction of the mosque in Ćirez/Qirez

667. Having spent some time in the mosque in Ćirez/Qirez, as described above, Salihu also testified that he later heard that it was completely destroyed by “the Serbs” some 15 days before the withdrawal of the FRY/Serbian forces from Kosovo. He also heard that they had used mines and bombs to do so.¹⁶⁹⁷

668. Further evidence about the destruction of Ćirez/Qirez mosque was given by the Prosecution expert witness András Riedlmayer.¹⁶⁹⁸ Among the sites discussed in his expert report was the mosque in Ćirez/Qirez, which the report described as “almost destroyed”, meaning that the building was essentially a total loss, but that there were still some identifiable parts of the structure standing above ground.¹⁶⁹⁹ Riedlmayer never saw this particular mosque but worked off pre- and post-war photographs, which he said were taken by Sabri Bajgora, who was a deputy mufti for Kosovo. The comments in the report relating to how this damage occurred (shelling) and who caused it (Serb attacks) were also made by Bajgora. It was Riedlmayer’s view that it was difficult to tell from the photograph whether the damage was done by external impact of projectiles, or by detonation from within.¹⁷⁰⁰

5. Findings

a. Displacements from the municipality

669. The Prosecution contends that on 25 March 1999 FRY and Serbian forces shelled a number of villages in Srbica/Skenderaj municipality, including Voćnjak/Vojnika, Leocina/Leqina, Kladernica/Klladernica, Turićevac/Turiçec, Ćirez/Qirez, and Izbica, as a result of which thousands of civilians fled to Izbica where they were told they would be going to Albania. From there, the

¹⁶⁹⁴ Petar Damjanac, T. 23821–23823 (6 March 2008).

¹⁶⁹⁵ Ljubiša Diković, T. 19006 (10 December 2007).

¹⁶⁹⁶ Nebojša Bogunović, 6D1614 (witness statement dated 2 April 2008), para. 84.

¹⁶⁹⁷ Abdullah Salihu, T. 1994–1995 (21 August 2006); P1801 (photograph of the heavily damaged mosque in Ćirez/Qirez).

¹⁶⁹⁸ P1789 (András Riedlmayer’s Expert Report).

¹⁶⁹⁹ András Riedlmayer, T. 5425–5426, 5476 (30 October 2006); P1778 (Extract from P1789 re Ćirez/Qirez mosque).

¹⁷⁰⁰ András Riedlmayer, T. 5473, 5476–5477 (30 October 2006).

Prosecution argues, the displaced people were ordered to go to Klina, and then they travelled to Đakovica/Gjakova and crossed into Albania.¹⁷⁰¹

670. The Lazarević Defence responds by challenging the evidence of Hadije Fazliu and argues that, rather than shelling the villages, the VJ was engaging the KLA in that part of the municipality and completed its participation in the actions by 28 March 1999.¹⁷⁰² The Lazarević Defence also refers to the evidence of Abdullah Salihu about “paramilitaries” as proof that the VJ was not involved in his displacement and capture.¹⁷⁰³ It also points to the evidence of the VJ providing humanitarian aid to civilians in the Glogovac/Gllogoc municipality, and their treatment of the women in Ćirez/Qirez following their ordeal, as proof that the VJ showed a great deal of care for civilians.¹⁷⁰⁴ The Pavković Defence challenges the allegations of organised forcible displacement in the municipality by noting that the witnesses called by the Prosecution either remained in the municipality (Draga and Thaqi) or provided no evidence that they were told to leave Kosovo by the VJ (Rrahmani and Fazliu).¹⁷⁰⁵

671. On the basis of all the evidence, the Chamber finds that on 26 March 1999 Turićevac/Turiçec village was shelled by the FRY/Serbian forces from Broćna/Buroja, and its inhabitants formed a convoy, which included Hadije Fazliu, and left in the direction of Tušilje/Tushila to the east. The presence of these forces in the area at the relevant time is confirmed by the Joint Command order of 24 March, as well as Diković’s evidence that he engaged his combat group and used tanks in the area. The Chamber also recalls that Živanović testified that his brigade, namely the 125th Motorised Brigade, was engaged in the area, only on the eastern side of Turićevac/Turiçec. The Chamber notes, however, that Fazliu and Zyrapli testified that the KLA was present in Turićevac/Turiçec at the time and that it had a headquarters there. In addition, Živanović testified that the KLA forces were located in Tušilje/Tushila.

672. The Chamber further finds that both MUP and VJ forces eventually arrived in Tušilje/Tushila, as testified to by Fazliu, and that another convoy was then formed, which started moving towards Klina. Fazliu joined the convoy although no-one told her to leave. This evidence from Fazliu is partially confirmed by Diković who testified that he was expecting a large number of civilians in the area around that time due to the fighting with the KLA, and was thus instructed to move them to a safer area.

¹⁷⁰¹ Prosecution Final Trial Brief, 29 July 2008 (public version), paras. 371–375.

¹⁷⁰² Lazarević Final Trial Brief, 29 July 2008 (public version), paras. 162–170.

¹⁷⁰³ Lazarević Final Trial Brief, 29 July 2008 (public version), paras. 153–156.

¹⁷⁰⁴ Lazarević Final Trial Brief, 29 July 2008 (public version), paras. 149–150, 171–173.

673. The Trial Chamber accepts Abdullah Salihu's evidence that the VJ arrived in Ćirez/Qirez, or at least the area surrounding Ćirez/Qirez, sometime around 20 or 21 March, as confirmed by the Joint Command orders of 19 and 22 March, as well as the testimony of Ljubiša Diković. These sources also support Salihu's testimony about the presence of tanks in the area, as Diković accepted that his combat group had six tanks at its disposal. Salihu's evidence about another "Serb offensive" in the area taking place on 29 April is also supported by the 37th Motorised Brigade's report of 1 May 1999, which places the brigade near Salihu's village, Baks. The Chamber further finds that Salihu was detained by people he referred to as "paramilitaries", was mistreated by them, stripped of his identification documents and money, and then marched to Ćirez/Qirez along with over 170 other men, where the mistreatment continued. The Chamber notes that these "paramilitaries" were not operating independently of the VJ and MUP, and indeed were collaborating with them, and that they could have been VJ reservists or other special forces of some kind. Diković's combat reports also place his units in the area, and one even mentions detention of 172 KLA members. As for Salihu's detention in Glogovac/Gllogoc, the Chamber accepts his evidence and notes that the chief of Glogovac OUP, Petar Damjanac, confirmed that people were being detained in the town. Even though Damjanac denied that those detained were mistreated in any way, the Chamber is of the view that Salihu was indeed mistreated by the "paramilitaries" and the police while in Glogovac/Gllogoc.

674. The Chamber finds that, even though Rrahmani was told to go to Glogovac/Gllogoc because of the impending offensive in Ćirez/Qirez, once the bus that she was on arrived in Glogovac/Gllogoc, it was directed by the forces there to Macedonia.

675. Accordingly, the Chamber finds that Fazliu, Salihu, and Rrahmani, as well as many others, were displaced from their homes by the VJ and MUP forces. They were directed towards the border and into either Albania or Macedonia.

b. Killings in Izbica

676. The Prosecution argues that forces of the FRY and Serbia were responsible for the killings in Izbica, as they were conducting a joint operation in the area at the time.¹⁷⁰⁶ It also argues,

¹⁷⁰⁵ Pavković Final Trial Brief, 28 July 2008 (public version), paras. 410–413. *See also* Lukić Final Trial Brief, 7 August 2008 (public version), paras. 989–990, 994, Lukić Closing Arguments, T. 27377–27379 (26 August 2008).

¹⁷⁰⁶ Prosecution Final Trial Brief, 29 July 2008 (public version), paras. 373–379.

relying on Milazim Thaqi, that it was a VJ commander who ordered the execution on that day and points out that the victims were mostly elderly men and not KLA fighters.¹⁷⁰⁷

677. None of the Defence teams challenge that there were killings, although the Lukić Defence challenges the fact that they took place in Izbica and that the victims were civilians. The Lazarević Defence, relying on Ljubiša Diković, Slađan Pantić, Mustafa Draga, and VJ documentary evidence, argues that the VJ was not involved in the killings. It further argues that the village of Izbica was a “terrorist” stronghold, justifying the joint action conducted there, and challenges the credibility of Liri Loshi, Milazim Thaqi, and Mustafa Draga.¹⁷⁰⁸ The Pavković Defence also denies that the VJ was involved in the killings, and challenges Thaqi’s oral testimony to the contrary, on the basis that his prior statement made no mention of the VJ.¹⁷⁰⁹ The Lukić Defence argues, relying on Pantić, that, rather than entering Izbica, the PJP units bypassed it, and thus challenges the evidence of Diković that the MUP was in charge of dealing with the civilians near Izbica. It also argues that Izbica and surrounding villages had a large KLA presence, and that the nature and intensity of fighting between the KLA and the FRY/Serbian forces there must have caused heavy KLA casualties. The Lukić Defence challenges the evidence of Thaqi and Draga relating to their identification of forces in Izbica and, in particular, their inconsistent descriptions of the man who ordered the execution, as well as some internal inconsistencies in Draga’s evidence. The Lukić Defence also suggests that the Izbica burial site was staged to present an untrue picture of events. In support it raises the issue of the bodies being buried in the location both prior to and following the incident of 28 March 1999, and points to the fact that the area was under KLA control for a period of time following 28 March and, as such, was the target of four more joint VJ/MUP actions in April and May, which would have led to more KLA casualties.¹⁷¹⁰ Finally, the Lukić Defence points out that, as soon as the mass grave at Izbica was discovered, the Kosovska Mitrovica SUP launched an investigation and undertook an exhumation.¹⁷¹¹

678. The Chamber is satisfied that the evidence given by the survivors of the killings in Izbica is both credible and reliable in most respects. The events that these survivors witnessed were of an extremely traumatic nature and the Chamber considers it to be unlikely that they would have absolutely identical recollections of what occurred. Nevertheless, they may have felt obliged to try to assist the Chamber and, on occasion, as a result, have made errors in detail such as descriptions

¹⁷⁰⁷ Prosecution Final Trial Brief, 29 July 2008 (public version), para. 375; Prosecution Closing Arguments, T. 26876–26787 (19 August 2008), T. 26920–26922 (20 August 2008).

¹⁷⁰⁸ Lazarević Final Trial Brief, 29 July 2008 (public version), paras. 131–137.

¹⁷⁰⁹ Pavković Final Trial Brief, 28 July 2008 (public version), paras. 573–577.

¹⁷¹⁰ Lukić Final Trial Brief, 7 August 2008 (public version), paras. 947–988, 991–994, 1392–1407.

¹⁷¹¹ Lukić Final Trial Brief, 7 August 2008 (public version), paras. 995–1000.

of particular individuals. The Chamber does not consider, therefore, that the differences in the accounts of Thaqi and Draga undermine their evidence of what happened on that day.

679. The Chamber finds that on 28 March 1999 over 100 men were separated from women and children gathered in a field in Izbica. These men were divided into two groups and shot as described by the survivors of the incident. In one of the groups, both Draga and Januzi estimated that there were around 70 men while Thaqi stated that he counted 33 men, including himself, in the second group. The Chamber has heard evidence that 14 men survived the incident. In addition to the men killed in these two groups, four other elderly people were killed in the field. The majority of the people killed on that day were elderly, which militates against them being active KLA members. Indeed, Gordana Tomašević noted in her report that most victims were dressed in civilian clothing. The Chamber has analysed the video footage in relation to two bodies described by the Lazarević Defence as wearing partial uniforms, and notes that both descriptions refer in fact to one corpse, that of an elderly man whose green overcoat does not look like a uniform.

680. Addressing one of the Lukić Defence challenges, the Chamber accepts that Draga first testified that the men in Izbica were divided into two groups, but then referred to four groups altogether. However, the Chamber also notes that the larger group of men, to which Draga belonged, seems to have been subdivided into three smaller groups given that, according to Draga, the locations where these three groups were executed are near each other, and were indeed treated by the French Forensic Mission as one single execution site.

681. Accordingly, taking into account that approximately 103 men were separated into two groups and shot and that 14 of them survived, the Chamber finds that approximately 89 men were killed on 28 March, in the manner described in the Indictment. In addition, based on the evidence by one of the survivors, the Chamber also finds that corpses of four elderly people were seen in the field in Izbica following the executions described above.

682. The Prosecution named 118 people in Schedule F as being among those killed at Izbica in the course of these events. However, the evidence brought to connect those 118 names to the two groups of men who were executed and the elderly people killed in the field was led in such a way that made it impossible for the Chamber to positively identify all of those who were killed on that day in the manner described in the Indictment. This is especially so in light of the evidence that other people were brought to the burial site in Izbica and that some were members of the KLA. Accordingly, in identifying some of these victims, the Chamber will rely only on the evidence of the survivors and Liri Loshi's videotape depicting execution sites, as opposed to the burial site.

683. The following 21 people listed in Schedule F were either named as part of the two groups of men by Thaqi, Draga, and/or Januzi, or their bodies were seen by Draga in the field in Izbica after their killing: Ilaz Bajra, Ali Draga, Cen Draga, Hajriz Draga, Ismet Draga, Murat Draga, Rustem Draga, Sami Loshi, Jashar Loshi, Selman Loshi, Shaban Musliu, Ismajl Qelaj, Rexhep Qelaj, Metush Qelaj, Idriz Shala, Isuf Shala, Sali Shala, Zymer Shala, Halim Shala, Uke Uka, and Zoje Osmani. All 21 are also named on the list which was prepared by Afrim Xhemajli and Liri Loshi during the burial on 31 March 1999. The remains of five of the 21, namely those of Sami Loshi, Jashar Loshi, Selman Loshi, Metush Qelaj, and Zoje Osmani were later found in the mass grave in Petrovo Selo in Serbia, and the Chamber has in evidence the relevant medico-forensic material relating to these victims. In addition, with respect to the remaining 16, the Chamber, as outlined above, has other evidence, including video stills prepared from Loshi's video footage, all of which corroborate the eyewitness evidence. Accordingly, the Chamber is satisfied beyond reasonable doubt that these 21 named victims were killed on 28 March 1999 in Izbica in the manner described by the survivors.

684. For the following six victims named in Schedule F, the leading piece of evidence connecting them to the execution sites in Izbica is the video footage and stills of their corpses prepared by Loshi and his friend: Brahim Bajra, Fazli Bajra, Bajram Dervishi, Hamdi Doqi, Sadik Hoti, and Hysen (A) Shala. Accordingly, in light of this, as well as other evidence, and given that the Chamber could observe these corpses, noting that the majority were elderly, the Chamber is satisfied beyond reasonable doubt that they were killed on 28 March 1999 in Izbica in the manner described by the survivors of the executions.

685. For the remaining victims named in Schedule F, the Prosecution failed to sufficiently connect these people with the execution sites or the two people allegedly killed in the field. Accordingly, 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.¹⁷¹²

686. With respect to the perpetrators of the killings in Izbica, both Thaqi and Draga gave evidence that MUP forces were involved. While testifying before this Chamber, they for the first time mentioned that VJ soldiers were also present in the valley at the time of the killings. The Chamber notes, however, that the evidence Thaqi gave in support of his view that members of the VJ were there was that of soldiers wearing "Yugoslav colours" and insignia being worn on both

¹⁷¹² A more detailed description of the forensic and other evidence relating to individual victims from Izbica is contained in Annex A to the present Judgement.

arms. The evidence shows that the insignia worn by the PJP at the time contained Yugoslav flag colours, that PJP units wore insignia on both arms, and that they had green camouflage uniforms. Accordingly, Thaqi's description is consistent with these forces being PJP units. As for Draga, in his witness statement he specifically referred to both blue and green camouflage uniforms, but said that all had police signs on them. Furthermore, during cross-examination in the present case he conceded that he was too afraid to look at the forces. Accordingly, the Chamber is not convinced of the identification of VJ soldiers by these two witnesses and concludes that it can only be satisfied that the MUP forces were involved.

687. In addition, although conceding that his unit was in the area, Diković specifically denied that it entered Izbica village or had any contacts with the civilians. His evidence is supported by the VJ orders relating to the action, and to some extent by Pantić, a policeman who served as a guide to parts of the VJ and PJP forces, albeit his evidence was confined to one PJP unit as well as a small number of VJ soldiers. The Chamber also notes Diković's evidence that in that particular action it was the task of the MUP to deal with civilians, and that they did so in the vicinity of Izbica. Thus, the Chamber concludes that the execution of at least 93 people in Izbica on 28 March 1999 was carried out by MUP forces, specifically the PJP, while units of the VJ were also in the vicinity.

c. Sexual assaults in Ćirez/Qirez

688. The Prosecution argues that forces of the FRY and Serbia attacked Ćirez/Qirez in late March 1999 and that "some soldiers and paramilitaries" sexually assaulted a group of women and killed at least eight of them.¹⁷¹³ The Lazarević Defence denies involvement of the VJ in the incident and points to eyewitness testimony that men in black and brown uniforms, blue uniforms, and green camouflage uniforms with ribbons were involved. The Lazarević Defence also challenges Rrahmani's evidence about the shelling of Kozica/Kozhica in late March by pointing to the VJ documents and witnesses, such as Ljubiša Diković, indicating that the VJ was engaged away from that village on 29 March 1999.¹⁷¹⁴ The Pavković Defence denies VJ involvement in the incident in Ćirez/Qirez and refers to the good treatment of these women by men in solid green uniforms, as well as to the fact that they were mistreated by men wearing paramilitary-type uniforms.¹⁷¹⁵ The Lukić Defence is the only Defence team challenging the fact that sexual assaults and/or rapes took place in Ćirez/Qirez. It does so on the basis that Rrahmani did not see what happened to the younger girls who were taken out of the barn. The Lukić Defence, however, fails

¹⁷¹³ Prosecution Final Trial Brief, 29 July 2008 (public version), para. 372.

¹⁷¹⁴ Lazarević Final Trial Brief, 29 July 2008 (public version), paras. 142–148.

to address the evidence of K24 and the forensic evidence referred to above.¹⁷¹⁶ In addition, the Lukić Defence, relying on Bogunović and VJ documents, challenges the presence of MUP forces in Ćirez/Qirez in early April 1999, and refers to the presence in the village of the VJ 3rd Motorised Battalion of the 37th Motorised Brigade throughout April.¹⁷¹⁷

689. The Chamber is satisfied that the evidence of K24, as well as of Rrahmani, is both credible and reliable. Thus, it is of the view that both K24 and Rrahmani were touched in a sexual and threatening manner around mid-April 1999. In addition, at least two other women were sexually assaulted and were then, together with another six women, thrown into three wells while still alive. All eight died as a result of drowning. The Chamber notes that these killings are not charged in the Indictment and thus will not be entering convictions in respect of the same.

690. With respect to the perpetrators of these sexual assaults, the Chamber notes that throughout April VJ and the MUP forces were in and around Ćirez/Qirez, as confirmed by a number of April 1999 orders and combat reports of the 37th Motorised Brigade. Relying on the same orders and reports, the Chamber is satisfied that MUP forces were also present in the area and that they, as reported by Diković, were misbehaving and engaging in looting. The Chamber further recalls Diković's evidence that members of his unit had been investigated for killing Kosovo Albanians and disposing of their bodies by throwing them into wells. However, the Chamber notes that the men described as perpetrators by Rrahmani and K24 wore either black and brown uniforms, or green camouflage uniforms with red ribbons and the tiger insignia. K24 also mentioned a man in a dark blue camouflage uniform releasing her and the remaining women from the barn. In addition, Salihu testified about "paramilitaries" being present in Ćirez/Qirez. Accepting those accounts casts doubt on the allegation that the perpetrators were members of the regular VJ. Further doubt is caused by the fact that, when they returned to Kozica/Kozhica, the women went to the VJ soldiers and told them what had happened. The soldiers then attempted to investigate and find the other eight women who, by that time, had probably already been assaulted and thrown into wells. The Chamber cannot, therefore, make any findings about precisely who it was who sexually assaulted these women, but notes that the perpetrators worked in collaboration with VJ forces present in the area at the time and that they were armed, uniformed men who formed part of the forces of the FRY and Serbia.

¹⁷¹⁵ Pavković Final Trial Brief, 28 July 2008 (public version), paras. 650–652.

¹⁷¹⁶ Lukić Final Trial Brief, 7 August 2008 (public version), para. 375. The Chamber notes that this paragraph of the final brief has been redacted by the Lukić Defence but considers that it contains no confidential information, and is thus able to refer to the arguments listed therein.

¹⁷¹⁷ Lukić Closing Arguments, T. 27379–27380 (26 August 2008).

d. Destruction of the Ćirez/Qirez mosque

691. The Prosecution asserts that, during the above mentioned attacks on the villages in the municipality, the mosque in Ćirez/Qirez was destroyed by the FRY/Serbian forces.¹⁷¹⁸ The Lazarević Defence argues in turn that the only witness testifying to this was Abdullah Salihu who was not an eyewitness to the event.¹⁷¹⁹

692. The Trial Chamber is satisfied that the mosque was damaged, already in late March 1999, as described by Abdullah Salihu. Salihu later heard that the mosque was completely destroyed by “the Serbs” and András Riedlmayer concluded on the basis of photographs that it was indeed almost destroyed. Thus, the Chamber is in no doubt that the mosque was destroyed. However, the evidence does not establish to the satisfaction of the Chamber how or when this happened, nor who was responsible.

H. KOSOVSKA MITROVICA/MITROVICA

1. Charges in Indictment

693. The Indictment charges the Accused with responsibility for three different categories of crimes against humanity allegedly committed in the municipality of Kosovska Mitrovica/Mitrovica: deportation, forcible transfer, and persecution. The charged persecution is alleged to have taken the form of “sexual assault by forces of the FRY and Serbia of Kosovo Albanians, in particular women”, and “the wanton destruction or damage of Kosovo Albanian religious sites”, including the damage and/or destruction of mosques in Kosovska Mitrovica/Mitrovica.¹⁷²⁰

694. The charges in relation to Kosovska Mitrovica/Mitrovica are set out in paragraph 72(f) of the Indictment, which states that:

Beginning on or about 25 March 1999 and continuing through the middle of April 1999, forces of the FRY and Serbia began moving systematically through the town of Kosovska Mitrovica/Mitrovica. They entered the homes of Kosovo Albanians and ordered the residents to leave their houses at once and go to the bus station. Some houses were set on fire, forcing the residents to flee to other parts of the town. At least one of the mosques of the town was burned and damaged. Over a three-week period the forces of the FRY and Serbia continued to expel the Kosovo Albanian residents of the town. During this period, properties belonging to Kosovo Albanians were destroyed, Kosovo Albanians were robbed of money, vehicles, and other valuables, and Kosovo Albanian women were sexually assaulted. A similar pattern was repeated in other villages in the Kosovska Mitrovica/Mitrovica municipality, where forces of the FRY and Serbia forced Kosovo Albanians from their homes and destroyed the villages. The Kosovo Albanian residents of

¹⁷¹⁸ Prosecution Final Trial Brief, 29 July 2008 (public version), para. 371.

¹⁷¹⁹ Lazarević Final Trial Brief, 29 July 2008 (public version), para. 157.

¹⁷²⁰ Indictment, para. 77(c) and (d).

the municipality were forced to join convoys going to the Albanian border via the towns of Srbica/Skenderaj, Peć/Peja, Đakovica/Gjakovë and Prizren. *En route* to the border, forces of the FRY and Serbia officers [*sic*] robbed them of valuables and seized their identity documents.¹⁷²¹

2. Background

695. The municipality of Kosovska Mitrovica/Mitrovica is located in the northern part of Kosovo at the edge of the Kopaonik/Kopauniku mountain range, bordering among others the municipalities of Podujevo/Podujeva to the east, Vučitrn/Vushtrria to the south-east, and Srbica/Skenderaj to the south-west.¹⁷²² The main town is Kosovska Mitrovica/Mitrovica which is located in the south of the municipality.¹⁷²³ The villages of Žabare/Zhabar and Šipolje/Shipol are close to Kosovska Mitrovica/Mitrovica town to the south-west.

696. The Trial Chamber heard from three witnesses led by the Prosecution about the crimes alleged to have been committed in Kosovska Mitrovica/Mitrovica: Mahmut Halimi, a Kosovo Albanian lawyer who lived and worked in Kosovska Mitrovica/Mitrovica town; Aferdita Hajrizi, a Kosovo Albanian woman who lived in the town with her family and who works as an English teacher; and Sadije Sadiku, a Kosovo Albanian woman from Žabare/Zhabar. The Chamber has carefully considered the credibility of these witnesses, taking into account *inter alia* challenges made to their evidence during cross-examination, and consistency with other witnesses' accounts and with documentary evidence. During his testimony Mahmut Halimi was cross-examined about his involvement in giving bribes to judges when he was working as a defence lawyer. He admitted that he had participated in this practice, explaining that this was the way in which the system operated at that time.¹⁷²⁴ The Chamber believes him on this and found Halimi to be frank and honest in his testimony. No challenges to Hajrizi's overall credibility were raised by the Defence, and the Chamber finds her evidence concerning the killing of her husband and son and her subsequent departure from the town credible and reliable. Sadije Sadiku's account of events in the municipality in mid-April 1999 was largely consistent with that of Halimi, although with minor differences in dates, which are immaterial. She is considered to be a credible and reliable witness.

697. Bislim Zyrapli testified that in 1998 and 1999 Kosovska Mitrovica/Mitrovica municipality was divided between two KLA operational zones, namely Šalja/Shala, or operational zone four in

¹⁷²¹ Indictment, para. 72(f).

¹⁷²² P615 (Kosovo Atlas), pp. 2, 6.

¹⁷²³ P615 (Kosovo Atlas), p. 6.

¹⁷²⁴ Mahmut Halimi, T. 4472–4475 (9 October 2007).

the western part of the municipality, and Lab/Llap, or operational zone five in the eastern part.¹⁷²⁵ Each of these zones covered several municipalities.¹⁷²⁶ It is uncontested that in September 1998 MUP forces supported by the VJ conducted several actions to the north-east of Kosovska Mitrovica/Mitrovica town to “clean up the terrain from members of the KLA”.¹⁷²⁷

698. In its final brief the Prosecution contends that, beginning around February and continuing into March 1999, VJ forces increased their presence in the area of Kosovska Mitrovica/Mitrovica, and that around 17 March a large number of MUP forces were mobilised in the area, including members of the PJP who were brought into Kosovo from Serbia proper.¹⁷²⁸ The minutes of a meeting of the VJ General Staff collegium on 11 March 1999 show that Đorđe Ćurčin, who was the Chief of the First Administration of the Section for Operations and Staff Affairs, reported that the 37th Motorised Brigade had been relocated from Raška in south-west Serbia to Kosovska Mitrovica.¹⁷²⁹ During his oral testimony Ćurčin explained that the part of the 37th Motorised Brigade relocated to Kosovska Mitrovica/Mitrovica was comprised of approximately 375 men, and the relocation was done to defend the axis between Kosovska Mitrovica/Mitrovica and the Macedonian border from an anticipated joint KLA - NATO ground attack.¹⁷³⁰ In addition, the then chief of the Kosovska Mitrovica SUP, Ljubinko Cvetić, testified that after 17 March 1999 additional reserve and regular members of the MUP were sent to Kosovo from other parts of Serbia.¹⁷³¹

699. The Chamber recalls that actions pursuant to the *Grom 3* plan were executed towards the end of March 1999 by both VJ and MUP forces, including in the Malo Kosovo, Bajgora and Stari Trg/Stari Tërg areas, to the east and north-east of Kosovska Mitrovica/Mitrovica town.¹⁷³² However, the evidence led by the Prosecution concerning events in the municipality, discussed below, concerns locations to the west and south-west of the town, in the villages of Žabare/Zhabar

¹⁷²⁵ Bislim Zyrapi, T. 5967 (6 November 2006), T. 6258–6259 (10 November 2006); P2469 (Map showing KLA operational zones).

¹⁷²⁶ Šalja/Shala operational zone covered the municipalities of Zvečan, Zubin Potok, Laposavic/Leposaviq, Kosovska Mitrovica/Mitrovica, and parts of Vučitrn/Vushtrria. Lab/Llap operational zone covered part of the Kosovska Mitrovica/Mitrovica, as well as the municipalities of Podujevo/Podujeva, Lipljan/Lypjan, Kamenica, Priština/Prishtina, Obilić/Obiliq, and Kosovo Polje/Fushë Kosova, See P2469 (Map showing KLA operational zones).

¹⁷²⁷ K79, T. 9609–9610 (1 February 2007); P1718 (Decision to join MUP and VJ forces in destroying Sabotage Terrorist Forces in the region of Bajgora village).

¹⁷²⁸ Prosecution Final Brief, 29 July 2008 (public version), para. 407, citing Milorad Obradović, T. 15108 (6 September 2007).

¹⁷²⁹ P935 (Minutes of the Collegium of the General Staff of the Yugoslav Army (VJ) for 11 March 1999), p. 11.

¹⁷³⁰ Đorđe Ćurčin, T. 16943–16944 (5 October 2007).

¹⁷³¹ Ljubinko Cvetić, T. 8049–8050 (7 December 2006).

¹⁷³² P2808 (Order of the PrK, 16 February 1999); P3049 (Joint Command Order, 19 March 1999); P1966 (Joint Command Order, 22 March 1999), p. 8; P2616 (War Diary of the 125th Motorised Brigade); P2056 (War diary of 125th Motorised Brigade); 5D464 (War diary of 125th Motorised Brigade); 5D465 (War diary of the 125th Motorised Brigade); 5D466 (War diary of the 125th Motorised Brigade).

and Šipolje/Shipol, as well as in Kosovska Mitrovica/Mitrovica town itself. Ljubomir Savić, who served as commander of the 58th Light Infantry Brigade, explained that the MUP and the VJ chose to first conduct actions in the area of Bajgora and Stari Trg/Stari Tërg in the north-east of the municipality, and only in mid-May 1999 to engage in an action termed *Bajgora-2*, which covered Kosovska Mitrovica/Mitrovica town and the areas to its west.¹⁷³³

700. Despite the lack of evidence of combat operations in the town and areas west of it prior to mid-May 1999, there is some evidence about the MUP and VJ forces deployed in these areas. A document dated 17 April 1999, of which the author is unknown, lists the locations of various PJP units at that time, and records that the 1st and 5th Companies of the 35th Detachment of the PJP were deployed in Šipolje/Shipol village, the 2nd Company was deployed in the village of Žabare/Zhabar, and the 4th Company was deployed in Tamnik/Tavnik, a neighbourhood of Kosovska Mitrovica/Mitrovica town.¹⁷³⁴ When shown this document, Nebojša Bogunović confirmed that the 35th and 85th Detachments of the PJP were indeed deployed in Kosovska Mitrovica/Mitrovica as listed in the document.¹⁷³⁵ In addition, Bogunović stated that there was a joint VJ and MUP checkpoint in the area of Šipolje/Shipol.¹⁷³⁶

3. Kosovska Mitrovica/Mitrovica town

701. The Prosecution argues that on or about 24 March 1999 Serbian police began targeting prominent Albanian figures in Kosovska Mitrovica/Mitrovica town. It further alleges that MUP officers from the Kosovska Mitrovica SUP broke into Agim Hajrizi's home and shot and killed him, his mother Nazmije Hajrizi, and his son Ilir Hajrizi.¹⁷³⁷ The Prosecution also maintains that on the same night Latif Berisha, the chairman of the LDK in the municipality, was murdered.

702. Aferdita Hajrizi gave detailed testimony about the killing of her husband Agim Hajrizi, a prominent trade union leader, along with her son Ilir and mother-in-law Nazmije, in their home in Kosovska Mitrovica/Mitrovica town on the night of 24 to 25 March 1999. The following morning she heard on the local radio that Latif Berisha had also been killed.¹⁷³⁸ Mahmut Halimi confirmed

¹⁷³³ Ljubomir Savić, T. 20983–20984 (24 January 2008).

¹⁷³⁴ 5D1417 (PJP deployment on 17 April 1999). Note that witnesses speaking and documents in Serbian refer to one of the neighbourhoods of Kosovska Mitrovica/Mitrovica as *Tamnik*. Witnesses speaking Albanian refer to the neighbourhood of Tavnik. Though the Chamber is not in possession of evidence confirming that this is indeed the same location, it nevertheless appears to be the case.

¹⁷³⁵ Nebojša Bogunović, T. 25121–25123 (10 April 2008).

¹⁷³⁶ Nebojša Bogunović, 6D1614 (witness statement dated 6 April 2008), para. 89.

¹⁷³⁷ Prosecution Final Brief, 29 July 2008 (public version), para. 408.

¹⁷³⁸ Aferdita Hajrizi, T.4042–4073 (26 September 2006), P2319 (witness statement dated 31 January 2002), P2320 (witness statement dated 9 March 2002), P2321 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 3887–3911.

that Berisha was killed that night.¹⁷³⁹ None of these killings is charged in the Indictment, but they are relevant to both the situation in the town and to Aferdita Hajrizi's and Mahmut Halimi's flight from their homes.

703. Hajrizi testified that on the night of 24 to 25 March six men wearing uniforms with a dark blue camouflage pattern and black berets arrived at her house in two vehicles.¹⁷⁴⁰ They broke into the house and shot and killed her husband, her son, and her mother-in-law while she hid in the attic with her other two children.¹⁷⁴¹ Hajrizi clearly identified two of the perpetrators as being members of the regular police whom she knew. However, she stated that the uniforms that they and the other perpetrators were wearing were not the uniforms of the regular police, but what she described as "the paramilitary police". The Chamber recalls that blue camouflage uniforms were the standard operational uniforms used by the regular police, as well as by the PJP.¹⁷⁴² The Chamber also notes that, even after the issuance of new green-camouflage uniforms to PJP units, PJP members retained their blue camouflage uniforms.¹⁷⁴³

704. After the perpetrators left, Hajrizi took her children to a nearby house in the neighbourhood of Tamnik/Tavnik. The next morning she met up with her brother and went to stay with her uncle in the village of Žabare/Zhabar for three days. She testified that, as she fled her house, she saw many "Serb forces" on the streets wearing green camouflage uniforms and green masks.¹⁷⁴⁴ Hajrizi feared that those who killed her husband, and in particular one of the perpetrators who knew her by sight, would be looking for her, and would harm her and her remaining children. On 27 March 1999 she returned to Kosovska Mitrovica/Mitrovica, to her brother's house.¹⁷⁴⁵

705. Hajrizi further gave evidence about what she experienced and witnessed on 28 March 1999. On that date "the Serbs" started burning houses and expelling people in the Tamnik/Tavnik neighbourhood of Kosovska Mitrovica/Mitrovica town. The forces instructed the people to leave and were shouting "This is not your country. This is Serbia. Go to Albania," and "You wanted NATO and call NATO now to come and help you. We will kill you all."¹⁷⁴⁶ The home of a local activist named Halit Barani, located in close proximity to her brother's house in Tamnik/Tavnik,

¹⁷³⁹ Mahmut Halimi, T. 4446 (9 October 2006).

¹⁷⁴⁰ Aferdita Hajrizi, T. 4047–4053 (26 September 2006).

¹⁷⁴¹ Aferdita Hajrizi, T. 4047–4053 (26 September 2006).

¹⁷⁴² K86, T. 7349–7351, 7356 (24 November 2006) (closed session); K25, T. 4664 (11 October 2006).

¹⁷⁴³ K86, T. 7349–7351, 7356 (24 November 2006) (closed session).

¹⁷⁴⁴ Aferdita Hajrizi, P2320 (witness statement dated 20 August 2001), p. 3, P2319 (witness statement dated 31 January 2002), p. 8.

¹⁷⁴⁵ Aferdita Hajrizi, P2319 (witness statement dated 31 January 2002), p. 8.

¹⁷⁴⁶ Aferdita Hajrizi, T. 4065–4066 (26 September 2006); P2320 (witness statement dated 20 August 2001), p. 4.

was burned.¹⁷⁴⁷ She described those responsible as forces comprising “regular police”, “paramilitaries”, and the VJ, and stated that they ordered the local population to leave for Albania.¹⁷⁴⁸ Hajrizi explained that she identified these forces as including members of the VJ, since “...the police uniform is blue. The military uniform is green”.¹⁷⁴⁹ She further stated that the forces she identified as VJ members were not the regular army that she saw before 25 March 1999, but rather persons wearing “green uniforms...in military colours” with masks on their faces leaving only their eyes visible, carrying guns with bayonets.¹⁷⁵⁰ As a result, Hajrizi and her family left Kosovska Mitrovica/Mitrovica town along with a large group of other people, and again headed for the village of Žabare/Zhabar.¹⁷⁵¹ The “Serb forces” which were present on the road were shooting and directing the column of people towards Žabare/Zhabar. Hajrizi estimated that, as a result, 70,000 residents of Kosovska Mitrovica/Mitrovica town were forced to leave their homes on 28 March 1999.¹⁷⁵²

706. The Lukić Defence argues that it is possible that the murder of Agim Hajrizi, his mother, and his son, was carried out by the KLA, “particularly given the fact on the same night in another part of town another Albanian political [sic] opposed to the KLA was killed”, referring to the murder of Latif Berisha.¹⁷⁵³ The Lukić Defence suggests in the alternative that a policeman from Kosovska Mitrovica/Mitrovica, who was convicted *in absentia* for the murder, committed the crime for personal reasons, rather than as part of his official duties.¹⁷⁵⁴ This alternative argument is also made by the Pavković Defence.¹⁷⁵⁵

707. A MUP Staff report to the Ministry of Interior, dated 26 March 1999, mentions the killing of Agim Hajrizi, Nizmija Hajrizi, and Ilir Hajrizi, and suggests that the perpetrators were “Šiptar

¹⁷⁴⁷ Aferdita Hajrizi, P2320 (witness statement dated 20 August 2001), p. 4.

¹⁷⁴⁸ Aferdita Hajrizi, P2320 (witness statement dated 20 August 2001), p. 3, T. 4054–4055 (26 September 2006) (“We were forced. I repeat, we were forced to leave. There were so many killings going on around us. Many houses were set on fire. Many people were taken away and imprisoned. There were so many voices of people that we could hear; that showed us that somebody was forcing these people to leave.”). The witness described the paramilitary forces as having their faces painted, wearing fingerless black gloves, and having knives on top of their rifles. See Aferdita Hajrizi, T.4068, 4070 (26 September 2006). She described the VJ forces as having green military uniforms, but not the usual ones, because they had masks on their heads so you could only see their eyes and they had bayonets on their guns. See also Aferdita Hajrizi, T. 4072 (26 September 2006).

¹⁷⁴⁹ Aferdita Hajrizi, T. 4068, 4070–4072 (26 September 2006).

¹⁷⁵⁰ Aferdita Hajrizi, T. 4072 (26 September 2006).

¹⁷⁵¹ Aferdita Hajrizi, T. 4055 (26 September 2006).

¹⁷⁵² Aferdita Hajrizi, T. 4055, 4072 (26 September 2006).

¹⁷⁵³ Lukić Final Trial Brief, 7 August 2008 (public version), para. 1003.

¹⁷⁵⁴ Lukić Final Trial Brief, 7 August 2008 (public version), para. 1003, referring to P51 (Judgment in relation to Hajrizi murders).

¹⁷⁵⁵ Pavković Final Brief, (public version) para. 435.

terrorists”.¹⁷⁵⁶ The Trial Chamber however rejects this conclusion, in light of Aferdita Hajrizi’s clear evidence concerning the murder of her husband and the persons responsible. The Chamber also notes that two men, one of whom worked for the MUP, were convicted for this crime,¹⁷⁵⁷ but places little weight on that factor since these convictions were recorded *in absentia* in a hearing before a Chamber presided by the witness Mahmut Halimi, a personal friend of the victim.¹⁷⁵⁸

708. Aferdita Hajrizi further testified that she and the other people sheltering in Žabare/Zhabar were ordered by “the Serbs” to return to Kosovska Mitrovica/Mitrovica town on 1 April, which she and her family did.¹⁷⁵⁹ On 3 April her uncle informed her that “Serbs” had arranged buses for transport of Albanians out of Kosovo. She and her family decided to “join the buses”. When they arrived at the bus station the following day, it was surrounded by “Serb forces”. She and her family then went by bus to Montenegro. After a week in Montenegro, they moved to Albania.¹⁷⁶⁰

709. Mahmut Halimi testified that he and his family left the town on the morning of 25 March, after receiving a warning by telephone from a woman speaking in Serbian.¹⁷⁶¹ They also travelled to Žabare/Zhabar, where Halimi was from originally, and where he received another phone call from the same woman, who told him that individuals, whom he understood to be military and paramilitary forces, had approached his house in Kosovska Mitrovica/Mitrovica. That Halimi should be under threat at this time is supported by the killings of Hajrizi’s husband and Latif Berisha, suggesting that prominent members of the Kosovo Albanian community were being targeted.

710. What happened to Halimi and his family thereafter is set out below. When he returned to Kosovska Mitrovica/Mitrovica in July 1999, he found that his house had been burned and the four mosques in the town were destroyed.¹⁷⁶² The destruction of one of these mosques was confirmed by Andrés Riedlmayer, who presented photographs of the Ibar mosque in Kosovska Mitrovica/Mitrovica, showing its condition before the conflict and in the summer of 1999. He visited the site in 2001. In his report he described the mosque as “completely destroyed”, and in his testimony stated that the site had been bulldozed.¹⁷⁶³ However, he was unable to give any evidence

¹⁷⁵⁶ 6D1234 (MUP Staff report to the Ministry of Interior, 26 March 1999). *See also* Nebojša Bogunović, 6D1614 (witness statement dated 6 April 2008), para. 88 and T. 25194–25195 (11 April 2008).

¹⁷⁵⁷ P51 (Judgment in relation to Hajrizi murders).

¹⁷⁵⁸ P51 (Judgment in relation to Hajrizi murders).

¹⁷⁵⁹ Aferdita Hajrizi, P2320 (witness statement dated 20 August 2001), p. 5.

¹⁷⁶⁰ Aferdita Hajrizi, P2320 (witness statement dated 20 August 2001), p. 6.

¹⁷⁶¹ Mahmut Halimi, T. 4445–4446 (9 October 2006).

¹⁷⁶² Mahmut Halimi, T. 4461 (9 October 2006).

¹⁷⁶³ Andrés Riedlmayer, T. 5484–5486 (30 October 2006). *See also* Andrés Riedlmayer, P1780 (Extract from P1789 re Kosovska Mitrovica/Mitrovica mosque).

about the circumstances of the destruction, and did not address the condition of the remaining mosques in the town.

4. Other villages in Kosovska Mitrovica/Mitrovica municipality

711. Žabare/Zhabar is about three kilometres from Kosovska Mitrovica/Mitrovica town. Halimi testified that there was a KLA medical clinic, and a KLA presence from time to time in the village.¹⁷⁶⁴ Nebojša Bogunović testified, however, that Žabare/Zhabar was under KLA control throughout the NATO campaign.¹⁷⁶⁵

712. Halimi and his family stayed with his brother in Donje (Lower) Žabare/Zhabar. On 28 March he was told by two members of the KLA that the security forces were looking for him, and that he should leave the village for his own safety and that of the other villagers.¹⁷⁶⁶ He then went to hide in the mountains near the village and remained there for six days, before returning to Donje (Lower) Žabare/Zhabar.¹⁷⁶⁷

713. On 14 April 1999 at about 10 a.m. Halimi observed “Serbian forces” with APCs approaching and shooting towards the village from the direction of Suvi Do/Suhadoll, located to the north.¹⁷⁶⁸ Because of this he and his family travelled along the river to Gornje (Upper) Žabare/Zhabar. The next morning, from the house where they were staying, Halimi saw large numbers of people coming on foot from Suvi Do/Suhadoll, the Tamnik/Tavnik neighbourhood of Kosovska Mitrovica/Mitrovica town, and Šipolje/Shipol, all of which were visible from his vantage point. He was told by people who arrived from Donje (Lower) Žabare/Zhabar that Serbian forces were expelling the residents of these villages.¹⁷⁶⁹

714. Halimi further testified that a convoy was formed, comprising about 25,000-30,000 people, which moved south in the direction of the main road from Kosovska Mitrovica/Mitrovica town to Šipolje/Shipol.¹⁷⁷⁰ There were “paramilitary” forces stationed at the Valoni Hotel in Donje (Lower) Žabare/Zhabari. Halimi saw vehicles being burned, and heard shots being fired.¹⁷⁷¹ The

¹⁷⁶⁴ Mahmut Halimi, T. 4447–4448 (9 October 2006).

¹⁷⁶⁵ Nebojša Bogunović, 6D1614 (witness statement dated 6 April 2008), para. 96; 4D511 (Letter from 3rd Army Counterintelligence Group dated 15 April 1999), p. 1; 5D1124 (Order of the 58th Light Infantry Brigade, 27 May 1999).

¹⁷⁶⁶ Mahmut Halimi, T. 4447 (9 October 2006).

¹⁷⁶⁷ Mahmut Halimi, T. 4447–4448 (9 October 2006).

¹⁷⁶⁸ Mahmut Halimi, T. 4448–4449 (9 October 2006).

¹⁷⁶⁹ Mahmut Halimi, T. 4448–4451, 4478–4483 (9 October 2006).

¹⁷⁷⁰ Mahmut Halimi, T. 4456 (9 October 2006).

¹⁷⁷¹ Mahmut Halimi, T. 4452 (9 October 2006). The witness described these paramilitary forces as being distinguishable from the army and police by their clothes and equipment. “They wore scarves, bandannas on their heads, not caps. The majority of them were -- had their heads shaved and had beards, and they left this impression of fear and terror. Their weapons were very sophisticated ones.”

people in the convoy were forced to spend the night of 15 April in the open, and the following day were permitted to continue along the main road.¹⁷⁷²

715. The Lazarević and Pavković Defences point out that Halimi did not himself see the forces involved in expelling of the Albanians from Suvi Do/Suhadoll, Tamnik/Tavnik, Šipolje/Shipol, and Donje Žabare/Zhabar and that he could not identify them with certainty.¹⁷⁷³ The Lazarević Defence further argues that there were no VJ forces in the area of Tamnik/Tavnik and Žabare/Zhabar, relying on the testimony of Dragan Živanović. It also argues that there were PJP forces deployed in Žabare/Zhabar at that time, based on the document of 17 April 1999 referred to above.¹⁷⁷⁴

716. According to Halimi, on 16 April shortly after 11:00 a.m. the “Serb forces” forced the convoy of people to take the main road in the direction of Peć/Peja (to the south-west). These forces, including the police, regular military forces, and “paramilitaries”, entered Gornje (Upper) Žabare/Zhabar and started burning houses in one part of that village.¹⁷⁷⁵ The people who were at that time still in this part of Gornje (Upper) Žabare/Zhabar moved towards a carpentry compound called Gaterat. Halimi and his family then set out in three cars and attempted to join the main road from Kosovska Mitrovica/Mitrovica north-west to Zubin Potok, which then goes to Montenegro.¹⁷⁷⁶ However, they were stopped by two young VJ soldiers who ordered them out of the cars but permitted them to continue on foot.¹⁷⁷⁷ At that time Halimi saw two small lorries and five or six of the “paramilitaries” whom he had seen before in the Valoni Hotel, as well as a military jeep with a machine gun on the top. The “paramilitaries” were taking things from the abandoned houses in Žabare/Zhabar and loading them on to the lorries.¹⁷⁷⁸

717. After spending a night in the carpentry compound, Halimi and his family, along with the other people from Gornje (Upper) Žabare/Zhabar who were there, were ordered out on 17 April by members of the police.¹⁷⁷⁹ Upon the instructions of these police forces, a column was quickly formed and moved on to the main road towards Peć/Peja. From there they travelled south to Albania, passing through various municipalities. Along the way a mechanic relative of Halimi’s was able to repair one of two cars which they found abandoned by the side of the road. The family

¹⁷⁷² Mahmut Halimi, T. 4452–4456 (9 October 2006).

¹⁷⁷³ Lazarević Final Brief, 29 July 2008 (public version), para. 185; Pavković Final Brief, 28 July 2008 (public version), paras. 436–440.

¹⁷⁷⁴ 5D1417 (PJP deployment on 17 April 1999).

¹⁷⁷⁵ Mahmut Halimi, T. 4453 (9 October 2006).

¹⁷⁷⁶ Mahmut Halimi, T. 4457 (9 October 2006).

¹⁷⁷⁷ Mahmut Halimi, T. 4455 (9 October 2006).

¹⁷⁷⁸ Mahmut Halimi, T. 4455–4456 (9 October 2006).

travelled in one and towed the other car to the border. At Klina Halimi saw members of the VJ demanding money and valuables from people in the convoy, and at the entrance to Prizren he saw people being beaten by paramilitaries.¹⁷⁸⁰ However, he also stated that the VJ soldiers warned him not to turn on the lights of the car, so as not to become a target of the NATO bombing, and also warned them that there were mines on both sides of the road.¹⁷⁸¹ He and his family spent the night of 17 April at the border crossing at Vrbnica/Vërbnica (Morina). The next morning, as they crossed into Albania, they were told by the police to throw their passports, identity cards, registration plates, and licences into some boxes. Halimi's family did so, although he managed to keep his own driver's licence and passport.¹⁷⁸²

718. Sadije Sadiku, a Kosovo Albanian woman from Žabare/Zhabar, gave an account consistent with that of Halimi concerning the events of mid-April 1999. As already noted above, the differences in their recollection of specific dates are considered by the Chamber to be immaterial.¹⁷⁸³ She testified that on 13 April 1999 "police" started to burn the houses at one end of the village and expel people from their homes. She and her family and many others fled their homes and took shelter in a nearby wooded area where they stayed overnight.¹⁷⁸⁴ The following morning the women and children returned to their houses to get some food and dry clothes. At around 8:00 a.m. a group of seven policemen wearing blue and black uniforms came to the houses and ordered them to leave immediately, under threat of physical harm. Once outside they were instructed to join a column of other expelled people and together they walked along the main road towards Albania. There were approximately 8,000 to 9,000 Kosovo Albanian people on foot in the column. They passed through several checkpoints along the road and were told by the "police" to "go quickly," "disappear from Kosovo and go to Albania."¹⁷⁸⁵ When they reached the village of Ljušta/Lushta, a short distance from Gornje (Upper) Žabare/Zhabar, the men from the village, who had been hiding in the forest, joined the column. At a checkpoint in the village of Šipolje/Shipol they were further instructed by the "police" to go towards Peć/Peja.¹⁷⁸⁶

¹⁷⁷⁹ Mahut Halimi, T. 4495–4496 (9 October 2006). He described these police as wearing dark blue camouflage uniforms, with yellow insignia denoting their ranks on their shoulders, and with a white eagle and the words "MUP Serbia" on their upper arms.

¹⁷⁸⁰ Mahmut Halimi, T. 4491–4493 (9 October 2006)

¹⁷⁸¹ Mahmut Halimi, T. 4513 (9 October 2006). He described these VJ forces as wearing regular army clothes with an arched badge or patch with the letters for Vojska Jugoslavija on it, a white eagle and the Serbian flag. *See also* Mahmut Halimi, T.4515 (9 October 2006).

¹⁷⁸² Mahmut Halimi, T. 4459, 4490 (9 October 2006).

¹⁷⁸³ Sadije Sadiku, T. 1890–1950 (18 August 2006), P2256 (witness statement dated 15 August 2006), P2252 (witness statement dated 23 August 2001).

¹⁷⁸⁴ Sadije Sadiku, T. 1893 (18 August 2006).

¹⁷⁸⁵ Sadije Sadiku, P2256 (witness statement dated 15 August 2006), para. 16.

¹⁷⁸⁶ Sadije Sadiku, P2256 (witness statement dated 15 August 2006), para. 17.

719. The Lukić Defence argues that the evidence of Halimi and Sadiku is inconsistent concerning events in Žabare/Zhabar from 13 April 1999.¹⁷⁸⁷ However, having carefully examined the evidence of both witnesses, the Chamber finds that the slight divergences in their accounts are minor and can be easily explained by the different locations of the witnesses at the relevant time, the passage of time since the events, and the manner in which their evidence was given. Rather, their evidence about what happened in Žabare/Zhabar is broadly consistent, and the Chamber considers them both to be reliable witnesses.

720. Sadiku testified that, as the column moved along the road, they passed through many police and military checkpoints. She stated that the police “maltreated” the people in the convoy, but that the military personnel did not do so and occasionally provided the displaced people with food.¹⁷⁸⁸ Conditions were very bad due to adverse weather, lack of food and water, and, for some, lack of footwear. In addition the people were scared and tired, as they were kept moving by the police.¹⁷⁸⁹

721. The column walked for two days and nights. When it reached Gornja Klina/Klina e Eperme, a policeman split it into two groups, ordering that one group of about 2,000 people head back towards Kosovska Mitrovica/Mitrovica.¹⁷⁹⁰ Sadiku and her family were in the second group of about 6,000 people who were instructed to continue on to Peć/Peja. She saw a policeman in Gornja Klina/Klina e Eperme ripping the earrings off three or four women in the convoy causing them to bleed. On the third night of their journey they were permitted to rest in a field beside the road, somewhere near Srbica/Skenderaj. The following morning they continued to walk towards Zablaće/Zabllaq in Istok/Istog municipality and on to Zlokućane/Zllakuqan in Klina municipality, where they stayed for about an hour in a churchyard and were given some food by a priest.¹⁷⁹¹ However, they were then ordered by the police to return to Zablaće/Zabllaq.¹⁷⁹²

722. Sadiku described Zablaće/Zabllaq as having been deserted by the local population and there being houses in ruins due to shelling. The fact that the area was the site of combat operations by VJ and MUP forces at that time, which may account for the shelling damage, is supported by an order from the 7th Infantry Brigade of the VJ, dated 5 May 1999, indicating that on 6 May 1999 an action was to commence that included the sector of Zablace-Trbuhovac.¹⁷⁹³ Sadiku and the others in the

¹⁷⁸⁷ Lukić Final Trial Brief, 7 August 2008 (public version), paras. 1010–1043.

¹⁷⁸⁸ Sadije Sadiku, P2256 (witness statement dated 15 August 2006), para. 17.

¹⁷⁸⁹ Sadije Sadiku, P2252 (witness statement dated 23 August 2006), p. 4.

¹⁷⁹⁰ Sadije Sadiku, P2256 (witness statement dated 15 August 2006), para. 20.

¹⁷⁹¹ Sadije Sadiku, P2256 (witness statement dated 15 August 2006), para. 22; IC10 (Map marked by Sadije Sadiku); P32 (Map of Peć/Peje).

¹⁷⁹² Sadije Sadiku, P2252 (witness statement dated 23 August 2006), p. 5.

¹⁷⁹³ 5D794 (Order of the 7th Infantry Brigade, 5 May 1999), p. 2.

convoy were ordered by a policeman to stay in these houses. They remained there for the next three weeks, guarded by the police. There was insufficient accommodation for everyone, and the police did not provide them with food.¹⁷⁹⁴

723. Sadiku testified that sometimes members of the police shot at people who tried to leave the houses and enter the yards. This is how she was shot in the back on 6 May 1999.¹⁷⁹⁵ She gave a detailed account of this incident, which happened when she left the house where she was staying in order to collect some potatoes. The shooting caused damage to her spine, as a result of which she is now paraplegic. Sadiku indicated during her testimony that she believed that she was shot by a member of the police, although she could not see the actual gunman at the time.¹⁷⁹⁶ While the Lukić Defence sought to challenge her evidence in this regard, the Chamber notes that the shooting is not charged in the Indictment and need not, therefore, make any findings concerning who precisely was responsible.

724. Following this incident Sadiku was taken to the village of Zahać/Zahaq in Peć/Peja municipality, where she stayed for a further four days before being expelled again by the police, along with the local residents.¹⁷⁹⁷ They formed a convoy of tractors and cars and headed towards Peć/Peja. Policemen demanded money from the people travelling in the tractor with Sadiku. They were allowed to continue after handing over 300 German Marks. They then moved on to Peć/Peja and the Albanian border, passing through further checkpoints along the way, where more money was taken from them. At the border police in dark blue uniforms demanded 500 German Marks from each tractor, along with jewellery.¹⁷⁹⁸ Sadiku explained that throughout the journey they gave away all the money they had, but that she and her family managed to keep their jewellery by hiding it.¹⁷⁹⁹ In addition she stated that the border police seized identity documents from members of the convoy, which were then torn up or burned. Those people who did not hand over their documents were beaten. The Lukić Defence introduced evidence to show that Sadiku herself never had any identity documents which could have been seized at the border. The Chamber notes, however, that she did not claim that her own documents were taken.¹⁸⁰⁰

¹⁷⁹⁴ Sadije Sadiku, P2252 (witness statement dated 23 August 2006), p. 5.

¹⁷⁹⁵ Sadije Sadiku, P2256 (witness statement dated 15 August 2006), para. 24.

¹⁷⁹⁶ Sadije Sadiku, T. 1929 (18 August 2006).

¹⁷⁹⁷ IC10 (Map marked by Sadije Sadiku); P32 (Map of Peć/Peja).

¹⁷⁹⁸ Sadije Sadiku, P2256 (witness statement dated 15 August 2006), para. 38.

¹⁷⁹⁹ Sadije Sadiku, P2252 (witness statement dated 23 August 2006), p. 7.

¹⁸⁰⁰ Sadije Sadiku, T. 1903 (18 August 2006). *See* T. 23422 (28 February 2008); 6D1234 (Response on Defence request from the National Council for Cooperation with the ICTY); 6D1666 (Request from Sreten Lukić's Defence team to the National Council for Co-operation with the ICTY, 2 July 2007); P3141 (Birth Certificate of Sadije Sadiku).

725. Nebojša Bogunović asserted that Kosovo Albanians were leaving the area because their political leaders distributed flyers on the streets, calling upon them to do so.¹⁸⁰¹ However, Halimi, Hajrizi, and Sadiku, were not asked if they saw such flyers, and the reasons they gave for their departure from Kosovo were not those suggested by Bogunović but those recounted above. In his written witness statement Bogunović implied that people left Žabare/Zhabar on 14 April due to the NATO bombing of the area of Bair, near Žabare/Zhabar.¹⁸⁰² However, the suggestion that the witnesses were leaving Kosovska Mitrovica/Mitrovica because of the NATO bombing was also not put to any of them, nor did they mention the NATO bombing as a factor contributing to their departure from their homes.

5. Findings

726. The Chamber finds that there was a significant amount of KLA activity in parts of Kosovska Mitrovica/Mitrovica municipality in 1998 and 1999. From 1998 until the end of April 1999 VJ and MUP forces launched a number of actions in the area. These actions, however, do not appear to have included Kosovska Mitrovica/Mitrovica town, or the villages of Šipolje/Shipol and Žabare/Zhabar, despite Bogunović's claim that Žabare/Zhabar was under KLA control.

727. The Chamber finds that upon the commencement of the NATO air strikes prominent Kosovo Albanians in Kosovska Mitrovica/Mitrovica town were targeted and some killed. MUP forces then expelled thousands of Kosovo Albanians from parts of the town, some of whom were taken to Montenegro. The Chamber further notes that Hajrizi's identification of the VJ forces was based on her assumption that the VJ forces always wore green uniforms, while the MUP forces solely used blue uniforms, an assumption which during the trial was proven to be incorrect.¹⁸⁰³ Therefore, the Chamber is not satisfied that the VJ participated in the expulsions from Kosovska Mitrovica/Mitrovica town.

728. In addition the Trial Chamber finds that in mid April 1999 large numbers of Kosovo Albanians from Žabare/Zhabar and nearby villages, along with others who had been staying there, were expelled from their homes by MUP and VJ forces and forced to leave Kosovo. While there is evidence to suggest that there was KLA activity in Tamnik/Tavnik and Šipolje/Shipol at this

¹⁸⁰¹ Nebojša Bogunović, 6D1614 (witness statement dated 6 April 2008), para. 65, T. 25183–25184 (11 April 2008).

¹⁸⁰² Nebojša Bogunović, 6D1614 (witness statement dated 6 April 2008), para. 96; 5D985 (Combat Report of the Military District Command, dated 17 April 1999). MUP Staff reports, 15 and 16 April record that on 14 April 1999, NATO forces bombed the "depot in barracks no. 2" in Kosovska Mitrovica/Mitrovica, and that on 15 April 1999, NATO bombed the same barracks once again. It was reported that major material damage was caused to residential buildings near the barracks. See 6D1251 (MUP overview of security events, 15 April 1999), p. 3; 6D1252 (MUP overview of security events, 16 April 1999), p. 1.

¹⁸⁰³ See Section VI.A.3.

time,¹⁸⁰⁴ the testimony of Halimi and Sadiku concerning the burning of houses and looting of property in Žabare/Zhabar, and the threatening and forcible expulsion of its residents, including women and children, is not indicative of combat operations against the KLA.

729. Many of these people were forced to walk to the border without food or water for several days. As they made their way to the border crossing, members of the convoy were robbed and mistreated by the police and other uniformed forces acting with them. Upon their arrival at the border, many of the displaced people were forced by the border police to hand over their personal documents which were not returned to them.

730. The Chamber has not heard any evidence relating to sexual assault of people from Kosovska Mitrovica/Mitrovica municipality, and these charges are therefore unsupported. Similarly, the Chamber has not received any evidence concerning who was responsible for the destruction of the Ibar mosque, or other mosques in Kosovska Mitrovica/Mitrovica, and is not able, therefore, to make any findings on this matter.

I. VUČITRN/VUSHTRRIA

1. Charges in Indictment

731. The factual averments relating to Vučitrn/Vushtrria municipality deal with events said to have taken place there from 27 March to the end of May or early June 1999. The underlying offences of deportation and forcible transfer, charged under Counts 1 and 2 respectively, are described in paragraph 72(m) of the Indictment as follows:

On or about 27 March 1999, forces of the FRY and Serbia began to burn houses in the town of Vučitrn/Vushtrri and burned the main mosque in that town. On or about 2 May 1999, forces of the FRY and Serbia attacked a number of villages north-east of the town of Vučitrn/Vushtrri, including Skrovna/Skromë, Slakovce/Sllakofc, Cecelija/Ceceli and Gornja Sudimlja/Studime e Epërme. The villagers were forced out of their homes, and many of their houses, shops and religious sites were completely burnt. The villagers, as well as persons previously displaced from other communities in the Vučitrn/Vushtrri municipality, were forced to form a convoy of approximately 20,000 people travelling on the “Studime Gorge” road, in the direction of the town of Vučitrn/Vushtrri. During the night of 2-3 May 1999, forces of the FRY and Serbia harassed, beat and killed approximately 104 Kosovo Albanians and robbed many others of their valuables. Thousands of Kosovo Albanians in this convoy were detained by forces of the FRY and Serbia in the agricultural cooperative near the town of Vučitrn/Vushtrri. On or about 3 May 1999, forces of the FRY and Serbia at the agricultural cooperative separated Kosovo Albanian men of military age from women, children and the elderly. The Kosovo Albanian women, children and elderly were directed to travel to Albania and a number of Kosovo Albanian men were forced to drive vehicles that carried the women,

¹⁸⁰⁴ 4D511 (Letter from 3rd Army Counterintelligence Group, 15 April 1999); 6D1251 (MUP overview of security events, 15 April 1999), p. 4.

children and elderly to the Albanian border. The forces of the FRY and Serbia transported hundreds of Kosovo Albanian men of military age from the agricultural cooperative to a prison in the village of Smrekovnica/Smrakoncë. After several weeks of detention in inhumane conditions where they were subjected to beatings, torture and murder, many of these Kosovo Albanian men were transported to the village of Žur/Zhur, near the Albanian border, and forced to cross the border into Albania.

732. The allegations of killings contained in paragraph 72(m) are repeated in paragraph 75(i) of the Indictment, and the Accused are charged in respect thereof under Counts 3 and 4 with murder as a crime against humanity and as a violation of the laws or customs of war. Those persons from Vuçitrn/Vushtrria municipality allegedly killed on 2 May 1999, whose names are known, are listed in Schedule I attached to the Indictment. The Accused are also charged with responsibility for persecution with regard to the allegations of killings contained in paragraph 75(i) and the “wanton destruction or damage of Kosovo Albanian religious sites” including mosques in Vuçitrn/Vushtrria.¹⁸⁰⁵

2. Background

733. Vuçitrn/Vushtrria municipality is located in north-central Kosovo at the edge of the Kopaonik/Kopauniku mountain range and borders, among others, the municipalities of Kosovska Mitrovica/Mitrovica to the north, Srbica/Skenderaj to the west, and Priština/Prishtina to the south-east.¹⁸⁰⁶ The main town, also called Vuçitrn/Vushtrria, is located in the centre of the municipality. The villages of Skrovna/Skroma, Slakovce/Sllakofc, Cecelija/Cecelia, Donja Sudimlja/Studime e Poshtëme, and Gornja Sudimlja/Studimja e Epërme are all to the east and north-east of Vuçitrn/Vushtrria town.¹⁸⁰⁷

734. The bulk of the evidence regarding the events that took place in Vuçitrn/Vushtrria from 1998 until June 1999 was provided by four witnesses: Fedrije Xhafa, a Kosovo Albanian woman from Donji Svračak/Sfračaku i Ulët, a village to the south-east of Vuçitrn/Vushtrria town; Sabit Kadriu, a Kosovo Albanian man from Brusnik village to the south-west of Vuçitrn/Vushtrria town, who was a teacher and a member of the Vuçitrn/Vushtrria branch of the Council for the Defence of Human Rights and Freedoms (“CDHRF”);¹⁸⁰⁸ Shukri Gërxfhaliu, a Kosovo Albanian doctor and resident of Donja Sudimlja/Studime e Poshtëme, who until 26 March 1999 worked at the hospital in Vuçitrn/Vushtrria town, and who was also a member of the KLA serving as a doctor for the KLA

¹⁸⁰⁵ Indictment, paras. 75(i), 77(d).

¹⁸⁰⁶ P615 (Kosovo Atlas). *See also* 3D424 (Municipal profile of Vuçitrn/Vushtrria, June 2006).

¹⁸⁰⁷ P615 (Kosovo Atlas), p. 6.

¹⁸⁰⁸ Sabit Kadriu, T. 5103 (18 October 2006).

forces in the area; and Nebojša Bogunović, who was the deputy chief of the Kosovska Mitrovica SUP, which covered the territory of Vučitrn/Vushtrria municipality.

735. No specific challenges to Xhafa's overall credibility were raised by the Defence; her evidence pertaining to events she witnessed during the first half of 1999 in Vučitrn/Vushtrria is deemed generally reliable. The Lazarević and Pavković Defences challenged the credibility of Sabit Kadriu due to his affiliation with the Future of Kosovo political party as well as his reluctance to provide an answer identifying Ramush Haradinaj as the chairman of this party.¹⁸⁰⁹ His credibility was also challenged due to his refusal to admit that the KLA was involved in the expulsion of Serbian families from Kosovo and other mistreatment of the local population, and because he refused to acknowledge that some KLA actions constituted attacks, stating that the KLA activities were defensive actions.¹⁸¹⁰ While the Chamber is sceptical about aspects of Kadriu's testimony concerning KLA activities, and the partiality of the CDHRF's reporting system, it does not consider this to have undermined all his evidence. The Chamber was otherwise generally impressed by the witness and considered that he gave credible and reliable evidence about events in the municipality.

736. The Lazarević Defence also challenged the credibility of Shukri Gërxhaliu, arguing that his bias was apparent when commenting on video footage taken in the vicinity of Gornja Sudimlja/Studimja e Epërme on 3–4 May 1999 and showing armed Kosovo Albanian men dressed in civilian clothes.¹⁸¹¹ Despite numerous questions in this regard, Gërxhaliu refused to confirm that these armed men were KLA members, insisting the individuals in question were civilians who could have been holding guns belonging to their acquaintances.¹⁸¹² The Chamber finds that Gërxhaliu's evidence in relation to the activities of the KLA in Vučitrn/Vushtrria was evasive and not credible, but parts of his testimony about other issues, where consistent with the accounts of other witnesses (as will be discussed below) are accepted by the Chamber as reliable.

737. The Chamber found Nebojša Bogunović, a witness led by the Lukić Defence, to be a generally credible witness. However, it has reservations about certain aspects of Bogunović's evidence, and these particular aspects will be addressed in the course of the judgement.

¹⁸⁰⁹ Lazarević Final Brief, 29 July 2008 (public version), paras. 344–345; Pavković Final Brief, 28 July 2008 (public version), paras. 543–544.

¹⁸¹⁰ Sabit Kadriu, T. 5145–5150, 5164–5166, 5173–5174 (19 October 2006); see also 3D147 (Weekly Humanitarian Report from EU KDOM, 22 December 1998); 3D151 (European Community Monitor Mission report, 24 January 1999).

¹⁸¹¹ Lazarević Final Brief, 29 July 2008 (public version), paras. 340, 345.

¹⁸¹² Shukri Gërxhaliu, T. 2569–2577 (30 August 2006), while referring P4 (Video footage of Gornja Sudimlja/Studime e Epërme, filmed on 3 May 1999), at 3 min. 30 sec.

738. It is uncontested that Vuçitrn/Vushtrria municipality was an area of significant KLA activity in 1998 and early 1999. Bislim Zyrapi testified that during 1998 and 1999 several KLA brigades were operating in the municipality, in what was called the Šalja/Shala operational zone in the western part of the municipality, and the Lab/Llap operational zone in the eastern part of the municipality.¹⁸¹³ Shukri Gërxhaliu also acknowledged that in 1998 and up until the commencement of the NATO air campaign a significant part of the municipality was under KLA control.¹⁸¹⁴ In April and May 1999 Gornja Sudimlja/Studimja e Epërme and Cecelija/Cecelia were particular KLA strongholds, according to Fedrije Xhafa.¹⁸¹⁵

739. Sabit Kadriu described how Vuçitrn/Vushtrria was inundated with displaced Kosovo Albanians from the Drenica region following the 1998 summer offensive,¹⁸¹⁶ and stated that in September of that year further operations were conducted in parts of the municipality, including in his own village.¹⁸¹⁷ This account is supported by a VJ combat report recording that, from 22 to 23 September 1998, VJ and MUP forces conducted co-ordinated actions in the western part of Vuçitrn/Vushtrria municipality.¹⁸¹⁸

740. There was further activity by VJ and MUP forces in the municipality in February 1999. According to Kadriu this resulted in additional population displacement.¹⁸¹⁹ Xhevahire Rrahmani, a Kosovo Albanian woman from the village of Bukoš/Bukosh (to the south-west of Vucitrn/Vushtrria town), testified that on 22 February 1999 the army was shelling in the mountains of Taraxh, located in close proximity to her home. She heard the sounds of shelling and there were also “bullets that came up to [her] courtyard.”¹⁸²⁰ Consequently she went to Vucitrn/Vushtrria with her family in order to escape the shelling. On cross-examination, however, she conceded that she knew that at the time there was a military training exercise being conducted in the area.¹⁸²¹ Rrahmani also agreed with the proposition put to her on cross-examination that some Serbs were

¹⁸¹³ Bislim Zyrapi, T. 5967 (6 November 2006), T. 6258-6259 (10 November 2006). *See also* P2469 (Map Showing KLA Actional Zones as Indicated by Witness Bislim Zyrapi).

¹⁸¹⁴ Shukri Gërxhaliu, P2275 (witness statement dated 19 February 2000), para. 6; IC22 (Map of Vuçitrn Marked by Shukri Gërxhaliu).

¹⁸¹⁵ Fedrije Xhafa, T. 2459 (28 August 2006).

¹⁸¹⁶ Sabit Kadriu, P2377 (witness statement dated 10 December 2000), p. 7, T. 5065–5067 (18 October 2006).

¹⁸¹⁷ Sabit Kadriu, P2377 (witness statement dated 10 December 2000), p. 8, T. 5067–5070 (18 October 2006).

¹⁸¹⁸ P1162 (Analysis of Performed Combat Actions of 125th Motorised Brigade, 25 September 1998).

¹⁸¹⁹ Sabit Kadriu, P2377 (witness statement dated 10 December 2000), p. 11. *See also* 5D783 (Weekly Report of the 125th Motorised Brigade Command, 25 February 1999); P2808 (Order of the PrK, 16 February 1999).

¹⁸²⁰ Xhevahire Rrahmani, T. 1813 (17 August 2006).

¹⁸²¹ Xhevahire Rrahmani, T. 1851–1854 (17 August 2006).

killed by the KLA in Bukoš/Bukosh prior to the NATO campaign and that the KLA even fired shots at the KVM verifiers there.¹⁸²²

741. In March 1999 Kadriu noted a significant reinforcement of “Serbian forces” in the municipality, and described the setting up of special checkpoints by military forces in villages around Vučitrn/Vushtrria.¹⁸²³ VJ officer Milan Kotur confirmed that in February or March 1999 troop numbers on the ground were increased, and that a group of young VJ soldiers was sent to Bukoš/Bukosh for training.¹⁸²⁴ The then commander of the VJ’s 37th Motorised Brigade, Ljubiša Diković, also testified that parts of the Brigade conducted training in Bukoš/Bukosh at the beginning of March 1999, and that they did respond to attacks upon them by the KLA.¹⁸²⁵ On 12 March 1999 the KVM reported that, due to the VJ live firing exercise near the village of Bukoš/Bukosh, the situation on the ground between the VJ and the KLA became highly charged and volatile, with sporadic exchanges of fire.¹⁸²⁶

3. Events in Vučitrn/Vushtrria town

742. Sabit Kadriu, who at the end of March 1999 was staying in Vučitrn/Vushtrria town, gave evidence that on 27 March numerous men, whom he simply described as “Serbs” wearing a variety of uniforms, arrived in town and were stationed at the school opposite to where he was staying. Later that day he saw two “Serbs” in civilian clothes enter the house next door. Shortly after they came out he noticed that that house and one next to it were on fire. At this point Kadriu observed many “Serbs”, mostly wearing green uniforms, present in the street where the houses were burning. Out of fear Kadriu moved with his family into a relative’s house located in the vicinity of the old part of town. According to Kadriu, the “Serbs” also started burning the old part of town. He saw the old mosque in the centre of town in flames, as well as the buildings surrounding it, and saw the minaret collapsing as a consequence. Kadriu could hear shots being fired while the houses and shops were burned.¹⁸²⁷

¹⁸²² Xhevahire Rrahmani, T. 1855–1861, 1881–1885 (17 August 2006), P2240 (Transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 4584.

¹⁸²³ Sabit Kadriu, P2377 (witness statement dated 10 December 2000), p. 11. Note that it is unclear whether Kadriu means the villages surrounding Vučitrn/Vushtrria town, or the villages around the entire municipality.

¹⁸²⁴ Milan Kotur, T. 20634–20638 (18 January 2008).

¹⁸²⁵ Ljubiša Diković, T. 19927–19928, T. 19870 (10 December 2007); P2039 (37th Motorised Brigade Operational Report to PrK, 20 March 1999), p. 3. See also 3D179 (KVM report on compliance by the parties in Kosovo, 12 March 1999), p. 1, also admitted as P444; P407 (OSCE/KVM Bluebook), entries for 25 February–3 March 1999.

¹⁸²⁶ 3D179 (KVM report on compliance by the parties in Kosovo, 12 March 1999), p. 1, also admitted as P444; P407 (OSCE/KVM Bluebook), entries for 25–3 March 1999.

¹⁸²⁷ Sabit Kadriu, P2377 (witness statement dated 10 December 2000), p. 12.

743. Two days later Kadriu received information that there were three or four bodies lying near the old bridge in the town, although it does not appear that he saw these bodies himself, nor found out how they came to be there. On the morning of 1 April several of his relatives came from another part of the town saying that they had been expelled from their houses by the police.¹⁸²⁸ Shortly thereafter Kadriu saw and heard police officers on the street, one of whom he identified as the commander of the police station in Vuçitrn/Vushtrria, shouting and telling people to leave their houses immediately and go towards the cemetery.¹⁸²⁹ The Lukić Defence argues that “Kadriu does not in any form establish that his family was ordered to leave home by the police”.¹⁸³⁰ The Chamber rejects this argument in light of Kadriu’s testimony—which it accepts—that policemen shouted from the street instructing the people to leave their apartments.

744. He and his family joined large crowds of Kosovo Albanians leaving their houses and travelling to the cemetery either in vehicles or on foot.¹⁸³¹ When he got there, he saw three private buses parked, which the expelled Kosovo Albanians began to board. There were not any police in the cemetery itself. One of the bus drivers told them that he had been instructed by the police to drive people to Macedonia. Kadriu put his family on to one of the buses, and with several of his friends he decided to go to Gornja Sudimlja/Studimja e Epërme, which was in an area that was a KLA stronghold.¹⁸³² After his family learned that he had not boarded the bus, they disembarked and ended up staying in Vuçitrn/Vushtrria until the end of the war.¹⁸³³

745. The Lukić Defence argues that the evidence that there were no policemen at the cemetery, and the fact that Kadriu and his family did not eventually travel to Macedonia, show that the police were not forcing “anyone to do anything at the cemetery”.¹⁸³⁴

746. Kadriu’s testimony concerning the destruction of buildings in Vuçitrn/Vushtrria town at this time is supported by the evidence of András Riedlmayer, who visited the town in October 1999. He presented photographs of three mosques in the town, which he took during the visit. The first of these, the Market Mosque, was characterised by Riedlmayer in his report as “completely destroyed”. It was surrounded by a traditional goldsmith’s bazaar which had been completely

¹⁸²⁸ Sabit Kadriu, P2377 (witness statement dated 10 December 2000), p. 12.

¹⁸²⁹ Sabit Kadriu, T. 5121–5123, 5071–5072 (18 October 2006), P2377 (witness statement dated 10 December 2000), p. 13.

¹⁸³⁰ Lukić Final Trial Brief, 7 August 2008 (public version), paras. 1268–1269.

¹⁸³¹ Sabit Kadriu, P2377 (witness statement dated 10 December 2000), p. 13.

¹⁸³² Sabit Kadriu, P2377 (witness statement dated 10 December 2000), p. 13.

¹⁸³³ Sabit Kadriu, T. 5133 (18 October 2006).

¹⁸³⁴ Lukić Final Trial Brief, 7 August 2008 (public version), paras. 1270–1271.

burned.¹⁸³⁵ Two additional mosques, Gazi Ali Bey and Karamanli, were categorized by Riedlmayer as “lightly damaged”.¹⁸³⁶ His report recorded that Abdullah Mulaku, a town archivist from Vučitrn/Vushtrria who was interviewed by Riedlmayer and his colleague, indicated that the Market Mosque and the market shops next to it were burned with gasoline and subsequently knocked down with a bulldozer.¹⁸³⁷ The report also indicated that Mehmet Mejzini, who resided across the street from the Market Mosque, stated that the Mosque and his house were burned down by “Serb paramilitaries” who wore masks and were led by a local Serb politician, “the local boss of Arkan’s political party”. According to him, the site of the Mosque was bulldozed on 28 March 1999.¹⁸³⁸ The Chamber notes that these statements are consistent with the evidence given by Kadriu. Despite some general challenges to Riedlmayer’s methodology by Branimir Jokić, the expert witness called by the Defence, Riedlmayer’s evidence pertaining to Vučitrn/Vushtrria was not undermined, and the Chamber is not in doubt that the Market Mosque in the town, and surrounding buildings, were destroyed, as described by Kadriu.

4. Attacks on villages north-east of Vučitrn/Vushtrria town and the convoy killings

747. In addition to the evidence relating to events in Vučitrn/Vushtrria town at the end of March 1999, the Chamber heard from Kadriu, Fedrije Xhafa, and Shukri Gërxhaliu about the displacement of Kosovo Albanians from other villages in the municipality in the following weeks. This evidence is, to some extent, supported by that of Mihajlo Gergar, former commander of the VJ’s 211th Armoured Brigade, Ljubomir Savić, the then commander of the 58th Light Infantry Brigade, Vladimir Marinković, the then commander of 15th Armoured Brigade, and various military documents describing a joint VJ/MUP action in the Bajgora region in late April and early May 1999.

748. Kadriu testified that until late April 1999 the KLA strongly resisted the “Serbian forces” in the municipality.¹⁸³⁹ Until the end of April Gornja Sudimlja/Studimja e Epërme and Cecelija/Cecelia were held by the KLA, but the “Serbs” had strong positions further south at the old army barracks at Donja Sudimlja/Studime e Poshtme, at a compound between Gornja Sudimlja/Studimja e Epërme and Donja Sudimlja/Studime e Poshtme, in Pasoma and in lower

¹⁸³⁵ Andrés Riedlmayer, T. 5441–5442 (30 October 2006). *See also* P1799 (Photographs of Mosques in Vučitrn/Vushtrria), pp. 1–2; IC87; IC88; P1788 (Extract from P1789 re Vučitrn/Vushtrria Mosque). The Chamber notes that it has considered the challenge to the photographs of this mosque that was raised by the Lazarević Defence at T. 5571–5576 on 31 October 2006.

¹⁸³⁶ Andrés Riedlmayer, T. 5443–5444 (30 October 2006). *See also* P1799 (Photographs of Mosques in Vučitrn/Vushtrria), pp. 3–5, and P2456 (Extract from P1789 re Karamanli Mosque in Vučitrn/Vushtrria), pp. 1–6.

¹⁸³⁷ P1788 (Extract from P1789 re Vučitrn/Vushtrria Mosque); Andrés Riedlmayer, T. 5458 (30 October 2006).

¹⁸³⁸ P1788 (Extract from P1789 re Vučitrn/Vushtrria Mosque), p. 2.

¹⁸³⁹ Sabit Kadriu, P2377 (witness statement dated 10 December 2000), p. 14.

Dubnica/Dumnica. Kadriu added that “Serb forces” were present in the area north-east of Vučitrn/Vushtrria town up as far as Samodreža/Samodrezha, but the KLA had positions in the mountains further north towards Kosovska Mitrovica/Mitrovica municipality.¹⁸⁴⁰

749. Kadriu also testified that around 28 April 1999 “Serb forces” successfully advanced against KLA positions in Kosovska Mitrovica/Mitrovica municipality.¹⁸⁴¹ For two days they consolidated their positions and simultaneously started a major offensive against the KLA from several directions towards Vučitrn/Vushtrria.¹⁸⁴² As these forces advanced, displaced Kosovo Albanians who were sheltering in the mountainous region of Šalja/Shala and Bajgora started moving to the south towards Samodreža/Samodrezha, Slakovce/Sllakofc, and Cecelija/Cecelia. On 1 May the “Serb forces” were able to advance to Vesekovce/Vesekovc village, a strategic KLA point located high in the mountains in the north of Vučitrn/Vushtrria municipality. The KLA then advised the civilian Kosovo Albanians to leave Slakovce/Sllakofc and try to make it to Vučitrn/Vushtrria town. In the evening of 1 May the shelling of Slakovce/Sllakofc began. The following morning this shelling intensified and, as a consequence, people started to move south in a convoy towards Cecelija/Cecelia with the intention of going to Gornja Sudimlja/Studimja e Epërme and on to Vučitrn/Vushtrria town.¹⁸⁴³

750. Kadriu and his friend Fadil Beqiri were among the last to leave Cecelija/Cecelia and join the convoy on the way to Gornja Sudimlja/Studimja e Epërme. From the top of a hill close to the village they saw that the roads were crowded with people and tractors. When they reached Gornja Sudimlja/Studimja e Epërme at about 3:00 p.m., Kadriu could see smoke coming from houses in Cecelija/Cecelia.¹⁸⁴⁴

751. Mihajlo Gergar confirmed Kadriu’s account of an action by VJ and MUP forces beginning in late April 1999 in the region to the north and east of Vučitrn/Vushtrria town. He stated that a joint VJ/MUP action was decided upon due to the strong presence of KLA fighters in the area of Bajgora to the north of Vučitrn/Vushtrria municipality.¹⁸⁴⁵ Consequently, on 15 April 1999 a Joint Command order was issued “to break up and destroy ŠTS in the area of Bajgora-Bare” (action *Bajgora*). The goal of this joint action was to gain control over the general area contained in a triangle between Prvi Tunel/Tuneli i Parë village in the north-west, Bajgora village to the north-east (both in Kosovska Mitrovica/Mitrovica municipality), and Samodreža/Samodrezha village in

¹⁸⁴⁰ Sabit Kadriu, T. 5125 (18 October 2006), P2377 (witness statement dated 10 December 2000), p. 14.

¹⁸⁴¹ Sabit Kadriu, P2377 (witness statement dated 10 December 2000), p. 14.

¹⁸⁴² Sabit Kadriu, T. 5125 (18 October 2006), P2377 (witness statement dated 10 December 2000), p. 14.

¹⁸⁴³ Sabit Kadriu, P2377 (witness statement dated 10 December 2000), p. 14.

¹⁸⁴⁴ Sabit Kadriu, P2377 (witness statement dated 10 December 2000), p. 14.

Vučitrn/Vushtrria municipality to the south-east. The order divided the tasks between the 211th Armoured Brigade, the 15th Armoured Brigade, and the 58th Light Infantry Brigade of the VJ. In particular, the 211th Armoured Brigade was to be deployed on the axis Bajgora-Vesekvce/Vesekofc- Samodreža/Samodrezha (all to the north-east or east of Vučitrn/Vushtrria town); the 15th Armoured Brigade was to set up a blockade along the line of Breznica (in Obilić/Obiliq municipality)-Samodreža/Samodrezha-Gojbulja/Gojbuja- Smrekovnica/Smrakonica (an axis starting from south-east of Vučitrn/Vushtrria town and ending north-west of the town) and to “break up and destroy” the “ŠTS” in Skrovna/Skroma, Pasoma, Šljivovica/Shilvovica, and Cecelija/Cecelia. The 58th Light Infantry Brigade was to be deployed on the north-western axis, mainly covering villages in Kosovska Mitrovica/Mitrovica municipality.¹⁸⁴⁶ Based on the analysis of a VJ map for the action, several detachments of the PJP as well as the SAJ were also to take part. The VJ was to be deployed at the outer positions, while MUP forces were to engage in pushing the KLA to the south-west of Kosovo.¹⁸⁴⁷ The order specified that the action was to commence on 25 April 1999.¹⁸⁴⁸

752. Gergar testified that the 211th Armoured Brigade participated in action *Bajgora* and on several occasions provided fire support to the MUP using mortars against KLA fortified features.¹⁸⁴⁹ According to him, the VJ was engaged in holding the blockade, holding passive (static) positions, while the MUP was engaged in active combat activities.¹⁸⁵⁰

753. Ljubomir Savić, who from 16 April 1999 served as commander of the 58th Light Infantry Brigade, testified that from 25 April until approximately 2 May 1999 a portion of his brigade participated in supporting the MUP forces in action *Bajgora*. His unit was deployed from Stari Trg/Stari Tërg towards the villages of Bare and Bajgora, further north-east.¹⁸⁵¹ When questioned about the events of 2 May that took place near Gornja Sudimlja/Studimja e Epërme, he replied that the area in question was under control of the 15th Armoured Brigade, not his Brigade.¹⁸⁵²

754. The war diary of the 15th Armoured Brigade shows that on 21 April 1999 the unit began conducting preparations and linking up with MUP forces in order to carry out the *Bajgora* action tasks, and that on 24 and 25 April units of the brigade engaged in a siege supporting the MUP as

¹⁸⁴⁵ Mihajlo Gergar, 5D1400 (witness statement dated 28 January 2008), paras. 30–31.

¹⁸⁴⁶ P1975 (Joint Command Order, 15 April 1999), p. 3; 5D1329 (Map and Decision of the 211th Armoured Brigade).

¹⁸⁴⁷ Mihajlo Gergar, T. 21487–21489 (31 January 2008); 5D1329 (Map and Decision of the 211th Armoured Brigade).

¹⁸⁴⁸ P1975 (Joint Command Order, 15 April 1999), p. 3; 5D1329 (Map and Decision of the 211th Armoured Brigade).

¹⁸⁴⁹ Mihajlo Gergar, 5D1400 (witness statement dated 28 January 2008), para. 31, T. 21534–21535 (1 February 2008).

¹⁸⁵⁰ Mihajlo Gergar, T. 21534–21535 (1 February 2008).

¹⁸⁵¹ Ljubomir Savić, 5D1392 (witness statement dated 20 January 2008), para. 17.

¹⁸⁵² Ljubomir Savić, T. 21012–T. 21013 (24 January 2008).

part of that action.¹⁸⁵³ The diary also shows that on 29 April the 15th Armoured Brigade, together with the 2nd Motorised Brigade and the 1st Armoured Brigade, continued to carry out the planned tasks of the action. The diary further recorded that various units of the 15th Armoured Brigade took up positions in the villages of Žilivoda/Zhilivoda and Strovce/Strofc in the south of Vučitrn/Vushtrria municipality, and that on 30 April columns of “refugees” crossed from the slopes of Bajgora on the Kopaonik/Kopauniku mountain range.¹⁸⁵⁴ It also stated that MUP forces were engaged in “triage” and directing of the columns.¹⁸⁵⁵ A report from the 15th Armoured Brigade dated 2 May 1999 shows that battalions of this Brigade were engaged in “carrying out the tasks from the Decision of “Bajgora” plan”.¹⁸⁵⁶ Vladimir Marinković, the then commander of the 15th Armoured Brigade, testified that, at the beginning of May, he saw columns of civilians moving along the road.¹⁸⁵⁷

755. Other forces that took part in the *Bajgora* action were the 35th PJP Detachment and 122nd PJP Intervention Brigade of the MUP, as indicated by their commanders Colonel Branko Prljević and Lieutenant Colonel Dragan Nikolić respectively, at a meeting held at the MUP Staff on 11 May 1999.¹⁸⁵⁸ Bogunović confirmed that the PJP took part in the action. He stated that on 2 May 1999 a PJP company from the Kosovska Mitrovica SUP moved along the axis Bare-Trstena-Pasoma-Veliki Kičić, all to the north-west of Gornja Sudimlja/Studimja e Epërme. Right before dusk they completed their activities and traveled back to Kosovska Mitrovica/Mitrovica.¹⁸⁵⁹

756. Fedrije Xhafa was staying with her family in the village of Vesekovce/Vesekovc in the north of Vučitrn/Vushtrria municipality from late March until late April 1999, due to shelling of her home village of Donji Svrčak/Sfračaku i Ulët by the “Serb forces” at the end of March.¹⁸⁶⁰ Around 30 April they moved from Vesekovce/Vesekovc to Slakovce/Sllakofc village, which was nearby and held by the KLA at that time.¹⁸⁶¹ She described how a large number of displaced people had gathered in the area north-east of Vučitrn/Vushtrria town, including Slakovce/Sllakofc, seeking KLA protection.¹⁸⁶²

¹⁸⁵³ P2572 (War Diary of the 15th Armoured Brigade of the VJ), entries dated 21, 24, 25 April 1999.

¹⁸⁵⁴ P2572 (War Diary of the 15th Armoured Brigade of the VJ), entry dated 29 April 1999.

¹⁸⁵⁵ P2572 (War Diary of the 15th Armoured Brigade of the VJ), entry dated 30 April 1999.

¹⁸⁵⁶ 5D1437 (Report of the 15th Armoured Brigade to the PrK, 2 May 1999), paras. 2, 8.

¹⁸⁵⁷ Vladimir Marinković, T. 20325–20326 (14 December 2007).

¹⁸⁵⁸ P1993 (Minutes of the MUP Staff meeting, 11 May 1999) pp. 2, 4–5.

¹⁸⁵⁹ 6D1614 Nebojša Bogunović, (witness statement dated 2 April 2008), para. 67.

¹⁸⁶⁰ Fedrije Xhafa, T. 2420 (25 August 2006); Fedrije Xhafa, P2274 (witness statement dated 29 August 2006), para. 2.

¹⁸⁶¹ Fedrije Xhafa, T. 2456 (28 August 2006).

¹⁸⁶² Fedrije Xhafa, P2274 (witness statement dated 29 August 2006), para. 4.

757. After spending two nights in Slakovce/Sllakofc, Xhafa and her family were notified by the KLA that “the Serbs” were advancing from the north and that they, therefore, should try to make their way to Vuçitrn/Vushtrria town.¹⁸⁶³ They joined a convoy moving from Slakovce/Sllakofc south to Cecelija/Cecelia and on to Gornja Sudimlja/Studimja e Epërme.

758. From early April until the beginning of May 1999 Shukri Gërxhaliu and his family were also in Slakovce/Sllakofc, where he worked at the KLA “hospital.”¹⁸⁶⁴ Like Xhafa, he stated that at the beginning of May the KLA told all the people staying in Slakovce/Sllakofc that the “Serbs” had broken through the front-line and they should move.¹⁸⁶⁵ Gërxhaliu and his family then joined a convoy of tractors and trailers heading south towards Donja Sudimlja/Studime e Poshtëme.¹⁸⁶⁶

759. Kadriu, Xhafa, and Gërxhaliu estimated that the convoy, of which they were part, consisted of approximately 30,000 to 50,000 people.¹⁸⁶⁷ Xhafa testified that it was stopped at approximately at 4:00 p.m. on 2 May due to a curfew, and was surrounded by the “Serb military.” When this happened she was on a trailer close to Gornja Sudimlja/Studimja e Epërme.¹⁸⁶⁸ At 9:00 p.m. four men, whom she described as “Serb policemen”, arrived shooting in the air with machine guns and shouting insults at the people in the convoy. Additional forces, wearing blue camouflage uniforms, and others also wearing black masks and gloves, described by Xhafa as “paramilitaries”, shouted at the drivers of the tractors to clear the road so that they could get their vehicles through.¹⁸⁶⁹ Xhafa explained that in describing these forces as “policemen” and “paramilitaries” she was referring to the same group of people; however “paramilitaries” were those persons who, in addition to blue camouflage uniforms, also wore black masks and gloves.¹⁸⁷⁰ Some of the “policemen” caught her nephew Ismet and started to beat him. They accused him of being a KLA fighter, which he had indeed been until the commencement of the NATO campaign. They then demanded money and

¹⁸⁶³ Fedrije Xhafa, T. 2421 (25 August 2006), P2274 (witness statement dated 29 August 2006), para. 4.

¹⁸⁶⁴ Shukri Gërxhaliu, P2275 (witness statement dated 4 February 2002), paras. 6–9.

¹⁸⁶⁵ Shukri Gërxhaliu, P2275 (witness statement dated 4 February 2002), para. 11.

¹⁸⁶⁶ Shukri Gërxhaliu, P2275 (witness statement dated 4 February 2002), para. 9.

¹⁸⁶⁷ Sabit Kadriu, T. 5077, 5097–5098 (18 October 2006); P2377 (witness statement dated 10 December 2000), p. 15; Fedrije Xhafa, T. 2431–2432 (25 August 2006), P2274 (witness statement dated 29 August 2006), para. 4; Shukri Gërxhaliu, T. 2510, 2559–2562 (30 August 2006), P2275 (witness statement dated 4 February 2002), para. 11; P2386 (Vuçitrn Municipal Council’s Request for Humanitarian Assistance to Approximately 30,000 Refugees, 3 May 1999).

¹⁸⁶⁸ Fedrije Xhafa, T. 2437 (28 August 2006), P2274 (witness statement dated 29 August 2006). *See also* IC21 (Map of Vuçitrn Marked by Fedrije Xhafa).

¹⁸⁶⁹ Fedrije Xhafa, T. 2467–2468, 2478–2479 (28 August 2006). *See also* Fedrije Xhafa, P2274 (witness statement dated 29 August 2006), para. 5.

¹⁸⁷⁰ Fedrije Xhafa, T. 2363–2469, 2478–2479 (28 August 2006). *See also* Fedrije Xhafa, P2274 (witness statement dated 29 August 2006), para. 5.

threatened to kill Ismet if they were not paid. Xhafa gave them 200 German Marks and Ismet was released.¹⁸⁷¹

760. Xhafa further testified that her tractor was again approached by a group of Serb “policemen/paramilitaries”, who were wearing blue camouflage uniforms and black masks. One of them pulled her brother, Jetish, off of the tractor and began beating him with a wooden stick.¹⁸⁷² Eventually the policeman released Jetish, but not before he demanded and was given Jetish’s wife’s jewellery.¹⁸⁷³ According to Xhafa, Jetish was not a member of the KLA.¹⁸⁷⁴

761. At approximately 11.30 p.m. a third group of “policemen” approached Xhafa’s family’s tractor.¹⁸⁷⁵ These men were wearing black balaclava masks and blue camouflage uniforms.¹⁸⁷⁶ One of them pointed a machine gun at Xhafa’s mother’s chest.¹⁸⁷⁷ Another “policeman” dragged her brother, Jetish, to the bushes.¹⁸⁷⁸ Xhafa described how she then heard a shot and saw her brother fall down.¹⁸⁷⁹ When the “policemen” began to leave, Xhafa’s father, named Miran, said something to them in Serbian. The policemen came back, dragged him away, and shot him.¹⁸⁸⁰ They then ordered Xhafa and her family back on to their tractor without giving them an opportunity to check on the condition of the two men.¹⁸⁸¹ Xhafa subsequently learned that her father was killed, but her brother survived.¹⁸⁸² Shukri Gërxfhaliu confirmed that he later treated Jetish Xhafa for a gunshot wound to the head; Gërxfhaliu testified that he thought Jetish had been shot from “some distance”.¹⁸⁸³

762. The Lukić Defence argues that there is a discrepancy between the testimony of Xhafa, who allegedly stated that her brother was shot from a close range, and the testimony of Gërxfhaliu, who later treated Jetish Xhafa and estimated that he had been shot from “some distance”.¹⁸⁸⁴ The Chamber considers that the Lukić Defence reads too much into the evidence of Xhafa, who never

¹⁸⁷¹ Fedrije Xhafa, P2274 (witness statement dated 29 August 2006), para. 5.

¹⁸⁷² Fedrije Xhafa, T. 2441, 2479 (28 August 2006). *See also* Fedrije Xhafa, P2274 (witness statement dated 25 August 2006), para. 6.

¹⁸⁷³ Fedrije Xhafa, P2274 (witness statement dated 29 August 2006), para. 6.

¹⁸⁷⁴ Fedrije Xhafa, T. 2474 (28 August 2006).

¹⁸⁷⁵ Fedrije Xhafa, P2274 (witness statement dated 29 August 2006), para. 7.

¹⁸⁷⁶ Fedrije Xhafa, T. 2469 (28 August 2006). *See also* Fedrije Xhafa, P2274 (witness statement dated 29 August 2006), para. 7.

¹⁸⁷⁷ Fedrije Xhafa, P2274 (witness statement dated 29 August 2006), para. 7.

¹⁸⁷⁸ Fedrije Xhafa, T. 2443 (28 August 2006); Fedrije Xhafa, P2274 (witness statement dated 29 August 2006), para. 7.

¹⁸⁷⁹ Fedrije Xhafa, T. 2421–2422 (25 August 2006); Fedrije Xhafa, P2274 (witness statement dated 29 August 2006), para. 7.

¹⁸⁸⁰ Fedrije Xhafa, P2274 (witness statement dated 29 August 2006), para. 8.

¹⁸⁸¹ Fedrije Xhafa, P2274 (witness statement dated 29 August 2006), para. 9.

¹⁸⁸² Fedrije Xhafa, T. 2422 (25 August 2006); Shukri Gërxfhaliu, T. 2605–2607 (30 August 2006).

¹⁸⁸³ Shukri Gërxfhaliu, T. 2605–2607 (30 August 2006).

claimed that her brother was shot from close range, but only stated that the “policemen” pointed a gun at his head and that she subsequently heard a shot. In addition, the Chamber notes that Gërxhaliu is not qualified to opine on the distance from which Jetish Xhafa was shot, that he was not asked to explain what he meant by “some distance”, and that he was not an eye-witness to the shooting, unlike Xhafa, whom the Chamber believes.

763. Xhafa’s 13 year-old nephew then tried to drive the family tractor, but was not able to and was beaten by a “policeman” with the butt of his gun. The family managed to move about 100 metres on the tractor before abandoning it out of fear that they would again be attacked. When they were ordered by “the Serbs” to move again, they continued on foot, leaving their belongings behind.¹⁸⁸⁵ They were re-directed by members of the police to the agricultural co-operative buildings on the outskirts of Vuçitrn/Vushtrria town, arriving there at around 2:00 a.m. on 3 May 1999.¹⁸⁸⁶

764. Xhafa further testified that she and her family stayed in the agricultural co-operative compound for the rest of the night, and the following morning the deputy police commander from Vuçitrn/Vushtrria arrived. She was told by others that the compound was surrounded by police who were preventing people from leaving. The men were separated from the women, and all men between the ages of 15 and 60 were taken to Smrekovnica/Smrakonica prison. The remaining people who had vehicles were ordered to go to Albania. Those who did not have vehicles—including Xhafa and her family—were instructed to go to Kičić/Kiçiq village in Kosovska Mitrovica/Mitrovica municipality.¹⁸⁸⁷ The family stayed in an empty house in Kičić/Kiçiq for four days.¹⁸⁸⁸

765. Ljubomir Savić testified that on 2 May 1999 members of 58th Light Infantry Brigade in the vicinity of Kičić/Kiçiq village came across a group of 2,000 to 3,000 “refugees”, mainly women, children, and elderly people. After contacting the Kosovska Mitrovica SUP, the decision was made to accommodate these people in Kičić/Kiçiq village until they could return to their homes. According to Savić the people accepted his offer.¹⁸⁸⁹

¹⁸⁸⁴ Lukić Final Trial Brief, 7 August 2008 (public version), para. 1243.

¹⁸⁸⁵ Fedrije Xhafa, T. 2423 (25 August 2006).

¹⁸⁸⁶ Fedrije Xhafa, T. 2423 (25 August 2006), P2274 (witness statement dated 29 August 2006), para. 10.

¹⁸⁸⁷ Fedrije Xhafa, P2274 (witness statement dated 29 August 2006), para. 11.

¹⁸⁸⁸ Fedrije Xhafa, P2274 (witness statement dated 29 August 2006), para. 11. *See also* Fedrije Xhafa, T. 2423–2424 (25 August 2006).

¹⁸⁸⁹ Ljubomir Savić, 5D1392 (witness statement dated 27 December 2007), para. 33.

766. Having spent four days in Kičić/Kiçiq, Xhafa and her family then moved to Dobra Luka/Doberlluke.¹⁸⁹⁰ On 15 May members of the police, some of whom she recognised from the incident at Gornja Sudimlja/Studimja e Epërme, came to the house in Dobra Luka/Doberlluke where Xhafa and her family were staying, and removed the men. The women were ordered to go to a place in Smrekovnica/Smrakonica to register. The police gave Xhafa a card, which stated that she was entitled to stay in the house in Dobra Luka/Doberlluke.¹⁸⁹¹ She remained there until the end of the conflict. When she returned to her home in Donji Svračak/Sfračaku i Ulët, she found that it had been burned down.¹⁸⁹²

767. Shukri Gërxhaliu gave a similar account of the events of 2 May 1999. According to him, at around 1:00 p.m. that day the convoy was slowly moving from the north, being pushed southwards by the “Serbs” who were shelling from the north, in the direction of the convoy.”¹⁸⁹³ As a result of this shelling many people in the convoy were wounded.¹⁸⁹⁴ The convoy came to a halt at about 4:00 p.m. when they were told that a curfew had been imposed.¹⁸⁹⁵ When the convoy stopped, it was surrounded on all sides by “Serb forces.”¹⁸⁹⁶ Gërxhaliu and his family were roughly in the middle of the convoy, closer to Gornja Sudimlja/Studimja e Epërme.¹⁸⁹⁷

768. At around 5:00 p.m. a large number of “Serb military and paramilitary soldiers” wearing blue or green camouflage uniforms approached the convoy from the north.¹⁸⁹⁸ Fearing that he would be recognised, Gërxhaliu hid under the plastic sheet covering part of his trailer.¹⁸⁹⁹ The “soldiers”, some of whom were wearing masks and had painted faces, then started approaching tractors and demanding money from their occupants.¹⁹⁰⁰ Gërxhaliu testified that his wife was threatened by a “paramilitary,” who demanded money from her. The tractor he was hiding on was approached three or four times by the “Serbs” and each time his wife was forced to give them money.¹⁹⁰¹

¹⁸⁹⁰ Fedrije Xhafa, P2274 (witness statement dated 29 August 2006), para. 11. *See also* IC20 (Exhibit P38 marked by Fedrije Xhafa).

¹⁸⁹¹ Fedrije Xhafa, P2274 (witness statement dated 29 August 2006), paras. 11–13.

¹⁸⁹² Fedrije Xhafa, T. 2424 (25 August 2006).

¹⁸⁹³ Shukri Gërxhaliu, P2275 (witness statement dated 22 February 2000), paras. 12–13.

¹⁸⁹⁴ Shukri Gërxhaliu, P2275 (witness statement dated 22 February 2000), paras. 12–13.

¹⁸⁹⁵ Shukri Gërxhaliu, P2275 (witness statement dated 22 February 2000), para. 14.

¹⁸⁹⁶ Fedrije Xhafa, P2274 (witness statement dated 29 August 2006), para. 5.

¹⁸⁹⁷ Shukri Gërxhaliu, T. 2510 (28 August 2006).

¹⁸⁹⁸ Shukri Gërxhaliu, P2275 (witness statement dated 22 February 2000), para. 15.

¹⁸⁹⁹ Shukri Gërxhaliu, P2275 (witness statement dated 22 February 2000), para. 15.

¹⁹⁰⁰ Shukri Gërxhaliu, P2275 (witness statement dated 22 February 2000), paras. 15–16.

¹⁹⁰¹ Shukri Gërxhaliu, P2275 (witness statement dated 22 February 2000), para. 15.

769. Gërxhaliu's brother-in-law was severely beaten by a group of "paramilitaries," some of whom were wearing plain black uniforms, some blue camouflage uniforms, and some green camouflage uniforms.¹⁹⁰² He also noted that the "paramilitaries" were wearing masks; some had a small orthodox cross attached to the front, while others had eyebrows and moustaches drawn on them.¹⁹⁰³

770. Later that night, while the convoy was halted, another column of "Serb soldiers" approached it from the north, driving jeeps and APCs.¹⁹⁰⁴ These soldiers used their vehicles to push tractors which were in their way into a stream. They then started walking along the convoy demanding money. Those who did not, or could not, pay were shot.¹⁹⁰⁵ He saw a man whose surname was Bunjaku being killed by these soldiers. While Gërxhaliu was hiding in his family's tractor, he overheard two "soldiers" talking to each other, discussing the number of victims they had killed that day. One of the "soldiers" said that he killed about 50, to which the other proposed to continue the killing until they reached 100.¹⁹⁰⁶ Gërxhaliu explained that some of these "soldiers" wore bandannas, some had paint on their faces, and they also wore different types of uniforms. However, on cross examination he conceded that he did not actually observe very much because he was half hidden in the tractor; rather, he perceived what was happening aurally.¹⁹⁰⁷

771. When the "soldiers" approached the vehicle in which Gërxhaliu was hiding, he and his brother-in-law decided to escape.¹⁹⁰⁸ They jumped out of the trailer. Gërxhaliu landed on the dead body of his cousin, Haki Gërxhaliu, who must have been killed earlier. They ran into the stream and found a place to hide. Gërxhaliu was later told by his wife that several members of a family, who were in the tractor in front of his, were dragged down by "the police" and shot dead.¹⁹⁰⁹

772. At around 11:45 p.m. the convoy was permitted to move on.¹⁹¹⁰ From his place of hiding he saw about ten vehicles coming from the direction of Donja Sudimlja/Studime e Poshtme, including Zastava 101 police cars and APCs.¹⁹¹¹ The vehicles had their headlights on and the people inside

¹⁹⁰² Shukri Gërxhaliu, P2275 (witness statement dated 22 February 2000), paras. 16–17.

¹⁹⁰³ Shukri Gërxhaliu, P2275 (witness statement dated 22 February 2000), para. 16.

¹⁹⁰⁴ Shukri Gërxhaliu, T. 2513–2514 (28 August 2006); T. 2578–2579, 2584–2587 (30 August 2006). *See also* Shukri Gërxhaliu, P2275 (witness statement dated 22 February 2000), para. 18.

¹⁹⁰⁵ Shukri Gërxhaliu, P2275 (witness statement dated 22 February 2000), para. 18.

¹⁹⁰⁶ Shukri Gërxhaliu, P2275 (witness statement dated 22 February 2000), para. 21.

¹⁹⁰⁷ Shukri Gërxhaliu, T. 2578–2579, 2584–2587 (30 August 2006).

¹⁹⁰⁸ Shukri Gërxhaliu, P2275 (witness statement dated 22 February 2000), para. 21.

¹⁹⁰⁹ Shukri Gërxhaliu, P2275 (witness statement dated 22 February 2000), para. 22.

¹⁹¹⁰ Shukri Gërxhaliu, T. 2513 (28 August 2006). *See also* Shukri Gërxhaliu, P2275 (witness statement dated 22 February 2000), para. 24.

¹⁹¹¹ Shukri Gërxhaliu, T. 2513–2514 (28 August 2006), P2275 (witness statement dated 22 February 2000), para. 24. *See also* Fedrije Xhafa, T. 2483 (28 August 2006), P2274 (witness statement dated 29 August 2006), para. 9.

appeared to be searching the area.¹⁹¹² After they had left, Gërxhaliu and his brother-in-law walked towards Gornja Sudimlja/Studimja e Epërme and back to Slakovce/Sllakofc.¹⁹¹³

773. Kadriu testified that he was near the front of the convoy when it came to a halt on 2 May when the curfew was imposed. He thought it started at 6:00 p.m., rather than at 4:00 p.m.¹⁹¹⁴ The Chamber considers, however, this difference to be unremarkable. As it got dark, Kadriu could hear the sounds of automatic gun-fire and saw houses burning in Gornja Sudimlja/Studimja e Epërme. At about 9:00 p.m. he heard people, whom he identified simply as “Serbs”, shouting “push, push!”. Shortly afterward Kadriu saw three “Serbs” carrying automatic weapons coming from the direction of Gornja Sudimlja/Studimja e Epërme. These “Serbs” shouted at the convoy members, ordering them to follow behind. Kadriu followed these men towards Gornja Sudimlja/Studimja e Epërme. On the way he saw that one of them opened fire. Kadriu saw a dead body on the ground where the shooting had taken place, but in the darkness he could not tell if it was a man or a woman. At the place where the road forked, the group was led down the branch that goes to Vuçitrn/Vushtrria town. When shells began to land behind them, Kadriu realised that he was in a group of about 1,000 people that had become separated from the main convoy behind them. As they continued, he noticed dead bodies at the side of the road, but his group was told by the “Serbs” accompanying them to move on quickly. They were led to the compound of the agricultural co-operatives, which was comprised of several storage hangars. Like Xhafa, the group Kadriu was in was taken into these hangars to spend the night.¹⁹¹⁵

774. The following morning the people were taken out of the hangars. Kadriu could see that men in blue camouflage uniforms surrounded the area.¹⁹¹⁶ Some of the Kosovo Albanians in the group hid bodies of their family members on their tractors. There were also injured people in the area. Kadriu and other men were ordered to move to a nearby field, which was surrounded by policemen, while the women and children remained in the compound to be registered. Kadriu recognised the policeman who supervised the moving and registering of the women and children in the compound as the commander of the Vuçitrn/Vushtrria police station. He also saw an acquaintance of his, Ali Mernica, being taken away by two policemen and soon thereafter heard two shots. Although

¹⁹¹² Shukri Gërxhaliu, P2275 (witness statement dated 22 February 2000), para. 24.

¹⁹¹³ Shukri Gërxhaliu, P2275 (witness statement dated 22 February 2000), para. 25.

¹⁹¹⁴ Sabit Kadriu, P2377 (witness statement dated 10 December 2000), p. 15.

¹⁹¹⁵ Sabit Kadriu, P2377 (witness statement dated 10 December 2000), p. 16.

¹⁹¹⁶ Sabit Kadriu, P2377 (witness statement dated 10 December 2000), p. 17.

Kadriu did not see Mernica's body at the time, he learned after the conflict that Mernica's body was found buried with four others in the village of Pestova.¹⁹¹⁷

775. The "Serbs" then ordered the men who had driving licenses to form a line. About 30 of them were taken back into the compound. Kadriu assumed that these men were instructed to drive the women and children to Albania; he heard the "policemen" yelling at them and instructing them to go to Albania.¹⁹¹⁸ He and the remaining men were ordered to run towards some trucks through a corridor formed by the "policemen". These policemen beat them with wooden sticks as they ran. The trucks took them to the prison located in Smrekovnica/Smrakonica village.¹⁹¹⁹

776. Bogunović testified that in late April or early May 1999 he drove from Kosovska Mitrovica/Mitrovica towards Vučitrn/Vushtrria in order to conduct reconnaissance and report about a column of "refugees" that was moving from the direction of Samodreža/Samodrezha, located to the immediate east of Gornja Sudimlja/Studimja e Epërme, towards Vučitrn/Vushtrria.¹⁹²⁰ He described meeting civilians and policemen from the Vučitrn OUP, without clarifying the location of this encounter. He spoke to the civilians to try to persuade them to go back, but failed in his attempts. Then members of the Vučitrn OUP offered to accommodate the civilians on the premises of the agricultural co-operative, to which they agreed. Bogunović further stated that, when he inquired whether there were any wounded people among the civilians, no one told him that there were injured or dead among them. He did admit that the civilians asked him for medicines for sick people, which he provided.¹⁹²¹ He also stated that the next morning he heard reports that the civilians had left the premises of the agricultural co-operative, some going back to their homes and some finding accommodation in the nearby villages.¹⁹²²

777. The Lukić and Pavković Defences argue that the civilians brought to the agricultural co-operative were free to leave, as demonstrated by the testimony of Xhafa, apart from those who were suspected of having taken part in terrorist attacks. Such people were taken into custody in the prison in Smrekovnica/Smrakonica, "where those without such evidence against them were subsequently released".¹⁹²³ The Chamber rejects these arguments based on the testimony of Xhafa

¹⁹¹⁷ Sabit Kadriu, P2377 (witness statement dated 10 December 2000), p. 17.

¹⁹¹⁸ Sabit Kadriu, P2377 (witness statement dated 10 December 2000), p. 17.

¹⁹¹⁹ Sabit Kadriu, P2377 (witness statement dated 10 December 2000), p. 18.

¹⁹²⁰ Nebojša Bogunović, 6D1614 (witness statement dated 6 April 2008), para. 67.

¹⁹²¹ Nebojša Bogunović, 6D1614 (witness statement dated 6 April 2008), para. 67.

¹⁹²² Nebojša Bogunović, 6D1614 (witness statement dated 6 April 2008), para. 70.

¹⁹²³ Lukić Final Trial Brief, 7 August 2008 (public version), paras. 1254–1257; Pavković Final Brief, 28 July 2008 (public version), para. 546.

and Kadriu, who testified that they were led to the co-operative by armed Serb forces, and that the premises of the co-operative were surrounded by policemen.

778. At Smrekovnica/Smrakonica prison the detained men had their identification documents checked by men whom Kadriu described as “Serbian secret police in civilian clothes”, two of whom he recognised. As they walked into the prison building the men were beaten by the police using sticks and the butts of their guns.¹⁹²⁴ Kadriu was kept in an overcrowded prison cell for 20 days; for the first two or three days he was not given food or water.¹⁹²⁵ On 7 May 1999 Bogunović reported at a MUP Staff meeting in Priština/Prishtina that 827 “terrorists” were being held at Smrekovnica/Smrakonica prison. According to a 16 May 1999 report from the Vučitrn police station to the Kosovska Mitrovica SUP, there were approximately 830 prisoners held in the prison. However Kadriu estimated that this number grew to about 2,000.¹⁹²⁶ The detainees were beaten regularly by members of the police, some of whom Kadriu recognised from Vučitrn/Vushtrria. On around the twelfth day of Kadriu’s detention he was given a document to sign by a “Serb man” in civilian clothes in the office of the prison supervisor. Although this document was an admission to being part of a group of “terrorists” acting against the government, Kadriu felt he had no option but to sign it. After this event it became routine that police in blue camouflage uniforms, some of whom Kadriu personally knew from before, and prison guards, led certain prisoners down the stairs of a small building in the prison yard and beat them.¹⁹²⁷

779. On one occasion during their detention the detainees were taken from the prison and driven in two trucks to two different locations in Kosovska Mitrovica/Mitrovica.¹⁹²⁸ Kadriu’s group was taken to the Technical School, where they were beaten by members of the police and some students. Kadriu was then taken to a classroom where two “Serbs” in civilian clothes started asking questions and accusing him of being a member of the KLA and providing sensitive information to NATO. They also questioned him about his links with the OSCE. When Kadriu denied having anything to do with the KLA, one of the Serbs stood up and started beating him up with his stick, threatening to kill his family. He was then taken back to the gym where the beating continued.

¹⁹²⁴ Sabit Kadriu, P2377 (witness statement dated 10 December 2000), p. 18.

¹⁹²⁵ Sabit Kadriu, P2377 (witness statement dated 10 December 2000), p. 18. *See also* Sabit Kadriu, T. 5074–5075 (18 October 2006).

¹⁹²⁶ Sabit Kadriu, T. 5076–5077, 5096–5098 (18 October 2006); P53 (Report of Vučitrn Police Station to Kosovska Mitrovica SUP, 16 May 1999); P1231 (Report of Vučitrn Police Station to Kosovska Mitrovica SUP, 3 May 1999).

¹⁹²⁷ Sabit Kadriu, P2377 (witness statement dated 10 December 2000), p. 19.

¹⁹²⁸ Sabit Kadriu, P2377 (witness statement dated 10 December 2000), p. 19.

Later that afternoon the detained men were taken back to Smrekovnica/Smrakonica prison. There Kadriu learned that the others who were in the second truck were also beaten.¹⁹²⁹

780. Bogunović stated that those detained at the Smrekovnica/Smrakonica prison were not mistreated or killed, particularly because they were properly registered when detained.¹⁹³⁰ According to him some persons were released immediately upon their arrival in the prison, while others were released after having been “processed”.¹⁹³¹ Bogunović explained that he personally never went inside the prison; the prison was under the jurisdiction of the Ministry of Justice and not that of the MUP.¹⁹³² However, he received reports about the prison at the collegium meetings of the Kosovska Mitrovica SUP.¹⁹³³ He further explained that, in order for personnel of the Kosovska Mitrovica SUP to enter the prison, they needed court authorisation. Having obtained such authorisation, “a patrol” consisting of the members of the Kosovska Mitrovica OKP and crime technicians visited it.¹⁹³⁴

781. While the Chamber accepts that the prison would have been under the remit of the Ministry of Justice, it does not accept Bogunović’s evidence that none of the detainees were mistreated by members of the MUP. Rather, it finds that the evidence shows that the MUP was involved in arresting the persons in question, transferring them to the prison, and questioning and mistreating them during their detention.

782. In the morning of 23 May 1999 Kadriu and the other detainees were called out by name. They were loaded on to buses and taken past Vučitrn/Vushtrria town where Kadriu saw a lot of houses on fire. When they reached Štimlje/Shtima, they were joined by three trucks containing “paramilitaries”, which escorted them all the way to the border with Albania. The paramilitaries wore various bandannas on their heads; some of them had long hair and beards. At Žur/Zhur, close to the border crossing, the detainees were made to get off the buses. They were beaten again before being told to run towards the border with their hands behind their heads. At the border Kadriu’s identification card was seized, along with those of all his companions, before they crossed into Albania.¹⁹³⁵

783. Shukri Gërxhaliu testified that, after having escaped from the convoy on 2 May, he and his brother-in-law returned to Slakovce/Sllakofc, which had been burned and at least 90 cows

¹⁹²⁹ Sabit Kadriu, P2377 (witness statement dated 10 December 2000), pp. 19–20.

¹⁹³⁰ Nebojša Bogunović, 6D1614 (witness statement dated 6 April 2008), para. 87; T. 25170–25171 (10 April 2008).

¹⁹³¹ Nebojša Bogunović, 6D1614 (witness statement dated 6 April 2008), para. 69.

¹⁹³² Nebojša Bogunović, T. 25170–25171 (10 April 2008).

¹⁹³³ Nebojša Bogunović, 6D1614 (witness statement dated 6 April 2008), para. 69.

¹⁹³⁴ Nebojša Bogunović, T. 25170–25171 (10 April 2008).

slaughtered. Afterwards they went back to Gornja Sudimlja/Studimja e Epërme, to the place where the convoy killings had taken place, arriving there on 3 May 1999. Members of the KLA were present and were helping to bury the dead. Of the bodies that Gërxhaliu saw at that time, many appeared to him to have been shot in the head from close range. Most were male, but there were five or six female victims also.¹⁹³⁶ Xhafa testified that the bodies of about 115 people killed in the convoy were buried on 4 May by local civilians helped by members of the KLA.¹⁹³⁷ A MUP report records that on 3 May 1999 policemen from the Kosovska Mitrovica SUP attempted to carry out an on-site investigation in the area between Gornja Sudimlja/Studimja e Epërme and Donja Sudimlja/Studime e Poshtëme, but were attacked by the KLA from the upper neighbourhood in Donja Sudimlja/Studime e Poshtëme called Rashica hill.¹⁹³⁸

784. Despite the involvement of KLA members in the burial of those from the convoy who were killed on 2 May, both Gërxhaliu and Xhafa stated that the convoy had been comprised exclusively of civilians when it was attacked, although Xhafa's nephew Ismet had previously been in the KLA. Both witnesses stated that the KLA had indeed withdrawn from the area of Slakovce/Sllakofc and Cecelija/Cecelia in the direction of Dubnica/Dumnica, south-east of Vuçitër/Vushtrria town.¹⁹³⁹

785. The Lukić Defence challenges the evidence of Xhafa and Gërxhaliu that the convoy was approached by people wearing blue camouflage uniforms. According to the Lukić Defence, these persons could not have been policemen, since Bogunović testified that the MUP forces which participated in operation *Bajgora* wore green camouflage uniforms, while he and Obrad Stevanović were the only MUP members in the area who wore a solid blue police uniform.¹⁹⁴⁰ The Lukić Defence also argues that it is “odd and unbelievable” that the witnesses did not describe that the police wore flak jackets with phosphorescent lettering stating “police”, usually used by the police “involved in anti-terrorist actions”, or that the police wore combinations of coloured ribbons¹⁹⁴¹ The Chamber does not accept these arguments. While green camouflage uniforms and vests stating “police” indeed were the identifying characteristics of the PJP forces, evidence has been adduced that regular police forces, including PJP members on routine duty, continued to use blue

¹⁹³⁵ Sabit Kadriu, P2377 (witness statement dated 10 December 2000), p. 20.

¹⁹³⁶ Shukri Gërxhaliu, P2275 (witness statement dated 22 February 2000), para. 25.

¹⁹³⁷ Shukri Gërxhaliu, T. 2470-2472 (28 August 2006).

¹⁹³⁸ Shukri Gërxhaliu, T. 2548–2550 (30 August 2006); 3D70 (Official Note of the Kosovska Mitrovica SUP, 3 July 2001).

¹⁹³⁹ Shukri Gërxhaliu, T. 2579, (30 August 2006); Fedrije Xhafa, T. 2448–2449 (28 August 2006). *See also* Sabit Kadriu, T. 5125–5127 (18 October 2006), P2377 (witness statement dated 10 December 2000), p. 14.

¹⁹⁴⁰ Lukić Final Trial Brief, 7 August 2008 (public version), paras. 1236–1240. The Lukić Defence refers to the witness statement of Nebojša Bogunović, 6D1614 (witness statement dated 6 April 2008), paras. 67–68.

¹⁹⁴¹ Lukić Final Trial Brief, 7 August 2008 (public version), paras. 1241–1242. The Lukić Defence refers to 6D579 (Instructions for Police Identification Ribbons, May 1999).

camouflage uniforms throughout the conflict. In addition, upon examination of Bogunović's evidence the Chamber notes that he merely stated that the PJP forces that took part in the operation wore green camouflage uniforms, which does not exclude the presence of other non-PJP members of the MUP in the area. In fact, Bogunović himself stated that in the evening of 2 May 1999, on the road from Samodreža/Samodrezha to Vučitrn/Vushtrria, he met a group of Kosovo Albanian civilians traveling in a column and policemen from the Vučitrn OUP, confirming the presence of non-PJP members of the MUP in the area. The Chamber also finds that the witnesses' failure to report about the coloured ribbons does not undermine the overall reliability of their identification.

786. The Lukić Defence also argues that Xhafa, Gërxhaliu, and Kadriu could not see the colours of the uniforms clearly in the dark.¹⁹⁴² When similar arguments were put to Xhafa, she explained that it was a bright moonlit night, adding that tractor headlights were also turned on, which enabled her to see clearly.¹⁹⁴³ Gërxhaliu also stated that, despite being half-hidden under a plastic sheet on the tractor, he could see a bit of what was happening.¹⁹⁴⁴ The Chamber notes that in his testimony Kadriu referred to the persons attacking the convoy as "Serbs", without referring to the colour of their uniforms.

5. Other killings

787. A body of evidence was led about the killing of a number of members of Gërxhaliu's own family, including several children, on 31 May 1999 at Donja Sudimlja/Studime e Poshtëme. The matter was the subject of investigation by a team including members of the VJ and MUP on the instructions of an investigating judge. However, since the killing of these Gërxhaliu family members is not charged in the Indictment and no conviction can follow thereon, the Chamber makes no finding about these events.

788. Following the killing of his relatives, Gërxhaliu decided to leave for Montenegro with the rest of his family. When he returned to his home after the conflict, he found that his house had been looted. There were also signs that somebody had tried, unsuccessfully, to set it on fire.¹⁹⁴⁵

6. Investigation of the convoy killings

789. In relation to the numbers killed in the convoy, the Lukić Defence argues that, because Xhafa, Gerxhaliu, and Kadriu testified about only a handful of dead that they saw, insufficient

¹⁹⁴² Lukić Final Trial Brief, 7 August 2008 (public version), paras. 1244–1245, 1273–1274.

¹⁹⁴³ Fedrije Xhafa, T. 2447 (28 August 2006).

¹⁹⁴⁴ Shukri Gërxhaliu, T. 2585 (30 August 2006).

evidence was introduced to demonstrate the death of the 104 victims as alleged in Schedule I, or the cause or nature of their death.¹⁹⁴⁶

790. Sabit Kadriu testified that after the conflict ended, and in his capacity as president of the local war crimes commission, he conducted an investigation into the attack on the convoy on 2 and 3 May 1999. As a result of this investigation he concluded that 104 members of the convoy had been killed by “the Serbs”.¹⁹⁴⁷ In his written witness statement Kadriu provided a list of all of these victims, which he appears to have compiled partially on the basis of interviews with witnesses. He recorded the names of the victims as follows: Musa Abazi; Rrahman Ademi; Ramadan Aliu; Remzi Aliu; Afrim Bekteshi; Nezir Beqiri, Hysni Bunjaku; Qamile Fejzullahu; Istref Ferati; Milazim Ferati; Rifat Ferati; Bislim Ferizi; Mihrije Ferizi; Ruzhdi Ferizi; Agim Gerguri; Enver Geguri; Musli Gerguri; Fahri Gërxhaliu; Haki Gërxhaliu; Kadri Gërxhaliu; Shaban Gërxhaliu; Skender Gërxhaliu; Zejnullah Gërxhaliu; Shukri Gerguri; Skender Gerguri; Naman Gerguri; Ramush Gerguri; Avdyl B. Gërxhaliu; Avdyl F. Gërxhaliu; Bajram Gërxhaliu; Fatmir A. Gërxhaliu; Fatmir U. Gërxhaliu; Imer Gërxhaliu; Nuhi Gërxhaliu; Sejdi Gërxhaliu; Xhevet Gërxhaliu; Meriton Gjata; Sevdije Gjata; Tefik Gjata; Bahri Haxhaj; Nafije Haziri; Agim Hyseni; Ali Hyseni; Beqir Hyseni; Kada Hyseni; Hysen Hyseni;¹⁹⁴⁸ Qazim Hyseni; Ramadam Hyseni; Rrahman Hyseni, Xhevdet Hyseni; Selman Ibishi; Sylejman Ibishi; Rahim Ibishi, Tafil Ibishi; Bajram Kurti; Afrim Konjuhi; Rexhep Konjuhi; Shaban Krasniqi; Syle Krasniqi; Ibadete Lushaku; Shehide Lushaku; Driton Maxhuni; Sabri Maxhuni; Ali Mernica; Remzi Morina; Ekrem Mulaku.; Xhavit Mulaku; Gani Muli; Asllan Muli; Hazir Muli; Bajram Muliqi; Islam Musa; Kadrush Musa; Nexhmi Musa; Mehdi Musliu; Ragip Musliu; Besim Muzaqi; Salih Muzaqi; Shehide Parduzi; Murat Peci; Ismajl Popova; Enver Prronaj; Zymer Prronaj; Ali Rashica; Deli Rashica; Eshref Rashica; Ahmet Rexhepi; Ilaz Rexhepi; Ismet Rexhepi; Agim Sadiku; Hamdi Shala; Shehide Sfarqa; Sherif Sfarqa; Skender Sfarqa; Fetah Tahiri; Fehmi Ternava; Sahit Tiku; Azemine Vershevci; Faik Vidishiqi; Driton Xhafa; Nazif Xhafa; Veli Xhafa; Naser Zhegrova.

791. The Chamber notes that the list of victims provided by the Prosecution in Schedule I is identical to the list of victims presented by Sabit Kadriu.

792. In addition to Kadriu’s conclusions concerning the identities of the victims of the convoy killings, Dr. Eric Baccard gave evidence, under reference to his report, of the forensic

¹⁹⁴⁵ Shukri Gërxhaliu, P2275 (witness statement dated 22 February 2000), para. 36.

¹⁹⁴⁶ Lukić Final Trial Brief, 7 August 2008 (public version), para. 1276.

¹⁹⁴⁷ Sabit Kadriu, P2377 (witness statement dated 10 December 2000), pp. 20–24.

¹⁹⁴⁸ NOTE: This victim was mentioned by Sabit Kadriu twice. See Sabit Kadriu, P2377 (witness statement dated 10 December 2000), pp. 23–24 (victim number 53 and number 94).

investigations carried out by a French forensic expert team that examined the Gornja Sudimlja/Studimja e Epërme site in July 1999.¹⁹⁴⁹

793. The French forensic team prepared a report recording that there were two cemeteries which they labelled L1 and L2.¹⁹⁵⁰ According to the report, the L1 cemetery, which was the smaller of the two, had many graves, out of which only 17 were recent. Each of these 17 was an individual grave containing a wooden plaque indicating the name of each victim. The cemetery labelled L2 appeared to have been created more recently. It contained 102 bodies, 76 of which were exhumed. At the L2 cemetery the bodies were buried in shared graves containing four to six bodies each. The shared graves were dug in the shape of a trench and the bodies were put next to each other, in most cases with wooden plaques indicating the names of the dead.¹⁹⁵¹

794. The French team identified 84 of the 93 bodies with the help of local villagers.¹⁹⁵² They photographed the bodies of each victim and then performed an autopsy.¹⁹⁵³ 75 percent of the victims were found to be less than 50 years old at the time of death.¹⁹⁵⁴ Two of the most common causes of death were injuries to the abdominal internal organs and skull-brain injuries. Among the 93 examined bodies, seven probably died of natural causes.¹⁹⁵⁵ Among those who died a violent death, 97 percent were victims of wounds inflicted by firearms, generally from close range, while the remainder had been struck using blunt or sharp weapons.¹⁹⁵⁶

7. Findings

795. The Trial Chamber finds that on 27 March 1999 VJ and MUP forces burned houses and at least one mosque in Vuçitrn/Vushtrria town. The Chamber also finds that MUP forces expelled some Kosovo Albanians from their homes in Vucitrn/Vushtrria town and instructed them to go to the cemetery, where many of them boarded buses that were meant to take them to Macedonia. There is no evidence as to the actual destination of these buses, as Kadriu instead went to Gornja Sudimlja/Studimja e Epërme and his family disembarked and stayed in the town.

¹⁹⁴⁹ P1809 (Eric Baccard's overview report), p. 64; Eric Baccard, T. 10104–10105 (19 February 2007). *See also* P333 (French Forensic Mission Report on Gornja Sudimlja/Studime e Epërme from "Cemetery 1").

¹⁹⁵⁰ P333 (French Forensic Mission Report on Gornja Sudimlja/Studime e Epërme from "Cemetery 1"), p. 6. P1809 (Eric Baccard's overview report), p. 64.

¹⁹⁵¹ P333 (French Forensic Mission Report on Gornja Sudimlja/Studime e Epërme from "Cemetery 1"), p. 6.

¹⁹⁵² P333 (French Forensic Mission Report on Gornja Sudimlja/Studime e Epërme from "Cemetery 1": includes photographs of mortal remains, clothing, and ballistic evidence), p. 6 (English version of the document); P1809 (Eric Baccard's overview report), p. 64–65; P210 (French Forensic Mission ballistics report), p. 40.

¹⁹⁵³ P333 (French Forensic Mission Report on Gornja Sudimlja/Studime e Epërme from "Cemetery 1": includes photographs of mortal remains, clothing, and ballistic evidence), p. 6 (English version of the document).

¹⁹⁵⁴ P1809 (Eric Baccard's overview report), p. 65.

¹⁹⁵⁵ P1809 (Eric Baccard's overview report), p. 66.

796. The Chamber also finds, based on military orders and combat reports, that on 2 May 1999 MUP and VJ forces were engaged in an action in the area around the villages of Slakovce/Slakofc, Cecelija/Cecelia, Donja Sudimlja/Studime e Poshtëme, and Gornja Sudimlja/Studimja e Epërme, which had a strong KLA presence. The action resulted in the collapse of the KLA. As a result of the conflict, a convoy of approximately 30,000 Kosovo Albanians formed, moving towards the south of the municipality. These people left their homes at least in part due to instructions or orders from the KLA. Once they departed, their movement was controlled by the MUP, who also robbed and mistreated them. The evidence does not show that the VJ was involved in controlling the convoy, or robbing, mistreating, or killing its members.

797. The Chamber is not convinced by the denials of the eye-witnesses that there were any KLA members in the convoy. Indeed, Shukri Gërxhaliu himself was a KLA member, if not one who bore arms, and Fedrije Xhafa's nephew had also been in the KLA at one time. Nonetheless, the Chamber considers the convoy to have been comprised predominantly of civilians, even if there were some KLA members present or nearby.

798. The Chamber notes that Sabit Kadriu's testimony whereby 104 persons, as listed in his statement and adopted by the Prosecution in Schedule I, travelled in the convoy and were killed by "Serbs", constitutes hearsay evidence, with the exception of evidence in relation to Ali Mernica. The Chamber does not consider this to be in the circumstances an adequate basis on which to convict for a serious crime. Kadriu's evidence is also undermined by the French forensic team's medical report, which demonstrates that three of the persons from the list, namely Agim Hyseni; Kada Hyseni; and Shehide Sfarqa died from natural causes, and thus could not have been "killed" by Serbs, as stated by Kadriu. Furthermore, the Prosecution provided no indication that an attempt was made to investigate whether the victims from Kadriu's list, whose bodies were found at the L1 and L2 cemeteries, with the exception of Haki Gërxhaliu, indeed travelled in the convoy on 2 May 1999.

799. The Chamber concludes, based on the eye-witness testimony of Shukri Gërxhaliu and Sabit Kadriu, that on the night of 2 May 1999 MUP forces incorporating special or irregular units, killed Haki Gërxhaliu and Ali Mernica, victims listed in Schedule I. In addition, the Trial Chamber finds, based on the eye-witness testimony of Fedrije Xhafa, that Miran Xhafa, a victim not listed in

¹⁹⁵⁶ P1809 (Eric Baccard's overview report), p. 66; P210 (French Forensic mission ballistics report), p. 40.

Schedule I, was killed by Serbian police or paramilitary forces on 2 May 1999 while travelling in the convoy.¹⁹⁵⁷

800. The Chamber further finds that between 1 and 3 May MUP forces separated the convoy into three groups. The first group, comprised of women, children, and elderly people who had vehicles, was sent to Albania; the second group, comprised of women, children, and elderly people who had no means of transportation, was sent to nearby villages, among them Kičić/Kiçiq and Dobra Luka/Doberlluke; while the third group, containing mainly men of military age, was sent to Smrekovnica/Smrakonica prison where they were detained and mistreated. Following detention in dismal condition for approximately three weeks, the detainees were taken to the Albanian border, where they were forced to surrender their identification documents and cross into Albania.

J. PRIŠTINA/PRIŠHTINA

1. Charges in Indictment

801. The Indictment charges the Accused with responsibility for three different categories of crimes against humanity allegedly committed in the municipality of Priština/Prishtina: deportation, forcible transfer, and persecution. The charged persecution is alleged to have taken the form of sexual assault of Kosovo Albanian women in Priština/Prishtina municipality, as described in paragraph 72(g).¹⁹⁵⁸

802. The specific factual averments are set out in Paragraph of 72(g) of the Indictment, which states that:

Beginning on or about 24 March 1999 and continuing through the end of May 1999, forces of the FRY and Serbia went to the homes of Kosovo Albanians in the city of Priština/Prishtinë and forced the residents to leave. During the course of these forced expulsions, a number of people were killed. Many of those forced from their homes went directly to the train station, while others sought shelter in nearby neighbourhoods. Hundreds of ethnic Albanians, guided by Serb police at all the intersections, gathered at the train station and then were loaded onto overcrowded trains or buses. Those on the trains went as far as Đeneral Janković/Hani i Elezit, a village near the Macedonian border. On the way to the border many people had their identification papers taken from them. After getting off the trains, forces of the FRY and Serbia told the Kosovo Albanians to walk along the tracks into Macedonia since the surrounding land had been mined. Those who tried to hide in Priština/Prishtinë were eventually expelled in a similar fashion. During the course of these forced expulsions, a number of people were killed and several women were sexually assaulted.

¹⁹⁵⁷ Fedrije Xhafa, T. 2421–2422 (25 August 2006). *See also* Fedrije Xhafa, P2274 (witness statement dated 29 August 2006), para. 8.

¹⁹⁵⁸ Indictment, para. 77(c).

- (i) During the same period, forces of the FRY and Serbia entered the villages of Priština/Prishtinë municipality where they beat and killed many Kosovo Albanians, robbed them of their money, looted their property and burned their homes. Many of the villagers were taken by truck to the town of Glogovac/Glllogoc in the municipality of Lipljan/Lipjan. From there, they took the train to Đeneral Janković/Hani i Elezit and walked to the Macedonian border. Others, after making their way to the town of Uroševac/Ferizaj, were ordered by forces of the FRY and Serbia to take a train to Đeneral Janković/Hani i Elezit, from where they walked across the border into Macedonia.¹⁹⁵⁹

2. Background

803. Priština/Prishtina municipality is located towards the east of Kosovo and includes its largest town, also called Priština/Prishtina, comprising a number of neighbourhoods and suburbs. This town was and remains today the economic, cultural, political, and administrative centre of Kosovo. As with the rest of Kosovo, Priština/Prishtina's population in early 1999 was predominantly Kosovo Albanian. However, because it was the administrative centre of the province, its Serb minority was larger than in other municipalities.¹⁹⁶⁰

804. The Trial Chamber heard evidence from several witnesses concerning the situation in Priština/Prishtina town during the NATO air campaign, and the events leading to the departure of a significant number of its residents. The fact that a large number of people left Priština/Prishtina during the NATO campaign was not contested by the Defence, who focused on the reasons for this exodus, arguing that it was largely due to the NATO bombing rather than the actions of the FRY/Serbian forces.

805. Among those who testified were Nazlie Bala, K63, K62, Baton Haxhiu, Adnan Merovci, and Emin Kabashi, all Kosovo Albanian residents of the town or nearby villages, led by the Prosecution. In addition, the Chamber admitted a written statement pursuant to Rule 92 *quater* from Antonio Russo, an Italian journalist who was present in Priština/Prishtina at the relevant time, but who died before the commencement of the trial.¹⁹⁶¹ The director of the Priština Media Centre Milivoje Mihajlović, MUP officer Božidar Filić, and VJ officer Milutin Filipović, were among the witnesses called by the Defence to counter the accounts given by the witnesses brought by the Prosecution. The consistent evidence given by Bala, K62, K63, and Kabashi, about their expulsion from their homes at the end of March 1999, supported by the statement from Russo, was not

¹⁹⁵⁹ Indictment, para. 72(g).

¹⁹⁶⁰ See 3D422 (OSCE Priština/Prishtina municipal profile, June 2006), p. 2; P1960 (Report on the size and ethnic composition of the population of Kosovo, 14 August 2002), p. 9; P906 (1991 Census), p. 10; see also P1893 (Božidar Delić's Degree Thesis, "Preparation and Engagement of FRY Defence forces for the Prevention and Suppression of the Armed Uprising in KiM", 1997).

¹⁹⁶¹ The Chamber admitted Antonio Russo's witness statement by an oral ruling on 24 August 2006. T. 2288 (24 August 2006).

undermined by either the Defence challenges or the evidence led by the Defence, and the Chamber considers these witnesses reliable on the material events. Although Haxhiu has been found in contempt of the Tribunal, the Chamber does not find that to be a reason for disbelieving his evidence on events in Priština/Prishtina, particularly bearing in mind that his conviction related to the circumstances in which information was published rather than dishonesty or how he conducted himself as a witness before the Tribunal. The Chamber will address specific issues of reliability in context where they arise.

806. Nazlie Bala, who worked for the KVM in Priština/Prishtina in late 1998 and early 1999, informed the Chamber that, in the period leading up to the commencement of the NATO air campaign, the situation in the town was generally calm but tense.¹⁹⁶² Witness K63, a Kosovo Albanian man who ran a shop in Priština/Prishtina with his wife, gave evidence that a Serb friend told him that, if NATO began bombing, “all the Albanians [would] be finished and cleared out of Kosovo.”¹⁹⁶³ K63 further indicated that by 1999 there were many displaced people in Priština/Prishtina town who had come from Kosovo Polje/Fushë Kosova and the Drenica region because of fear engendered by the police and VJ in their villages.¹⁹⁶⁴ K63’s wife, witness K62, confirmed that during March 1999 many people came from other villages in the countryside into Priština/Prishtina town because they had been expelled from their homes and were afraid.¹⁹⁶⁵ The town residents permitted these displaced people to stay in their apartments, resulting in overcrowding. However, at the same time, those who could began to leave the town.¹⁹⁶⁶ Adnan Merovci, who was LDK leader Ibrahim Rugova’s personal secretary, testified that on 21 March 1999, as he drove from Macedonia towards Priština/Prishtina in a convoy of vehicles, he noticed many people going in the opposite direction, towards the Macedonian border.¹⁹⁶⁷ When he arrived in Priština/Prishtina on 21 March, the situation was terrible, with a climate of panic prevailing.¹⁹⁶⁸

807. A Media Centre had been established in Priština/Prishtina in April 1998 by an association of journalists in Serbia. Milivoje Mihajlović, who in early 1999 was the director of the Media Centre, located in the Grand Hotel, and one of the journalists involved in its creation, said that its purpose was to provide assistance to the large number of foreign journalists who were then arriving in

¹⁹⁶² Nazlie Bala, P2262 (witness statement dated 16 August 2006), e-court pp. 5, 11; *see also* K63, P2443 (witness statement dated 28 May 2003), paras. 4–5, 11.

¹⁹⁶³ K63, P2443 (witness statement dated 28 May 2003), para. 11.

¹⁹⁶⁴ K63, P2443 (witness statement dated 28 May 2003), para. 13.

¹⁹⁶⁵ K62, T. 2269–2270 (24 August 2006).

¹⁹⁶⁶ K62, T. 2269 (24 August 2006).

¹⁹⁶⁷ Adnan Merovci, P2588 (witness statement dated 13 April 2000), paras. 40, 42.

¹⁹⁶⁸ Adnan Merovci, T. 8575–8576 (17 January 2007).

Kosovo.¹⁹⁶⁹ According to Mihajlović, by the commencement of the NATO bombing only a few foreign journalists remained at the centre. They could move freely and film whatever they wanted, although leaving the town itself was risky.¹⁹⁷⁰ According to Antonio Russo, on 23 March 1999 the foreign journalists who were still in town were summoned to the Ministry of Information and informed that the government could no longer guarantee their safety, and that, if they wished to stay, they would be doing so at their own risk.¹⁹⁷¹ Mihajlović asserted that he did not receive any notification from the Secretariat of Information about foreign journalists being asked to leave, but confirmed that he saw some journalists departing after the 23 March meeting.¹⁹⁷²

808. As foreign journalists were leaving Priština/Prishtina, MUP and VJ forces were being reinforced. Merovci testified that, prior to the onset of the NATO bombing, every Serb male in Kosovo had been mobilised into these forces in some manner.¹⁹⁷³ Similarly, K63 described how all able-bodied Serb civilians had been called up into the police, and were wearing police uniforms and carrying guns.¹⁹⁷⁴ In his statement Russo recounted that in late February 1999 the VJ began deploying large numbers of tanks, APCs, and troops on the outskirts of Priština/Prishtina town and established checkpoints there.¹⁹⁷⁵ On 20 March 1999, when the KVM left Priština/Prishtina, Nazlie Bala went to the centre of town to observe what was happening.¹⁹⁷⁶ She spoke to people who told her that they had seen increased police and VJ activity in the area and feared for their safety, not knowing what the intentions of these forces were.¹⁹⁷⁷ Merovci also confirmed that he saw and met several groups of MUP and VJ operating in Priština/Prishtina after his return from Paris on 21 March 1999.¹⁹⁷⁸

809. The Trial Chamber heard evidence from various VJ and MUP officers, and admitted documents, which confirm the presence of MUP and VJ forces in and around Priština/Prishtina in March 1999. Before the NATO bombing the 3rd Army's forward command post was located in the *Kosovski Junaci* barracks in Priština/Prishtina. It relocated several times during the bombing but

¹⁹⁶⁹ Milivoje Mihajlović, T. 24051–24054, 24063–24066 (11 March 2008), 6D1530 (witness statement dated 6 March 2008), para. 10.

¹⁹⁷⁰ Milivoje Mihajlović, 6D1530 (witness statement dated 6 March 2008), para. 33.

¹⁹⁷¹ Antonio Russo, P2261 (witness statement dated 24 April 1999), e-court p. 4; *see also* P2900 (TEC Report sent to the Office of the Serbian President, 16 April 1999), p. 13.

¹⁹⁷² Milivoje Mihajlović, T. 24090 (11 March 2008).

¹⁹⁷³ Adnan Merovci, T. 8439 (16 January 2007), P2588 (witness statement dated 13 April 2000), para. 49.

¹⁹⁷⁴ K63, P2443 (witness statement dated 28 May 2003), para. 22.

¹⁹⁷⁵ Antonio Russo, P2261 (witness statement dated 24 April 1999), e-court pp. 3–4.

¹⁹⁷⁶ Nazlie Bala, P2262 (witness statement dated 30 June 2001), e-court p. 5.

¹⁹⁷⁷ Nazlie Bala, T. 2151 (22 August 2006), P2262 (witness statement dated 16 August 2006), e-court p. 11.

¹⁹⁷⁸ Adnan Merovci, T. 8435–8436 (16 January 2007).

always in places close to the town.¹⁹⁷⁹ Prior to the bombing, the Priština Corps Command and the MUP Staff were housed in buildings in the town about 500 metres apart.¹⁹⁸⁰ Around 29 March 1999 the Priština Corps Command was relocated and thereafter was relocated again a number of times during the NATO air campaign.¹⁹⁸¹ On 30 March the Accused Lazarević issued an order that a group from the Priština Corps Command should remain in the area of Priština/Prishtina to protect the Priština garrison.¹⁹⁸² This group was headed by Milutin Filipović. He insisted that there were no VJ combat units in Priština/Prishtina town during the NATO bombing, but only the military police battalion composed of 350–400 armed men which was guarding the Priština Corps garrison.¹⁹⁸³ The Chamber notes that an order from the Priština Military District dated 27 March 1999 records that the 50th Military Territorial Detachment, which on occasion may have had combat duties, was also located in Priština/Prishtina town, where it was tasked with guarding military facilities, protecting hospitals, post offices, and TV and radio stations, and protecting “the Serbian population in the southern part of the town of Priština.”¹⁹⁸⁴

810. The Trial Chamber has received evidence that the VJ’s 52nd Military Police Battalion, was stationed at the *Kosovski Junaci* barracks in Priština/Prishtina, along with the 72nd Special Brigade, up until 24 March 1999, when it was relocated to Gračanica/Gračanica, to the south of the town.¹⁹⁸⁵ After about a week they returned to the area of Grmija, near Priština/Prishtina town, but then had to relocate closer to the town itself.¹⁹⁸⁶ The 15th Armoured Brigade took up positions outside the town on the eve of the NATO bombing.¹⁹⁸⁷ An order from the Priština Corps Command dated 1 April 1999 directed the Brigade to “establish control of the territory and law and order in the general area of Priština”,¹⁹⁸⁸ which according to the war diary included Slatina airport, just outside the town.¹⁹⁸⁹

811. The Chamber also heard some evidence that “paramilitary” groups were among the FRY/Serbian forces operating in Priština/Prishtina town at this time. Adnan Merovci testified that

¹⁹⁷⁹ Miodrag Janković, 4D504 (witness statement dated 1 October 2007), para. 16; Ljubiša Stojimirović, T. 17667 (26 October 2007); P950 (Vladimir Lazarević interview with the Prosecution), e-court pp. 44, 111; Mirko Starčević, T. 17436, 17438 (22 October 2007), 4D500 (witness statement dated 29 September 2007), para. 15.

¹⁹⁸⁰ P950 (Vladimir Lazarević interview with the Prosecution), p. 109; *see also* P616 (Karol John Drewienkiewicz, Sketch of four main Serbian authority buildings in Priština/Prishtina).

¹⁹⁸¹ Milutin Filipović, T. 19162 (27 November 2007), T. 19203–19204 (28 November 2007); Momir Stojanović, T. 19733 (6 December 2007).

¹⁹⁸² 5D348 (Order of the PrK, 30 March 1999); Milutin Filipović, T. 19151 (27 November 2007), T. 19209 (28 November 2007).

¹⁹⁸³ Milutin Filipović, T. 19153 (27 November 2007), T. 19242 (28 November 2007).

¹⁹⁸⁴ 6D1470 (Order of the Priština Military District dated 27 March 1999), p. 3.

¹⁹⁸⁵ K73, P2440 (witness statement), para. 35.

¹⁹⁸⁶ P2297 (War diary of the 52nd Military Police Battalion), pp. 2, 4; K73, P2440 (witness statement), paras. 36–37.

¹⁹⁸⁷ Miodrag Simić, T. 15686 (14 September 2007); Milutin Filipović, T. 19177 (27 November 2007); Vladimir Marinković, T. 20303 (14 December 2007); P2572 (War Diary of the 15th Armoured Brigade), pp. 19, 25, 28;

¹⁹⁸⁸ P2029 (Order of the PrK, 1 April 1999), pp. 1–2.

on 21 March 1999, while the streets were empty of Kosovo Albanians, everywhere there were large numbers of “Serb paramilitaries”, who were stopping vehicles and stealing property. Merovci described these “paramilitaries” as mostly local people, but said he could not exclude the possibility that some had come from elsewhere in Serbia. He further stated that “[i]n some cases they appeared to have just put on a military jacket or something similar, taken the license plates off of their vehicles, and picked up a gun. Nevertheless, it seemed very organised.”¹⁹⁹⁰ He explained that most of the “paramilitaries” in Priština/Prishtina wore predominately civilian clothes with either green military-style jackets or black leather jackets. Some wore black or camouflage style uniforms. He could differentiate these men from the regular VJ and MUP forces because he was familiar with the regular police and army uniforms, and anyone with a different uniform he considered to be a paramilitary.¹⁹⁹¹ Merovci recognised some of them as local employees of the public utilities companies, who had a detailed knowledge of the city and its residents.¹⁹⁹²

812. Nazlie Bala also described irregular forces, who were dressed all in black, without any insignia, and who had knives strapped to their legs. These men wore masks or had painted faces. She stated that their presence in the town was highly intimidating and that they worked together with the police and the VJ.¹⁹⁹³ K62 also testified that she used to see “paramilitaries” and police beating and robbing people in front of her shop.¹⁹⁹⁴

813. Emin Kabashi, a Kosovo Albanian man who worked as a researcher at the Institute of Albanian Studies in Priština/Prishtina, and who was also a member of the KLA, testified that he saw forces he identified as Arkan’s men, or Frenki Simatović’s men, in Kosovo Polje/Fushë Kosova and Priština/Prishtina town. According to Kabashi these groups were armed and were wearing darker uniforms than those worn by other formations. Some were wearing caps and others had berets with a red ribbon around them.¹⁹⁹⁵

814. Perhaps because it was the administrative centre of the province and accommodated VJ and MUP commands, there does not appear to have been a significant KLA presence inside Priština/Prishtina town in the period leading up to the NATO air campaign. However, the KLA was present in the surrounding area. As discussed in Section VI.B above, Bislim Zyrapi testified

¹⁹⁸⁹ P2619 (Extract from the War Diary of the 15th Armoured Brigade), p. 3.

¹⁹⁹⁰ Adnan Merovci, T. 8433–8434 (16 January 2007), P2588 (witness statement dated 13 April 2000), para. 44.

¹⁹⁹¹ Adnan Merovci, T. 8433 (16 January 2007), P2588 (witness statement dated 13 April 2000), para. 48.

¹⁹⁹² Adnan Merovci, P2588 (witness statement dated 13 April 2000), para. 48.

¹⁹⁹³ Nazlie Bala, P2262 (witness statement dated 16 August 2006), e-court p. 12.

¹⁹⁹⁴ K62, T. 2268–2269 (24 August 2006).

¹⁹⁹⁵ Emin Kabashi, T. 2048–2049, 2061–2062 (21 August 2006), 2083, 2086–2087, 2114 (22 August 2006), P2251 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 4017–4021.

that the KLA in Kosovo operated on the level of local staffs in seven zones. Lab/Llap zone, or operational zone five, encompassed the area of Priština/Prishtina municipality.¹⁹⁹⁶ The strongest KLA presence in the Lab/Llap zone was in the area of Podujevo/Podujeva.¹⁹⁹⁷ Emin Kabashi stated that he belonged to a KLA “logistics formation or unit” with its headquarters in Priština/Prishtina, responsible for “guerrilla duties”, and added that he supplied KLA members with paper, medicines, uniforms, clothes, food, and sanitary equipment, but not with weapons.¹⁹⁹⁸ According to Kabashi there were no actual KLA headquarters in Priština/Prishtina town, but there were people in several neighbourhoods who helped with logistics, including a group in Vranjevac/Vranjevc¹⁹⁹⁹ who prepared uniforms for KLA fighters.²⁰⁰⁰ However, the Trial Chamber does not find Kabashi’s evidence in relation to the KLA to be reliable. Moreover, the understanding of the authorities was slightly different; a MUP RDB report dated 28 January 1999 recorded that “terrorist groups ha[d] allegedly been inserted into Priština”, including a small group in Vranjevac/Vranjevc whose task was “to carry out an attack in the near future with the objective of executing selected members of security organs”.²⁰⁰¹

815. The Chamber has heard some evidence that, after the departure of the KVM verifiers in March 1999 the KLA launched some attacks in urban areas, including Priština/Prishtina town.²⁰⁰² Filipović testified that before the NATO campaign the VJ did not do anything in response to attacks by the “terrorists” in Priština/Prishtina, as it was not tasked with doing so.²⁰⁰³ The Chamber concludes that there were no combat activities in Priština/Prishtina as the NATO campaign began.

3. Events in Priština/Prishtina town during the NATO bombing

816. Nazlie Bala, who worked for the OSCE as a human rights assistant from the end of November 1998 until 2001, including working with the KVM from the beginning of 1999 until its withdrawal from Kosovo, remained in her home town of Priština/Prishtina after the KVM

¹⁹⁹⁶ Bislim Zyrapi, T. 5934, 5967 (6 November 2006), 6018 (7 November 2006), 6258 (10 November 2006); P2469 (map showing different KLA operational zones).

¹⁹⁹⁷ See Shukri Gërxhaliu, T. 2529–2530 (30 August 2006); Shaun Byrnes, T. 12232 (17 April 2007); Bislim Zyrapi, T. 6258 (10 November 2006); see also 6D1016 (MUP RDB Priština Report), p. 2; Milutin Filipović, T. 19165 (27 November 2007).

¹⁹⁹⁸ Emin Kabashi, T. 2083, 2086–2087, 2114 (22 August 2006).

¹⁹⁹⁹ Emin Kabashi testified that the name of the neighbourhood is now “Kodra e Trimave”. Emin Kabashi, P2251 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 4048.

²⁰⁰⁰ Emin Kabashi, T. 2084–2085 (22 August 2006).

²⁰⁰¹ 6D1017 (MUP Prizren Report, 28 January 1999), p. 15.

²⁰⁰² Michael Phillips, T. 12016–12017 (20 March 2007); Božidar Filić, T. 23951–23953 (10 March 2008); Milutin Filipović, T. 19164 (27 November 2007); Danica Marinković, 6D1495 (witness statement dated 25 February 2008), paras. 28–30; 6D1523 (On-site investigation report by Danica Marinković, 21 March 1999); 6D1524 (On-site investigation report by Danica Marinković, 22 March 1999); 6D1525 (On-site investigation report by Danica Marinković, 22 March 1999); P407 (OSCE/KVM Bluebook), p. 820.

withdrawal in March 1999. She observed events unfolding in the town over a period of days from the roof of the five storey building where she lived in the old part of town²⁰⁰⁴. As a result of her observations and enquiries, Bala was able to provide the Chamber with a detailed description of events in Priština/Prishtina and some of its neighbourhoods—Dragodan/Arbëria, Vranjevac/Vranjevc, Kolovica,²⁰⁰⁵ and Taslixhe—in late March 1999, before she was expelled from the town, as described below.²⁰⁰⁶ Her evidence is further supported by the accounts of K62, K63, Baton Haxhiu, and the written statement of Antonio Russo.

817. Bala testified that in the evening of 24 March 1999 the electricity was cut off in various parts of the town. The following morning she saw local Serbs driving around the town shooting into the air with automatic weapons and hand guns.²⁰⁰⁷ She also saw houses and shops belonging to Kosovo Albanians being destroyed and people being forced to move towards the centre of the town.²⁰⁰⁸ She was able to see this happening both day and night. At night she used a pair of night vision binoculars which had been left in her car by staff members of the KVM.²⁰⁰⁹ Despite challenges by the Lukić Defence, which include that Bala could not have determined that the persons shooting from the cars were Serbs because the electricity was out and she was in her house, the Trial Chamber finds Bala’s evidence credible in this regard.²⁰¹⁰

818. On 26 March Bala watched as “the army, the police and ... the Serb civilians”, whom she distinguished from each other by identifying their uniforms—“[t]he VJ had green uniforms, the police blue”²⁰¹¹—destroyed Kosovo Albanian houses and shops in the neighbourhoods of Dragodan/Arbëria, Vranjevac/Vranjevc, Kolovica, and Taslixhe. She could also hear explosions in those areas. She further stated that she saw two APCs go in the direction of Dragodan/Arbëria at around 10:00 p.m. and, shortly thereafter, two houses burning in the area where the APCs had been.²⁰¹² Although Bala’s ability to see what was happening from her roof was challenged by the

²⁰⁰³ Milutin Filipović, T. 19218–19219 (28 November 2007).

²⁰⁰⁴ Nazlie Bala, T. 2135, 2137 (22 August 2006).

²⁰⁰⁵ The village of Kolovica is located to the north-east of Priština/Prishtina, on the outskirts of town. P615 (Kosovo atlas), p. 7; 3D388 (Map of Kosovo).

²⁰⁰⁶ For details on Bala’s work for the Council for Defence of Human Rights and Freedom and the OSCE, see Nazlie Bala, T. 2123–2124 (22 August 2006), 2175 (23 August 2006), P2262 (witness statement dated 30 June 2001), e-court p. 5, P2262 (witness statement dated 16 August 2006), e-court p. 11.

²⁰⁰⁷ Nazlie Bala, T. 2200 (23 August 2006), P2262 (witness statement dated 30 June 2001), e-court p. 5. Filić also testified that electricity was cut out during the NATO bombings. Božidar Filić, T. 23958 (10 March 2008).

²⁰⁰⁸ Nazlie Bala, P2262 (witness statement dated 30 June 2001), e-court p. 6.

²⁰⁰⁹ Nazlie Bala, T. 2153–2154, 2160–2161 (22 August 2006), 2179–2180 (23 August 2006).

²⁰¹⁰ Lukić Final Trial Brief, 7 August 2008 (public version), para. 1043.

²⁰¹¹ Nazlie Bala, T. 2139, 2161–2164 (22 August 2006), P2262 (witness statement dated 16 August 2006), e-court p. 12.

²⁰¹² Nazlie Bala, T. 2137 (22 August 2006), P2262 (witness statement dated 30 June 2001), e-court p. 6.

Lazarević and Pavković Defences,²⁰¹³ the Chamber is satisfied with her explanation of how she was able to see what she saw.²⁰¹⁴

819. In the morning of 28 March she heard shooting in Vranjevac/Vranjevc and later saw some houses there burning.²⁰¹⁵ Milutin Filipović confirmed that there was shooting on 28 March in Vranjevac/Vranjevc; this was a KLA attack on two Russian journalists, which resulted in the killing of their driver.²⁰¹⁶ A MUP report dated 28 March 1999 also mentions this incident, but states that the journalists were attacked in the village of Lebane, which is located to the north of Priština/Prishtina.²⁰¹⁷ Božidar Filić gave evidence that after the attack the “terrorists” took refuge in Vranjevac/Vranjevc, and that the police made several attempts during the following two or three days to arrest them.²⁰¹⁸ The police were unsuccessful because “of the fierce resistance by the terrorist groups located in Vranjevac.”²⁰¹⁹ The Trial Chamber is unable to determine how or by whom the houses in Vranjevac/Vranjevc were set on fire on 28 March.

820. Later that day Bala heard shelling in Kolovica and saw a tank and “Serb forces with artillery” firing from the hillside of Vranjevac/Vranjevc towards the hillside of Kolovica. These “Serb forces” were shooting at unarmed Albanian civilians who were fleeing; this continued all day and throughout the night. Bala spoke to some of the people fleeing Kolovica as they passed by her house. They described “the killings of the Albanians, the looting and the burning of homes in that area by the Serb forces.”²⁰²⁰ Contrary to this evidence, Milutin Filipović testified that there was no VJ artillery in Vranjevac/Vranjevc, which was a “major logistical base for the terrorists,” and, even if there had been, they would never have used artillery against civilians, especially since Kolovica was populated by both Serbs and Albanians.²⁰²¹ Antonio Russo’s statement that “the NATO bombing was simultaneous to the heaviest shelling of the city of by VJ forces on the outskirts of the city, in addition to their general burning and destruction of buildings in the city”, supports Bala’s

²⁰¹³ Nazlie Bala, T. 2152–2160 (22 August 2006); Milutin Filipović, T. 19178–19180 (27 November 2007); IC148 (Marking made by witness Filipović on page 31 of P615, 27 November 2007); Lazarević Final Trial Brief, 29 July 2008 (public version), paras. 209–210.

²⁰¹⁴ See Nazlie Bala, T. 2135, 2137, 2152–2160 (22 August 2006), P2262 (witness statement dated 30 June 2001), e-court pp. 5–6, P2262 (witness statement dated 16 August 2006), e-court p. 11; P13 (Road map of the city of Priština and surrounding villages); IC17 (Marking made by Nazlie Bala on P13); IC15 (Marking made by Nazlie Bala on page 31 of P615).

²⁰¹⁵ Nazlie Bala, P2262 (witness statement dated 30 June 2001), e-court p. 6.

²⁰¹⁶ Milutin Filipović, T. 19165, 19181 (27 November 2007). Filipović did not clarify, however, whether he witnessed this incident himself or whether he heard of it from other sources.

²⁰¹⁷ P1099 (MUP report dated 28 March 1999), pp. 3–4; see P615 (Atlas of Kosovo), p. 7.

²⁰¹⁸ Božidar Filić, T. 23955–23958 (10 March 2008).

²⁰¹⁹ Božidar Filić, T. 23957 (10 March 2008). See also Lukić Final Trial Brief, 7 August 2008 (public version), paras. 1038, 1046.

²⁰²⁰ Nazlie Bala, T. 2166–2167, 2177–2179, 2183 (23 August 2006), P2262 (witness statement dated 30 June 2001), e-court p. 6.

²⁰²¹ Milutin Filipović, T. 19180–19181 (27 November 2007).

description of shelling by the VJ against parts of Priština/Prishtina town when the NATO bombing began.²⁰²²

821. K63 testified that, when the NATO bombing commenced, the residents of Priština/Prishtina were afraid of what would be done to them by the MUP and VJ forces, although their biggest fear was of the “paramilitary wearing the Red Berets and the Special Forces.”²⁰²³ During the following days he tried to keep to his routine as much as possible. He continued to open his shop at 8:00 a.m., but had to close earlier than before because the electricity would go off in the evenings.²⁰²⁴ At the same time he saw people leaving their homes and heading towards the train station with suitcases, saying that they were getting their families out and sending them to Macedonia.²⁰²⁵ K62 added that on 31 March 1999 some uniformed men, who were not policemen, looted her home. This happened in all the houses in her neighbourhood.²⁰²⁶

822. Witness K14 also testified about events in the town in March and April 1999, giving an account broadly consistent with that of the other witnesses, but this evidence is not discussed here in detail due to the protective measures in place for this witness.²⁰²⁷

823. Adnan Merovci testified that, when the NATO bombing started, the VJ and MUP forces in Priština/Prishtina spread out among vacated Kosovo Albanian homes, putting signs on the doors saying, “This is a MUP apartment”.²⁰²⁸ Local Serbs put their names on the doors of their homes so that they would not have trouble when the police came to evict people. There were even instances when Serbs allowed their Albanian neighbours to put their names on their doors.²⁰²⁹ According to Merovci, on the first night of the NATO bombing several prominent Albanians in Kosovo—such as Agim Hajrizi, and Latif Berisha, and Bajram Kelmendi and his two sons—were abducted and killed by “paramilitaries”,²⁰³⁰ who used their local knowledge to track them down.²⁰³¹ Merovci thought that these killings “sent a clear message that Albanian leaders were going to be targets of the Serb

²⁰²² Antonio Russo, P2261 (witness statement dated 24 April 1999), e-court pp. 4–5.

²⁰²³ K63, P2443 (witness statement dated 28 May 2003), para. 22.

²⁰²⁴ K63, P2443 (witness statement dated 28 May 2003), para. 23.

²⁰²⁵ K63, P2443 (witness statement dated 28 May 2003), para. 24.

²⁰²⁶ K62, T. 2284–2285 (24 August 2006).

²⁰²⁷ K14, P2643 (witness statement dated 31 May 1999), pp. 2–4 (under seal); K14, T. 10991 (2 March 2007) (closed session).

²⁰²⁸ Adnan Merovci, P2588 (witness statement dated 13 April 2000), para. 75.

²⁰²⁹ Adnan Merovci, P2588 (witness statement dated 13 April 2000), para. 75.

²⁰³⁰ Adnan Merovci, T. 8436–8437 (16 January 2007), T. 8577 (17 January 2007), P2588 (witness statement dated 13 April 2000), para. 46; *see also* Ibrahim Rugova, P2613 (witness statement dated 3 November 2001), p. 9; Baton Haxhiu, T. 6096 (8 November 2006).

²⁰³¹ Adnan Merovci, P2588 (witness statement dated 13 April 2000), para. 48.

forces and it also served to frighten normal citizens who had heard about the killings.”²⁰³² Rumours were spread that LDK leader Ibrahim Rugova had been shot.²⁰³³ That same night the offices of Rugova and Merovci were bombed and burnt out, an act which Mervoci attributed to paramilitaries.²⁰³⁴

824. Merovci paid daily visits to Rugova at his house from 24 to 29 March in order to give him updates on the situation in Priština/Prishtina and to check that he was safe.²⁰³⁵ On 25 March Merovci moved his family from his home to his brother’s apartment.²⁰³⁶ He later heard from a neighbour that “Serb paramilitaries” had come to his house that night looking for him.²⁰³⁷ On 29 March Merovci and his wife moved to Rugova’s house.²⁰³⁸

825. Ibrahim Rugova, who gave a written statement to the Prosecution in 2001, and testified in the *Milošević* trial, died before the commencement of this trial. His statement and the transcript of his testimony in *Milošević* were admitted into evidence in this case.²⁰³⁹ In his statement Rugova explained that the day before the NATO bombing began all the telephone lines in town were cut and that there were explosions, because “cafes and shops were being destroyed.”²⁰⁴⁰ On the first night of the bombing, “the police and military went into action”: the LDK office and the “U.S. office” in town were burned by “Serbian forces”; Bajram Kelmendi was killed together with his two sons; and word spread out that certain people were being taken away or killed.²⁰⁴¹

826. Both Adnan Merovci and Ibrahim Rugova described the events at Rugova’s house on 31 March 1999 when heavily armed VJ and MUP forces arrived and held them and the other occupants of the house at gunpoint. They also described their communications with Ljubivoje Joksić, then assistant co-ordinator of the RDB, which led to their agreeing to meet with Slobodan

²⁰³² Adnan Merovci, P2588 (witness statement dated 13 April 2000), para. 46; *see also* Baton Haxhiu, T. 6093, 6096 (8 November 2006).

²⁰³³ Adnan Merovci, P2588 (witness statement dated 13 April 2000), para. 76.

²⁰³⁴ Adnan Merovci, T. 8438–8439 (16 January 2007), P2588 (witness statement dated 13 April 2000), para. 46; *see also* Ibrahim Rugova, P2613 (witness statement dated 3 November 2001), p. 9, P2612 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 4222–4223.

²⁰³⁵ Adnan Merovci, P2588 (witness statement dated 13 April 2000), para. 50.

²⁰³⁶ Adnan Merovci, P2588 (witness statement dated 13 April 2000), para. 47.

²⁰³⁷ Adnan Merovci, P2588 (witness statement dated 13 April 2000), para. 47.

²⁰³⁸ Adnan Merovci, P2588 (witness statement dated 13 April 2000), paras. 51–52.

²⁰³⁹ Decision on Second Prosecution Motion for Admission of Evidence Pursuant to Rule 92 *Quater*, 5 March 2007; Corrigendum to Decision on Second Prosecution Motion for Admission of Evidence Pursuant to Rule 92 *Quater*, 6 March 2007.

²⁰⁴⁰ Ibrahim Rugova, P2613 (witness statement dated 3 November 2001), p. 9.

²⁰⁴¹ Ibrahim Rugova, P2613 (witness statement dated 3 November 2001), p. 9, P2612 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 4222.

Milošević in Belgrade on 1 April 1999.²⁰⁴² Merovci and Rugova further described the situation during April in Rugova's house, in particular regarding the fact that they—together with other 15 or 20 other people, mainly members of their families—were kept there under house arrest until they were permitted to leave Kosovo at the beginning of May.²⁰⁴³ RDB officer Ljubivoje Joksić, however, denied that Rugova and Merovci, or anyone else staying at Rugova's house at the time, was ever under house arrest.²⁰⁴⁴ The Trial Chamber accepts the evidence of Merovci and Rugova, which it found consistent and reliable. The Chamber does not accept Joksić's version of events and considers that the RDB was actively involved in the house arrest of Rugova, Merovci, and their family members in April 1999.

827. Baton Haxhiu, a Kosovo Albanian journalist and founding member of the *Koha Ditore* newspaper, described his fear of being targeted by soldiers in green camouflage uniforms, whom he described as “paramilitaries”, following the commencement of the NATO air strikes, as he was a publicly known person. He decided not to sleep at home but to move from one part of Priština/Prishtina town to another, staying in various basements and houses.²⁰⁴⁵ His fears appear to have been justified, for the Trial Chamber heard from K62, who knew Haxhiu, that she had met his father early in the period of the bombing, and that he had been badly beaten by forces searching for his son.²⁰⁴⁶ Haxhiu finally left Priština/Prishtina on 2 April 1999, together with large numbers of other people, when forces he identified as “paramilitaries” expelled people from their homes.²⁰⁴⁷

828. Emin Kabashi, who lived in Kosovo Polje/Fushë Kosova about six kilometres from Priština/Prishtina town, testified on events near his home. Although Kosovo Polje/Fushë Kosova does not form part of Priština/Prishtina municipality, due to its proximity to Priština/Prishtina town the Trial Chamber considers that the events described by Kabashi help to demonstrate the general situation in the area. Kabashi testified that on 25 March 1999 he saw a lot of police and other armed people moving in the street near his house. The policemen, two of whom he knew, were wearing standard plain blue police uniforms and were with other forces in “military style uniforms”, some of whom had a white eagle badge on their shoulders and a beret with a white eagle badge, as well as armed civilians. Later that afternoon he received three anonymous phone calls,

²⁰⁴² Adnan Merovci, T. 8441–8450 (16 January 2007), 8548–8550 (17 January 2007), P2588 (witness statement dated 13 April 2000), paras. 52–56; Ibrahim Rugova, P2613 (witness statement dated 3 November 2001), pp. 9–11, P2612 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 4225–4229, 4233.

²⁰⁴³ Adnan Merovci, P2588 (witness statement dated 13 April 2000), paras. 52, 59–74; Ibrahim Rugova, P2613 (witness statement dated 3 November 2001), pp. 10–12, P2612 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 4226–4227, 4234–4236, 4253–4255.

²⁰⁴⁴ Ljubivoje Joksić, T. 21989–21997 (8 February 2008), T. 22069–22070 (11 February 2008).

²⁰⁴⁵ Baton Haxhiu, T. 6090, 6092–6094 (8 November 2006).

²⁰⁴⁶ K62, T. 2270–2271 (24 August 2006).

²⁰⁴⁷ Baton Haxhiu, T. 6090, 6092–6094 (8 November 2006).

and on the third occasion heard a male voice say in Serbian, “You people who are waiting for NATO, you will be killed, you have to go to Albania”.²⁰⁴⁸ After these phone calls Kabashi sent eight members of his family to two different houses in separate neighbourhoods of Priština/Prishtina town; part of his family remained with him at home.²⁰⁴⁹ Despite the challenge made by the Lukić Defence,²⁰⁵⁰ an important feature of this evidence for the Chamber is the fact that Kabashi actually recognised two of the police officers.

829. About one hour later the electricity in Kosovo Polje/Fushë Kosova was cut off. Later that night an explosive device was thrown into Kabashi’s house, followed by three volleys of automatic gunfire directed from the yard towards the window of the house.²⁰⁵¹ Afterwards Kabashi heard the attackers running away and fleeing in a car, which looked like a “police jeep” that was “dark blue [with] a machine gun mounted at the back”, and which Kabashi had seen on several occasions patrolling his street.²⁰⁵² He saw at least eight people—some of whom he knew personally—leaving.²⁰⁵³ Kabashi spent the night of 25 March in the loft of a three-story house from where he was able to see that four shops and three houses—all belonging to Kosovo Albanians—were burned.²⁰⁵⁴ He later heard that on the same night in his neighbourhood 44 Kosovo Albanians had been killed, ten of whom he knew personally, including Hamit Krasniqi, his neighbour, Krasniqi’s wife, his son Agron Krasniqi, as well as an elderly couple that used to live two doors down from his house, and a lawyer named Ajjet Muharremi.²⁰⁵⁵

830. The next day, 26 March 1999, Kabashi returned to his house to survey the damage. He then collected a few belongings and left for Priština/Prishtina town along with his family.²⁰⁵⁶ He and some of his family members went to the Dragodan/Arbëria neighbourhood.²⁰⁵⁷ The rest of his family stayed in other neighbourhoods of Priština/Prishtina. After three days in Dragodan/Arbëria Kabashi was ordered by “special police” and “soldiers” to go to the neighbourhood of Vranjevac/Vranjevc, where he stayed another two days and nights before being expelled from

²⁰⁴⁸ Emin Kabashi, T. 2044–2045 (21 August 2006).

²⁰⁴⁹ Emin Kabashi, T. 2044–2045 (21 August 2006), P2250 (witness statement dated 24 April 1999), p. 2.

²⁰⁵⁰ Lukić Final Trial Brief, 7 August 2008 (public version), para. 1033.

²⁰⁵¹ Emin Kabashi, T. 2094–2095 (22 August 2006), P2250 (witness statement dated 24 April 1999), p. 2; P2251 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 4047.

²⁰⁵² Emin Kabashi, T. 2062–2063 (21 August 2006), 2093–2096 (22 August 2006), P2250 (witness statement dated 24 April 1999), p. 2.

²⁰⁵³ Emin Kabashi, P2251 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 4038–4039.

²⁰⁵⁴ Emin Kabashi, P2250 (witness statement dated 24 April 1999), p. 2; P2251 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 4047–4048.

²⁰⁵⁵ Emin Kabashi, T. 2045 (21 August 2006), T. 2096–2097 (22 August 2006), P2250 (witness statement dated 24 April 1999), p. 3.

²⁰⁵⁶ Emin Kabashi, P2250 (witness statement dated 24 April 1999), p. 3.

²⁰⁵⁷ Emin Kabashi, P2251 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 4048.

Priština/Prishtina as recounted below.²⁰⁵⁸ While in Dragodan/Arbëria, Kabashi was able to see people being driven out of their homes. He also saw damage to buildings, which he was told had been caused by shelling from a tank located on the railway bridge.²⁰⁵⁹

831. Confirming the expulsion of Kosovo Albanians from Priština/Prishtina, Lakić Đorović, who was a wartime military prosecutor at the Belgrade Military District and later the Military Prosecutor at the Priština Military District during the time relevant to the Indictment, gave evidence that, when he arrived in the town on 22 May 1999 to perform duties as the new military prosecutor of the Priština Military District Command, together with the newly appointed Prosecutor of the Priština Corps Command, Miloš Spasojević, they were called by the “state security organs”, which were located in two apartments that belonged to Kosovo Albanians who had been expelled.²⁰⁶⁰ Miloš Spasojević disputed Đorović’s evidence, stating that they were not offered any apartments belonging to expelled Kosovo Albanians, and added that he lived at the house of his deputy, Dragan Živica, while Đorović was taken in by Đorović’s co-workers.²⁰⁶¹ However, the fact that official organs used abandoned Kosovo Albanian homes was confirmed by Miomir Bogosavljević, who was the then commander of the police at the Kosovo Polje/Fushë Kosova train station, and who stated that, when the NATO bombings started, his police station relocated to an abandoned Kosovo Albanian home and stayed there until the end of the war.²⁰⁶²

832. Similarly, K73 testified that, after spending about a week in Gračanica/Gračanica in early April 1999, his VJ unit moved to the area of Grmija—close to Priština/Prishtina town—where they stayed in “a couple of Albanian houses that were already empty”. They then moved again further into Priština/Prishtina town and hid from NATO in other empty houses also belonging to Kosovo Albanians.²⁰⁶³ This information is corroborated by the war diary of the 52nd Military Police Battalion.²⁰⁶⁴ K73 clarified that, before taking position in the houses of the Grmija sector, they were ordered to search the area for any remaining civilians and expel them from their houses.²⁰⁶⁵ While searching the houses, the VJ forces also searched for goods and confiscated “ammunition, weapons, Albanian propaganda material such as Albanian flags and ... were told to loot valuables

²⁰⁵⁸ Emin Kabashi, P2250 (witness statement dated 24 April 1999), pp. 3–4.

²⁰⁵⁹ Emin Kabashi, T. 2046 (21 August 2006), P2250 (witness statement dated 24 April 1999), pp. 3, 5.

²⁰⁶⁰ Lakić Đorović, P2671 (witness statement dated 1 September 2006), para. 32.

²⁰⁶¹ Miloš Spasojević, 3D532 (witness statement dated 9 January 2007), para. 3.

²⁰⁶² Miomir Bogosavljević, T. 23849 (6 March 2008), 23875–23876 (7 March 2008); IC190 (Map marked by Miomir Bogosavljević).

²⁰⁶³ K73, T. 3371 (14 September 2006) (closed session), P2440 (witness statement), para. 36.

²⁰⁶⁴ P2297 (War Diary of the 52nd Military Police Battalion), pp. 4, 7.

²⁰⁶⁵ K73, P2440 (witness statement), para. 36.

such as money, gold, and silver.”²⁰⁶⁶ The forces gave the looted goods to the “Platoon for Service of Military Police”, which maintained a list of all the goods received.²⁰⁶⁷ K73 and part of his battalion left Priština/Prishtina in the direction of Junik at the end of March 1999.²⁰⁶⁸ After being involved in an operation at the end of April in Đakovica/Gjakova municipality, K73’s unit was sent back to Priština/Prishtina.²⁰⁶⁹ In light of this evidence, the Trial Chamber rejects Spasojević’s denial of the situation in Priština/Prishtina and accepts the account of Đorović.

833. Contrary to all of these descriptions of the conditions in Priština/Prishtina from the commencement of the NATO airstrikes, Milutin Filipović and witness SD3, a Kosovo Albanian who worked for the VJ in Priština/Prishtina, testified that life in the town was normal.²⁰⁷⁰ The Chamber does not consider their evidence in this regard to be credible; it is inconsistent with the evidence of the witnesses led by the Prosecution discussed above, and also with SD3’s own acknowledgement that many people were leaving the town.²⁰⁷¹ The Chamber is satisfied that life in the city was far from “normal”.

834. The Chamber has heard from several witnesses about the bombing of targets in and around Priština/Prishtina by NATO, commencing on 24 March 1999. Among these, Zoran Anđelković, a former Minister in the Government of the Republic of Serbia and the President of Kosovo’s Temporary Executive Council in early 1999, testified that the town and its surroundings were targeted by NATO every night.²⁰⁷² These bombings caused “[d]estruction, chaos, a large number of people feeling unsafe, fear, departures.”²⁰⁷³ Danica Marinković, who worked as an investigative judge at the Priština District Court in early 1999, asserted that NATO forces targeted civilian facilities in Priština/Prishtina town and the area around it, such as a post office, the institute for retirement insurance, a recreation centre, and private homes.²⁰⁷⁴

835. Among the facilities reportedly struck by NATO were: the police buildings at “Havalja”—located on the road to the village of Gračanica/Graçanica,²⁰⁷⁵ the Priština/Prishtina airport,²⁰⁷⁶ the

²⁰⁶⁶ K73, P2440 (witness statement), para. 37.

²⁰⁶⁷ K73, P2440 (witness statement), para. 37.

²⁰⁶⁸ K73, P2440 (witness statement), para. 38.

²⁰⁶⁹ K73, P2440 (witness statement), paras. 47, 49.

²⁰⁷⁰ Milutin Filipović, T. 19196 (28 November 2007); SD3, T. 20815 (22 January 2008), 5D1444 (witness statement dated 27 December 2007), paras. 1–2, 7–8.

²⁰⁷¹ SD3, 5D1444 (witness statement dated 27 December 2007), paras. 9, 11.

²⁰⁷² Zoran Anđelković, T. 14678 (30 August 2007).

²⁰⁷³ Zoran Anđelković, T. 14678 (30 August 2007).

²⁰⁷⁴ Danica Marinković, T. 23457, 23462–23463 (29 February 2008).

²⁰⁷⁵ K63, P2443 (witness statement dated 28 May 2003), para. 22.

²⁰⁷⁶ Emin Kabashi, P2250 (witness statement dated 24 April 1999), p. 6, P2251 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 4016–4017; Miomir Bogosavljević, T. 23856 (6 March 2008).

VJ barracks located outside of Priština/Prishtina on the way to Kosovo Polje/Fushë Kosova;²⁰⁷⁷ the “SAJ facility”;²⁰⁷⁸ the “youth settlement buildings”, which used to house MUP forces;²⁰⁷⁹ the Priština/Prishtina SUP building,²⁰⁸⁰ and the post office building.²⁰⁸¹ Anđelković, who was in Priština/Prishtina on 7 April when the post office building was hit, testified that there were a great number of casualties on that day, including Serbs, Turks, and Kosovo Albanians.²⁰⁸² He also testified that, as a result of the bombing, a large number of people felt unsafe and many departed; this was the “usual consequence” of any sort of destruction on that scale.²⁰⁸³ Filipović added that 90 percent of the targeted facilities in the town and its surroundings were civilian,²⁰⁸⁴ and included the provincial institution for social welfare, which was hit at the same time as the post office, along with many, mainly residential, buildings in the immediate vicinity. Some of these buildings were seriously damaged, such as the TEC building, the national bank, and the Municipal Assembly building. There were over ten civilian fatalities as a result of those strikes, and over 20 civilians were wounded.²⁰⁸⁵

836. However, none of the Kosovo Albanians who testified, nor indeed Antonio Russo, listed the NATO bombing as among the causes of their and others’ departure from Priština/Prishtina. The Trial Chamber also notes that, in fact, witnesses testified that they had already left Priština/Prishtina by the beginning of April when the post office was hit. Moreover, Emin Kabashi testified that, when he was staying at the end of March in the Dragodan/Arbëria neighbourhood, which was on a hill, he could see the whole of Priština/Prishtina town and was sure that the NATO bombing had not affected its residential areas.²⁰⁸⁶

837. Various documents discuss NATO attacks on VJ facilities in and around Priština/Prishtina, but make no mention of civilian objects being targeted. The war diary of the 52nd Military Police Battalion records that NATO bombed the barracks of the 52nd Military Police Battalion in

²⁰⁷⁷ Emin Kabashi, P2250 (witness statement dated 24 April 1999), p. 6, P2251 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 4016–4017; Dragan Živaljević, 6D1606 (witness statement dated 30 March 2008), para. 33; Miomir Bogosavljević, T. 23856 (6 March 2008).

²⁰⁷⁸ Božidar Filić, T. 23970 (10 March 2008).

²⁰⁷⁹ Božidar Filić, T. 23970 (10 March 2008).

²⁰⁸⁰ Božidar Filić, T. 23970, 24035–24036 (10 March 2008); Miroslav Mijatović, T. 22176–22177 (12 February 2008); Miloš Deretić, T. 22577–22578 (15 February 2008), 22585 (18 February 2008); Zoran Anđelković, T. 14673–14674 (30 August 2007).

²⁰⁸¹ Božidar Filić, T. 23970 (10 March 2008); P2297 (War diary of the 52nd Military Police Battalion), p. 5.

²⁰⁸² Zoran Anđelković, T. 14675–14676 (30 August 2007); *see also* Milutin Filipović, T. 19175–19176 (27 November 2007).

²⁰⁸³ Zoran Anđelković, T. 14678 (30 August 2007).

²⁰⁸⁴ Milutin Filipović, T. 19192–19193 (28 November 2007).

²⁰⁸⁵ Milutin Filipović, T. 19174 (27 November 2007); *see also* 5D1242 (Video clips. Section used is labelled “Priština 03-06-1999”).

²⁰⁸⁶ Emin Kabashi, T. 2074–2077 (22 August 2006).

Priština/Prishtina town on the night of 29 March causing “huge damage” but no losses.²⁰⁸⁷ The bombing of the *Kosovski Junaci* barracks in Priština/Prishtina on 12 April is also reported in a document sent by the security department of the 3rd Army Command to the Security Administration of the Supreme Command Staff.²⁰⁸⁸ Indeed, a significant number of reports made at the time are in evidence and none of them confirms Marinković and Filipović’s testimony that civilian buildings in Priština/Prishtina were targeted.²⁰⁸⁹

a. Departure of Kosovo Albanians from Priština/Prishtina town

838. Over the days following the start of the NATO air campaign a significant number of people left Priština/Prishtina, many of whom ended up in Macedonia. The parties dispute the cause of these departures, it being the Prosecution’s position that Kosovo Albanians were expelled from their homes by forces of the FRY and Serbia, while the Defence variously argue that they were fleeing the NATO attacks.

839. K63 testified that during the early days of the airstrikes he saw members of the police going to apartments in his neighbourhood, threatening the occupants, who were Kosovo Albanians, and ordering them to leave by saying things like, “Go to Albania, Kosovo is not your land” or “Albanians belong to Albania and must go, Kosovo is not yours.”²⁰⁹⁰ Often when this happened the neighbours of the people expelled saw what was going on and fled too. However, when Kosovo Albanians refused to leave their homes upon instruction, they were threatened with violence by the police. In this manner an atmosphere of fear was created among the local Kosovo Albanian population.²⁰⁹¹ K63 specifically recalled that on 1 April 1999, at around 12:00 p.m., when he was on his way home from his shop, he saw groups of people leaving, carrying bags, while members of the police were pointing long guns at them, calling them names, and telling them they must leave Kosovo. K63 estimated that during the week after 24 March 1999 about 50 percent of

²⁰⁸⁷ P2297 (War diary of the 52nd Military Police Battalion), p. 3.

²⁰⁸⁸ 5D1310 (Report of the 3rd Army to the Security Administration of the Supreme Command Staff, 13 April 1999), p. 2.

²⁰⁸⁹ 3D820 (Combat Report of the Supreme Command Staff, 15 April 1999), p. 1; P2004 (Combat Report of the PrK Command, 13 April 1999), p. 1; P1997 (3rd Army Combat Report, 3 April 1999), p. 2; 3D821 (Combat Report of the Supreme Command Staff, 16 April 1999), pp. 1–3; 3D832 (Combat Report of the Supreme Command Staff, 27 April 1999), p. 1; P2005 (3rd Army Combat Report, 27 April 1999), p. 1; P1693 (MUP survey of security situation, 1 May 1999), p. 2; 3D843 (Combat Report of the Supreme Command Staff, 8 May 1999), p. 1; 3D850 (Combat Report of the Supreme Command Staff, 15 May 1999), p. 5; 5D305 (Daily Report of the Provincial Reporting Centre, 25–26 May 1999); 5D307 (Daily Report of the Provincial Reporting Centre, 27–28 May 1999, and for 29 and 30 May 1999); 5D308 (Daily Report of the Provincial Reporting Centre, 30–31 May 1999).

²⁰⁹⁰ K63, P2443 (witness statement dated 28 May 2003), para. 24.

²⁰⁹¹ K63, P2443 (witness statement dated 28 May 2003), paras. 24–26.

his neighbourhood's population had been expelled either to Macedonia or to Albania and were leaving by any possible means.²⁰⁹²

840. Nazlie Bala similarly testified that on 29 March 1999 “the VJ, MUP, Serb civilians and gypsies, with the gypsies wearing police uniforms” went to Kosovo Albanian homes in various parts of the town and forced the residents to leave.²⁰⁹³ Later that day a VJ officer and a person whom she recognised as a local traffic policeman, and whom she described as a “gypsy”,²⁰⁹⁴ both armed, came to her house. The VJ officer told the people staying at her house that they had five minutes to leave. These two men were followed by a group of armed police, soldiers, civilians, and other armed forces, who went to the houses in the neighbourhood.²⁰⁹⁵ Bala stated that, if any people remained, they would be either beaten or killed;²⁰⁹⁶ she did not actually see anyone being killed, but heard people talking about such incidents. She saw her 80 year old neighbour being beaten badly, and heard that the man had later died as a result of the beating.²⁰⁹⁷ According to Bala, “[T]he majority of the inhabitants of Pristina left the city ... The overwhelming majority were forced to leave.”²⁰⁹⁸

841. After Bala was expelled from her home she walked towards the centre of Priština/Prishtina, along with thousands of other Kosovo Albanians. She saw men in black uniforms with eagle patches on their shoulders manning the main checkpoint. She also saw armed policemen and soldiers, and “other uniformed individuals,” lining one side of the road, and “armed civilians” on the other side with their weapons pointing at the convoy of people, all cursing the convoy as it passed. Serb civilians in apartment buildings threw bottles at the departing Kosovo Albanians and played loud music, and said things like, “What are you waiting for? What are you waiting for? Kill them, kill them.”²⁰⁹⁹ Bala added that money was taken from the men in her group. She also recounted that she heard gunfire behind her after a paralysed man who was being carried by his son started shouting. She did not, however, see whether anyone was killed in the chaos.²¹⁰⁰

842. Emin Kabashi testified that he hid for three days in a house in the Dragodan/Arbëria neighbourhood in late March 1999, until four members of the army and eight members of the

²⁰⁹² K63, P2443 (witness statement dated 28 May 2003), paras. 25, 27–28.

²⁰⁹³ Nazlie Bala, P2262 (witness statement dated 30 June 2001), e-court p. 7.

²⁰⁹⁴ Nazlie Bala, T. 2139 (22 August 2006), P2262 (witness statement dated 16 August 2006), e-court p. 12.

²⁰⁹⁵ Nazlie Bala, T. 2183–2184 (23 August 2006), P2262 (witness statement dated 30 June 2001), e-court p. 7, P2262 (witness statement dated 16 August 2006), e-court p. 12.

²⁰⁹⁶ Nazlie Bala, P2262 (witness statement dated 30 June 2001), e-court p. 7.

²⁰⁹⁷ Nazlie Bala, T. 2171 (23 August 2006).

²⁰⁹⁸ Nazlie Bala, T. 2187–2188 (23 August 2006).

²⁰⁹⁹ Nazlie Bala, T. 2141 (22 August 2006), 2204–2205 (23 August 2006), P2262 (witness statement dated 30 June 2001), e-court pp. 7–8.

“special police” came and broke in the front door.²¹⁰¹ These forces demanded the identity cards of the women in the house, some of which they then tore up and threw on the floor. They also pulled off the headscarf off Kabashi’s sister-in-law and threw that on the floor. Money was demanded at gunpoint from the men, and one of the soldiers said, “Get out, go to Albania, NATO will defend you there.”²¹⁰² Kabashi described the forces he termed “special police” as wearing dark blue camouflage uniforms, masks, bullet proof vests, baseball style peaked caps, boots up to their calves, and knives on their waists. Kabashi went on to testify that these special police had “SJ” on their sleeves which indicated that they were “special police”.²¹⁰³ The “special police” had automatic rifles, and some had longer sniper rifles with telescopic sights. The soldiers and the “special police” took the occupants out of the house and to the neighbourhood of Vranjevac/Vranjevc, where Kabashi spent one night.²¹⁰⁴

843. Kabashi further testified that, while staying in Vranjevac/Vranjevc, he witnessed some fighting during the day and night and heard that four people were killed. There was great panic among the people because of the number of gunshots and explosions, and he saw that houses were burning where the fighting was taking place.²¹⁰⁵ The police surrounded the entire neighbourhood and started to carry out expulsions, making comments such as, “Get out, you asked for NATO, go to Macedonia, or Albania, anyone who does not leave we will catch and burn. This is Serbia” and “Get out of here, go to Albania.”²¹⁰⁶ He himself was expelled with others from the house where he had spent the night, and sent towards the centre of town by the police. He and his brother were stopped on the main road by police who demanded money.²¹⁰⁷

844. Kabashi moved through the town with a very long column of people. A tank stationed at the Vranjevac/Vranjevc bridge then divided the column in two. One group was ordered to go to the Islamic madrasah, while this group was ordered to go to the railway station and from there to Albania. On the way to the railway station Kabashi’s group was stopped at a checkpoint by another “police patrol”, which had a list of people that had been compiled on a computer. Kabashi was able to read his name on the list, and he saw four or five other names of people with whom he had worked. When the police asked him for his name, he gave a different one hoping that it was not on

²¹⁰⁰ Nazlie Bala, T. 2141 (22 August 2006), P2262 (witness statement dated 30 June 2001), e-court p. 7.

²¹⁰¹ Emin Kabashi, T. 2055 (21 August 2006), P2250 (witness statement dated 24 April 1999), p. 3.

²¹⁰² Emin Kabashi, T. 2046, 2048, 2055 (21 August 2006), P2250 (witness statement dated 24 April 1999), pp. 3–4.

²¹⁰³ Emin Kabashi, T. 2046–2047 (21 August 2006), T. 2097–2098 (22 August 2006).

²¹⁰⁴ Emin Kabashi, P2250 (witness statement dated 24 April 1999), p. 4.

²¹⁰⁵ Emin Kabashi, T. 2049 (21 August 2006), P2250 (witness statement dated 24 April 1999), p. 4.

²¹⁰⁶ Emin Kabashi, T. 2049 (21 August 2006), P2250 (witness statement dated 24 April 1999), p. 4.

²¹⁰⁷ Emin Kabashi, P2250 (witness statement dated 24 April 1999), p. 4.

the list.²¹⁰⁸ He was again then asked for money. The police threatened that, if he did not leave immediately for Albania, they would kill him.²¹⁰⁹

845. Milutin Filipović denied that this could have happened. He testified that it was not possible that any VJ units were deployed at the Vranjevac/Vranjevc bridge, especially not with a tank, because all VJ combat units had left the town “on the very eve of [the] aggression” to take up other positions. A tank could not have been located in that position because “it would have been a sitting duck for NATO aeroplanes and Šiptar terrorists who were numerous in Vranjevac.”²¹¹⁰ However, the Chamber notes that Nazlie Bala also described seeing a tank on 28 March firing from the hillside of Vranjevac/Vranjevc towards the hillside of Kolovica.

846. Kabashi was able to see snipers observing the column from a tall building nearby. He testified that he saw a “boy” attempt to escape from the column by going through a side road and trying to open a door, after which a gun shot was heard and the boy fell. He could not, however, be sure if the boy had been killed. He also saw another boy who was detained. When the boy’s father went to help his son, he was beaten.²¹¹¹

847. Adnan Merovci testified that on 31 March 1999, around 11:45 a.m., from the first floor of Rugova’s house, he saw “heavily armed” VJ and MUP forces driving an APC and other armoured vehicles, and going from door to door expelling people living in houses close by.²¹¹²

848. This evidence of the movement of people being directed is supported by the written statement of Antonio Russo, who described his own departure from Priština/Prishtina among a large group of Kosovo Albanians at the end of March 1999. Russo recounted that in the morning of 31 March VJ and MUP forces started advancing into the neighbourhood of Velania/Lagija e Dodonës. There was some shelling in the area, which appeared to be covering the advance of the forces. He saw the forces searching houses individually and ejecting the inhabitants. That afternoon Russo joined a group of about 400 people who had been expelled from their houses and had gathered near the Park Hotel. The crowd remained there for a long time, while more people were being expelled and ordered to join them. He described the atmosphere as one of “real concern”, because the people believed that the reason that they had been gathered there was to

²¹⁰⁸ Emin Kabashi, T. 2050, 2057–2060 (21 August 2006), P2250 (witness statement dated 24 April 1999), p. 4.

²¹⁰⁹ Emin Kabashi, P2250 (witness statement dated 24 April 1999), pp. 4–5.

²¹¹⁰ Milutin Filipović, T. 19177 (27 November 2007).

²¹¹¹ Emin Kabashi, P2250 (witness statement dated 24 April 1999), p. 5.

²¹¹² Adnan Merovci, T. 8441–8442 (16 January 2007), P2588 (witness statement dated 13 April 2000), para. 52.

provide an easy target for a mass execution. After a while a VJ soldier arrived and began shouting and motioning for the crowd to start moving.²¹¹³

849. Russo also saw “MUP men, wearing the same uniforms as VJ, but with a badge bearing 4 to 5 rocket propelled grenades on the back” searching nearby houses and expelling more people, who eventually gathered and formed a second crowd. This second crowd was being guided by a green jeep with Cyrillic “militia” markings, an APC camouflaged vehicle, and VJ troops dressed in green camouflage-pattern uniforms. Eventually the two crowds, amounting to approximately 2,000 people, were forced to merge and were ordered to keep moving. The combined group started heading down the main street past the police station in the direction of the railway station.²¹¹⁴

850. On his way to the railway station Russo saw that all the crossroads and junctions had been blocked off, and that there were armed groups of police and occasionally armed civilians every 10 to 15 metres guarding the route to keep people moving on the main road. He further noticed that there were Serb civilian residents looking on in silence from the roadsides and their windows, in some cases “making derogatory finger gestures at the crowd”. As the convoy walked, another large crowd of people joined them. During the whole journey towards the railway station the police continued shouting “Raus” in German and “Marš” in Serbian to keep the crowd moving.²¹¹⁵

851. Baton Haxhiu, K63, K62, and K14 were also expelled from Priština/Prishtina in early April 1999. Haxhiu testified that on 2 April, while staying in the neighbourhood of Bregu e Diellit/Kodra e Diellit, “paramilitaries” wearing green camouflage uniforms, masks, and carrying guns, ordered the local residents out of their homes and directed them towards the road, while military or police vehicles guarded the streets and junctions to ensure that the population left in the desired direction.²¹¹⁶

852. K63 and his wife K62 were expelled from their home on 3 April. K63 testified that he heard someone on the street shouting in Serbian, “Šiptars leave the building”, and when he went outside he saw approximately 20 policemen. Only Kosovo Albanians were expelled and ordered to go to the train station. He and his wife started walking with a group of approximately 30 or 40 other people. During the whole journey to the railway station there were police officers every four or five metres.²¹¹⁷ More Kosovo Albanians joined at every intersection. He witnessed the police

²¹¹³ Antonio Russo, P2261 (witness statement dated 24 April 1999), e-court p. 5.

²¹¹⁴ Antonio Russo, P2261 (witness statement dated 24 April 1999), e-court p. 6.

²¹¹⁵ Antonio Russo, P2261 (witness statement dated 24 April 1999), e-court p. 6.

²¹¹⁶ Baton Haxhiu, T. 6091, 6094–6095 (8 November 2006).

²¹¹⁷ K63, T. 2232, 2239 (23 August 2006), P2443 (witness statement dated 28 May 2003), paras. 33, 36.

beating a young man.²¹¹⁸ While K63 had problems recognising and identifying colours, such that he could not provide an accurate description of the colours and patterns of the uniforms worn by the forces expelling him and his wife, the Chamber considers his account of the events surrounding his expulsion and his identification of the forces involved to be reliable, given its consistency with that of other witnesses. Although K62 described the forces that expelled her and her husband from their home and instructed them to go to the railway station as “paramilitaries” rather than police, her version of events did not differ markedly from that of her husband.²¹¹⁹ However, she asserted that she did not see a single policeman as they went from their home to the railway station.²¹²⁰ The Chamber notes that K62 had been raped by three men two days earlier (see further below) and may have been in a traumatised state during her expulsion. This inconsistency between her evidence and that of K63 and the other eye-witnesses is not, therefore, considered material.

853. K14 testified that she and her family were expelled by policemen and soldiers approximately six days after the bombing began. They were lined up in a convoy and some of the men were beaten. K14 was in a group of people separated from the convoy, who then went in a different direction.²¹²¹

854. Nazlie Bala testified that, after being expelled from her house on 29 March, she arrived around midday at the railway station, where thousands of people were waiting. She recognised the MUP personnel at the station as police from the Dragodan/Arbëria region wearing blue camouflage uniforms. “Serb civilians” had also surrounded the people at the station. At about 5:00 p.m. a train with 30 passenger cars arrived carrying armed MUP, VJ, and civilians on the first and last cars; she managed to board.²¹²² The train was so crowded that it was difficult to breathe. It left in the direction of Macedonia.²¹²³ Miomir Bogosavljević, who was the then commander of the police at the Kosovo Polje/Fushë Kosova train station, disputed Bala’s evidence, stating that not a single train or engine at the time could pull as many as 30 cars, but only 10, 12, or “up to 15 at the most.”²¹²⁴ He also denied the proposition put to him during cross-examination that they would add extra engines to the cars so that the trains could carry additional cars.²¹²⁵ Bogosavljević confirmed, however, that after 29 March 1999, during a few days at the very end of March and the beginning of April, there was a greater number of trains than usual, carrying more than the usual number of

²¹¹⁸ K63, T. 2232–2233 (23 August 2006), P2443 (witness statement dated 28 May 2003), para. 34.

²¹¹⁹ K62, T. 2277–2278, 2283–2285 (24 August 2006).

²¹²⁰ K62, T. 2285–2286 (24 August 2006).

²¹²¹ K14, P2643 (witness statement dated 31 May 1999), p. 3 (under seal).

²¹²² Nazlie Bala, P2262 (witness statement dated 30 June 2001), e-court pp. 7–8.

²¹²³ Nazlie Bala, T. 2141 (22 August 2006), P2262 (witness statement dated 30 June 2001), e-court p. 7.

²¹²⁴ Miomir Bogosavljević, T. 23862, 23874 (7 March 2008).

²¹²⁵ Miomir Bogosavljević, T. 23874–23875 (7 March 2008).

cars.²¹²⁶ Based on this evidence, the Trial Chamber is satisfied that trains with more cars than usual were running at the end of March and the beginning of April.

855. Emin Kabashi similarly testified that he reached the railway station in a very large column of people. He described how the people in his column were taken to a large field in front of the station, which separates the station from Dragodan/Arbëria. After a short time the police came and told the people to leave this spot because there was fighting in Dragodan/Arbëria and they could get killed.²¹²⁷ They were moved to an area between the railway line and the station building. After half an hour they were moved again, and taken to the other side of the railway station, between the station buildings and the asphalt road, on the pretext that they could be shelled by NATO and be killed. Kabashi saw large columns of people coming from the town. They were told to take from their pockets anything with metal, and that anyone in possession of metal would be killed.²¹²⁸

856. Kabashi stayed at the railway station for three days and nights waiting and hoping for the rest of his family to arrive, until he was forced by the police to board a goods train that took him to the Macedonian border.²¹²⁹ During his time at the station he saw buses arriving and taking people away; nobody knew where they were going. He also saw between five and 12 trains arriving at the station every day and leaving filled with people, mostly during the night. People were being forced on to the trains by the police, herded “like cattle”.²¹³⁰

857. When K63, along with his wife K62, arrived at the Priština/Prishtina railway station on 3 April 1999, he saw approximately 2,000 people, who were mainly Kosovo Albanians, but also “a few Turks and Romas”. The police were directing people onto trains and telling them that they had to go.²¹³¹ K62 testified that people were so close to each other at the railway station that she could not breathe. They were asked for money. Because they did not know how much they had to pay, everybody gave whatever they had, which was far more than the normal fare.²¹³² K63 and his wife got onto a train, in which “the situation ... was really catastrophic” because “[t]here were three times too many people in each car.”²¹³³ After about 30 minutes the train departed the station.²¹³⁴

²¹²⁶ Miomir Bogosavljević, T. 23872–23873, 23881, 23884 (7 March 2008); P1331 (Traffic log book from 1 January 1999).

²¹²⁷ Emin Kabashi, P2250 (witness statement dated 24 April 1999), p. 5.

²¹²⁸ Emin Kabashi, P2250 (witness statement dated 24 April 1999), p. 5.

²¹²⁹ Emin Kabashi, P2250 (witness statement dated 24 April 1999), pp. 5–6.

²¹³⁰ Emin Kabashi, T. 2052–2053 (21 August 2006), P2250 (witness statement dated 24 April 1999), pp. 5–6.

²¹³¹ K63, T. 2232–2233 (23 August 2006), P2443 (witness statement dated 28 May 2003), paras. 35–36; K62, T. 2278 (24 August 2006).

²¹³² K62, T. 2278 (24 August 2006).

²¹³³ K63, P2443 (witness statement dated 28 May 2003), para. 36.

858. Antonio Russo also described his arrival on 31 March in a convoy at the railway station, where there was already a crowd gathered. The crowd was forced to remain in a nearby square all night, without any kind of shelter, guarded by members of the police to prevent anyone from leaving. During the night Russo saw several houses burning in the neighbourhood of Dardania/Dardana.²¹³⁵ The following morning the people in the square rushed forward to board a train which had arrived; although thousands were unable to get on, Russo was able to board. Some in the square offered money to the train company's staff to add two more carriages to the train. The staff agreed to do so in exchange for about 15,000 German Marks, and more people boarded the extra carriages. It was another two hours before the train left.²¹³⁶

859. Nazlie Bala described her train journey to Macedonia on 29 March. During the whole journey, and at the stops the train made in Kosovo Polje/Fushe Kosova, Lipljan/Lypjan, Uroševac/Ferizaj, and Đeneral Janković/Hani i Elezit, it was surrounded by "Serb forces", whom she described as "police, army, and these other forces who were not part ... of the legal forces of Serbia" and who "had black uniforms with the flags, with white, red, blue flags, and ... insignia on various parts of their ... Serb uniforms".²¹³⁷ Just before the train reached the Kosovo Polje/Fushë Kosova railway station, she saw three or four burnt bodies in different areas between the houses and the left hand side of the railway track. Although the train was moving very slowly she could only see out of the corner of her eye. She was too afraid to look around as the track was lined with VJ and MUP personnel pointing their weapons at the train. These forces were also shouting insults of a nationalistic type such as, "You mother fucker Albanians. Kosovo does not belong to you Albanians, it now belongs to Serbs" and "We're are going to kill you Albanians."²¹³⁸ While the train was stopped at Kosovo Polje/Fushë Kosova, it was surrounded and the windows had to remain closed. The forces surrounding them continued to shout insults and to threaten them.²¹³⁹

860. The train arrived in front of the cement factory at Đeneral Janković/Hani i Elezit at about 10:00 p.m.²¹⁴⁰ The passengers were told to disembark, form a line, and walk towards Macedonia. Bala testified that they walked for about 45 minutes in the middle of the train tracks, because they were told that there were mines on either side. A long line of "Serb forces", which she described as

²¹³⁴ K63, T. 2232 (23 August 2006), P2443 (witness statement dated 28 May 2003), para. 37; K62, T. 2278 (24 August 2006).

²¹³⁵ Antonio Russo, P2261 (witness statement dated 24 April 1999), e-court pp. 6–7.

²¹³⁶ Antonio Russo, P2261 (witness statement dated 24 April 1999), e-court p. 7.

²¹³⁷ Nazlie Bala, T. 2141, 2161–2162 (22 August 2006), P2262 (witness statement dated 30 June 2001), e-court pp. 7–8.

²¹³⁸ Nazlie Bala, T. 2172 (23 August 2006), P2262 (witness statement dated 30 June 2001), e-court pp. 7–8.

²¹³⁹ Nazlie Bala, P2262 (witness statement dated 30 June 2001), e-court p. 8.

²¹⁴⁰ Nazlie Bala, P2262 (witness statement dated 16 August 2006), e-court p. 12.

policemen, soldiers, and others wearing black uniforms with flags,²¹⁴¹ were located in front of the cement factory in Đeneral Janković/Hani i Elezit, standing guard over the group. The forces separated more than 100 men from the column, and demanded money and identity documents from them. After handing over these, the men were released and allowed to return to the group.²¹⁴² At around 10:30 or 11:00 p.m. Bala's group arrived at a large grain yard where there were a lot of people, some of whom had been there for eight days. She spent the night there and was one of the first to leave the following day. She waited three to four hours to be registered, and was placed on one of about 50 or 60 buses going in the direction of Ohrid in Macedonia.²¹⁴³

861. The train that K63 and his wife boarded on 3 April stopped first at Kosovo Polje/Fushë Kosova train station, where no one was allowed to disembark. K63 testified that he saw a lot of police and Serb civilians at the station, shouting at people, "Leave, leave, where is your NATO now". Then the train went to Uroševac/Ferizaj, where it stayed for only a few minutes before departing again in the direction of the Macedonian border.²¹⁴⁴ K62 and K63 were taken to Blace, where they spent a night sleeping outside.²¹⁴⁵ According to K63, when the train reached the Macedonian border, VJ forces ordered the people onboard to get off and keep to a very small track because "there were mines everywhere". They then ordered them at gunpoint to cross the border into Macedonia. K63 added that there were thousands of people at the border, and that he and his wife were separated when she was placed onto a different bus.²¹⁴⁶ After some time they were reunited through the auspices of the Red Cross.²¹⁴⁷

862. The train on which Emin Kabashi was travelling also terminated at Đeneral Janković/Hani i Elezit, from where people were ordered to walk between the rails as the area was mined on both sides.²¹⁴⁸ Kabashi reached Blace and saw that there were a lot of people already there. He stayed in Blace for six days and nights, waiting for his family to come from Priština/Prishtina. Every day he saw buses and trains arriving, bringing more people.²¹⁴⁹ After Kabashi's family arrived they all

²¹⁴¹ Nazlie Bala, T. 2140–2141 (22 August 2006).

²¹⁴² Nazlie Bala, T. 2173, 2191–2192 (23 August 2006), P2262 (witness statement dated 30 June 2001), e-court p. 8.

²¹⁴³ Nazlie Bala, T. 2189–2190 (23 August 2006), P2262 (witness statement dated 30 June 2001), e-court p. 8.

²¹⁴⁴ K63, P2443 (witness statement dated 28 May 2003), paras. 36–37.

²¹⁴⁵ K62, T. 2278 (24 August 2006).

²¹⁴⁶ K63, T. 2233, 2237 (23 August 2006), P2443 (witness statement dated 28 May 2003), paras. 38, 41.

²¹⁴⁷ K62, T. 2278 (24 August 2006).

²¹⁴⁸ Emin Kabashi, T. 2102 (22 August 2006), P2250 (witness statement dated 24 April 1999), p. 5.

²¹⁴⁹ Emin Kabashi, P2250 (witness statement dated 24 April 1999), pp. 5–6.

left together by bus and went to Albania, with the assistance of the Red Cross.²¹⁵⁰ Antonio Russo's account of his train journey to Blace was remarkably similar to those of the other witnesses.²¹⁵¹

863. After K14 was expelled from Priština/Prishtina town at the end of March 1999, she returned to the town days later. However, having been raped by a policeman who told her he would return for her (see further below), she left the town on foot during the night towards the end of May 1999, together with her family, and reached the train station in Kosovo Polje/Fushë Kosova at around 7:00 a.m. There were a lot of people at the station. Since there was not enough space for everyone, only part of her family was able to get on the first train that arrived. Like some of the witnesses discussed above, K14 arrived in Blace and spent the night at the border before being permitted to cross into Macedonia.²¹⁵²

864. Baton Haxhiu also travelled to Macedonia following his expulsion from Priština/Prishtina on 2 April 1999. He testified that he joined a convoy of cars going to Tetovo. At the border the convoy was more than 15 kilometres long, and included thousands of displaced people.²¹⁵³ Haxhiu spent four days at the border before he was able to enter Macedonia. Others had to wait even longer before they could cross because the Macedonian authorities initially prevented them from entering.²¹⁵⁴

865. In contrast to all of this evidence, Milutin Filipović testified that people started leaving Priština/Prishtina town on the eve of the beginning of the NATO airstrikes because of fear of the bombing, and that this continued to a lesser degree throughout the campaign.²¹⁵⁵ The migration out of Priština/Prishtina intensified after the bombing of the centre of town on 7 April, as crucial facilities, such as the transformer station and waterworks supplying water to the town, were bombed, and others, such as communication facilities, were damaged. People were in panic because telephone lines had been cut off.²¹⁵⁶ He did see columns of civilians moving through the town, coming from several directions, in particular from Donje Ljupce/Lupç i Poshtëm and Graštica/Grashtica. However, he considered that they were simply pretending to be leaving. They were creating convoys in order to be joined by "terrorists" who wanted to conceal themselves and

²¹⁵⁰ Emin Kabashi, P2250 (witness statement dated 24 April 1999), p. 6.

²¹⁵¹ Antonio Russo, P2261 (witness statement dated 24 April 1999), e-court pp. 6–7.

²¹⁵² K14, P2643 (witness statement dated 31 May 1999), p. 7 (under seal).

²¹⁵³ Baton Haxhiu, T. 6092–6093 (8 November 2006), P2479 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 5419–5420.

²¹⁵⁴ Baton Haxhiu, T. 6091, 6093 (8 November 2006).

²¹⁵⁵ Milutin Filipović, T. 19194–19195 (28 November 2007).

²¹⁵⁶ Milutin Filipović, T. 19192 (28 November 2007).

flee before the FRY/Serbian forces could kill them. In Filipović's words, it was "an imitation of migration".²¹⁵⁷

866. Director of the Priština Media Centre Milivoje Mihajlović, who lived in Kosovo Polje/Fushë Kosova, similarly testified that, a few days before the NATO bombing commenced, many "Serbs" started sending their families to Serbia, Macedonia, or Hungary. Once the NATO bombing commenced, Kosovo Albanians started to move out in large groups from Priština/Prishtina town, and Serbs also continued to leave.²¹⁵⁸ He sent his family to Kopaonik after the post office was bombed, "thinking it was safer there".²¹⁵⁹ Mihajlović further testified that "[t]here was great confusion. Fear of the bombs, fear of the KLA, among the Albanians there was fear of the police and the army fighting against the KLA ... There was looting and killing in the chaos."²¹⁶⁰ He specified that, although he was in Priština/Prishtina town most evenings in March and April 1999, he did not observe civilians being directed towards the train station. However, he did see them "going" in the direction of the Kosovo Polje/Fushë Kosova railway station and to the bus station in Priština/Prishtina town.²¹⁶¹

867. SD3 also testified that he saw columns of "refugees" leaving Priština/Prishtina during the NATO bombing and heading to Macedonia. However, there were also Serb and other non-Albanian groups leaving at that time and heading to Serbia. SD3 claimed that he does not know if anyone forced these people to leave their homes,²¹⁶² but rejected the proposition that MUP and/or VJ forces were responsible for causing the columns to leave, as the people were "moving on [their] own".²¹⁶³ SD3 further added that he saw the greatest number of people leaving Priština/Prishtina in the second half of April, "after the post office was bombed."²¹⁶⁴

868. RDB officer Ljubivoje Joksić also testified that he saw columns of Kosovo Albanians moving towards the railway and bus stations in Priština/Prishtina to depart Kosovo, but claimed that he did not see anyone forcing them or giving them instructions to do so.²¹⁶⁵ On the contrary, at the beginning of April he received a phone call from Rade Marković, then the Head of the RDB,

²¹⁵⁷ Milutin Filipović, T. 19193 (27 November 2007).

²¹⁵⁸ Milivoje Mihajlović, 6D1530 (witness statement dated 9 March 2008), paras. 32, 35.

²¹⁵⁹ Milivoje Mihajlović, 6D1530 (witness statement dated 9 March 2008), para. 35.

²¹⁶⁰ Milivoje Mihajlović, 6D1530 (witness statement dated 9 March 2008), para. 36.

²¹⁶¹ Milivoje Mihajlović, T. 24080 (11 March 2008).

²¹⁶² SD3, T. 20827 (22 January 2008) (private session), 5D1444 (witness statement dated 27 December 2007), paras. 9–10.

²¹⁶³ SD3, T. 20821–20825 (22 January 2008).

²¹⁶⁴ SD3, T. 20821 (22 January 2008).

²¹⁶⁵ Ljubivoje Joksić, T. 22051–22052, 22054–22055 (11 February 2008).

instructing him to “try to do everything to prevent these departures.”²¹⁶⁶ However, his efforts proved to be unsuccessful, as he could not stop people from going either to Albania or to Macedonia.²¹⁶⁷

869. Emin Kabashi, who said clearly that he did not want to leave Kosovo, but was forced to do so by the actions and words of the Serbian police and the VJ, stated that he was never given any assistance, offer of assistance, or humanitarian aid by the Yugoslav authorities.²¹⁶⁸ Milutin Filipović, on the other hand, testified that he assisted some of the people leaving Priština/Prishtina out of fear of the NATO bombing in moving out in accordance with requests made by the Priština Corps commander to assist the civilians.²¹⁶⁹

870. The Lukić Defence led evidence from Miomir Bogosavljević to counter the witnesses who testified about their expulsion from Priština/Prishtina by train. He explained that his office existed “to ensure the safety and security of passengers, to prevent any breaches of law and order, to prevent the commission of any crimes ... and it was there to provide assistance to the railway personnel on the train.”²¹⁷⁰ When asked whether members of the VJ provided “security in terms of railway lines and directions within the area of Kosovo”, he responded with a simple “no”.²¹⁷¹ Bogosavljević testified that the Kosovo Polje/Fushë Kosova train station police office was supposed to be manned with 66 police officers, but that there were only 37 police officers during the time of the Indictment, and that this number did not change during the NATO bombing.²¹⁷² There was one patrol, consisting of two police officers, on every train; they would remain on the trains until they reached their destination.²¹⁷³ From 29 March to 15 April some of the police patrols on trains, particularly those composed of 12 to 15 cars, were reinforced, thus there might have been up to six policemen on a train at a time.²¹⁷⁴ He also added that he received no reports of criminal activities by his police officers during 1999.²¹⁷⁵

871. Bogosavljević further explained that, once the bombing commenced, trains to Macedonia stopped at the border.²¹⁷⁶ On 24 March, and for the following four or five days, “there was not a

²¹⁶⁶ Ljubivoje Joksić, T. 22052 (11 February 2008).

²¹⁶⁷ Ljubivoje Joksić, T. 22052 (11 February 2008).

²¹⁶⁸ Emin Kabashi, P2250 (witness statement dated 24 April 1999), p. 6.

²¹⁶⁹ Milutin Filipović, T. 19259–19262 (28 November 2007).

²¹⁷⁰ Miomir Bogosavljević, T. 23847 (6 March 2008).

²¹⁷¹ Miomir Bogosavljević, T. 23864 (7 March 2008).

²¹⁷² Miomir Bogosavljević, T. 23844–23846 (6 March 2008), 23866, 23869 (7 March 2008).

²¹⁷³ Miomir Bogosavljević, T. 23847 (6 March 2008), 23869 (7 March 2008).

²¹⁷⁴ Miomir Bogosavljević, T. 23875 (7 March 2008).

²¹⁷⁵ Miomir Bogosavljević, T. 23851 (6 March 2008).

²¹⁷⁶ Miomir Bogosavljević, T. 23852 (6 March 2008).

single train that left Priština or Kosovo Polje for Macedonia”,²¹⁷⁷ because there were not enough train drivers.²¹⁷⁸ He conceded that from 29 March there were “special trains” running once or twice a day, in addition to the regular trains, because of the number of people leaving;²¹⁷⁹ from 31 March to 2 April there might have been two or three special trains leaving Priština/Prishtina on a daily basis.²¹⁸⁰ However, he denied that there could have been thousands of people on those trains, explaining that a ten-car train could take a maximum of 1,000 people.²¹⁸¹

872. On two occasions between 29 March and 15 April Bogosavljević boarded trains going to Đeneral Janković/Hani i Elezit, which were full of mainly Kosovo Albanians. Only the “police patrol” was on the train; there were no members of the VJ. When the trains arrived at Đeneral Janković/Hani i Elezit, however, he saw the people “walking down the railroad track towards the border”, and there were members of the VJ present there. He did not know whether they were directing these people or not.²¹⁸² Bogosavljević did not accept the proposition that at the end of March and the beginning of April 1999 some trains passed through the train station in Uroševac/Ferizaj without stopping, in order to transport Kosovo Albanians across the border.²¹⁸³ He also did not accept that the trains were “jam-packed” with people.²¹⁸⁴

873. The Trial Chamber is unconvinced by Bogosavljević’s attempts to refute the consistent evidence of the eye-witnesses concerning the manner in which they were transported to Macedonia. He conceded that a large number of people were leaving Priština/Prishtina by train, and that he only twice boarded a train to Macedonia. Furthermore, the Chamber does not accept the Lukić Defence’s assertion that Kabashi’s ability to remain at the railway station in Priština/Prishtina for three days before boarding a train shows that people were voluntarily leaving Priština/Prishtina.²¹⁸⁵

b. Sexual assault

874. Three witnesses gave evidence relating to their experiences of being sexually assaulted in Priština/Prishtina in April and May 1999. K62, K14, and K31, all Kosovo Albanian women, gave detailed accounts of their ordeals at the hands of Serbian soldiers and police officers, which were

²¹⁷⁷ Miomir Bogosavljević, T. 23862 (7 March 2008).

²¹⁷⁸ Miomir Bogosavljević, T. 23863 (7 March 2008).

²¹⁷⁹ Miomir Bogosavljević, T. 23873–23874 (7 March 2008).

²¹⁸⁰ Miomir Bogosavljević, T. 23881 (7 March 2008).

²¹⁸¹ Miomir Bogosavljević, T. 23873–23874 (7 March 2008).

²¹⁸² Miomir Bogosavljević, T. 23871 (7 March 2008).

²¹⁸³ He stated that “every train had to be stopped at these stations.” Miomir Bogosavljević, T. 23885 (7 March 2008).

²¹⁸⁴ Miomir Bogosavljević, T. 23885 (7 March 2008).

²¹⁸⁵ Lukić Final Trial Brief, 7 August 2008 (public version), para. 1039.

not substantially challenged by the Defence. The Chamber finds their evidence credible and reliable

875. K62 testified that on 1 April 1999 she was alone in her home when three men wearing green camouflage uniforms and “some hats and masks on their faces” arrived.²¹⁸⁶ Two of them started searching the apartment, while the third man pushed K62 to the floor and raped her. A second man then raped her as well, and the third one put his penis in her mouth.²¹⁸⁷ After the men had left, K62 managed to contact her husband with the help of a neighbour and he immediately returned home. They stayed in their apartment for two more nights after the incident until they were expelled from their home on 3 April 1999 as described above. She subsequently met a woman who told her that the same thing had happened to many other women in Priština/Prishtina at that time.²¹⁸⁸ K63 provided some support for his wife’s account. Although he was not present when she was raped and did not see her attackers, he heard her almost contemporaneous account and told the Chamber what she said.²¹⁸⁹ That account was similar to the one she gave in court.

876. K14 was in her mid-teens in May 1999 when she too was raped in Priština/Prishtina. While some of her evidence in relation to the incident was contradictory, in light of her age, the traumatic nature of the event, and the passage of time, the Chamber considers that to be entirely understandable, and finds her testimony to be generally reliable.

877. K14 described how in late May 1999 a group of policemen came to her home. They were wearing blue and green camouflage uniforms with blue ribbons tied on their right arms.²¹⁹⁰ The next morning two of these policemen returned, along with a local person whom she knew and who was wearing a police uniform.²¹⁹¹ K14 heard one of the policemen being referred to by name. All three men spoke Serbian, and two of them spoke a bit of Albanian.²¹⁹² K14 and her sister were taken by these policemen to a car parked outside. However, her sister was allowed to return to the house before the car departed.²¹⁹³ K14 was put in the back seat with one of the policemen, who hit her on her hip with the butt of his gun. He also slapped her face, bit her on the neck, and sprayed

²¹⁸⁶ K62, T. 2274–2275 (24 August 2006) (private session).

²¹⁸⁷ K62, T. 2271–2272, 2274 (24 August 2006) (private session).

²¹⁸⁸ K62, T. 2274–2275 (24 August 2006) (private session).

²¹⁸⁹ K63, T. 2231 (23 August 2006), P2443 (dated 27–28 May 2003), paras. 27–31.

²¹⁹⁰ K14, T. 10981–10982 (2 March 2007) (closed session), P2643 (witness statement dated 31 May 1999), p. 4 (under seal).

²¹⁹¹ K14, T. 10981–10982 (2 March 2007) (closed session).

²¹⁹² K14, T. 10984, 10994 (2 March 2007) (closed session), P2643 (witness statement dated 31 May 1999), p. 4 (under seal).

²¹⁹³ K14, T. 10985–10986 (2 March 2007) (closed session), P2644 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 1429 (under seal), P2643 (witness statement dated 31 May 1999), p. 5 (under seal).

her on her face and neck with a clear liquid contained in a small clear plastic spray bottle. After five minutes she felt relaxed and started laughing.²¹⁹⁴ The Trial Chamber notes that, although there is some documentary evidence to suggest that the some police forces in Kosovo were instructed to wear red ribbons on the date in question, rather than blue, this does not change its finding that K14 gave a reliable account of the incident and could identify her perpetrators as police.²¹⁹⁵

878. At the Bozhur Hotel in the centre of Priština/Prishtina K14 was taken through the basement to a room on the second floor where one of the policemen raped her. The other policeman stayed outside.²¹⁹⁶ Afterwards the one who had raped her told her that he would not let the other policeman in if she promised to come back on Monday and bring her sister for his friend. K14 agreed because she wanted him to leave.²¹⁹⁷ In the car on the way back to her house he kept reminding her to return on Monday.²¹⁹⁸ When she got back home, she told one of her friends what had happened to her. Her friend told K14 that the same thing had happened to her, and that she had been taken to a civilian house, had been raped by four men, and had been brought back after two days.²¹⁹⁹ K14 added that the following day the local person who had accompanied the policemen the previous day came back to her house and told her not to worry, that she could not become pregnant, and that, if she was frightened, she could stay in his house. That same day and the next the policeman who had raped her, and the other who had not, drove past the house several times and honked the car horn. At 4:00 a.m. the following Monday, when she was supposed to go back to the hotel, K14 and her family fled Priština/Prishtina on foot, as described above.²²⁰⁰

879. K31, a Kosovo Albanian woman from Kačanik/Kaçanik municipality, was in her late-teens in May 1999 when she was raped by three “Serb soldiers” at a hospital in Priština/Prishtina town.²²⁰¹ Towards the end of May 1999, she and her injured brother were taken from Kačanik/Kaçanik municipality to a hospital in Priština/Prishtina town. K31 testified that on the way one soldier sexually assaulted her in the vehicle.²²⁰²

²¹⁹⁴ K14, P2643 (witness statement dated 31 May 1999), p. 5 (under seal).

²¹⁹⁵ 6D579 (Instructions for the police in May 1999). *See also* Lukić Final Trial Brief, 7 August 2008 (public version), para. 1064.

²¹⁹⁶ K14, P2643 (witness statement dated 31 May 1999), pp. 5–6 (under seal).

²¹⁹⁷ K14, P2643 (witness statement dated 31 May 1999), p. 6 (under seal).

²¹⁹⁸ K14, P2643 (witness statement dated 31 May 1999), p. 6 (under seal).

²¹⁹⁹ K14, P2643 (witness statement dated 31 May 1999), pp. 6–7 (under seal).

²²⁰⁰ K14, P2643 (witness statement dated 31 May 1999), p. 7 (under seal).

²²⁰¹ K31, T. 9244 (25 January 2007) (closed session), P2596 (witness statement dated 12 March 2002), pp. 5–6 (under seal).

²²⁰² K31, T. 9251–9253 (25 January 2007) (closed session), P2596 (witness statement dated 12 March 2002), pp. 2–3 (under seal), P2595 (witness statement dated 16 October 1999), pp. 3–4 (under seal); *cf.* K31, T. 9241 (25 January 2007) (closed session), P2597 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 8158–8160 (under seal).

880. When they arrived at the hospital in Priština/Prishtina, K31 was taken to the basement and put in a locked, dark room with no furniture and about 10 to 15 other women inside, all Kosovo Albanian. About 20 minutes later a soldier entered and, using a torch, selected K31 and took her into another room in the basement.²²⁰³ He and two other soldiers beat her and forced her to drink something with a bitter taste, after which she felt as if something had hit her on the head.²²⁰⁴ After two of the soldiers left the room, K31 was raped by the one who had first selected her; he bit her shoulders, arms, and breasts, and covered her mouth with his hand.²²⁰⁵ While K31 was still on the floor, a second soldier came into the room and raped her twice.²²⁰⁶ Afterwards this soldier called the third into the room. K31 then lost consciousness. This soldier may also have raped her while she was unconscious, but the next thing she could remember was waking up naked and on her back in the empty room. When she was finally able to stand up, she left the room and went to the first floor, which was deserted.²²⁰⁷

881. K31 then found her brother on the fifth floor and hid near him for almost two weeks, because she had been told that, if she left the hospital, she would not be allowed back. While at the hospital, K31 saw policemen and soldiers carrying automatic weapons. She and her brother finally left the hospital around mid-June 1999.²²⁰⁸

4. Villages in Priština/Prishtina municipality

882. In addition to the charges pertaining to Priština/Prishtina town, the Indictment avers that forces of the FRY and Serbia entered villages in the municipality and mistreated the Kosovo Albanian inhabitants. It specifically alleges that many villagers were taken by truck to Glogovac/Gllogoc and from there by train to Macedonia. No evidence was brought by the Prosecution in relation to this specific allegation, and very little evidence was heard concerning events in villages in the municipality during the NATO campaign.

883. K14 gave some evidence about her family's initial expulsion at the end of March 1999 from their home in Priština/Prishtina town.²²⁰⁹ She described shelling and shooting in a nearby village

²²⁰³ K31, T. 9254, 9256–9257 (25 January 2007) (under seal), P2596 (witness statement dated 12 March 2002), p. 4 (under seal).

²²⁰⁴ K31, P2596 (witness statement dated 12 March 2002), p. 4 (under seal).

²²⁰⁵ K31, P2596 (witness statement dated 12 March 2002), pp. 4–5 (under seal).

²²⁰⁶ K31, P2596 (witness statement dated 12 March 2002), p. 5 (under seal).

²²⁰⁷ K31, P2596 (witness statement dated 12 March 2002), pp. 5–6 (under seal).

²²⁰⁸ K31, P2596 (witness statement dated 12 March 2002), p. 6 (under seal), P2595 (witness statement dated 16 October 1999), p. 5 (under seal).

²²⁰⁹ K14, T. 10970 (2 March 2007) (closed session), P2643 (witness statement dated 31 May 1999), p. 3 (under seal).

that she passed.²²¹⁰ K14 and her family decided to return to Priština/Prishtina because of the shelling and shooting in the area. On their journey back to Priština/Prishtina K14 saw policemen stealing cars from Kosovo Albanians in the convoy that she was travelling in.²²¹¹ She and her family returned to Priština/Prishtina at the beginning of April, and stayed there until late May 1999 as described above.²²¹²

884. In addition to this evidence, the Chamber heard from K73 that on 24 March 1999 his unit was deployed to the village of Gračanica/Gračanica, south of the town, for about a week.²²¹³ K73 testified that he was with this unit there during part of the NATO bombing, and that the village was already empty.²²¹⁴ However, Milutin Filipović, who testified that Gračanica/Gračanica was the largest village in Kosovo inhabited by Serbs,²²¹⁵ added that life in the village during the NATO bombing was relatively normal, except for the fact that there were many bombings of military facilities very close to the village, which disturbed the citizens.²²¹⁶ Filipović further added that religious services were held regularly at the mosque of the town, which remained undamaged, and that the village's council even took in "Siptar" refugees from the surrounding villages.²²¹⁷

5. Findings

885. The Trial Chamber finds that large numbers of Kosovo Albanians were expelled from Priština/Prishtina town, beginning on 24 March 1999. Many of these people were transported by train—or made their own way—to Macedonia. Some of them were directly evicted from their homes by VJ, MUP, and other armed forces, while others left due to the prevailing atmosphere of fear in the town caused by the violent evictions of their neighbours, and by threats, killings, beatings, and other acts of intimidation carried out by these forces.

886. The Chamber heard from some witnesses called by the Defence that Kosovo Albanians fled the town due to the NATO airstrikes themselves.²²¹⁸ The Chamber also heard some evidence that

²²¹⁰ K14, P2643 (witness statement dated 31 May 1999), p. 3 (under seal).

²²¹¹ K14, P2643 (witness statement dated 31 May 1999), p. 4 (under seal).

²²¹² K14, P2643 (witness statement dated 31 May 1999), pp. 4, 7 (under seal).

²²¹³ K73, T. 3336, 3358–3359 (13 September 2006) (closed session), P2440 (witness statement), paras. 35–36, 49; *see also* Milutin Filipović, T. 19162 (27 November 2007); Mirko Starčević, T. 17435–17436 (22 October 2007); Vladimir Lazarević, T. 17916, 17960 (8 November 2007).

²²¹⁴ K73, T. 3375 (14 September 2006) (closed session).

²²¹⁵ Milutin Filipović, T. 19200 (28 November 2007); *see also* Sandra Mitchell, T. 559 (11 July 2006).

²²¹⁶ Milutin Filipović, T. 19200 (28 November 2007).

²²¹⁷ Milutin Filipović, 19200–19201 (28 November 2007).

²²¹⁸ *See, e.g.*, Milutin Filipović, T. 19181–19183 (27 November 2007), T. 19194–19195 (28 November 2007); SD3, T. 20821 (22 January 2008), 5D1444 (witness statement dated 27 December 2007), paras. 9–10; Milivoje Mihajlović, 6D1530 (witness statement dated 9 March 2008), paras. 32, 35; *see also* Lukić Final Trial Brief, 7 August 2008 (public version), para. 1047.

the media in Albania were calling on Kosovo Albanians to leave their homes, and that propaganda calls—mainly through pamphlets—were constantly made in Priština/Prishtina town and its surrounding area to make people leave Kosovo during the NATO bombing.²²¹⁹ However, none of the Kosovo Albanian witnesses testified that they heard or saw such broadcasts or propaganda, or that they left Priština/Prishtina for these reasons. Indeed the suggestion was not even put to them during their cross-examination.

887. The Chamber finds that, although the NATO bombing of targets in or around Priština/Prishtina town had an impact on civilians in the town, for example by cutting off the supply of electricity and water and damaging civilian buildings, this was not the reason why thousands of Kosovo Albanians left their homes in the days and weeks following the start of the airstrikes. Rather, these Kosovo Albanians were driven out of their homes by the words and actions of the VJ and MUP forces, and other armed forces operating with them. Even if certain people left because of KLA fighting, the NATO bombing, or propaganda calls made for them to leave Kosovo, this does not affect the Chamber's finding. The fact that people might have returned to Priština/Prishtina several times during this time period, as submitted by the Lazarević Defence, also does not affect the Trial Chamber's conclusions in this regard.²²²⁰

888. The Chamber has heard consistent evidence that VJ, police, armed Serb civilians, and other irregular forces operated together in Priština/Prishtina to ensure, and control the direction of, the departure of the Kosovo Albanian residents. Such operations would have required significant planning and co-ordination. The Chamber thus finds that the expulsion of the Kosovo Albanian population of the town was carried out in an organised manner, utilising forces and resources under the control of the FRY and Serbian governmental authorities, including the VJ, the police, and the rail service.

889. The Chamber also finds it proved that three women were raped in the course of the operation to remove large numbers of Kosovo Albanians from Priština/Prishtina town – K62 by three VJ or MUP personnel, K14 by a policeman, and K31 by three VJ soldiers.

890. There is no evidence to support the allegations concerning the mistreatment and killing of Kosovo Albanians from other villages in Priština/Prishtina municipality, the removal of Kosovo Albanians and their transportation by truck to Glogovac/Gllogoc in Lipljan/Lypjan municipality from where they took trains to Đeneral Janković/Hani i Elezit and walked to the Macedonian

²²¹⁹ Milutin Filipović, T. 19181–19183 (27 November 2007), T. 19194–19195 (28 November 2007); Milivoje Mihajlović, 6D1530 (witness statement dated 6 March 2008), para. 36.

²²²⁰ Lazarević Final Trial Brief, 29 July 2008 (public version), para. 231.

border, or the looting and burning of property in villages in Priština/Prishtina municipality, as alleged in paragraph 72(g)(i) of the Indictment.

K. GNJILANE/GJILAN

1. Charges in Indictment

891. The Indictment charges the Accused with responsibility for three different categories of crimes against humanity allegedly committed in the municipality of Gnjilane/Gjilan: deportation, forcible transfer, and persecution. The charged persecution is alleged to have taken the form of “wanton destruction or damage of Kosovo Albanian religious sites,” including the damage and/or destruction of a mosque in Vlačica/Llashtica.²²²¹

892. The specific factual averments are set out in Paragraph of 72(i) of the Indictment, which states that:

Forces of the FRY and Serbia entered the town of Prilepnica/Përlepticë on or about 6 April 1999, and ordered residents to leave. The townspeople left and tried to go to another village but forces of the FRY and Serbia turned them back. On 13 April 1999, residents of Prilepnica/Përlepticë were again informed that the town had to be evacuated by the following day. The next morning, Kosovo Albanians left in a convoy of approximately 500 vehicles. Shortly after they left, the houses in Prilepnica/Përlepticë were set on fire by forces of the FRY and Serbia. Throughout the entire municipality of Gnjilane/Gjilan, forces of the FRY and Serbia systematically burned and destroyed houses, shops, cultural monuments and religious sites belonging to Kosovo Albanians, including a mosque in Vlačica/Vlastica. Kosovo Albanians in other villages in Gnjilane/Gjilan municipality were also forced from their homes. Thousands of displaced persons from villages such as Žegra/Zhegër, Nosalje/Nosalë and Vladovo/Lladovë sought shelter in the village of Donja Stubla/Stubëlle e Poshtme, located in the Vitina municipality. Many of these displaced persons from Gnjilane/Gjilan crossed Kosovo’s boundary with the province of Serbia, where some of them suffered similar harassment and mistreatment to that which they experienced in Kosovo, before entering Macedonia. Others travelled directly to Macedonia. When the Kosovo Albanians reached the border with Macedonia, forces of the FRY and Serbia confiscated their identification papers.²²²²

2. Background

893. Gnjilane/Gjilan municipality is located in south-east Kosovo. The main town in the municipality is also called Gnjilane/Gjilan and is located in the centre of the municipality.²²²³ Prilepnica/Përlepnica is located about seven kilometres north-east of Gnjilane/Gjilan town and is surrounded by hills and mountains.²²²⁴ In 1999 it had a population of about 3,000, the majority of

²²²¹ Indictment, paras. 72(i) and 77(d). The Indictment alleges that “houses, shops, cultural monuments and religious sites” were “burned and destroyed”, including the mosque in Vlačica/Llashtica.

²²²² Indictment, para. 72(i).

²²²³ P615 (Kosovo Atlas).

²²²⁴ Abdyalhaqim Shaqiri, 4D6 (witness statement dated 22 June 2001), p. 2.

whom were Kosovo Albanians, with some Roma and Serb families.²²²⁵ Vladovo/Lladova is in the southern part of the municipality, about ten kilometres south of Gnjilane/Gjilan town in the direction of Macedonia. Vlaštica/Llashtica and Nosalje/Nosala are located close to, and to the east and west of, Vladovo/Lladova, while Žegra/Zhegra is one kilometre south of Vladovo/Lladova.²²²⁶ In 1999 Žegra/Zhegra had approximately 4,000 inhabitants, the majority of whom were Kosovo Albanians, but including some Serb families.²²²⁷

894. The Trial Chamber heard evidence from Abdylhaqim Shaqiri, Qamil Shabani, and witness K81, led by the Prosecution, in relation to the crimes alleged to have been committed in Gnjilane/Gjilan municipality. The Defence led, among others, Božidar Delić, Franjo Glončak, and Dušan Gavrančić to give evidence about the situation in the municipality and events there. The Chamber finds Shaqiri, Shabani, and K81 to be generally credible and reliable due to the broad consistency of their evidence concerning the events that they witnessed and experienced at this time, and the impression the Chamber formed of them in court, while noting that there were difficulties with the manner in which the Prosecution presented the evidence of K81. In addition the evidence of Shaqiri was in large part consistent with that of the witness Gavrančić called by the Lukić Defence. The Chamber further observes that, although a number of inconsistencies in the evidence of Shaqiri and Shabani were explored in cross-examination, it is satisfied, in light of the explanations given, that they do not render their evidence unreliable on the key issues discussed below. Where an inconsistency was more than insignificant, the Chamber has left the evidence of the witness on that point out of account.²²²⁸ The Chamber also finds that it can rely on large parts of the testimony of Dušan Gavrančić, but has rejected it on certain important points as further explained below. The Chamber was not impressed by Glončak and found much of his evidence to be unreliable. The evidence of other witnesses who testified in relation to the situation in the municipality is dealt with as it arises.

895. There is evidence that the 175th Infantry Brigade of the VJ was deployed in Gnjilane/Gjilan municipality and was present in, for example, Žegra/Zhegra and Vladovo/Lladova villages in March and April 1999.²²²⁹ On 27 March the Priština Military District Command ordered the

²²²⁵ Abdylhaqim Shaqiri, 4D4 (witness statement dated 25 April 1999), p. 2, 4D6 (witness statement dated 22 June 2001), p. 2, 4D10 (handwritten statement dated October 1999), p. 13, T. 2770, 2915–2917 (5 September 2006).

²²²⁶ P615 (Kosovo Atlas); K81, T. 7079 (21 November 2006).

²²²⁷ Qamil Shabani, P2263 (witness statement dated 18 June 2001), p. 2, P2264 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 1513, P2280 (addendum to witness statement dated 27 August 2006), p. 2, T. 2699–2700 (1 September 2006). *See also* Dušan Gavrančić, T. 22681 (18 February 2008).

²²²⁸ *See, e.g.*, Abdylhaqim Shaqiri, T. 2930, 2933, 2938, 2940, 2973–2974 (7 September 2006), 4D10 (handwritten statement dated 25 April 1999), pp. 10–11, 4D6 (witness statement dated 22 June 2001), p. 4.

²²²⁹ Franjo Glončak, 5D1395 (witness statement dated 26 December 2007), paras. 4–5, T. 21133–21134 (25 January 2008). *See also* P407 (OSCE/KVM Bluebook), p. 812.

Gnjilane Military Territorial Detachment to protect the Serb population and guard roads and military facilities in co-ordination with the 175th Infantry Brigade, the 78th Motorised Brigade, and MUP forces. The 58th Military Territorial Detachment, in co-ordination with the 52nd Mixed Artillery Brigade, the 175th Infantry Brigade, and MUP forces, was deployed in *inter alia* the town of Gnjilane/Gjilan and the village of Kmetovce/Kmetofc.²²³⁰

896. Bislim Zyrapi testified that the KLA's operational zone seven encompassed the area of Gnjilane/Gjilan municipality.²²³¹ According to a map marked by Zyrapi showing the areas held by the KLA and the direction of attack by the "Serb forces" at the end of March 1999, Gnjilane/Gjilan was not among the areas attacked at that time.²²³² However, a number of documents indicate that the KLA was active in certain parts of the municipality, for example, close to the border with Lipljan/Lypjan municipality, to the west, in the beginning of April 1999.²²³³

897. According to an order of the Joint Command dated 13 April 1999, concentration and combat activities of the KLA had increased in the village of Žegovačka Vrbica/Verbicë e Zhegofcit at the beginning of April. The Priština Corps was ordered to provide support to MUP forces in routing and destroying the KLA in their zone of responsibility, and the 175th Infantry Brigade was to set up a blockade of Cernica, Kravarica, and Balance/Ballanca and to support the MUP forces along the axis of the villages of Pašjak and Gornje Slakovce/Sllakove e Eperme.²²³⁴ A report from the 3rd Army dated 13 April 1999 notes that the majority of the "terrorists" were in the triangle between Mučibaba/Mučibaba, Ugljare/Uglare, and Podgradje/Pogragje.²²³⁵ These villages do not, however, include the alleged crime sites in the Indictment.

898. Abdylhaqim Shaqiri, a Kosovo Albanian resident of Prilepnica/Përlepnica and a local imam, testified that there was no KLA presence in his village or in the whole south-eastern part of Kosovo, including Gnjilane/Gjilan, Vitina/Viti, and Kosovska Kamenica/Kamenica village.²²³⁶ However, Dušan Gavranić, former chief of the Gnjilane SUP, stated that there was indeed a KLA

²²³⁰ 6D1470 (Order from the Priština Military District Command, 27 March 1999), pp. 5–6. See also 5D545 (Combat Report of the 175th Infantry Brigade, 21 April 1999). See also 4D349 (3rd Army Command Order re resubordination of 175th Infantry Brigade to the PrK, 14 April 1999).

²²³¹ Bislim Zyrapi, T. 5934, 5967 (6 November 2006); P2469 (map showing different KLA operational zones).

²²³² P2447 (Map showing KLA-held areas), *cf.*, P1991 (Minutes of the MUP Staff meeting, 21 December 1998), p. 6.

²²³³ P1971 (Joint Command Order, 13 April 1999); 5D1354 (Combat report from 175th Infantry Brigade, 12 April 1999). See also 5D476 (Order of the PrK, 9 April 1999); 3D822 (Combat report to the Supreme Command Staff, 17 April 1999), p. 3.

²²³⁴ P1971 (Joint Command Order, 13 April 1999), pp. 1–2, 4–5.

²²³⁵ 5D1310 (3rd Army Command Report, 13 April 1999), p. 3. The Trial Chamber notes that the village Predgrade is mentioned in the document and not Podgradje/Pogragje.

²²³⁶ Abdylhaqim Shaqiri, T. 2823 (5 September 2006).

presence in Gnjilane/Gjilan, although he later testified that in 1998 there were no “terrorist actions” in Gnjilane/Gjilan; there were “terrorists” but they were not active as in other areas.²²³⁷

3. Prilepnica/Përlepnica

899. Shaqiri testified that on 6 April 1999, while at his mother’s house in Prilepnica/Përlepnica, he heard gunfire from all sides and decided to investigate.²²³⁸ As he walked along the main road, he met a “soldier” wearing an “olive-green-grey” uniform and black bandanna, who was detaining two villagers in the middle of the road.²²³⁹ Shaqiri asked the soldier why he could hear gunfire, to which the latter replied that “they” had received information of a KLA presence in the village, and that it needed to be emptied in order for “them” to fight the KLA. The soldier then ordered Shaqiri to tell everyone to leave their homes within two hours, and go in the direction of Uroševac/Ferizaj.²²⁴⁰

900. Shaqiri also testified that there were 10 to 15 soldiers present in the centre of Prilepnica/Përlepnica at this time, who were occasionally shooting into the air. Most of them carried automatic weapons and were wearing the same SMB “olive-green-grey” uniforms, although one or two were wearing green-blue-lemon yellow camouflage uniforms.²²⁴¹ Shaqiri also explained that the SMB uniform was used by military reservists.²²⁴² Based on Shaqiri’s evidence the Trial Chamber accepts that these soldiers were VJ reservists, and whether they were serving in the army or not is of minor importance in light of the following events on 14 April 1999, in which the VJ was clearly involved, as discussed below.

901. While Shaqiri used the minaret loudspeaker at the mosque to announce that everyone had to leave Prilepnica/Përlepnica, he could hear gunfire in the village. The villagers left their houses and gathered on the roads, one to the east and one in the western part of the village. Shaqiri headed the group going to the west.²²⁴³ He then returned to the soldier who was “holding the two villagers hostage”, and asked to talk to the officers who had given the order to empty Prilepnica/Përlepnica.

²²³⁷ Dušan Gavrančić, T. 22738–22784 (19 February 2008).

²²³⁸ Abdylhaqim Shaqiri, T. 2768, 2771–2772 (5 September 2006), T. 2836 (6 September 2006), 4D4 (witness statement dated 25 April 1999), p. 2, 4D6 (witness statement dated 22 June 2001), p. 2; IC28 (marked map of Gnjilane/Gjilan (P36)).

²²³⁹ Abdylhaqim Shaqiri, 4D4 (witness statement dated 25 April 1999), p. 2, T. 2772–2773 (5 September 2006), T. 2837–2838, 2840–2843, 2847 (6 September 2006); 4D8 (supplemental information sheet dated 28 August 2006), p. K0532301.

²²⁴⁰ Abdylhaqim Shaqiri, 4D4 (witness statement dated 25 April 1999), p. 3, 4D10 (handwritten statement dated October 1999), p. 4, T. 2771–2774 (5 September 2006).

²²⁴¹ Abdylhaqim Shaqiri, T. 2772–2774 (5 September 2006), T. 2841–2843 (6 September 2006).

²²⁴² Abdylhaqim Shaqiri, T. 2808–2810 (5 September 2006).

²²⁴³ Abdylhaqim Shaqiri, T. 2772, 2774–2775 (5 September 2006).

He accompanied the soldier to the edge of the village where he met three officers who introduced themselves as belonging to the regular army. They were dressed in green and yellow camouflage uniforms with “regular soldier belts”.²²⁴⁴ Shaqiri testified that he spoke in Serbian with these soldiers, whom he had never seen before, and they told him that there was a KLA presence in Prilepnica/Përlepnica and that the shooting was coming from the KLA. They threatened to execute Shaqiri when he tried to explain that there was no KLA presence in the village.²²⁴⁵ One of the officers, who was referred to by the others as “Russ”, took Shaqiri aside and explained to him that “people must be moved out of Prilepnica”, or else the village and its dam would be mined the following day at noon since there was a risk that NATO would bomb the village.²²⁴⁶ The order had come from above, from Belgrade, according to “Russ”.²²⁴⁷ The Pavković Defence pointed out during cross-examination that Shaqiri mentioned for the first time in court that the order had come from Belgrade.²²⁴⁸

902. “Russ” took Shaqiri to his vehicle and they drove in it to the place where the villagers had gathered on the western side of Prilepnica/Përlepnica. The departing villagers had been stopped on the road while still inside the village. There were around 20 to 30 soldiers scattered in groups amongst them. When he arrived with “Russ”, one of the villagers told Shaqiri that their personal documents had been seized. Shaqiri relayed this information to “Russ,” who ordered that the documents be returned to their owners. The soldiers who had taken the documents then threw them on the ground near a wall.²²⁴⁹

903. After a soldier was injured by a bullet which ricocheted off an iron gate when the soldiers were firing their weapons into the air, the group of soldiers was ordered to withdraw and departed in the direction of Gnjilane/Gjilan town. The local villagers remained in Prilepnica/Përlepnica and considered what to do next. Shaqiri and some others, including an armed Serb resident of the village, went to Gnjilane/Gjilan and attempted to contact the chief of the police there to gain permission to stay. However, they were stopped in the town by soldiers who threatened them, and they returned to Prilepnica/Përlepnica.²²⁵⁰

²²⁴⁴ Abdylhaqim Shaqiri, T. 2775 (5 September 2006), 4D4 (witness statement dated 25 April 1999), p. 3.

²²⁴⁵ Abdylhaqim Shaqiri, T. 2774–2778 (5 September 2006).

²²⁴⁶ Abdylhaqim Shaqiri, T. 2778–2783 (5 September 2006), T. 2849–2855 (6 September 2006), 4D4 (witness statement dated 25 April 1999), p. 3.

²²⁴⁷ Abdylhaqim Shaqiri, T. 2778–2783 (5 September 2006), T. 2849–2858 (6 September 2006).

²²⁴⁸ Abdylhaqim Shaqiri, T. 2856–2857 (6 September 2006).

²²⁴⁹ Abdylhaqim Shaqiri, T. 2779–2780 (5 September 2006).

²²⁵⁰ Abdylhaqim Shaqiri, T. 2781–2786 (5 September 2006), T. 2858 (6 September 2006).

904. When Shaqiri arrived back in Prilepnica/Përlepnica, he made further announcements over the mosque loudspeaker that the population should leave the village. He then went to the main Gnjilane/Gjilan–Bujanovac/Bujanoc road and led a convoy of 400 vehicles, with approximately 3,000 people, to the east, through Dobrčane/Dobërčan village.²²⁵¹ He went in this direction instead of towards Uroševac/Ferizaj, since he knew the way and thought it was safer for them to walk in that direction.²²⁵²

905. According to Shaqiri, at the village of Kmetovce/Kmetofc there were police and military forces at a checkpoint on the road. The policemen were wearing regular blue uniforms and a white cloth with a ribbon on their arms. The soldiers were wearing olive-green-grey uniforms.²²⁵³ The convoy was stopped at the checkpoint by the soldiers, who asked why they were leaving. They were then allowed to proceed. From Kmetovce/Kmetofc they moved on to Dobrčane/Dobërčan village, then passed the villages of Ranilug/Ranllug and Gornje Korminjane/Kormnjan i Epërm, heading in the direction of Končul and Bujanovac/Bujanoc, across the provincial boundary from Kosovo.²²⁵⁴

906. Approximately four or five kilometres before Končul, after they had already left Kosovo, policemen from Kosovska Kamenica/Kamenica informed Shaqiri that they had orders from the chief of police in Gnjilane/Gjilan for the villagers to return to Prilepnica/Përlepnica. He also said that they would not be harmed. Shaqiri relayed this information to the others in the convoy, who then turned back and dispersed – some of them returning to Prilepnica/Përlepnica that night, and others staying with relatives and friends in nearby villages. Shaqiri spent the night in Dobrčane/Dobërčan village and returned to Prilepnica/Përlepnica on the evening of 7 April 1999. When he arrived home he found that 70 or 80 percent of the population had already returned.²²⁵⁵ The western part of the village had been raided and looted and some of the villagers had been beaten.²²⁵⁶

907. Dušan Gavranić confirmed that on 2, 3, and 4 April 1999 there were large movements of people leaving their homes in the municipality. During this period the NATO bombing was

²²⁵¹ Abdylhaqim Shaqiri, T. 2788–2791 (5 September 2006), T. 2870 (6 September 2006).

²²⁵² Abdylhaqim Shaqiri, T. 2801–2802 (5 September 2006).

²²⁵³ Abdylhaqim Shaqiri, T. 2788–2789 (5 September 2006). *See also* Momir Stojanović, T. 19758 (7 December 2007); Dušan Gavranić, T. 22676–22678 (18 February 2008); IC188 (Map marked by Dušan Gavranić).

²²⁵⁴ Abdylhaqim Shaqiri, T. 2789–2793, 2801 (5 September 2006); IC29 (marked map of Kosovo (P615) indicating the route taken by the convoy on 6 April).

²²⁵⁵ Abdylhaqim Shaqiri, T. 2793–2797 (5 September 2006), T. 2868–2871 (6 September 2006), T. 2960–2962 (7 September 2006); P2288 (OSCE Interview report), also admitted as 4D9.

²²⁵⁶ Abdylhaqim Shaqiri, T. 2779–2780, 2793–2797 (5 September 2006), T. 2868–2871 (6 September 2006), T. 2960–2962 (7 September 2006); P2288 (OSCE Interview report).

intense. On 6 April the population of Prilepnica/Përlepnica left the village and a delegation, led by an imam, Abdylhaqim Shaqiri, talked to the chief of the police department, Dragan Rizanović. They asked for assistance from the SUP in order to be able to stay, since the army had told them to move out. Gavranić talked to a Colonel Milinović at the “intersection by the well”, but could not get any confirmation that the army had indeed ordered or asked the residents to move out. They were already on the move in the direction of Vranje, and Gavranić sent out a patrol to talk to them to tell them that this was misinformation.²²⁵⁷ Eventually the residents came back, and the SUP gave them a guarantee that they should not fall prey to “various propaganda”, “misinformation”, and “people putting on false uniforms”.²²⁵⁸ During the following week a patrol, which was called a “checkpoint” by the villagers, was sent out by the SUP, and positioned at the intersection near Prilepnica/Përlepnica. Gavranić stated that he remembered these events since they were “unusual”.²²⁵⁹

908. Shaqiri also gave evidence about events on 13 April 1999. At about 12.30 p.m., while he was in the yard of his mother’s house in Prilepnica/Përlepnica, he was approached by two VJ reservists whom he knew, Ljuba Palamarević and Đilas Mladenović. They were later joined by a third soldier.²²⁶⁰ The two were wearing yellow-green camouflage military uniforms, and were not armed, but the third soldier that joined them was carrying three Kalashnikovs, and gave one to each of the other two. Mladenović told Shaqiri that “an order had come from the Supreme Staff in Belgrade” that Prilepnica/Përlepnica was to be evacuated. When Shaqiri asked why, they said that “we have to carry out our orders and we do carry out our orders and we don’t know the reasons for those orders.” Other villagers came to hear the news and questioned the two reservists at length. During the exchange Mladenović stated that the villagers should move out to the main road by 9:00 a.m. the following day.²²⁶¹ He also told them that it had been the “paramilitary army” which had ordered them out on 6 April 1999, but that this order came now from the “regular army” because the villagers had not gone in the direction of Uroševac/Ferizaj.²²⁶²

909. As regards the origin of the order, the Trial Chamber notes that after a lengthy cross-examination Shaqiri finally stated that Palamarević referred to orders coming from Gnjilane/Gjilan,

²²⁵⁷ Dušan Gavranić, T. 22703–22705, 22794 (19 February 2008).

²²⁵⁸ Dušan Gavranić, T. 22704 (19 February 2008).

²²⁵⁹ Dušan Gavranić, T. 22704–22706 (19 February 2008).

²²⁶⁰ Abdylhaqim Shaqiri, T. 2798–2800, 2802–2803 (5 September 2006). *See also* Dušan Gavranić, T. 22794 (19 February 2008).

²²⁶¹ Abdylhaqim Shaqiri, T. 2798–2802 (5 September 2006), T. 2932, 2937–2938 (7 September 2006), 4D4 (witness statement dated 25 April 1999), p. 5.

²²⁶² Abdylhaqim Shaqiri, T. 2798–2804 (5 September 2006).

whereas Mladenović referred to orders from Belgrade.²²⁶³ Shaqiri, however, conceded that he was sure that the officers were speaking in the name of the army, in the name of Belgrade, and that their reasoning was that the order came from the “Supreme Staff” in Belgrade.²²⁶⁴ The Chamber took particular account of this when assessing Shaqiri’s credibility as a whole. Since in earlier statements he made no reference to being told that the order to empty the village came from Belgrade, and since his testimony on the question whether Belgrade was mentioned was confusing, the Trial Chamber is not prepared to accept that there was any reference to Belgrade at the time of the incident. While noting the inconsistencies in Shaqiri’s evidence in this regard, his description of the soldiers as members of the VJ was clear and the Chamber finds it immaterial whether the order originated from Belgrade or from somewhere in Kosovo.

910. Shaqiri stated that at first he refused to leave Prilepnica/Përlepnica, but that he then agreed to organise the evacuation if the convoy was given a police or military escort. He was told that this demand would be conveyed to “the staff” and that he would receive a response later. Later that day he heard that an escort would be provided at the village well at 8:00 a.m. the following morning. At that time three villagers from Prilepnica/Përlepnica went to the police in Gnjilane/Gjilan to try to stop the evacuation from taking place. When they returned they informed Shaqiri that they had been told by the police that “the army had taken the situation into their hands and that the police could no longer do anything about it”.²²⁶⁵ By that point the army had encircled the village, because some people had started to flee, and prevented anyone from leaving until the designated time the next morning.²²⁶⁶

911. At 7:30 a.m. on 14 April 1999 the group of around 3,000 villagers was prepared to leave. On the way to meet their escort they passed through Kosača/Kosace e Epërme. Around 300 to 600 people from that village, who had also been ordered to leave their homes, joined the convoy, as well as a couple of hundred people from other surrounding villages.²²⁶⁷ From the well a policeman whom Shaqiri knew escorted the convoy in the direction of Uroševac/Ferizaj. Upon arriving at Donji Livoč/Livoç i Epërm this policeman was replaced by another group of four police officers in a white Zastava car, who escorted the convoy to the Macedonian border. At Donji Livoč/Livoç i

²²⁶³ Abdylhaqim Shaqiri, T. 2940, 2973-2974 (7 September 2006). *See also* 4D10 (handwritten statement dated 25 April 1999), pp. 10–11, 4D6 (witness statement dated 22 June 2001), p. 4.

²²⁶⁴ Abdylhaqim Shaqiri, T. 2930, 2933, 2938 (7 September 2006).

²²⁶⁵ Abdylhaqim Shaqiri, T. 2804 (5 September 2006).

²²⁶⁶ Abdylhaqim Shaqiri, T. 2803–2805 (5 September 2006).

²²⁶⁷ Abdylhaqim Shaqiri, T. 2805–2806 (5 September 2006), T. 2886–2887 (6 September 2006).

Epërm Shaqiri saw the last inhabitants of that village boarding a bus. That bus and another bus from Žegra/Zhegra joined their convoy for a part of the way to Macedonia.²²⁶⁸

912. The convoy passed through Gnjilane/Gjilan town, Donji Livoč/Livoç i Epërm, Parteš/Paresh, Radivojce/Radivojc, Klokot/Kllokot, Vitina/Viti, and Doganović/Doganaj on its way to Macedonia. Shaqiri observed that most of the Albanian villages they passed were empty.²²⁶⁹ He stated that it took them approximately one day to get to the Macedonian border. They passed a number of checkpoints which were manned by “people” wearing blue police uniforms and olive-grey uniforms.²²⁷⁰ Five or six kilometres from the border the convoy was stopped at a military checkpoint. There a soldier wearing a “solid olive green-grey uniform” beat Shaqiri for no apparent reason.²²⁷¹ One of the police escorts and an officer at the checkpoint intervened to stop the beating, and the convoy was allowed to continue.²²⁷² However, the chief of the border police forced the villagers to leave their vehicles in a field—approximately 518 of them—with the keys and licences inside. None of these vehicles was ever recovered.²²⁷³

913. Having lost their vehicles, the people in the convoy crossed the border on foot, but spent the night in the border zone. The next day buses from Macedonia took them to different camps. Shaqiri testified that he returned to Prilepnica/Përlepnica on 25 June 1999, and found that some of the houses had been burned, and all of them had been looted, and the mosque, together with its library, had been burned.²²⁷⁴ Dušan Gavranić, when presented with this information, testified that he only knew that individual houses were burned and that property was looted; they even arrested some people who were caught in the act.²²⁷⁵

914. Gavranić confirmed that around 13 and 14 April 1999 people were “on the move” again. The residents of Prilepnica/Përlepnica joined a column of several thousands of people, with residents from Muçibaba/Muçibaba, on the road towards Kačanik/Kaçanik and the Macedonian border. According to Gavranić the people left because of fear of the NATO bombing.²²⁷⁶ On this

²²⁶⁸ Abdylhaqim Shaqiri, T. 2805–2807, 2811–2812 (5 September 2006), T. 2886 (6 September 2006).

²²⁶⁹ Abdylhaqim Shaqiri, T. 2812–2816, 2823 (5 September 2006); IC30 (marked map of Kosovo (P615) indicating the route taken by the convoy on 14 April to Macedonia); IC31 (marked map of Kosovo (P24) indicating the route taken by the convoy on 14 April to Macedonia).

²²⁷⁰ Abdylhaqim Shaqiri, T. 2811, 2816–2817 (5 September 2006), T. 2895–2896 (6 September 2006).

²²⁷¹ Abdylhaqim Shaqiri, T. 2812–2816 (5 September 2006), T. 2896 (6 September 2006).

²²⁷² Abdylhaqim Shaqiri, 4D6 (witness statement dated 22 June 2001), p. 6, T. 2820 (5 September 2006), T. 2897–2901 (6 September 2006).

²²⁷³ Abdylhaqim Shaqiri, T. 2821–2822 (5 September 2006), T. 2870 (6 September 2006).

²²⁷⁴ Abdylhaqim Shaqiri, 4D5 (witness statement dated 5 February 2002), p. 2, T. 2821 (5 September 2006), T. 2901–2904 (6 September 2006).

²²⁷⁵ Dušan Gavranić, T. 22795 (19 February 2008).

²²⁷⁶ Dušan Gavranić, T. 22704–22706, 22794 (19 February 2008).

occasion also the residents of Prilepnica/Përlepnica contacted Dragan Rizanović, the chief of the police department. This time nobody could convince them to stay; they were determined to go to Macedonia. However, the imam asked the police to give them a patrol so that nobody would mistreat them. Gavranić also confirmed the circumstances in which a police escort came to head the convoy to Macedonia.²²⁷⁷

915. The Trial Chamber notes, however, that Gavranić was not asked to comment further on Shaqiri's evidence regarding the army's involvement in this incident. When asked why he left his village, Shaqiri stated "There was no other way out for us except to fulfil -- to obey these orders or to fight. Since we were not able to fight, we just obeyed their orders as calmly as possible." He also refuted the suggestion that they were scared of NATO bombing.²²⁷⁸ The Chamber also notes the evidence given by Spasoje Smiljanić, Commander of the Air Force and Air Defence, who testified that the parts of Kosovo most frequently targeted by NATO were the border areas with Albania and Macedonia, and the Đeneral Janković/Hani i Elezit-Kaçanik/Kaçanik-Uroševac/Ferizaj- Priština/Prishtina axis, none of which covers Gnjilane/Gjilan municipality.²²⁷⁹ In light of Shaqiri's evidence, which the Chamber accepts, and the lack of evidence of NATO bombing in the area at the time, discussed further below, the Chamber does not accept Gavranić's assertion that people left Prilepnica/Përlepnica because of NATO bombing. In light of the involvement of the army, the Chamber rejects Gavranić's statement that the army was unaware of the reason for people leaving the village.

916. The Trial Chamber also heard no evidence of specific military actions against, or attacks by, the KLA in this area during these days, which it finds strengthens the evidence from Shaqiri of the army forcibly expelling the population of the village.

4. Žegra/Zhegra, Vladovo/Lladova, Vlaštica/Llashtica and Nosalje/Nosala

917. Witness K81, a Kosovo Albanian resident of Vladovo/Lladova, testified that around 25 March 1999 the VJ and armed men in civilian clothes came to his village. They were stationed in the depot of a battery factory located at the entrance to Žegra/Zhegra, a village nearby.²²⁸⁰ These VJ soldiers wore dark green uniforms, had military insignia, and were driving army vehicles into the village. Their vehicles included eight to ten buses and heavy trucks, all with VJ registration

²²⁷⁷ Dušan Gavranić, T. 22705–22707 (19 February 2008).

²²⁷⁸ Abdylhaqim Shaqiri, T. 2822 (5 September 2006), T. 2930 (7 September 2006).

²²⁷⁹ Spasoje Smiljanić, T. 15750–15751, 15777 (17 September 2007).

²²⁸⁰ K81, P2526 (witness statement dated 30 May 1999), e-court p. 6, T. 7079–7081 (21 November 2006).

plates.²²⁸¹ The local residents were told that the men in civilian clothes were Arkan's Tigers, although it is unclear who gave them this information. According to K81, these men were much older than the VJ soldiers, had long beards, and were armed with automatic weapons. Some of them were wearing partial uniforms, and drove civilian vehicles, some of which had registration plates from Leskovac. K81 saw that the Serb civilians and the VJ worked together and was of the opinion that the civilians were under the command of the VJ. The situation in the village deteriorated upon their arrival on account of their intimidating behaviour.²²⁸²

918. Qamil Shabani, a Kosovo Albanian teacher from Žegra/Zhegra, confirmed K81's evidence and testified that two or three weeks before the NATO air campaign began the "Serb police and army" arrived in Žegra/Zhegra, with tanks, armoured cars, cannons, and other equipment such as mortars and machine-guns. These forces positioned themselves at the entrance and exit of the village, but established their headquarters at the agricultural co-operative, the village battery factory, some Albanian houses, and the facilities of the primary school. They constantly patrolled the streets of Žegra/Zhegra, stopped the villagers to check their identity documents, and cursed and insulted them.²²⁸³

919. The VJ presence in Žegra/Zhegra was corroborated by Franjo Glončak, who stated that, when he joined the army as a volunteer on 25 March 1999, he was sent to the 175th Infantry Brigade in Žegra/Zhegra.²²⁸⁴

920. Shabani further testified that in the evening of 28 March (the Muslim holiday known as the day of Bajram) he and other inhabitants of Žegra/Zhegra heard gunfire from heavy automatic weapons, which appeared to be directed at Vlačica/Llashtica from Pasjane/Pasjan, and which lasted for about an hour.²²⁸⁵ Also on that day the Serb families living in Žegra/Zhegra started to mark their homes with a white cloth on the door to distinguish them from the Albanian houses.²²⁸⁶ At about 6:00 p.m. "paramilitaries", assisted by local Serbs, went to some houses in Žegra/Zhegra looking for the village's prominent people in order to kill them.²²⁸⁷

²²⁸¹ K81, P2526 (witness statement dated 30 May 1999), e-court p. 6, T. 7066 (21 November 2006).

²²⁸² K81, P2526 (witness statement dated 30 May 1999), e-court p. 6, T. 7066, 7075, 7079–7082 (21 November 2006).

²²⁸³ Qamil Shabani, P2263 (witness statement dated 18 June 2001), p. 2, T. 2682 (31 August 2006), T. 2716 (1 September 2006), P2264 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 1514, 1518–1519, P2263 (witness statement dated 18 June 2001), p. 2.

²²⁸⁴ Franjo Glončak, 5D1395 (witness statement dated 26 December 2007), paras. 4-5, T. 21122 (25 January 2008).

²²⁸⁵ Qamil Shabani, P2264 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 1527–1528.

²²⁸⁶ Qamil Shabani, P2263 (witness statement dated 18 June 2001), p. 2, P2264 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 1514, 1592–1593, T. 2700–2703 (1 September 2006).

²²⁸⁷ Qamil Shabani, P2263 (witness statement dated 18 June 2001), p. 3, P2264 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 1528–1530, 1560, P2280 (addendum to witness statement dated 27 August 2006),

921. Shabani testified that on 29 March 1999 other supplementary forces arrived, including “paramilitaries” working with the police and the army. Together they then began “cleansing” the village of Albanians.²²⁸⁸ Shabani saw and heard the “soldiers” shelling Žegra/Zhegra, driving around the village in APCs, and shooting at houses to drive the inhabitants out.²²⁸⁹ He also saw vehicles belonging to the regular VJ in Žegra/Zhegra.²²⁹⁰ Shabani defined the term “paramilitary” to mean someone working with the police but who is not a regular police officer. He recognized them by their irregular uniforms, including the use of handkerchiefs on their heads.²²⁹¹ He also clarified during cross-examination that by “military” he meant the regular army, regular police, the reservist police, and the reservist army forces.²²⁹²

922. Shabani testified that the armed soldiers went to the houses at the entrance of Žegra/Zhegra and started to expel people by ordering them to leave the town. Regular army, paramilitaries, and Serb civilians with their own guns were firing into the air to frighten the Kosovo Albanian population and to drive them out of the village.²²⁹³ They also beat people they encountered on the streets. He heard that some villagers had been killed.²²⁹⁴ People panicked when they heard the gunfire and started fleeing from their houses and heading for the mountains.²²⁹⁵ Around 7:00 or 8:00 p.m. Shabani, together with his family and other people from his neighbourhood, was forced to leave Žegra/Zhegra. He was fired upon, but was not hit.²²⁹⁶

923. Gavranić testified that the largest migration of people from Žegra/Zhegra started during the first few days of the NATO bombing, and that the first “refugees” from Žegra/Zhegra were Serbs, who were a minority in the village.²²⁹⁷

p. 2, T. 2683 (31 August 2006). *See also* K81, P2268 (witness statement dated 30 May 1999), pp. 00799042–00799043 (under seal), T. 7071–7072, 7084–7086 (21 November 2006).

²²⁸⁸ Qamil Shabani, P2263 (witness statement dated 18 June 2001), pp. 2-3, P2264 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 1528-1529, 1556, T. 2682 (31 August 2006); K81, T. 7071–7072 (21 November 2006).

²²⁸⁹ Qamil Shabani, P2263 (witness statement dated 18 June 2001), p. 3, T. 2683–2684, 2688–2689 (31 August 2006).

²²⁹⁰ Qamil Shabani, T. 2688–2689 (31 August 2006); P1325 (set of photographs of various military vehicles).

²²⁹¹ Qamil Shabani, P2280 (addendum to witness statement dated 27 August 2006), pp. 2–3.

²²⁹² Qamil Shabani, 2751–2752 (1 September 2006). *See also* Lukić Final Trial Brief, 7 August 2008 (public version), para. 1192.

²²⁹³ Qamil Shabani P2263 (witness statement dated 18 June 2001), pp. 2–3, T. 2683 (31 August 2006).

²²⁹⁴ Qamil Shabani, P2264 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 1561–1562, 1572–1574, 1581–1582, 1585–1588, P2263 (witness statement dated 18 June 2001), p. 2, T. 2705–2711, 2759–2761 (1 September 2006), P2280 (addendum to witness statement dated 27 August 2006), pp. 3, 6; Dušan Gavranić, T. 22691 (18 February 2008).

²²⁹⁵ Qamil Shabani, P2263 (witness statement dated 18 June 2001), p. 3.

²²⁹⁶ Qamil Shabani, P2263 (witness statement dated 18 June 2001), p. 3, P2264 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 1528–1530, 1557, T. 2684, 2714 (31 August 2006).

²²⁹⁷ Dušan Gavranić, T. 22681 (18 February 2008), T. 22795-22796 (19 February 2008).

924. After being forced out of Žegra/Zhegra, Qamil Shabani travelled with his family and approximately 1,300 other villagers to a hill called Kušljevica/Kushlevica, located in the direction of Donja Stubla/Stublla e Poshtme in Vitina/Viti municipality, and spent the night there in the rain.²²⁹⁸ He and the other villagers decided to return to Žegra/Zhegra the next morning because they could no longer hear gunfire coming from there.²²⁹⁹

925. After returning to their homes on 30 March, the villagers had to leave Žegra/Zhegra again that day because “paramilitary forces” and “Serbian military forces” continued shooting at the houses as they drove through the village in APCs. These forces continued abusing the inhabitants of the village, killing, beating, and injuring them. Additionally, they entered the houses in Žegra/Zhegra, frightening the inhabitants and expelling them from their homes.²³⁰⁰

926. Consequently on 30 March the same group of around 1,300 villagers again left Žegra/Zhegra on foot, and went in the direction of Donja Stubla/Stublla e Poshtme,²³⁰¹ where they stayed for five weeks. According to Shabani there were no “Serbian forces or police” in Donja Stubla/Stublla e Poshtme, but they were positioned around the village, in the hills, and were monitoring the situation and keeping the population under observation.²³⁰² Furthermore the “Serbian forces” attacked nearby villages, such as Nosalje/Nosala and Vladovo/Lladova, and that resulted in almost 20,000 people moving into Donja Stubla/Stublla e Poshtme during the month of April.²³⁰³ During the five weeks that Shabani’s group stayed in Donja Stubla/Stublla e Poshtme their living conditions were very difficult, because there was not enough food and shelter, and some of them had to sleep in nylon tents pitched on the mountain slopes in the vicinity of the village.²³⁰⁴ They lived in constant fear of being attacked and killed by the “Serb forces.”²³⁰⁵ As a result various

²²⁹⁸ Qamil Shabani, P2263 (witness statement dated 18 June 2001), p. 3, P2264 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 1530–1531, 2684–2685 (31 August 2006), 2714 (1 September 2006).

²²⁹⁹ Qamil Shabani, T. 2715, 2716 (1 September 2006).

²³⁰⁰ Qamil Shabani, P2263 (witness statement dated 18 June 2001), p. 3, P2264 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 1531, T. 2717 (1 September 2006).

²³⁰¹ Qamil Shabani, T. 2686–2687 (31 August 2006); IC27 (marked map of Gnjilane/Gjilan (P36) indicating the route taken by Shabani to Donja Stubla/Stublla e Poshtme).

²³⁰² Qamil Shabani, P2263 (witness statement dated 18 June 2001), p. 4, P2264 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 1596.

²³⁰³ Qamil Shabani, P2263 (witness statement dated 18 June 2001), p. 4, P2264 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 1533–1534.

²³⁰⁴ Qamil Shabani, P2263 (witness statement dated 18 June 2001), p. 5, P2280 (addendum to witness statement dated 27 August 2006), p. 4, P2264 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 1532, 1533, 1535; P2280 (addendum to witness statement dated 27 August 2006), p. 4, T. 2719–2722 (1 September 2006).

²³⁰⁵ Qamil Shabani, P2263 (witness statement dated 18 June 2001), p. 5, P2280 (addendum to witness statement dated 27 August 2006), p. 4, T. 2719–2722 (1 September 2006).

groups of people started to organise themselves and left in the direction of the Macedonian border.²³⁰⁶

927. Shabani testified that he left Donja Stubla/Stublla e Poshtme at the beginning of May 1999, along with a group of approximately 600 people, and went in the direction of Macedonia. The convoy decided to leave at night in order to avoid discovery by the “Serbian forces”. They travelled through the hills and on secondary roads, avoiding the main roads where the forces were moving.²³⁰⁷ In the afternoon of 3 May they reached the neighbourhood of “Rustaj” in the municipality—where there is a border crossing—and encountered a group of “military” and “paramilitary” soldiers, who searched them and forced the men and women in the convoy to separate. The men were surrounded, and the military and paramilitary soldiers pointed their guns at them for about two or three hours. During this time they threatened to kill them, but eventually let them join the group of women again.²³⁰⁸

928. The convoy was ordered to continue walking, under escort by about 30 or 40 of these “military” and “paramilitary” soldiers, to a hill near the Macedonian border, where they were made to sit in a field. One of the soldiers, whom Shabani described as the commander, picked him out of the group and threatened him, accusing him of intending to join the KLA in Albania. Eventually the convoy was ordered to go in the direction of Preševo where, according to the soldiers, another group of “military” and “paramilitary” would be waiting for them. However, the members of the convoy decided to take a different route through “Mal i Thate”, and finally across the border to Macedonia.²³⁰⁹

929. When Shabani returned to Žegra/Zhegra on 26 June 1999, he saw that some of the houses belonging to the Kosovo Albanian inhabitants were totally burnt down, others were partially burnt; and only a few remained intact. All of the Serb houses were intact.²³¹⁰ K81 confirmed that all the

²³⁰⁶ Qamil Shabani, P2263 (witness statement dated 18 June 2001), p. 4, P2264 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 1534, 1565; T. 2720 (1 September 2006).

²³⁰⁷ Qamil Shabani, P2263 (witness statement dated 18 June 2001), p. 5, P2264 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 1534–1535, T. 2723 (1 September 2006).

²³⁰⁸ Qamil Shabani, P2263 (witness statement dated 18 June 2001), p. 5, P2264 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 1536–1537, 1599, T. 2723–2724 (1 September 2006); P36 (map of Gnjilane/Gjilan); IC27 (marked map of Gnjilane/Gjilan (P36) indicating the route taken by Qamil Shabani to Macedonia).

²³⁰⁹ Qamil Shabani, P2263 (witness statement dated 18 June 2001), p. 6, P2264 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 1536–1538, T. 2685–2687 (31 August 2006), T. 2762 (1 September 2006); IC27 (marked map of Gnjilane/Gjilan (P36) indicating the route taken by Shabani to Macedonia).

²³¹⁰ Qamil Shabani, P2264 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 1540, 1569, P2280 (addendum to witness statement dated 27 August 2006), p. 4, T. 2731 (1 September 2006).

Kosovo Albanian houses in Žegra/Zhegra were burned, except for the ones in which the soldiers were staying, but all of the Serb houses were untouched.²³¹¹

930. Vladovo/Lladova consisted of approximately 100 houses in 1999 and was divided into three hamlets.²³¹² K81 testified that there were no KLA in this village and that he was never asked to join the KLA.²³¹³ On 29 or 30 March 1999 he decided to leave the village along with his family, due to the strong VJ presence nearby. They went towards an area of the “Black Mountain” located approximately three or four kilometres away from Vladovo/Lladova, and around Vlaštica/Llashtica and Žegra/Zhegra.²³¹⁴ K81 spent two weeks hiding in the mountains with other men, women, children, elderly, and young people.²³¹⁵

931. During the two weeks that K81 spent in the mountains he was able to watch, with a pair of binoculars, soldiers and “paramilitaries” in Vladovo/Lladova looting, stealing, and setting fire to the houses in the village.²³¹⁶ With the binoculars he could clearly see the uniforms of the soldiers and what happened in the village.²³¹⁷ He also heard that three men had been executed by the soldiers.²³¹⁸ The Trial Chamber does not accept the Lazarević Defence submission that, since he could not identify the insignia of the uniforms of the perpetrators from that distance, he is not reliable.²³¹⁹

932. VJ activity in this area at this time was confirmed by Glončak, who testified that, when he was deployed in the 175th Brigade, he took part in repelling an infantry attack by the KLA from the village of Vladovo/Lladova. There was a short period of shooting which went on for about half an hour and there were no casualties on their side. It was not an “action”, rather a provocation by the KLA to which his brigade returned fire.²³²⁰

933. K81 testified that on or around 2 April 1999 at about 3:30 p.m. members of his family, including women, left the mountains and decided to go back to Vladovo/Lladova. He saw that, when they were 500 or 600 metres away from the village, VJ soldiers wearing dark green uniforms

²³¹¹ K81, P2526 (witness statement dated 30 May 1999), e-court p. 8.

²³¹² K81, P2268 (witness statement dated 30 May 1999), e-court p. 6 (under seal).

²³¹³ K81, T. 7077–7078 (21 November 2006).

²³¹⁴ K81, T. 7070, 7075, 7081–7082 (21 November 2006), P2268 (witness statement dated 30 May 1999), e-court p. 6 (under seal); IC111 (marked map of Gnjilane/Gjilan (P36) indicating the location of the mountain where K81 was hiding); IC112 (Map of the area of the Black Mountain marked by K81).

²³¹⁵ K81, T. 7079 (21 November 2006).

²³¹⁶ K81, P2268 (witness statement dated 30 May 1999), e-court p. 7 (under seal), T. 7082 (21 November 2006).

²³¹⁷ K81, T. 7074–7075 (21 November 2006).

²³¹⁸ K81, P2268 (witness statement dated 30 May 1999), e-court p. 7 (under seal), T. 7082 (21 November 2006).

²³¹⁹ Lazarević Final Trial Brief, 29 July 2008 (public version), para. 240.

²³²⁰ Franjo Glončak, T. 21133–21134 (25 January 2008).

opened fire on them, using automatic weapons. Two of them were killed, a man aged 28 and a woman aged 22, and the rest were wounded.²³²¹

934. He also gave evidence that, after staying two weeks in the mountains, he ran out of food and decided to go to Preševo to see if he could take his family there. He spent a night in Preševo and the next morning went back to Vlačica/Llashtica by tractor. On the way to Vlačica/Llashtica he saw “regular” VJ soldiers, wearing dark green uniforms, surrounding a hill near the village. He also saw tractors carrying people from the area proceeding in the direction of Preševo.²³²² K81 hid from the soldiers. He saw three or four of them open fire on three unarmed men who were carrying their father in a blanket. The bullets hit the old man, and the men carrying him had to drop him and run for cover. They joined K81 in hiding and that night they all went back to collect the old man’s body and buried him in a village called Beqir.²³²³

935. K81 then left Beqir and went to Žub/Zhub to try to find some food. While there, he was told by some local villagers that the army was nearby and that they had to leave. He saw around 70 villagers who were fleeing because of attacks by the VJ, but he remained in Žub/Zhub overnight. The next day he heard gunshots and decided to leave the village. As he and others were departing, the VJ noticed them and opened fire upon them.²³²⁴ K81 and his companions made it to the village of Sefer, where they stopped to get some food and rest. They then travelled on foot for 12 hours, in a group of people who had fled their homes in this area, in the direction of Preševo. K81 testified that he did not see any more members of the army until he arrived at Preševo.²³²⁵

936. When he arrived in Preševo, K81 learned that his family was there and spent the night with them. The next morning at around 11:00 a.m. they joined a convoy of 1,000 people travelling in the direction of Macedonia. The convoy was escorted by police officers wearing dark blue uniforms, and the VJ. Some of these VJ soldiers were driving tractors that previously had been seized from the Kosovo Albanians.²³²⁶ At the village of Miratovac, close to the Macedonian border, the convoy stopped and their police escorts searched them and took all of their identification papers and passports. When they reached the border, the Macedonian authorities

²³²¹ K81, P2268 (witness statement dated 30 May 1999), e-court p. 7 (under seal).

²³²² K81, P2268 (witness statement dated 30 May 1999), e-court p. 8 (under seal).

²³²³ K81, P2526 (witness statement dated 30 May 1999), e-court p. 8.

²³²⁴ K81, P2526 (witness statement dated 30 May 1999), e-court pp. 8–9, T. 7072 (21 November 2006).

²³²⁵ K81, P2268 (witness statement dated 30 May 1999), e-court p. 9 (under seal), T. 7076 (21 November 2006).

²³²⁶ K81, P2268 (witness statement dated 30 May 1999), e-court p. 9 (under seal).

initially did not let them pass. Eventually the border was opened and the convoy crossed into Macedonia through the village of Tabanovce.²³²⁷

937. K81 also testified that, while hiding on the Black Mountain on or about 6 April 1999, he saw “paramilitaries” and VJ soldiers looting and burning the village of Vlaštica/Llashtica.²³²⁸ They first burned the mosque, located in the centre of the village, and then looted and burned the houses. The soldiers were wearing dark green uniforms and were firing their weapons constantly, despite the fact that there was no resistance from the villagers.²³²⁹ K81 recognised many of the civilians that “were working” with the soldiers in Vlaštica/Llashtica, most of whom were from Žegra/Zhegra. Even though all of these people were civilians, they were armed, and K81 saw two of them wearing dark blue police uniforms.²³³⁰ The Trial Chamber considers that the consistent eye-witness evidence from K81 and Shabani shows that armed civilians were working together with the VJ in and around Žegra/Zhegra.

938. Božidar Delić denied that his forces destroyed the mosque in Vlaštica/Llashtica.²³³¹ Dušan Gavranić, on the other hand, confirmed that a mosque in the Vlaštica/Llashtica area had burned down, but did not know how that happened. Upon receiving a report about the incident, he arranged to go to the site because an Albanian had claimed that his parents were under the ruins. Some remains were unearthed. An on-site investigation was conducted and a criminal complaint against unknown perpetrators was filed by the SUP.²³³²

939. In addition to the testimony of these witnesses, the Chamber heard evidence from Andrés Riedlmayer, who presented a photograph of the interior of the mosque in Vlaštica/Llashtica, taken in August 1999, which shows that the mosque was heavily damaged.²³³³ Riedlmayer opined that this damage was caused by intense fire, which destroyed all the combustible elements in the building.²³³⁴ He could not, however, give any evidence as to when the fire took place, or what caused it. The Trial Chamber notes that Riedlmayer did not personally visit the mosque in Vlaštica/Llashtica, but received the photograph from the offices of the Islamic community of Kosovo.

²³²⁷ K81, P2526 (witness statement dated 30 May 1999), e-court p. 9.

²³²⁸ K81, P2268 (witness statement dated 30 May 1999), e-court pp. 7–8 (under seal), T. 7070–7071 (21 November 2006); IC111 (Map marked by K81).

²³²⁹ K81, P2268 (witness statement dated 30 May 1999), e-court pp. 7–8 (under seal), T. 7070–7071, 7074, 7078 (21 November 2006); P1785 (photograph from the interior of the mosque in Vlaštica/Llashtica).

²³³⁰ K81, P2268 (witness statement dated 30 May 1999), e-court p. 8 (under seal), T. 7081 (21 November 2006).

²³³¹ Božidar Delić, T. 19391 (29 November 2007).

²³³² Dušan Gavranić, T. 22795–22797 (19 February 2008).

²³³³ P1798 (photograph of the mosque in Vlaštica/Llashtica).

940. The Joint Defence expert witness on cultural heritage, Branimir Jokić, was shown a photograph of the mosque in Vlaštica/Llashtica and testified that he could not comment on it because, according to him, one cannot identify a building if only part of the interior has been photographed. He further submitted that a photograph has to be documented and accompanied by the relevant information.²³³⁵ The Trial Chamber accepts Riedlmayer's account of how he obtained the photograph, which appears to the Chamber to be an authentic photograph of the mosque.

941. Giving an alternative explanation of why people were fleeing the municipality, Gavranić stated that NATO bombed the area of Gnjilane/Gjilan for 39 days without interruption.²³³⁶ Police and VJ reports record that NATO bombed mainly military and infrastructure installations in Gnjilane/Gjilan in March, April and May 1999.²³³⁷ Gavranić testified that, when the NATO bombing started, women, children and old men from his area of responsibility left towards other regions of Serbia; many went to Vranje and later on, when other "mass departures" took place, they also went in other directions, for example towards Macedonia. According to him, people moved because of fear from the NATO bombing, and the greatest numbers of people moving out were from the territory of the town of Gnjilane/Gjilan, the vicinity of Mučibaba/Mučibaba, and the area above Žegra/Zhegra, towards the Macedonian border.²³³⁸

942. However, as noted above in relation to Prilepnica/Përlepnica, the Chamber does not accept that fear of the NATO bombing was the reason why so many people left their homes in Gnjilane/Gjilan municipality at this time, as there is no evidence of NATO targeting areas inhabited by civilians, neither K81 nor Shabani cited fear of NATO as among the reasons for their and their families flight, and the municipality was not the site of intense NATO bombardment, as explained by Smiljanić.

²³³⁴ Andreas Riedlmayer, P1785 (photograph from the interior of the mosque in Vlaštica/Llashtica); T. 5487–5488 (30 October 2006), T. 5569–5570 (31 October 2006).

²³³⁵ Branimir Jokić, T. 25878–25879 (23 April 2008); P1785 (photograph from the interior of the mosque in Vlaštica/Llashtica).

²³³⁶ Dušan Gavranić, T. 22715 (19 February 2008), 4D123 (Combat report from the 3rd Army Command, 2 May 1999).

²³³⁷ See, e.g., P1099 (Report from the MUP Staff, 26 March 1999), stating that the VJ barracks and the agricultural and industrial complex were bombed; P1100 (Report by the MUP Staff to the Serbian MUP, 27 March 1999), stating that the VJ barracks and the Kosmetprevoz DP (socially-owned enterprise building) in Gnjilane/Gjilan were bombed; 4D363 (Report from the 3rd Army Command, 25 March 1999), stating that the *Knez Lazar* barracks were hit; P2617 (Report from the PRK, 4 April 1999), stating that NATO fired at the Gnjilane barracks and hit the technical radio station; P1997 (Combat report from 3rd Army Command, 13 April 1999), stating that on 12 and 13 April 1999, NATO air-forces launched an attack on the "isolated" Saz feature in the vicinity of Gnjilane/Gjilan, but that there were no consequences; 4D123 (Combat report from the 3rd Army Command, 2 May 1999), stating that on 2 May 1999, NATO attacked the "general area" of Gnjilane/Gjilan; P1996 (Minutes of the MUP Staff meeting, 7 May 1999), p. 9, reporting that there had been 31 NATO "bombing raids" in Gnjilane/Gjilan; 3D853 (Combat report of the Supreme Command Staff, 18 May 1999), stating that the focus of NATO attacks were elements of the combat formation of units, energy, commercial and other infrastructure installations in Gnjilane/Gjilan.

5. Findings

943. The Trial Chamber finds, based on eye-witness testimony from Abdylhaqim Shaqiri, confirmed in part by Dušan Gavranić, that VJ reservists ordered the residents of Prilepnica/Përlepnica to leave the village on 6 April 1999. A convoy of approximately 3,000 people left but, after having crossed the provincial boundary, members of the police ordered them to return to Prilepnica/Përlepnica. On the testimony of the same witness the Chamber finds that on 13 April members of the VJ ordered the residents of Prilepnica/Përlepnica to leave the village and that, once again, a convoy of around 3,000 people was formed and was escorted by police to the Macedonian border. The Chamber notes that there is evidence from Shaqiri, partly corroborated by Gavranić, that houses in the village were raided, looted and burned, but finds that there are no eye-witnesses to these events and can, therefore, not reach a finding as to who caused that burning.

944. The Trial Chamber is convinced by the evidence from Qamil Shabani and K81, confirmed by Franjo Glončak, that the VJ and MUP, reinforced by armed civilians as well as other irregular forces, were present in Žegra/Zhegra at the end of March 1999. The Chamber finds that the VJ and MUP, as well as other irregular forces, drove Kosovo Albanians from the village by the use of threats, beatings and killings, creating a climate of fear. On their way to Macedonia they were subjected to more abuse. The Chamber further believes the testimony of K81 about similar events in Vladovo/Lladova, where houses were burned and villagers killed by VJ soldiers. Kosovo Albanians fled to the mountains and eventually left for Macedonia, escorted by MUP and VJ personnel.

945. Evidence from Qamil Shabani and K81 also shows that houses in Žegra/Zhegra were looted and burned down by the VJ, reinforced by armed civilians and other irregular forces. Although the Trial Chamber heard no eye-witnesses to these events, both witnesses testified that only Kosovo Albanian houses had been burned, while the Serb houses remained intact. However, in the absence of eye-witnesses to these events the Chamber cannot reach make a finding as to who caused the burning.

946. On the basis of the testimony given by K81, which the Chamber finds it can rely on in this regard, and András Riedlmayer, which was partly corroborated by Dušan Gavranić, the Chamber finds it proved that the mosque in Vlaštica/Llashtica was burned down by VJ soldiers and armed locals, some of whom were wearing dark blue police uniforms.

²³³⁸ Dušan Gavranić, T. 22680 (18 February 2008), T. 22700–22702, 22739–22740 (19 February 2008). *See also* 5D1100 (Order of the 52nd Mixed Artillery Brigade, 7 April 1999); 5D1101 (Order of the 52nd Mixed Artillery Brigade 22 April 1999); P1099 (Report from the MUP Staff in Priština, 28 March 1999).

947. The Trial Chamber also finds that several thousands of displaced people from the villages of Žegra/Zhegra, Nosalje/Nosala and Vladovo/Lladova sought shelter in the village of Donja Stubla/Stublla e Poshtme, in Vitina municipality. However, the Chamber heard no additional evidence in relation to events in Nosalje/Nosala and therefore finds that it has not been proved beyond reasonable doubt that the people from that village were forcibly displaced as a result of actions by the forces of the FRY and Serbia.

948. On the basis of the evidence of Shaqiri and Shabani, the Trial Chamber also finds that Kosovo Albanians from the municipality were mistreated at VJ checkpoints before the border with Macedonia, that they were forced to leave their vehicles before the border and that soldiers pointed guns and threatened to kill them. At the Macedonian border Serbian police searched them and took their identification papers and passports.

949. Although the Chamber heard some evidence of people being killed, there are no charges of murder relating to events in this municipality.

L. UROŠEVAC/FERIZAJ

1. Charges in Indictment

950. The Indictment charges the Accused with responsibility for two different categories of crimes against humanity allegedly committed in the municipality of Uroševac/Ferizaj between 24 March and 14 April 1999: deportation and forcible transfer. The specific factual averments are set out in Paragraph of 72(j) of the Indictment, which states that:

During the period between 24 March and 14 April 1999, forces of the FRY and Serbia shelled and attacked villages in the Uroševac/Ferizaj municipality, including Biba/Bibe, Muhadžer Prelez/Prelez i Muhaxherëve, Raka/Rakaj and Staro Selo, killing a number of residents. After the shelling, forces of the FRY and Serbia entered some of the villages, including Papaz and Sojevo/Sojevë, and ordered the residents to leave. Other Kosovo Albanians from Varoš Selo/Varosh and Mirosavlje/Mirosalë fled their villages as the forces of the FRY and Serbia entered. After the residents left their homes, the soldiers and policemen burned the houses. The displaced persons went to the town of Uroševac/Ferizaj, where most boarded trains which carried them to the Macedonia border crossing at Đeneral Janković/Hani i Elezit. Forces of the FRY and Serbia directed the train passengers to walk on the railroad tracks to the border. Others travelled in convoys from Uroševac/Ferizaj to the same border crossing. At the border, forces of the FRY and Serbia confiscated their identity documents.

951. The allegations of killings contained in this paragraph are not separately charged as murder.

2. Background

952. The municipality of Uroševac/Ferizaj is located in the southern part of Kosovo, with Suva Reka/Suhareka to the west and Kačanik/Kaçanik to the south. Biba, Staro Selo and Sojevo/Sojeva are located to the east of the town of Uroševac/Ferizaj, which is in the centre of the municipality. Biba, which is approximately three kilometres from Uroševac/Ferizaj town, had about 1,000 inhabitants prior to the NATO bombing, residing in 100 to 120 houses, all of whom were ethnic Albanians.²³³⁹ Sojevo/Sojeva village is located two kilometres further east of Biba.²³⁴⁰ The Trial Chamber heard no evidence about the size and ethnic composition of Sojevo/Sojeva. Prior to 24 March 1999 Staro Selo, just to the south of Biba, was ethnically mixed, comprising 103 Albanian families totalling 800 to 1,000 individuals, 13 Serb families, and a few Roma families.²³⁴¹

953. Muhadžer Prelez/Prelezi i Muhaxherëve is in the northern part of the municipality, and Papaz and Mirosavlje/Mirosala are located to the north-east.²³⁴² The population of Mirosavlje/Mirosala was about 3,000 people living in 160 houses.²³⁴³ With the exception of five Serbs, the entire population of the village was ethnic Albanian.²³⁴⁴

954. Varoš Selo/Varosh is located on the road and railway line leading to Kačanik/Kaçanik, south of Uroševac/Ferizaj town, and Raka/Rakaj is at the border with Kačanik/Kaçanik municipality.²³⁴⁵

955. The Trial Chamber heard evidence in relation to the specific incidents described in paragraph 72 (j) of the Indictment from Bedri Hyseni, Florim Krasniqi, and Bajram Bucaliu. Several other witnesses also testified in relation to the general situation in Uroševac/Ferizaj municipality at that time. The Chamber finds Hyseni, Krasniqi, and Bucaliu to be credible and reliable witnesses. The Chamber notes that there were a number of challenges to Hyseni's testimony by the Defence based on inconsistencies in his statements. However, in each case he was able to give satisfactory explanations,²³⁴⁶ and Krasniqi, an economist whom the Chamber also finds generally credible and reliable, corroborated Hyseni on certain material aspects of his evidence.

²³³⁹ Bedri Hyseni, P2270 (witness statement dated 8 May 1999), p. 2, P2270 (witness statement dated 1 September 2001), p. 2. *See also* Krsman Jelić, T. 18950 (23 November 2007).

²³⁴⁰ Bedri Hyseni, P2270 (witness statement dated 8 May 1999), p. 2, P2270 (witness statement dated 1 September 2001), p. 5. *See also* P615 (Kosovo Atlas 2), p. 12.

²³⁴¹ Bajram Bucaliu, T. 2981–2982 (7 September 2006), P2298 (witness statement dated 25 April 1999), p. 2.

²³⁴² P615 (Kosovo Atlas 2), p. 12.

²³⁴³ Florim Krasniqi, P2269 (witness statement dated 23 April 1999), p. 2.

²³⁴⁴ Florim Krasniqi, P2269 (witness statement dated 23 April 1999), p. 2. The Trial Chamber heard no evidence about the ethnic composition of Muhadžer Prelez/Prelez i Muhaxherëve and Papaz.

²³⁴⁵ P615 (Kosovo Atlas 2), p. 12.

²³⁴⁶ *See e.g.* Bedri Hyseni, T. 3107, 3110–3111, 3121, 3130, 3135–3136 (11 September 2006).

956. The Defence led, among others, Krsman Jelić, the then commander of the VJ's 243rd Mechanised Brigade, to testify about events in and around Uroševac/Ferizaj, and several other witnesses who gave evidence in relation to the general situation in the municipality at the end of March and beginning of April 1999. The Chamber notes that Jelić frequently changed his own evidence when confronted with other, contradictory evidence. He denied allegations with general statements, which were subsequently shown to be wrong.²³⁴⁷ His general explanations often were not credible, and have led the Chamber to doubt the reliability of his testimony where it clashes with that of other witnesses.²³⁴⁸

957. Bedri Hyseni, a Kosovo Albanian resident of Biba, served as an activist with the Council for the Defence of Human Rights and Freedom (CDHRF) from 1991 until 1999, and worked as a professor of law at the time of his testimony.²³⁴⁹ As a member of CDHRF, it was Hyseni's duty to monitor the political situation and violations of human rights within the municipality.²³⁵⁰ He was also linked with the LDK political party, led by Ibrahim Rugova.²³⁵¹ Hyseni maintained that in approximately March 1999 there was a build up of forces in the municipality. These forces were comprised of police reservists who worked in co-operation with the regular VJ and MUP forces. He learned through the media that the VJ and MUP had distributed arms to the local Serb civilian residents of the municipality, and during the NATO bombing he saw local Kosovo Serbs wearing uniforms and carrying weapons.²³⁵²

958. Bislim Zyrapi testified that the KLA's operational zone six, the Nerodimlje/Nerodime zone, encompassed the area of Uroševac/Ferizaj municipality.²³⁵³ Shukri Buja was the commander of the zone.²³⁵⁴ Zyrapi also testified that in January 1999 small scale combat activities took place between the KLA and the FRY/Serbian forces in the municipality. During these skirmishes KLA members attacked the road blocks set up by the MUP and VJ, which obstructed the movement of the KLA.²³⁵⁵ However, a map marked by Zyrapi showing the areas held by the KLA and the

²³⁴⁷ See e.g. Krsman Jelić, T. 18901–18905, 18916–18918, 18946–18947 (23 November 2007), T. 18977–18980, 19006, 19011, 19057–19062 (26 November 2007).

²³⁴⁸ See e.g. Krsman Jelić, T. 18938, 18941, 18943–18945, 18948 (23 November 2007), T. 19052 (26 November 2007).

²³⁴⁹ Bedri Hyseni, T. 3092, 3127, 3131–3132 (11 September 2006), P2270 (witness statement dated 1 September 2001), p. 3.

²³⁵⁰ Bedri Hyseni, P2270 (witness statement dated 1 September 2001), p. 3.

²³⁵¹ Bedri Hyseni, P2270 (witness statement dated 1 September 2001), p. 3.

²³⁵² Bedri Hyseni, T. 3092–3093 (11 September 2006); P2270 (witness statement dated 1 September 2001), p. 4.

²³⁵³ Bislim Zyrapi, T. 5932, 5934, 5967 (6 November 2006), T. 6259 (10 November 2006); P2469 (map showing different KLA operational zones). See also P2453 (Minutes of KLA Operational Staff of Plain of Dukagjin Working Meeting), p. 2.

²³⁵⁴ Bislim Zyrapi, T. 6209 (9 November 2006).

²³⁵⁵ Bislim Zyrapi, T. 5987–5989 (7 November 2006).

direction of attack by the “Serb forces” at the end of March 1999 does not include Uroševac/Ferizaj among the areas attacked at that time.²³⁵⁶

959. Krsman Jelić testified that Uroševac/Ferizaj, Biba, Muhadžer Prelez/Prelezi i Muhaxherëve, Raka/Rakaj, Staro Selo, Papaz, Varoš Selo/Varosh, and Mirosavlje/Mirosala were all in the area of responsibility of his brigade.²³⁵⁷ He also testified that his forces were reinforced with volunteers during March and April 1999.²³⁵⁸ According to Jelić there was an escalation of “terrorism” during February and March 1999, especially in the areas of Kačanik/Kaçanik and Uroševac/Ferizaj.²³⁵⁹ His forces were under constant attack until they withdrew from Kosovo.²³⁶⁰ Milan Kotur also testified that in the second half of February 1999 Uroševac/Ferizaj was attacked by the KLA, resulting in the deaths of 14 or 15 local residents and a large number of wounded.²³⁶¹

3. Biba and Sojevo/Sojeva villages

960. Bedri Hyseni testified that, although there was a general KLA presence in the area, especially in Jezerce/Jezerc and Nerodimlje/Nerodime villages, there were no active KLA members in Biba and Sojevo/Sojeva until the NATO bombing started.²³⁶² When the NATO bombing started at about 8:00 p.m. on 24 March 1999, the vast majority of the residents of Biba moved to houses in the centre of the village, away from the main road.²³⁶³ At 11:00 p.m. Hyseni observed two APCs, one of which went to Sojevo/Sojeva, where it continuously shelled the village.²³⁶⁴ The two APCs later opened fire on houses in Biba. Hyseni could see that the APCs belonged to either the MUP or the VJ, but could not tell which. Hyseni’s own home was hit but his father, who was the sole occupant at the time, was unhurt.²³⁶⁵

²³⁵⁶ P2447 (Map showing KLA-held areas).

²³⁵⁷ Krsman Jelić, T. 18847–18848 (22 November 2007), T. 18966 (23 November 2007), T. 19125 (27 November 2007). *See also* 5D1337 (Map showing area of responsibility of the 243rd Brigade); IC141 (Map marked by Krsman Jelić).

²³⁵⁸ Krsman Jelić, T. 18878–18879 (23 November 2007); P2021 (War Diary of the 243rd Mechanised Brigade), p. 7.

²³⁵⁹ Krsman Jelić, T. 18845 (22 November 2007). Jelić testified that KLA activity slowly started moving from rural areas to urban areas and in Uroševac/Ferizaj there were three or four explosions in the centre of town.

²³⁶⁰ Krsman Jelić, T. 18885 (23 November 2007); *see e.g.* P2021 (War Diary of the 243rd Mechanised Brigade), p. 12.

²³⁶¹ Milan Kotur, T. 20647 (21 January 2008). *See also* 6D1, T. 25671–25672 (21 April 2008) (closed session); Branislav Debeljković, 6D1533 (witness statement dated 7 March 2008), paras. 57 and 66; 6D412 (Forensic documentation, 13 February 1999); 6D614 (MUP Overview of recorded criminal offences, 1 July 1998 to 20 June 1999), p. 667, para. 448. *But see* Bedri Hyseni, T. 3131–3132 (11 September 2006).

²³⁶² Bedri Hyseni, T. 3133–3134 (11 September 2006), P2270 (witness statement dated 1 September 2001), p. 4; P615, (Kosovo Atlas 2), p. 11. *See also* P2021 (War Diary of the 243rd Mechanised Brigade), pp. 21–23, 25–29.

²³⁶³ Bedri Hyseni, T. 3096 (11 September 2006); P2270 (witness statement dated 1 September 2001), p. 2.

²³⁶⁴ Bedri Hyseni, T. 3096 (11 September 2006). Hyseni stated “In Sojevo we didn't see it, but it started to shell continuously at all the houses. It shelled also the new neighbourhood in Sojevo.” *See also* Bedri Hyseni, P2270 (witness statement dated 8 May 1999), p. 2.

²³⁶⁵ Bedri Hyseni, T. 3096 (11 September 2006), P2270 (witness statement dated 1 September 2001), p. 5.

961. Partially confirming this evidence, Jelić stated that “almost certainly” APCs from the VJ or MUP passed through Biba on 24 March, because on this day all the units left their barracks and went to take up positions. However, usually three APCs moved together, never two, and Jelić had no information about APCs opening fire. He noted that, had they done so, they would have revealed their whereabouts and would have been exposed to the air-strikes.²³⁶⁶

962. Hyseni testified that he was particularly afraid of being targeted by “the Serbs,” because he was a member of the CDHRF in Uroševac/Ferizaj. In light of this, and because Biba was getting overcrowded with displaced people, he left his home on 27 March 1999 and moved with his family to his uncle’s house in Sojevo/Sojeva, which he regarded as being safer.²³⁶⁷

963. On 2 April 1999 Hyseni saw three tanks and two anti-aircraft artillery cannons positioned near his uncle’s house in Sojevo/Sojeva.²³⁶⁸ On 4 April he also saw a VJ unit deployed close to the main road outside the village, effectively blocking the road from Sojevo/Sojeva to Uroševac/Ferizaj town.²³⁶⁹ Jelić also confirmed the presence of his units in the municipality and testified that an anti-armour detachment, as well as the two strongest units from the brigade, were located on the road leading from the village of Grlica/Gërlica towards Vitina/Viti municipality in order to prevent NATO forces from entering Kosovo. He stated that the “tactical facilities” were on the heights and that from there “one could fire on any possible aggressor.”²³⁷⁰

964. On 6 April Hyseni saw the VJ unit stationed near his uncle’s house move to the Sojevo/Sojeva school, joining another VJ unit already deployed there.²³⁷¹ Jelić however testified, without expressly denying the presence of his units, that there was “no need” for the army to be inside the village, because villages are mainly located in valleys and thus unsuitable for defence.²³⁷²

965. Hyseni further testified that at 8:00 a.m. on 6 April a group of 18 “paramilitaries” and two “policemen” entered Sojevo/Sojeva from the direction of Gnjilane/Gjilan.²³⁷³ The “paramilitaries”

²³⁶⁶ Krsman Jelić, T. 18946 (23 November 2007).

²³⁶⁷ Bedri Hyseni, T. 3096, 3108–3110 (11 September 2006), P2270 (witness statement dated 8 May 1999), p. 2, (witness statement dated 1 September 2001), p. 5.

²³⁶⁸ Bedri Hyseni, T. 3096, 3096–3097 (11 September 2006),

²³⁶⁹ Bedri Hyseni, T. 3097 (11 September 2006), P2270 (witness statement dated 8 May 1999), p. 2, P2270 (witness statement dated 1 September 2001), p. 5. The Chamber notes that in his statement given in 2001, the witness stated that the unit was deployed close to the main road on 1 April 1999. However in a subsequent statement given in 2006, and in his oral testimony, the witness maintained that it was on either 3 or 4 April.

²³⁷⁰ Krsman Jelić, T. 18947 (23 November 2007). According to P615 (Kosovo Atlas 2), p. 12, Grlica/Gërlice is located to the southwest of Sojevo/Sojeva.

²³⁷¹ Bedri Hyseni, T. 3096–3097 (11 September 2006), P2270 (witness statement dated 1 September 2001), p. 5.

²³⁷² Krsman Jelić, T. 18947 (23 November 2007). According to P615 (Kosovo Atlas 2), p. 12, Grlica/Gërlice is located to the southwest of Sojevo/Sojeva.

²³⁷³ Bedri Hyseni, T. 3097–3098 (11 September 2006). *See also* Bedri Hyseni, P2270 (witness statement dated 8 May 1999), p. 2, (witness statement dated 1 September 2001), p. 5.

wore green uniforms and carried automatic weapons and knives, while the policemen wore blue/black uniforms and carried automatic rifles.²³⁷⁴ Hyseni also stated that on that same day he witnessed the murder of his aunt and uncle, Nazmi and Haxhere Nebihu, by two of the “paramilitaries” wearing green military camouflage uniforms and red berets.²³⁷⁵ The “paramilitaries” and police also went to the Limanaj neighbourhood of Sojevo/Sojeva, where they burned 90 percent of the houses and killed two Kosovo Albanians, Qerim Ajvazi and Hamit Halimi, whose bodies Hyseni saw two days after the event.²³⁷⁶ Hyseni saw that the neighbourhood was on fire and went there to help evacuate the population.²³⁷⁷

966. Florim Krasniqi, a Kosovo Albanian resident of Miroslavlje/Mirosala, partially corroborated this account, testifying that at around this time he could see fires in the distance and that it appeared to him that the houses in Sojevo/Sojeva were on fire.²³⁷⁸ Krasniqi also confirmed the presence of military forces in Sojevo/Sojeva at the time; as he fled Miroslavlje/Mirosala on 8 April 1999 (see below) he saw a military checkpoint in Sojevo/Sojeva with five M-84 tanks.²³⁷⁹ The soldiers at that checkpoint were shouting nationalistic insults towards them.²³⁸⁰ Krasniqi thought that these were “paramilitary” soldiers, wearing banners or strips of red and blue on their right shoulder epaulettes.²³⁸¹ He later explained that, when he referred to paramilitaries, he meant to say “reservists” of the VJ.²³⁸² Some of them were wearing single-coloured green uniforms of the type previously worn by the JNA, and other soldiers were dressed in VJ green camouflage uniforms.²³⁸³ Krasniqi also testified that “[a]ll these men with weapons in a war, regardless of whether they are soldiers or regular army, they’re all mobilised under one uniform, under one command. Therefore, it is not important to make a distinction between paramilitary or military. The important thing is that they were mobilised under the Yugoslav flag.”²³⁸⁴ The Chamber concludes that it appeared to Krasniqi that the forces were acting as the forces of the state.

967. Jelić, however, when faced with the above evidence, testified that the villages of Sojevo/Sojeva and Kamena Glava/Komogllava were never the target of an attack by the army, but

²³⁷⁴ Bedri Hyseni, P2270 (witness statement dated 8 May 1999), p. 2.

²³⁷⁵ Bedri Hyseni, T. 3097, 3135–3137 (11 September 2006), P2270 (witness statement dated 8 May 1999), pp. 2–3.

²³⁷⁶ Bedri Hyseni, T. 3097–3098, 3135 (11 September 2006), P2270 (witness statement dated 8 May 1999), p. 3, P2270 (witness statement dated 1 September 2001), p. 5.

²³⁷⁷ Bedri Hyseni, T. 3135 (11 September 2006).

²³⁷⁸ Florim Krasniqi, P2269 (witness statement dated 23 April 1999), p. 4.

²³⁷⁹ Florim Krasniqi, P2269 (witness statement dated 23 April 1999), p. 5.

²³⁸⁰ Florim Krasniqi, P2269 (witness statement dated 23 April 1999), p. 6. The soldiers were shouting things as “We will fuck your Albanian mothers.”

²³⁸¹ Florim Krasniqi, P2269 (witness statement dated 23 April 1999), p. 6.

²³⁸² Florim Krasniqi, T. 3052 (8 September 2006).

²³⁸³ Florim Krasniqi, T. 3052–3031 (8 September 2006), P2269 (witness statement dated 23 April 1999), p. 6.

²³⁸⁴ Florim Krasniqi, T. 3053–3054 (8 September 2006).

that these villages and areas were hit by NATO air-strikes almost daily. He thought it likely that the fires seen by Hyseni and Krasniqi had been caused by these NATO air-strikes.²³⁸⁵ The Chamber notes that it has received no other evidence about NATO attacks on Sojevo/Sojeva during this time period. It does not find Jelić's evidence credible in this regard.²³⁸⁶

968. The Trial Chamber is satisfied that Hyseni could distinguish between police and what he called "paramilitaries". It notes the evidence of several other witnesses, describing police uniforms as black and recalls that the dark blue police uniforms could be described as almost black in colour.²³⁸⁷ The Chamber, therefore, does not accept the Lukić Defence argument that his description of police uniforms does not refer to police uniforms used at the time.²³⁸⁸ Based on the evidence given by Krasniqi, the Chamber finds that VJ reservists were among the forces deployed in Sojevo/Sojeva at this time.

969. Hyseni and his family escaped to the woods in the Lugu i Zenes mountains, where they joined a group of about 230 other villagers.²³⁸⁹ This group then split into two smaller ones. Hyseni's group, which consisted of 80 people, managed to escape, whereas the other group was robbed by the "paramilitaries" and forced to walk to Uroševac/Ferizaj town.²³⁹⁰ Hyseni did not, however, specify the source of his information in relation to this second group. For four days Hyseni and the others in his group stayed in the mountains during the night, and went back to their homes in Sojevo/Sojeva during the day. Throughout this four-day period he heard constant firing from anti-aircraft weapons.²³⁹¹

²³⁸⁵ Krsman Jelić, T. 18945 (23 November 2007).

²³⁸⁶ There is evidence of NATO attacks in Uroševac/Ferizaj municipality on 24 March 1999 (see above). There is also evidence that the *Car Uroš* Barracks were attacked on 2 April and 13 April; P2021 (War Diary of the 243rd Mechanised Brigade), p. 9; 5D660 (243rd Mechanised brigade communiqué to PrK Command, 13 April 1999). On 14 April 1999, *Car Uroš* Barracks and Doganjevo village were also attacked, but there were no consequences. 6D1251 (overview of security events, 15 April 1999), p. 3. On 16 April 1999, NATO targeted the villages of Varoš Selo/Varosh and Nekodim. 5D1286 (243rd mechanised Brigade communiqué to PrK Command, 16 April 1999), p. 1. On 24 April, NATO air attacks were directed at the Sojevo/Sojeva sector. P2021 (War Diary of the 243rd Mechanised Brigade), p. 24. On 5 May 1999, attacks were noted against Sojevo/Sojeva village sector and military vehicles in Staro Selo village. 4D325 (3rd Army order, 10 May 1999). On 15 May 1999, the *Car Uroš* Barracks were attacked. 5D683 (243rd Mechanised Brigade communiqué to PrK Command, 15 May 1999). On 27 May 1999 Staro Selo and Biba villages were targeted with 17 missiles, and on 29 May 1999 Gornje Nerodimlje/Nerodime e Eperme and Varoš villages were attacked. 5D307 (Daily Report of the Provincial Reporting centre, 27–28 May 1999), pp. 3, 5, 7; 5D232 (Interim Combat report from PrK to 3rd Army, 28 May 1999). See also 5D1336 (Review of NATO action in Kosovo).

²³⁸⁷ See e.g. Reshit Salihi, P2336 (witness statement dated 29 April 1999), pp. 2–3, T. 4204–4205 (28 September 2006); Lutfi Ramadani, T. 4323–4324 4285–4286, 4294–4295, (28 September 2006). Ramadani explained that black uniforms were not quite black; nevertheless, he called them black. T. 4364 (29 September 2006); Mehmet Krasniqi, P2341 (witness statements dated 4 April 1999, 5 October 2001, and 7 March 2002), e-court p. 8. See Section VI.A.3.

²³⁸⁸ Lukić Final Trial Brief, 7 August 2008 (public version), paras. 1131–1132.

²³⁸⁹ Bedri Hyseni, P2270 (witness statement dated 8 May 1999), p. 3, P2270 (witness statement dated 1 September 2001), p. 5.

²³⁹⁰ Bedri Hyseni, P2270 (witness statement dated 1 September 2001), p. 5.

²³⁹¹ Bedri Hyseni, P2270 (witness statement dated 1 September 2001), p. 6.

970. On 10 April 1999, while still in the mountains, Hyseni and the others with him met another group of Sojevo/Sojeva villagers. They informed him that the commander of the VJ tank unit that was stationed at the school had given an order for all the Sojevo/Sojeva residents to leave the village within two hours and travel to Uroševac/Ferizaj town.²³⁹² Once again Jelić denied this evidence and stated that “[t]here were no expulsions. The army did not send anyone anywhere, from this village or anywhere else. They did not send anybody to the town of Uroševac/Ferizaj.”²³⁹³

971. At 10:00 a.m. on 10 April Hyseni and his group went down the road to Sojevo/Sojeva and joined another group of approximately 300 people already waiting there.²³⁹⁴ The combined group then left Sojevo/Sojeva, travelling by tractors and other vehicles towards Uroševac/Ferizaj town.²³⁹⁵ At Biba Hyseni saw a large number of VJ units, including tanks and anti-aircraft launchers, in the village. He estimated that there must have been about 70 or more soldiers there.²³⁹⁶ He also noticed tanks and trenches in his and his father’s yards, as well as anti-aircraft weapons and a Pinzgauer next to his cousins’ house.²³⁹⁷

972. Along the road to Uroševac/Ferizaj Hyseni saw both VJ soldiers and policemen, who let the convoy proceed without stopping it.²³⁹⁸ Once the convoy reached the outskirts of the town, it was stopped by the “Serbian traffic police” and turned back. The police ordered them to proceed to Gnjilane/Gjilan, which is located about 38 kilometres to the south-east of Uroševac/Ferizaj.²³⁹⁹ As the convoy members were worried that they might run out of fuel if they did so, they decided to stop in Slatina/Sllatina village, which is located to the south of Uroševac/Ferizaj town.²⁴⁰⁰ Hyseni, his wife, and four children stayed in this village for 10 or 12 days and then, on 22 April 1999, they travelled to Uroševac/Ferizaj to take care of his father-in-law and brother-in-law, who had been wounded at the end of March, and because large numbers of displaced people were staying in Slatina/Sllatina and he was afraid that “something might happen there.”²⁴⁰¹

²³⁹² Bedri Hyseni, T. 3099, 3120–3122 (11 September 2006); P2270 (witness statement dated 1 September 2001), p. 6.

²³⁹³ Krsman Jelić, T. 18948 (23 November 2007).

²³⁹⁴ Bedri Hyseni, P2270 (witness statement dated 8 May 1999), p. 3; P2270 (witness statement dated 1 September 2001), p. 6.

²³⁹⁵ Bedri Hyseni, P2270 (witness statement dated 1 September 2001), p. 6.

²³⁹⁶ Bedri Hyseni, P2270 (witness statement dated 8 May 1999), p. 3.

²³⁹⁷ Bedri Hyseni, P2270 (witness statement dated 1 September 2001), p. 6.

²³⁹⁸ Bedri Hyseni, P2270 (witness statement dated 1 September 2001), p. 6.

²³⁹⁹ Bedri Hyseni, T. 3100, 3140–3141 (11 September 2006), P2270 (witness statement dated 8 May 1999), p. 3, (witness statement dated 1 September 2001), p. 6.

²⁴⁰⁰ Bedri Hyseni, T. 3100 (11 September 2006), P2270 (witness statement dated 8 May 1999), p. 3, P2270 (witness statement dated 1 September 2001), p. 6.

²⁴⁰¹ Bedri Hyseni, T. 3102, 3142–3145 (11 September 2006), P2270 (witness statement dated 1 September 2001), p. 6. *See also* Krsman Jelić, T. 18948–18949 (23 November 2007).

973. Hyseni and his family stayed in Uroševac/Ferizaj town for about five days, but then decided to leave. This was because they were scared, as every night they heard gun fire, and they also wanted to get treatment for his brother-in-law.²⁴⁰² The town was already empty since it “ha[d] been cleansed of Kosovo Albanians”.²⁴⁰³ The fact that Hyseni and his family stayed in Uroševac/Ferizaj municipality even after the NATO bombing had started shows that fear of NATO bombs was not his reason for leaving the area, as suggested by the Lukić Defence.²⁴⁰⁴

974. On 27 April Hyseni met a group of 30 displaced people, who arrived in the town after having been expelled from Nerodimlje/Nerodime, a village to the west.²⁴⁰⁵ The next morning he and his family joined this group and went to the Uroševac/Ferizaj bus station, where he saw four buses filled with people.²⁴⁰⁶ The driver of one of the buses allowed Hyseni and his family to board, but only after they each paid 20 German Marks.²⁴⁰⁷ The buses then travelled to Macedonia, through Kačanik/Kaçanik municipality.²⁴⁰⁸ There were soldiers and policemen at the bus station, but they did not get involved in the loading of the buses.²⁴⁰⁹

975. In Kačanik/Kaçanik town the four buses were stopped at a checkpoint manned by VJ soldiers, police, and police and military reservists.²⁴¹⁰ Two soldiers wearing green uniforms and carrying automatic rifles boarded the bus carrying Hyseni and ordered the passengers to hand over their cameras and mobile phones.²⁴¹¹ Hyseni recognised both of the soldiers; one of them worked in the bakery and the other in the “Financial Police” in Uroševac/Ferizaj town.²⁴¹² The soldiers then took three or four young men off the bus, asking them whether they belonged to the KLA.²⁴¹³ One of the young men was separated from the group, held at gunpoint, and threatened with execution. Hyseni heard the soldiers say that all the Kosovo Albanians would be sent to Albania,

²⁴⁰² Bedri Hyseni, T. 3102, 3111–3112 (11 September 2006); P2270 (witness statement dated 8 May 1999), p. 3, (witness statement dated 1 September 2001), p. 7.

²⁴⁰³ Bedri Hyseni, P2270 (witness statement dated 8 May 1999), p. 3, P2270 (witness statement dated 1 September 2001), p. 7.

²⁴⁰⁴ Lukić Final Trial Brief, 7 August 2008 (public version), para. 1134.

²⁴⁰⁵ Bedri Hyseni, T. 3102–3103 (11 September 2006), P2270 (witness statement dated 1 September 2001), p. 7.

²⁴⁰⁶ Bedri Hyseni, T. 3102–3103 (11 September 2006), P2270 (witness statement dated 1 September 2001), p. 7.

²⁴⁰⁷ Bedri Hyseni, P2270 (witness statement dated 1 September 2001), p. 7. He stated that the buses bore the inscription “*Kosovotrans*” on both sides.

²⁴⁰⁸ Bedri Hyseni, P2270 (witness statement dated 1 September 2001), p. 7.

²⁴⁰⁹ Bedri Hyseni, P2270 (witness statement dated 8 May 1999), p. 3.

²⁴¹⁰ Bedri Hyseni, P2270 (witness statement dated 1 September 2001), p. 7.

²⁴¹¹ Bedri Hyseni, P2270 (witness statement dated 8 May 1999), p. 4, P2270 (witness statement dated 1 September 2001), p. 7.

²⁴¹² Bedri Hyseni, P2270 (witness statement dated 1 September 2001), p. 7, P2270 (witness statement dated 8 May 1999), p. 3, P2270 (correction to witness statement dated 31 January 2002), p. 2.

²⁴¹³ Bedri Hyseni, P2270 (witness statement dated 8 May 1999), p. 4, P2270 (witness statement dated 1 September 2001), p. 7.

since that is their country and not Kosovo.²⁴¹⁴ The young man was ultimately allowed back on to the bus.²⁴¹⁵

976. The bus eventually arrived at the Đeneral Janković/Hani i Elezit border crossing, where numerous policemen could be seen. Hyseni observed many other displaced people coming from the direction of the train station.²⁴¹⁶ He and the others were then allowed to cross the border in groups of ten. They crossed the border on 28 April 1999. Hyseni's identification documents were not taken from him.²⁴¹⁷ When he returned to Biba a year later, he discovered that his house had been burned.²⁴¹⁸

4. Mirosavlje/Mirosala and surrounding villages

977. Florim Krasniqi testified that approximately 200 of the residents of Mirosavlje/Mirosala, including him, were members of the LDK.²⁴¹⁹ As a member of the LDK, he was involved in humanitarian work.²⁴²⁰ When a flow of displaced people came to Uroševac/Ferizaj municipality in 1998, the LDK started to register them. After the NATO air-campaign started, it became impossible to register properly all the displaced, but the LDK nevertheless continued with its humanitarian work.²⁴²¹

978. On 4 April 1999 at about noon Krasniqi observed from the "vicinity" of his village a very large convoy of green military vehicles travelling on the main road from the direction of Gnjilane/Gjilan to Uroševac/Ferizaj town.²⁴²² Although the Lazarević Defence questions what Krasniqi could have seen from that distance,²⁴²³ the Chamber notes that it was not put to Krasniqi during his cross-examination that he would not have been able to see it, and that it was a large convoy. The convoy included four large trucks towing cannons, which were eventually positioned near the village of Softovic/Softoviq.²⁴²⁴ The cannons then started shelling towards the villages of Rahovica and Zlatare/Zllatar, located near Mirosavlje/Mirosala.²⁴²⁵ Jelić, when asked about this

²⁴¹⁴ Bedri Hyseni, P2270 (witness statement dated 8 May 1999), p. 4, P2270 (witness statement dated 1 September 2001), p. 7.

²⁴¹⁵ Bedri Hyseni, P2270 (witness statement dated 8 May 1999), p. 4.

²⁴¹⁶ Bedri Hyseni, P2270 (witness statement dated 1 September 2001), p. 7.

²⁴¹⁷ Bedri Hyseni, P2270 (witness statement dated 1 September 2001), p. 7.

²⁴¹⁸ Bedri Hyseni, T. 3103 (11 September 2006).

²⁴¹⁹ Florim Krasniqi, T. 3068–3069 (8 September 2006).

²⁴²⁰ Florim Krasniqi, T. 3057–3059 (8 September 2006).

²⁴²¹ Florim Krasniqi, T. 3057–3059 (8 September 2006).

²⁴²² Florim Krasniqi, P2269 (witness statement dated 23 April 1999), p. 2.

²⁴²³ Lazarević Final Trial Brief, 29 July 2008 (public version), para. 261.

²⁴²⁴ Florim Krasniqi, P2269 (witness statement dated 23 April 1999), p. 2. The Chamber notes that the witness uses the name Softaj, the new Albanian name for Softovic/Softoviq.

²⁴²⁵ Florim Krasniqi, P2269 (witness statement dated 23 April 1999), p. 2.

evidence, stated that there was a VJ unit near Softovic/Softoviq. However, he stated that this unit could not have targeted Rahovica and Zlatare/Zllatar, because there were VJ forces in the vicinity of these villages and, had they done so, they would have been shooting at their own forces.²⁴²⁶

979. On 5 April 1999, when he spoke to the residents of Rahovica and Zlatare/Zllatar, Krasniqi learned that, as a result of the shelling, four people in these villages had been killed and five wounded. He attended their funerals. At around 1:00 p.m. he could hear the sound of automatic weapons coming from the direction of Pojatište/Pojatishta village. A short time later approximately 1,000 displaced people from Pojatište/Pojatishta, as well as Uroševac/Ferizaj town, Muhadžer Prelez/Prelezi i Muhaxherëve, Muhovce/Muhoc, and many other villages, arrived in Mirosavlje/Mirosala, since it was calm and the “Serb forces” had not yet entered that village.²⁴²⁷ Krasniqi helped them find shelter in Mirosavlje/Mirosala. He questioned about 20 to 30 of them; they told him that “Serb military” forces had entered Pojatište/Pojatishta and surrounding villages in tanks, and that the soldiers searched houses in this village (Pojatište/Pojatishta); they “were all forced out of their villages by the Serb military” and said that they came to Mirosavlje/Mirosala seeking safety.²⁴²⁸

980. When confronted with this information, Jelić stated that “certainly” in that period the VJ did not enter, search houses in, or expel people from, Pojatište/Pojatishta or any nearby villages, since it was already busy with its defence, holding its positions with tanks as of 24 March 1999. According to him, “there was no expulsion from villages”.²⁴²⁹

981. On 8 April Krasniqi saw several green military vehicles, including a tank and a number of APCs, heading towards Mirosavlje/Mirosala from the direction of Sojevo/Sojeva. Krasniqi had military experience as a soldier in the JNA and he recognised the tanks as M-84s and the APCs as M60s, although he could not see the markings on them. The Chamber notes that Krasniqi’s identification of the types of tanks was not explored during his cross-examination. When the military convoy approached the outskirts of Mirosavlje/Mirosala, several soldiers jumped from the APCs and began running towards the houses in the village. Krasniqi got into a car and went towards the centre of Mirosavlje/Mirosala, while his brothers took their tractor and did the same. There they met up with other villagers who were also fleeing, and together they moved towards the main road, away from the approaching soldiers. When his convoy, comprising approximately 20

²⁴²⁶ Krsman Jelić, T. 18943–18944 (23 November 2007).

²⁴²⁷ Florim Krasniqi, P2269 (witness statement dated 23 April 1999), pp. 2–3.

²⁴²⁸ Florim Krasniqi, T. 3063 (8 September 2006); P2269 (witness statement dated 23 April 1999), pp. 3–4.

²⁴²⁹ Krsman Jelić, T. 18944–18945 (23 November 2007). He testified: “The units were already at their position, and there was no reason to drive the tanks around. That would have been crazy, and who would have dared do it? Because the tanks would have been destroyed immediately.”

vehicles, reached an intersection, the leading vehicle turned left and drove a short distance in the direction of Tankosic/Tankosiq village. There Krasniqi could see a military roadblock manned by two soldiers.²⁴³⁰ The soldiers stopped the first car of the convoy and confiscated it.²⁴³¹ The convoy then turned on to the road heading towards Uroševac/Ferizaj town.²⁴³²

982. Jelić testified that he did not have any M-84 tanks in his brigade, only T-55 tanks, but acknowledged that his unit did engage tanks in Kosovo.²⁴³³ The Chamber does not doubt that Krasniqi saw tanks, whether he could distinguish the different types or not. The Chamber also recalls that additional evidence in this regard was given by John Crosland, who said that the VJ used T-55 and M-84 tanks in Kosovo.²⁴³⁴ Jelić also stated that neither his brigade nor any other VJ units set up any checkpoints. The Chamber rejects this evidence on the basis of the testimony of several witnesses and documents, which show that checkpoints manned by the VJ existed throughout Kosovo.²⁴³⁵

983. After having passed by Sojevo/Sojeva village, the convoy proceeded towards Uroševac/Ferizaj town. On the way Krasniqi saw many destroyed vehicles that he thought had been run over by tanks.²⁴³⁶ He also observed many burning and destroyed houses.²⁴³⁷ There were many soldiers along the road; some appeared to be pointing their guns at the convoy. The convoy continued undisturbed to Uroševac/Ferizaj town. At the outskirts of the town they encountered a police checkpoint manned by two traffic policemen who directed them to go towards Skopje in Macedonia.²⁴³⁸ The convoy then turned, split up, and entered Uroševac/Ferizaj town through back roads. Krasniqi and his family arrived there on 8 April and stayed in a friend's house for seven days.²⁴³⁹

984. On 14 April Krasniqi decided to leave the town because he continuously heard about killings committed by the "Serbian military" and felt that it was too dangerous to stay. He and his family went to the train station, but could not board the train that was there since it was already overcrowded. After the departure of that train several buses arrived; he and his family boarded one

²⁴³⁰ Florim Krasniqi, P2269 (witness statement dated 23 April 1999), p. 5.

²⁴³¹ Florim Krasniqi, T. 3075–3077 (8 September 2006), P2269 (witness statement dated 23 April 1999), p. 5.

²⁴³² Florim Krasniqi, T. 3076 (8 September 2006), P2269 (witness statement dated 23 April 1999), p. 5.

²⁴³³ Krsman Jelić, T. 18946 (23 November 2007).

²⁴³⁴ John Crosland, T. 9764–9765 (7 February 2007). *See also* Dragan Živanović, T. 20550 (18 January 2008).

²⁴³⁵ *See e.g.* 5D1031 (Order of the 37th Motorised Brigade, 18 April 1999); Hamide Fondaj, P2283 (witness statement dated 9 June 2001), p. 4; Dragan Zlatković, T. 25292–25294 (15 April 2008); Nebojša Bogunović, 6D1614 (witness statement dated 2 April 2008), para. 89; Agim Jemini, T. 4278 (28 September 2006).

²⁴³⁶ Florim Krasniqi, T. 3054–3055 (8 September 2006), P2269 (witness statement dated 23 April 1999), p. 6.

²⁴³⁷ Florim Krasniqi, P2269 (witness statement dated 23 April 1999), p. 6.

²⁴³⁸ Florim Krasniqi, T. 3055 (8 September 2006), P2269 (witness statement dated 23 April 1999), p. 6.

²⁴³⁹ Florim Krasniqi, P2269 (witness statement dated 23 April 1999), p. 6.

of them, which took them to the Đeneral Janković/Hani i Elezit border crossing for a fee of 30 German Marks per person. Along the way to the border Krasniqi saw many trenches, which he thought appeared to have been excavated for tanks. At Đeneral Janković/Hani i Elezit police officers boarded the bus and asked the passengers for their identification cards. Krasniqi's card was returned to him after it had been checked. The bus then continued to the train station at Đeneral Janković/Hani i Elezit, where the passengers were told to disembark.²⁴⁴⁰ He and his family had to wait for six hours while the police separated people and collected money from them in order "to buy their way out of the country". They finally crossed the border after the police started allowing families with children to cross without having to pay.²⁴⁴¹

5. Staro Selo

985. Bajram Bucaliu, a Kosovo Albanian man who worked from 1987 until 25 March 1999 as a cashier at the Uroševac/Ferizaj railway station, testified that on 25 March 1999 he was dismissed from his job. He further testified that, a week before the NATO air strikes started, he noticed an unusual increase in the number of military officers coming to the train station and meeting with the chief of the station.²⁴⁴²

986. According to Bucaliu, up until 2 April 1999 there was no Serbian military presence in Staro Selo, nor did NATO target any sites in the village.²⁴⁴³ However, at 8:30 a.m. on 2 April the village was occupied by "VJ" forces that had approached from the Uroševac/Ferizaj–Gnjilane/Gjilan road.²⁴⁴⁴ There were approximately 40 soldiers and five military tanks. The tanks were green in colour and without extended long barrels.²⁴⁴⁵ The soldiers wore green-brown camouflage uniforms without emblems, and green berets with a "VJ" metal badge attached.²⁴⁴⁶ They occupied six houses belonging to Kosovo Albanians, and marked one of the Serb houses in the village with the letter "S" for identification.²⁴⁴⁷

987. Jelić refuted this account, stating that the VJ was never in Staro Selo. However, he conceded that to the south-east of the village there was one unit which was preparing defence from

²⁴⁴⁰ Florim Krasniqi, P2269 (witness statement dated 23 April 1999), p. 6.

²⁴⁴¹ Florim Krasniqi, P2269 (witness statement dated 23 April 1999), pp. 6–7.

²⁴⁴² Bajram Bucaliu, P2299 (witness statement dated 31 August 2001), pp. 2–3. *See also* Shaban Fazliji, T. 25218 (11 April 2008).

²⁴⁴³ Bajram Bucaliu, T. 2983–2984 (7 September 2006).

²⁴⁴⁴ Bajram Bucaliu, T. 2981 (7 September 2006), P2298 (witness statement dated 25 April 1999), p. 2, P2287 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 2059–2060. *See also* P43 (Hand-drawn map of Staro Selo, 24 April 1999).

²⁴⁴⁵ Bajram Bucaliu, T. 2982 (7 September 2006), P2298 (witness statement dated 25 April 1999), p. 2.

²⁴⁴⁶ Bajram Bucaliu, T. 2982 (7 September 2006), P2298 (witness statement dated 25 April 1999), p. 2.

²⁴⁴⁷ Bajram Bucaliu, P2298 (witness statement dated 25 April 1999), p. 2

“aggression”. As far as he knew, MUP forces did not carry out any “anti-terrorist” action in Staro Selo in that period of time either. In support of his evidence, Jelić pointed out that the army never took up position in built-up areas because its task was to defend territory, not towns and villages.²⁴⁴⁸ Jelić also stated that there was no letter insignia on the caps of VJ soldiers.²⁴⁴⁹

988. When he saw the VJ entering the village, Bucaliu and his son attempted to escape. However, they were stopped by one of the soldiers, who introduced himself as a major, and told him that he and his soldiers were part of the regular army and that they should not flee.²⁴⁵⁰ Bucaliu also stated that on 4 April one of the soldiers confiscated his Mercedes truck, which had been parked at the time in a Serb neighbour’s yard. The truck was never returned to him.²⁴⁵¹

989. According to Jelić, however, the army did not search villages, because it was not authorised to do so, nor to check people's identity cards. Jelić further stated that for each vehicle that was taken away from an individual for the purpose of being involved in mobilisation a document was issued.²⁴⁵²

990. Bucaliu further testified that, at about 8:30 a.m. on 5 April 1999, the VJ left Staro Selo in the direction of the Gnjilane/Gjilan road.²⁴⁵³ As they left, they set fire to the houses which they had previously occupied.²⁴⁵⁴ Between 3:00 p.m. and 4:00 p.m. that same day approximately 80 “paramilitaries” entered the village, with five military tanks and two buses.²⁴⁵⁵ Bucaliu explained that the tanks were the same as those of “regular” soldiers.²⁴⁵⁶ They imposed a curfew upon the village from 7:00 p.m. to 7:00 a.m. Three of the “paramilitaries” entered Bucaliu’s house and one of them pointed a gun at one of his relatives, a young boy. They also demanded that Bucaliu produce his identity card; then they inspected his tractor.²⁴⁵⁷ After the inspection they gave him an order not to leave the village because they intended to use the local Kosovo Albanians as a human

²⁴⁴⁸ Krsman Jelić, T. 18938, 18941 (23 November 2007).

²⁴⁴⁹ Krsman Jelić, T. 18939 (23 November 2007).

²⁴⁵⁰ Bajram Bucaliu, T. 2983 (7 September 2006), P2298 (witness statement dated 25 April 1999), p. 2, P2287 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 2060–2062.

²⁴⁵¹ Bajram Bucaliu, T. 2984, (7 September 2006), T. 3020–3023 (8 September 2006), P2298 (witness statement dated 25 April 1999), p. 2; P2287 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 2062.

²⁴⁵² Krsman Jelić, T. 18938–18939, 18941–18942 (23 November 2007).

²⁴⁵³ Bajram Bucaliu, T. 2984 (7 September 2006).

²⁴⁵⁴ Bajram Bucaliu, T. 2984 (7 September 2006), T. 3035 (8 September 2006), P2298 (witness statement dated 25 April 1999), p. 3, P2287 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 2063.

²⁴⁵⁵ Bajram Bucaliu, T. 2985 (7 September 2006), P2287 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 2064, P2298 (witness statement dated 25 April 1999), p. 3.

²⁴⁵⁶ Bajram Bucaliu, P2298 (witness statement dated 25 April 1999), p. 4.

²⁴⁵⁷ Bajram Bucaliu, P2298 (witness statement dated 25 April 1999), p. 3.

shield when “Clinton’s infantry” arrived.²⁴⁵⁸ The “paramilitaries” also ordered the local men to dig trenches.²⁴⁵⁹

991. Bucaliu testified that the “paramilitaries” called themselves “volunteer forces.” They wore camouflage military green uniforms, and at least some of them bore emblems on their left arms reading “*Srpski Četnički Pokret*” (Serbian Chetnik Movement),²⁴⁶⁰ this emblem had a white eagle, a skull, and two crosses on it.²⁴⁶¹ They also wore a traditional Serbian emblem named “*kokarda*” (cockade) on their caps, and carried automatic rifles and long butcher’s knives.²⁴⁶² Some of them were bearded and had long hair. Their ages ranged from 18 to 60.²⁴⁶³ They told Bucaliu that they were Serbs from Sombor and Apatin, and were Šešelj’s men.²⁴⁶⁴ They confiscated various vehicles and extorted money from the local people; Bucaliu was forced to give them 300 German Marks.²⁴⁶⁵

992. Jelić stated that he was not aware that any paramilitaries as described by Bucaliu had entered Staro Selo. There were no paramilitary forces in his brigade.²⁴⁶⁶ He also testified that VJ soldiers were trained to dress in accordance with the rules. He excluded the possibility that anyone could have had a long beard, long hair, or wear a “*kokarda*” (cockade) on their uniform, because that would have been against the rules of service.²⁴⁶⁷

993. Bucaliu was informed by a Muslim “priest” that in the evening of 13 April 1999 three “paramilitary soldiers” had killed Emin Zeka and his sons Habib and Faruk Zeka, all of whom were civilians, and had taken four other civilians to an unknown location.²⁴⁶⁸ The following day, out of fear, 500 to 600 people, including Bucaliu’s wife and children, gathered in the centre of the village and started leaving on foot, since their vehicles had been confiscated.²⁴⁶⁹ Only four families remained behind, as did Bucaliu who chose to stay with his sick mother. However, later that day he too decided to leave the village and travelled to Uroševac/Ferizaj town by bicycle.²⁴⁷⁰ At the bridge

²⁴⁵⁸ Bajram Bucaliu, T. 2987 (7 September 2006), P2298 (witness statement dated 25 April 1999), pp. 3–4, P2299 (witness statement dated 31 August 2001), p. 3.

²⁴⁵⁹ Bajram Bucaliu, T. 2987 (7 September 2006), P2298 (witness statement dated 25 April 1999), p. 4.

²⁴⁶⁰ Bajram Bucaliu, T. 2986–2987 (7 September 2006).

²⁴⁶¹ Bajram Bucaliu, P2298 (witness statement dated 25 April 1999), p. 3.

²⁴⁶² Bajram Bucaliu, T. 2985–2986 (7 September 2006), P2298 (witness statement dated 25 April 1999), p. 3.

²⁴⁶³ Bajram Bucaliu, T. 2985–2986 (7 September 2006).

²⁴⁶⁴ Bajram Bucaliu, T. 2987 (7 September 2006), P2298 (witness statement dated 25 April 1999), p. 3.

²⁴⁶⁵ Bajram Bucaliu, P2298 (witness statement dated 25 April 1999), p. 4.

²⁴⁶⁶ Krsman Jelić, T. 18940 (23 November 2007).

²⁴⁶⁷ Krsman Jelić, T. 18940 (23 November 2007).

²⁴⁶⁸ The individuals in question are Hasan and Fatime Zeka, Aslan and his wife Safete Zeka. Bajram Bucaliu, P2298 (witness statement dated 25 April 1999), p. 4. *See also* Bajram Bucaliu, T. 2988 (7 September 2006).

²⁴⁶⁹ Bajram Bucaliu, T. 2989–2990 (7 September 2006), T. 3024 (8 September 2006), P2298 (witness statement dated 25 April 1999), p. 5, P2299 (witness statement dated 31 August 2001), p. 3.

²⁴⁷⁰ Bajram Bucaliu, T. 2989 (7 September 2006), P2298 (witness statement dated 25 April 1999), p. 5, P2299 (witness statement dated 31 August 2001), p. 3.

junction with the Skopje-Priština/Prishtina highway there was a combined military and police checkpoint through which he was allowed to pass.²⁴⁷¹ He joined the rest of his family in Uroševac/Ferizaj that evening.²⁴⁷²

994. In the morning of 15 April he and his family joined 2,500 to 3,000 other Kosovo Albanians aboard a train, comprising ten cars, which travelled from Uroševac/Ferizaj to Đeneral Janković/Hani i Elezit.²⁴⁷³ Upon their arrival at the border they were not allowed to disembark.²⁴⁷⁴ After four hours the train was sent back to Uroševac/Ferizaj town where all the passengers got off.²⁴⁷⁵ At Đeneral Janković/Hani i Elezit train station a railway worker acquaintance of his told him that the Macedonians did not want to allow the Kosovo Albanians to cross the border.²⁴⁷⁶ At the same time, Bucaliu observed that buses were arriving at the crossing point with displaced people who were allowed to cross the border.²⁴⁷⁷

995. On 16 April Bucaliu and his family boarded another train in Uroševac/Ferizaj.²⁴⁷⁸ There were ten “Serb policemen” on the train, dressed in blue uniforms and blue caps.²⁴⁷⁹ The policemen were inside the train in the first carriage.²⁴⁸⁰ They had been escorting Serb families from unknown destinations who got off the train in Uroševac/Ferizaj.²⁴⁸¹ The policemen then continued the journey with Bucaliu and the others all the way to Đeneral Janković/Hani i Elezit. About half an hour after the train’s arrival the Kosovo Albanians were allowed to get off the train and proceed on foot to the border along the train tracks.²⁴⁸² The passengers were told by police to avoid walking outside the train tracks, since the area was mined.²⁴⁸³ As they walked along the tracks, soldiers dressed in regular camouflage uniforms and policemen on tractors were shouting insults at

²⁴⁷¹ Bajram Bucaliu, P2299 (witness statement dated 31 August 2001), p. 3.

²⁴⁷² Bajram Bucaliu, P2299 (witness statement dated 31 August 2001), pp. 3–4.

²⁴⁷³ Bajram Bucaliu, T. 3001 (7 September 2006), P2298 (witness statement dated 25 April 1999), p. 5, P2299 (witness statement dated 31 August 2001), p. 4; P1331 (Traffic log book from 1 January 1999), e-court p. 124.

²⁴⁷⁴ Bajram Bucaliu, P2298 (witness statement dated 25 April 1999), p. 5, P2299 (witness statement dated 31 August 2001), p. 4.

²⁴⁷⁵ Bajram Bucaliu, T. 2990, 3002 (7 September 2006), P2298 (witness statement dated 25 April 1999), p. 5, P2299 (witness statement dated 31 August 2001), p. 4; P1331 (Traffic log book from 1 January 1999), e-court p. 124.

²⁴⁷⁶ Bajram Bucaliu, T. 2990 (7 September 2006); P2299 (witness statement dated 31 August 2001), p. 4.

²⁴⁷⁷ Bajram Bucaliu, P2299 (witness statement dated 31 August 2001), p. 4.

²⁴⁷⁸ Bajram Bucaliu, T. 2991 (7 September 2006), P2298 (witness statement dated 25 April 1999), p. 5, P2287 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T) T. 2071; P25 (Map showing deportation routes from Uroševac).

²⁴⁷⁹ Bajram Bucaliu, P2298 (witness statement dated 25 April 1999), p. 5.

²⁴⁸⁰ Bajram Bucaliu, P2298 (witness statement dated 25 April 1999), p. 5.

²⁴⁸¹ Bajram Bucaliu, T. 2991 (7 September 2006), P2298 (witness statement dated 25 April 1999), p. 5.

²⁴⁸² Bajram Bucaliu, T. 2992 (7 September 2006), P2298 (witness statement dated 25 April 1999), p. 5, P2299 (witness statement dated 31 August 2001), pp. 4–5.

²⁴⁸³ Bajram Bucaliu, T. 2992 (7 September 2006), P2298 (witness statement dated 25 April 1999), p. 5.

them.²⁴⁸⁴ They crossed the border into Macedonia at 10:00 a.m. that day, without Bucaliu having his identification documents taken.²⁴⁸⁵

996. The Trial Chamber notes the evidence discussed above in the section relating to Priština/Prishtina, concerning transport of Kosovo Albanians by train to the Macedonian border.

6. Findings

997. The Trial Chamber is satisfied that the village of Biba was attacked by either the VJ or the MUP on 24 March 1999. In this regard the Chamber notes Jelić's evidence that the villages of Biba, Muhadžer Prelez/Prelezi i Muhaxherëve, Raka/Rakaj, and Staro Selo were located in the area of responsibility of the 243rd Mechanised Brigade of the Priština Corps, but that he was not present personally at these locations during the events alleged in the Indictment.²⁴⁸⁶

998. The Trial Chamber further finds that at the beginning of April 1999 VJ units, police and associated armed forces were deployed in and nearby the village of Sojevo/Sojeva. Houses were set on fire and at least two civilians were killed by the police and other unidentified armed forces in Sojevo/Sojeva, and villagers were expelled and forced to walk to Uroševac/Ferizaj town. Hundreds of people left in convoys, travelling by tractors and other vehicles, as well as on foot. Police and other armed forces burned a large number of houses in the area of Sojevo/Sojeva.

999. The Trial Chamber is satisfied that elements of the 243rd Mechanised Brigade of the Priština Corps, reservists, and members of the MUP were among the forces involved in the expulsion of Kosovo Albanians from Sojevo/Sojeva.

1000. The Trial Chamber also finds that at the beginning of April 1999 VJ units were positioned in the village of Softovic/Softoviq (also referred to as Softaj) and shelled in the direction of the villages of Rahovica and Zlatare/Zllatar, located near Miroslavlje/Mirosala. As noted above, the Chamber found Jelić's attempt to refute the evidence of eye witnesses unconvincing. The Chamber finds that it has not been proved that on 5 April VJ forces surrounded the village of Pojatište/Pojatishta with tanks, entered it and searched houses and expelled the civilian population, because the sole evidence adduced in this regard is fairly general hearsay testimony. However, the

²⁴⁸⁴ Bajram Bucaliu, T. 2992 (7 September 2006); P2298 (witness statement dated 25 April 1999), p. 5; P2299 (witness statement dated 31 August 2001), p. 5.

²⁴⁸⁵ Bajram Bucaliu, P2298 (witness statement dated 25 April 1999), p. 5.

²⁴⁸⁶ Evidence shows that Jelić was present in Kačanik/Kaçanik municipality on 24 March 1999, *see* 6D1, T. 25677 (21 April 2008) (closed session).

Chamber accepts that approximately 1,000 people arrived in Miroslavlje/Mirosala at the beginning of April 1999.

1001. The Trial Chamber is satisfied that VJ troops entered Miroslavlje/Mirosala on 8 April 1999 with a tank, and that the people staying in the village fled at this point.

1002. The Chamber finds that on 5 April 1999, a group of approximately 80 “paramilitaries” entered the village of Staro Selo and imposed a curfew on the village. Based on the evidence of the equipment that they had, and how they described themselves, the Chamber is satisfied that these “paramilitaries” were incorporated into the VJ as volunteers. When news spread among the village’s inhabitants that they had killed at least three people, many of them decided to leave their homes.

1003. Based on the eye-witness accounts of Bedri Hyseni, Florim Krasniqi, Bajram Bucaliu and Mimir Bogoslavljević, the Trial Chamber finds that from Uroševac/Ferizaj town people were sent on buses and trains to Macedonia and the border crossing at Đeneral Janković/Hani i Elezit. Many were forced to get off the trains before the border and proceed on foot along the train tracks. As they walked, soldiers and policemen were shouting insults at them.

1004. The Trial Chamber did not hear evidence that forces of the FRY and Serbia seized the identity documents of displaced people at the border crossing and it did not hear any evidence regarding charges in relation to Raka/Rakaj, Papaz and Varoš Selo/Varosh. There was also no evidence presented in relation to the alleged shelling by FRY/Serbian forces of Muhadžer Prelez/Prelezi i Muhaxherëve and Staro Selo.

M. KAČANIK/KAÇANIK

1. Charges in Indictment

1005. The factual averments relating to Kačanik/Kaçanik municipality deal with events said to have taken place there between March and May 1999. The underlying offences of deportation and forcible transfer, charged under Counts 1 and 2 respectively, are described in paragraph 72(k) of the Indictment as follows:

Between March and May 1999, forces of the FRY and Serbia attacked villages in the Kačanik municipality and the town of Kačanik/ Kaçanik itself. This attack resulted in the destruction of houses and religious sites including, but not limited to, the mosques of Kotlina and Ivaja.

- a. On or about 8 March 1999, forces of the FRY and Serbia attacked and partially burned the village of Kotlina/Kotlinë. On 24 March 1999, forces of the FRY and

Serbia attacked Kotlina again with heavy weapons systems and soldiers. Many of the male residents of Kotlina/Kotlinë fled into nearby forests during this attack, while forces of the FRY and Serbia ordered the women, children and elderly to board trucks which took them towards the town of Kačanik/Kaçanik. Those who could not fit into the trucks were compelled to walk behind them towards Kačanik/Kaçanik. A number of male residents of Kotlina/Kotlinë were killed during this attack, including at least 17 men whose bodies were thrown into wells. Before departing Kotlina/Kotlinë, forces of the FRY and Serbia burned the remainder of the village. Many of the survivors fled to Macedonia.

- b. On or about 27 and 28 March 1999, forces of the FRY and Serbia attacked the town of Kačanik/Kaçanik. Forces of the FRY and Serbia harassed, detained, beat, and shot many Kosovo Albanian residents of Kačanik/Kaçanik. Thousands of persons fled to nearby forests and eventually walked across the border into Macedonia. Other displaced persons from the town of Kačanik/Kaçanik and nearby villages walked to the village of Stagovo/Stagovë, where they boarded trains that took them to the Macedonian border.
- c. On or about 13 April 1999, forces of the FRY and Serbia surrounded the village of Slatina/Sllatinë and the hamlet of Vata. After shelling the village, infantry troops and police entered the village and looted and burnt the houses. During this action, 13 civilians were shot and killed. Following this attack, much of the population of Slatina/Sllatinë fled to Macedonia.
- d. On or about 25 May 1999, forces of the FRY and Serbia attacked the village of Dubrava/Lisnaje in the municipality of Kačanik/Kaçanik. During the attack, forces of the FRY and Serbia killed several Kosovo Albanian residents of Dubrava/Lisnaje. Many residents of Dubrava/Lisnaje formed a convoy of tractors and trailers and fled to Macedonia. Other residents fled to other villages or into forests before eventually crossing the border into Macedonia.

1006. The Accused are also charged with murder, under Counts 3 and 4, in relation to events described in paragraph 75(k) of the Indictment which avers:

- a. On or about 24 March 1999, the village of Kotlina/Kotlinë was attacked by forces of the FRY and Serbia. In the course of the attack, most of the houses were burnt down and at least 17 persons were killed. Some of those killed were captured in the woods, executed and then thrown into wells. Explosives were thrown on top of the wells.
- b. On or about 13 April 1999, forces of the FRY and Serbia surrounded the village of Slatina/Sllatinë and the hamlet of Vata/Vata. After shelling the village, infantry troops and police entered the village and looted and burnt the houses. During this action, 13 civilians were shot and killed.
- c. On or about 21 May 1999, the village of Stagovo/Stagovë was surrounded by forces of the FRY and Serbia. The population tried to escape toward the mountains east of the village. During this action, at least 12 persons were killed. Most of the village was looted and burnt down.
- d. On or about 25 May 1999, forces of FRY and Serbia surrounded the village of Dubrava/Lisnaje. As the forces entered the village, the population was ordered to gather at the school and leave the village on tractors. Men were then separated from women and children. During this action 4 men were killed. In addition, 4 members of the Qorri family were killed while trying to escape toward the woods.

1007. Those persons allegedly killed in the municipality of Kačanik/Kaçanik who are known by name are listed in Schedule K of the Indictment. Under Count 5 the Accused are charged with responsibility for persecution, in the form of the killings described in paragraph 75(k) and the “wanton destruction or damage of Kosovo Albanian religious sites”, including the mosques in Kotlina/Kotllina and Ivaja, as described in paragraphs 72(k) and 77(d) of the Indictment.

2. Background

1008. Kačanik/Kaçanik municipality is located in the south of Kosovo, bordering Macedonia. The Trial Chamber heard evidence that in the period relevant to the Indictment the population of the municipality was predominantly Kosovo Albanian, but that there were also other ethnic groups living there in small numbers. In particular, there were Serb residents in the village of Stari Kačanik/Kaçanik i Vjëter.²⁴⁸⁷ The villages of Kotlina/Kotllina and Ivaja are to the south and south-west of Kačanik/Kaçanik town, close to the Macedonian border. Slatina/Sllatina and Vata/Vataj are located further to the north-west, near to the boundary with Štrpce/Shtërpce municipality. Stagovo/Stagova is to the north of Kačanik/Kaçanik town on the route of the railway line from Macedonia north to Priština/Prishtina. The main border crossing to Macedonia in the municipality is Đeneral Janković/Hani i Elezit.²⁴⁸⁸

1009. The Trial Chamber heard from three witnesses led by the Prosecution about events in the village of Kotlina/Kotllina and the town of Kačanik/Kaçanik, namely Hazbi Loku, Isa Raka and Muharrem Dashi. The last of these also gave evidence in relation to his home village of Stagovo/Stagova. Sejdi Lami testified to events in Slatina/Sllatina and Vata/Vataj; and Fadil Vishi and witness K31 with regard to the village of Dubrava/Lisnaja. The Chamber has carefully considered the credibility of these witnesses, taking into account *inter alia* challenges made to their evidence during cross-examination, and consistency with other witnesses’ accounts and with documentary evidence. In general, the Chamber finds these witnesses to be credible, but does not accept all of their evidence in relation to the presence of the KLA in the area. The Chamber discusses its concerns about the evidence given by Hazbi Loku relating to events in Kotlina/Kotllina on 24 March 1999 in greater detail below. The Chamber also heard evidence in relation to the general situation in the municipality from witness K73, Bislim Zyrap, and Klaus Naumann, and found that it could rely on them in this regard.

²⁴⁸⁷ Muharrem Dashi, T. 4617 (11 October 2006).

²⁴⁸⁸ P615 (Kosovo Atlas), pp. 12, 16. *See also* Petar Dujković, T. 23315 (27 February 2008).

1010. Krsman Jelić, former commander of the VJ's 243rd Mechanised Brigade, gave some evidence contradicting the accounts of the witnesses led by the Prosecution. The Chamber has already indicated in Section VII.L above that Jelić made an unfavourable impression and that it considers parts of his evidence to be unreliable. Further evidence in relation to the general situation in the municipality was given by *inter alia* Karol John Drewienkiewicz and Milan Kotur. While the Chamber has reservations about the reliability of parts of the evidence given by Kotur, it finds Drewienkiewicz to be both credible and reliable.²⁴⁸⁹

1011. Bislim Zyrapi explained that the Kačanik/Kaçanik area fell within the KLA's sixth operational zone, called Nerodimlje.²⁴⁹⁰ Zyrapi further testified that in 1999 the 162nd Brigade of the KLA was located in the Kačanik/Kaçanik area and was composed of Kosovo Albanians from that area.²⁴⁹¹ Muharrem Dashi, a Kosovo Albanian resident of Stagovo/Stagova village, testified that the 162nd brigade of the KLA, also known as the "Agim Bajrami unit," operated in the Sharri mountains area (in the west and south-west of Kačanik/Kaçanik municipality).²⁴⁹² He asserted that the KLA may have needed to enter villages in the area, such as Grlica/Gërlica, Doganović/Doganaj, Stari Kačanik/Kaçanik i Vjëter, Dubrava, Runjevo/Runjeva, Kovčevac/Kovaçeq, Gajre/Gajra, Ivaja, and Đurđev dol/Gjurgjedell, in order to get food supplies, but that otherwise they did not operate in the villages themselves.²⁴⁹³

1012. A KVM report, describing events before 28 February 1999, notes that the KLA appeared to have moved into the Kačanik/Kaçanik region in force and combined with a "militia" to form a force of 120 to 160 persons. According to the report, the KLA told the villagers in the region to move out, nearly all of whom did so by 27 February 1999.²⁴⁹⁴

1013. Jelić testified that the villages of Kotlina/Kotllina, Ivaja, Stagovo/Stagova, Slatina/Sllatina, Vata/Vataj and Dubrava were within the responsibility of his brigade.²⁴⁹⁵ He stated that his units were under constant attack, particularly on the axes Uroševac/Ferizaj, Kačanik/Kaçanik, Đeneral

²⁴⁸⁹ See e.g. Milan Kotur, T. 20646 (21 January 2008).

²⁴⁹⁰ Bislim Zyrapi, T. 5967 (6 November 2006); P2469 (Map showing KLA's seven operational zones as indicated by Bislim Zyrapi). See also Karol John Drewienkiewicz, P2508 (witness statement dated 23 June 2000), para. 191.

²⁴⁹¹ Bislim Zyrapi, T. 6046–6047 (7 November 2006), 6259 (10 November 2006); P2469 (Map showing KLA's seven operational zones as indicated by Bislim Zyrapi). See also Hazbi Loku, T. 3185 (12 September 2006), P2296 (witness statement dated 4 June 1999), p. 2; Muharrem Dashi, T. 4628–4629 (11 October 2006).

²⁴⁹² Muharrem Dashi, T. 4628–4629 (11 October 2006), 5D8 (witness statement dated 6 June 1999), p. 2.

²⁴⁹³ Muharrem Dashi, T. 4628–4629 (11 October 2006).

²⁴⁹⁴ P680 (OSCE/KVM Fusion Working Papers, 4 March 1999), p. 4.

²⁴⁹⁵ Krsman Jelić, T. 18967 (23 November 2007).

Janković/Hani i Elezit, Globočica/Gllobočica, and in the area of the Macedonian border.²⁴⁹⁶ He also stated that the KLA had territorial components, not included in the brigades, which were present in smaller villages and hamlets, and he believed there were about 40 such components, consisting of a total of 4,000 to 6,000 members altogether.²⁴⁹⁷ The territorial components were “local guards” who would mobilise people to serve as the defence of that village.²⁴⁹⁸

1014. The Accused Lazarević also testified that villages in Kačanik/Kaçanik municipality quickly turned into “terrorist strongholds” in late February 1999.²⁴⁹⁹ At that time he reported to the 3rd Army Commander, Pavković, that there was a concentration of Albanian “terrorists” in the border belt on the Kačanik/Kaçanik-Đeneral Janković/Hani i Elezit-Doganović/Doganaj-Globočica/Gllobočica axis. In his opinion the task of these forces was to set up a corridor for the “infiltration of terrorists” and of weapons and military equipment from Macedonia.²⁵⁰⁰

1015. Jelić said that people moved out of the area to the south of Uroševac/Ferizaj before and during the NATO bombing due to pressure from the KLA and coerced mobilisation of the population to join the KLA.²⁵⁰¹ Milan Kotur, infantry commander with the Priština Corps, also claimed that one of the reasons for the KLA putting pressure on local residents to move out may have been to misrepresent their departure as a result of actions by the FRY/Serbian forces.²⁵⁰²

1016. K73 gave evidence on operations in Kačanik/Kaçanik municipality in which he participated.²⁵⁰³ His unit carried out a joint operation with the 72nd Special Brigade against the KLA at the end of January or beginning of February 1999. In that action they exchanged fire with the KLA at Đeneral Janković/Hani i Elezit.²⁵⁰⁴ An order from the 3rd Army Command dated 16 March 1999 also directed the Sabotage and Reconnaissance Battalion (IDB) of the 72nd Special Brigade to engage in actions against the KLA in the broad area of Kačanik/Kaçanik along the

²⁴⁹⁶ Krsman Jelić, T. 18885, 18932 (23 November 2007). *See also* Branislav Debeljković, 6D1533 (witness statement dated 7 March 2008), paras. 63–64; 6D357 (Criminal Report, 25 April 1999); 5D680 (Interim combat report from the Command of the 243rd Mechanised Brigade, 6 June 1999).

²⁴⁹⁷ Krsman Jelić, T. 18839–18840 (22 November 2007).

²⁴⁹⁸ Krsman Jelić, T. 18840 (22 November 2007). *See also* 6D1018 (MUP Report, 15 February 1999).

²⁴⁹⁹ Vladimir Lazarević, T. 17858 (7 November 2007). *See also* 3D1048 (3rd Army Command- Security Department Report sent to the VJ General Staff, 2 March 1999), pp. 1–2.

²⁵⁰⁰ Vladimir Lazarević, T. 17869–17870 (7 November 2007); 5D253 (Letter of the PrK Command to the Command of the 3rd Army, signed by Lazarević, 28 February 1999), p. 1. *See also* Krsman Jelić, T. 18845 (22 November 2007).

²⁵⁰¹ Krsman Jelić, T. 18934–18935 (23 November 2007).

²⁵⁰² Milan Kotur, T. 20646 (21 January 2008).

²⁵⁰³ K73, T. 3295, 3297–3298, 3301–3302 (13 September 2006) (closed session).

²⁵⁰⁴ K73, P2307 (witness statement dated 2 December 2005), paras. 31–33 (under seal), T. 3312–3313 (13 September 2006) (closed session).

following axes: Tetovo–state border–Globočica/Glloboçica–Dubrava; Skopje–Đeneral Janković/Hani i Elezit–Kačanik/Kaçanik.²⁵⁰⁵

1017. During the week of 26 February to 4 March 1999 KVM monitors in the Kačanik/Kaçanik area reported that “Serb authorities” had conducted exercises in places that might have sparked conflict, had increased their patrols in areas of strong KLA influence, “projecting their authority on” members of the KVM. They also noted that the KLA appeared to have “taken the fight to the Serbs” in a number of ambushes and attacks, notably at Đeneral Janković/Hani i Elezit Salient, an area previously quiet. The report again noted that KLA members had crossed the border and combined with this militia, while encouraging the locals to leave.²⁵⁰⁶

1018. Another KVM report noted that between 23 February and 11 March 1999 a new area of military engagement had become gradually active, as the KLA from other regions moved into the villages south-west of Kačanik/Kaçanik near the border with Macedonia. This was followed by an increased concentration of VJ and police forces. Reports of fighting in that area were received on 28 February 1999, when the security forces were attacked by the KLA near Gajre/Gajra. The commander of Kačanik/Kaçanik police station was killed and four other policemen wounded. In addition an estimated 2,000 people fled villages in the Kačanik/Kaçanik area because of the conflict, and some tried to cross the border to Macedonia.²⁵⁰⁷

1019. Karol John Drewienkiewicz, Chief of Operations and Deputy Head of the KVM, also confirmed that in the period from late-February to mid-March 1999 two large operations occurred in the Kačanik/Kaçanik and Vučitrn/Vushtrria areas. In his assessment these operations must have been ordered and planned at least at the VJ Corps level because they occurred in the areas of responsibility of more than one brigade. According to Drewienkiewicz, the VJ and the MUP were on the offensive at this stage and would seal off areas where they were conducting operations, denying entry to the KVM verifiers. A cordon would be set up by the VJ, and the MUP would sweep the area within.²⁵⁰⁸ Drewienkiewicz further testified that the VJ operation in Kačanik/Kaçanik began on 8 March 1999 and was successful in pushing the KLA off the high ground on either side of the defile, but primarily the west side. Once the Kačanik/Kaçanik defile was secured, the VJ deposited platoon or section-sized units at key locations along the road to the

²⁵⁰⁵ P531 (Order of the 3rd Army, 16 March 1999), p. 1.

²⁵⁰⁶ P680 (OSCE/KVM Fusion Working Papers), pp. 1, 5. *See also* Karol John Drewienkiewicz, T. 7932–7933 (5 December 2006).

²⁵⁰⁷ 3D179 (KVM report on compliance by the parties in Kosovo, 12 March 1999), p. 2, also admitted as P444. *See also* Vladimir Lazarević, T. 17869–17870 (7 November 2007); Krsman Jelić, T. 18904 (23 November 2007); P634 (Chronology of major events in Kosovo from 15 October to 18 April 1999), p. 5; 6D347 (MUP Complaint from the Criminal Investigation Department, 28 February 1999).

Đeneral Janković/Hani i Elezit border crossing.²⁵⁰⁹ Drewienkiewicz also testified that, when he left Kosovo on 20 March 1999, taking the route Priština/Prishtina–Uroševac/Ferizaj–Kačanik/Kaçanik and going through the Đeneral Janković/Hani i Elezit border crossing, the entire road was under the control of FRY/Serbian forces.²⁵¹⁰

1020. John Crosland testified that in the period just before the NATO bombing commenced, the most significant “hotspots”—so-called on the basis of a combination of KLA activity and what the Serbs considered key areas—were *inter alia* the Podujevo/Podujeva area, Vučitrn/Vushtrria area, and the Kačanik/Kaçanik area.²⁵¹¹ The Trial Chamber is convinced that, whether or not a NATO ground invasion from Macedonia was planned, the VJ were preparing for such an eventuality and thus the Kačanik/Kaçanik area had a special significance in terms of defence.²⁵¹²

3. Kotlina/Kotllina

1021. Kotlina/Kotllina is located in a valley south of Kačanik/Kaçanik town and north-west of Đeneral Janković/Hani i Elezit, about three or four kilometres from the main road from the border crossing towards the town.²⁵¹³

1022. Hazbi Loku, who in early 1999 was a Kosovo Albanian resident of Kotlina/Kotllina, testified about events that transpired in the village in March 1999.²⁵¹⁴ According to Loku, at that time Kotlina/Kotllina was wholly inhabited by Kosovo Albanians, numbering 450–500 people.²⁵¹⁵ There were no KLA members in the village,²⁵¹⁶ not a single man was armed or in a KLA uniform, nor were there any weapons in the village.²⁵¹⁷ However, young people who wished to join the

²⁵⁰⁸ Karol John Drewienkiewicz, P2508 (witness statement dated 23 June 2000), para. 190.

²⁵⁰⁹ Karol John Drewienkiewicz, P2508 (witness statement dated 23 June 2000), para. 191.

²⁵¹⁰ Karol John Drewienkiewicz, T. 7931 (5 December 2006).

²⁵¹¹ John Crosland, P2645 (witness statement dated 31 October 2006), para. 71.

²⁵¹² See, e.g., Vladimir Lazarević, T. 17869–17870 (7 November 2007), 18785 (22 November 2007); Vlade Nonković, T. 16214 (24 September 2007); Đorđe Čurćin, T. 16945–16946, 16951 (5 October 2007); Krsman Jelić, T. 18845 (22 November 2007), 18906 (23 November 2007), 19121 (27 November 2007); Ljubomir Savić, T. 20987 (24 January 2008); Petar Damjanac, T. 23831 (6 March 2008); Spasoje Smiljanić, T. 15751–15752 (17 September 2007); P1920 (Order of the Supreme Command Staff, 29 May 1999). See also Christopher John Clark, 3D386 (witness statement dated 5 July 2001), pp. 8–9; Klaus Naumann, T. 8297 (13 December 2006); Bislim Zyrapi, T. 6047 (7 November 2006).

²⁵¹³ P615 (Kosovo Atlas), p. 12; Krsman Jelić, T. 19118 (27 November 2007).

²⁵¹⁴ Hazbi Loku, T. 3149–3178 (11 September 2006), 3179–3250 (12 September 2006), P2296 (witness statement dated 4 June 1999). See also P358 (Map of Kačanik Municipality locating various killing sites, indicating Kotlina/Kotllina and Ivaja as described by Hazbi Loku in the course of his evidence).

²⁵¹⁵ Hazbi Loku, T. 3149 (11 September 2006), P2296 (witness statement dated 4 June 1999), p. 2.

²⁵¹⁶ Hazbi Loku, T. 3183–3185, 3191, 3227, 3234, 3241 (12 September 2006).

²⁵¹⁷ Hazbi Loku, T. 3174–3176 (11 September 2006), 3192 (12 September 2006). Cf. 6D1, T. 25677–25678, 25718 (21 April 2008); 3D74 (Report on forensic examination); 3D179 (KVM report on compliance by the parties in Kosovo, 12 March 1999), also admitted as P444.

ranks of the KLA could do so by going to the mountains.²⁵¹⁸ He also stated that he knew that there were some KLA members in the village of Ivaja and that he believed that they were resisting the “Serb forces.” Later on during his testimony he specified that, when Ivaja was attacked, some resistance was put up by the KLA, but not inside the village, rather on the outskirts of it.²⁵¹⁹

1023. On the other hand, Krsman Jelić testified that Kotlina/Kotllina was a “terrorist stronghold”,²⁵²⁰ with between 200 and 600 “terrorists” there.²⁵²¹ He further stated that Combat Groups 3 and 21 of the 243rd Mechanised Brigade were positioned on both sides of Kotlina/Kotllina and Ivaja before and during March 1999.²⁵²²

a. Events on 9 March 1999

1024. Hazbi Loku testified that between 1 and 9 March 1999 villages near Kotlina/Kotllina were shelled, including the neighbouring village of Ivaja.²⁵²³ On 9 March at about 4:00 a.m. two rockets were fired over Kotlina/Kotllina. Out of fear that they were about to be attacked the villagers prepared to flee. Two evacuation plans had been formed, one to go to Kačanik/Kaçanik town, and the other to move west towards Macedonia. However, as the villagers did not know where the “Serb forces” were positioned, they could not decide which way to go. Consequently, about 30 people in groups of two or three spread out to see where these Serb forces were located. They included Loku’s brother, Milaim Loku, and a man named Emrlah Kuçi.²⁵²⁴ They were not carrying any guns or other weapons and were dressed in normal civilian clothing.²⁵²⁵ These men returned to the village when they came under fire, and reported that the road to Ivaja was blocked by “Serb forces” and that the only route that could be taken was towards Globočica/Gllobočica, close to the Macedonian border.²⁵²⁶

1025. Loku testified that “it was decided” that the men between 16 and 45 years age should hide because it was likely that, if captured, they would be killed or tortured.²⁵²⁷ He estimated that about

²⁵¹⁸ Hazbi Loku, T. 3185 (12 September 2006).

²⁵¹⁹ Hazbi Loku, P2296 (witness statement dated 4 June 1999), p. 2, 4D12 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 1925, T. 3208–3209 (12 September 2006).

²⁵²⁰ Krsman Jelić, T. 18902 (23 November 2007). *See also* 4D296 (Report from the Supreme Command Staff Intelligence Administration, 31 May 1999).

²⁵²¹ Krsman Jelić, T. 18975 (26 November 2007).

²⁵²² Krsman Jelić, T. 18906–18907 (23 November 2007); IC142 (Map marked by Krsman Jelić).

²⁵²³ Hazbi Loku, P2296 (witness statement dated 4 June 1999), p. 2.

²⁵²⁴ Hazbi Loku, P2296 (witness statement dated 4 June 1999), pp. 2–3.

²⁵²⁵ Hazbi Loku, P2296 (witness statement dated 4 June 1999), p. 4.

²⁵²⁶ Hazbi Loku, P2296 (witness statement dated 4 June 1999), p. 2, 4D12 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 1925–1928.

²⁵²⁷ Hazbi Loku, P2296 (witness statement dated 4 June 1999), p. 2, 4D12 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 1929.

60 to 70 men in this age group, including him, went to hide in deep gullies and ravines, while the rest of the villagers departed in the direction of Globočica/Gllobočica.²⁵²⁸ In “Drešec”, a neighbourhood of Kotlina/Kotllina, their route was blocked by members of the VJ and police wearing uniforms described by Loku as “blue camouflage police uniforms”. Loku could see what was happening from the position he had taken.²⁵²⁹ The VJ and the police started firing in the general direction of the group to prevent them from proceeding with their journey, and so the villagers stopped and then turned back towards the centre of Kotlina/Kotllina.²⁵³⁰ At the same time Loku saw three tanks, which he identified as being large green military tanks, accompanied by VJ soldiers, and two dark blue APCs, accompanied by members of the police, advancing ahead of the “Serb forces” that were on foot. He could also see houses on fire. He later saw that all the houses in the neighbourhood of “Drešec” had been burned, and concluded that they had been set on fire from the inside, the houses being so far apart that the fire could not have spread from house to house.²⁵³¹ No one was killed that day, but the entire neighbourhood was burned and looted.²⁵³²

1026. Loku described how the group of villagers travelled about 300 metres back towards Kotlina/Kotllina before turning into a ravine to hide. Simultaneously, “Serb forces” were approaching Kotlina/Kotllina from the direction of Ivaja. He went further into the ravine, again with the other men from the village, and from this new position he could hear the sounds of guns being fired and of vehicles passing by. He stayed hidden until he could no longer hear vehicle movement or gunshots, and then climbed to the top of the ravine to reach his village. He could see that several houses had been destroyed where tanks had been driven into them. While he tried to extinguish the fires in some burning houses, other men went to find the people from the larger group.²⁵³³ Loku also saw that shops in the village had been looted, cars and tractors had been stolen or damaged, and houses had been looted and damaged inside and out with gunfire. Many animals, including livestock, had been killed or injured by gunshots.²⁵³⁴

²⁵²⁸ Hazbi Loku, P2296 (witness statement dated 4 June 1999), p. 3, 4D12 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 1929.

²⁵²⁹ Hazbi Loku, P2296 (witness statement dated 4 June 1999), p. 3.

²⁵³⁰ Hazbi Loku, T. 3238 (12 September 2006), P2296 (witness statement dated 4 June 1999), p. 3, 4D12 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 1929–1930.

²⁵³¹ Hazbi Loku, P2296 (witness statement dated 4 June 1999), p. 3.

²⁵³² Hazbi Loku, T. 3151 (11 September 2006), T. 3238 (12 September 2006), P2296 (witness statement dated 4 June 1999), p. 3, 4D12 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 1929–1930, 1932–1933.

²⁵³³ Hazbi Loku, P2296 (witness statement dated 4 June 1999), p. 3.

²⁵³⁴ Hazbi Loku, P2296 (witness statement dated 4 June 1999), p. 4.

1027. By later that evening most of the people had returned to the village, but 15 of the men who had gone out as lookouts in the morning did not. During the next few days most of these men returned, except for Loku's brother Milaim, and Emrlah Kuçi.²⁵³⁵

1028. Representatives of the KVM arrived in Kotlina/Kotllina on 10 March 1999. Loku stated that, while they were there, the villagers felt safe.²⁵³⁶ Six days after the attack of 9 March, Loku and others were able to go searching for the two missing men and found their bodies lying close to each other. Milaim Loku's body was in a small river; he had been shot through the back of the head on the right side; he also had a wound on his right side. Emrlah Kuçi's body had been partly eaten by animals, but Loku could nonetheless see two bullet holes in his jacket on the right side of his back, and two other holes on the left side of his jacket.²⁵³⁷ The villagers buried the bodies later that day in Kotlina/Kotllina cemetery.²⁵³⁸

1029. When Jelić was confronted with Loku's evidence, he denied that Kotlina/Kotllina was attacked. He stated that the VJ never attacked "a village."²⁵³⁹ Jelić confirmed, however, that, due to the killing of a police commander by the KLA in late February in Gajre/Gajra (see above), MUP forces searched the area looking for "terrorists" and that a clash took place around 8 and 9 March 1999.²⁵⁴⁰

1030. Although the participation of the VJ was denied by Jelić, the KVM reported that on 8 and 9 March 1999 security forces and the KLA clashed in the villages of Straza/Strazha, Alil Mahala, Ivaja, and Gajre/Gajra, southwest of Kačanik/Kaçanik, in a relatively large engagement. VJ forces seen by KVM verifiers included tanks, mortars, and anti-aircraft artillery, but the verifiers were prevented from gaining access to the area by the security forces and the KLA. Small arms fire and mortar fire was heard sporadically throughout the day on 9 March, and police and VJ reinforcements were seen moving into the area. On 10 March the KVM was informed by the police that operations in the area had been completed, and were shown a stockpile of weapons, ammunition, and military uniforms said by the police to have been seized in Kotlina/Kotllina and Ivaja.²⁵⁴¹

²⁵³⁵ Hazbi Loku, P2296 (witness statement dated 4 June 1999), p. 3.

²⁵³⁶ Hazbi Loku, P2296 (witness statement dated 4 June 1999), pp. 3–4.

²⁵³⁷ Hazbi Loku, P2296 (witness statement dated 4 June 1999), p. 3.

²⁵³⁸ Hazbi Loku, P2296 (witness statement dated 4 June 1999), p. 4.

²⁵³⁹ Krsman Jelić, T. 18904 (23 November 2007).

²⁵⁴⁰ Krsman Jelić, T. 18904–18905 (23 November 2007).

²⁵⁴¹ 3D179 (KVM report on compliance by the parties in Kosovo, 12 March 1999), pp. 2–3, also admitted as P444. *See also* P634 (Chronology of major events in Kosovo from 15 October to 18 April 1999), p. 6; P407 (OSCE/KVM Bluebook), pp. 662, 673.

b. Events on 24 March 1999

1031. Loku testified that on 24 March 1999, at about 6:30 a.m., Kotlina/Kotllina was shelled by “Serb forces” from four positions around the village: from the direction of Globočica/Gllobočica (to the west); from the village of Gorance/Goranca (to the south); from the locality of “Kašan”; and from an area to the north of the town of Kačanik/Kaçanik. The shelling continued until about 9.00 a.m.. In Loku’s opinion it seemed to be directed towards an area just outside the village in an effort to stop people from fleeing.²⁵⁴² There was no-one in the village firing back; the local residents did not have any weapons with which to resist the attack.²⁵⁴³

1032. At about 9:00 a.m. the “Serb forces”, identified by Loku as including both the VJ and police, started to advance towards Kotlina/Kotllina and encircled the village. Because of the danger that they felt they were in, the villagers decided to leave and fled to various places.²⁵⁴⁴ Loku was in a group of about 30 men who hid in a deep ravine on the south side of the village. He positioned himself at the top of the ravine, at a place called “the fortress.”²⁵⁴⁵ Other groups fled in other directions; one went up to a wooded hill on the north side of the village. Loku estimated that approximately 100 men from the village went into hiding at that time.²⁵⁴⁶ It had been agreed previously that the women, children, and elderly men should all join up and go to an open area, so that they were easily visible and there was less chance of them all being killed.²⁵⁴⁷

1033. While hiding at the top of the ravine to the south of the village, Loku saw tanks and Pinzgauers arrive. The tanks were firing shots over the village.²⁵⁴⁸ On the top of the hill, to the north side of the village, he also saw a large number of “Serb soldiers”, who had surrounded and captured approximately 20 men from his village.²⁵⁴⁹ They were about 400 to 600 metres from Loku’s position on the hill to the south of the village. He stated that he had an unobstructed view

²⁵⁴² Hazbi Loku, P2296 (witness statement dated 4 June 1999), p. 4, 4D12 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 1926.

²⁵⁴³ Hazbi Loku, P2296 (witness statement dated 4 June 1999), p. 4, T. 3167 (11 September 2006), 4D12 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 1936–1937.

²⁵⁴⁴ Hazbi Loku, P2296 (witness statement dated 4 June 1999), p. 4, T. 3158 (11 September 2006).

²⁵⁴⁵ Hazbi Loku, P2296 (witness statement dated 4 June 1999), p. 4, T. 3152, 3154, 3158 (11 September 2006). Loku drew a map which is attached to his statement; he explained the map in the court and marked the fortress as “Kalaja”. Hazbi Loku, T. 3154 (11 September 2006), P2296 (witness statement dated 4 June 1999), p. 9.

²⁵⁴⁶ Hazbi Loku, T. 3156 (11 September 2006).

²⁵⁴⁷ Hazbi Loku, P2296 (witness statement dated 4 June 1999), p. 4.

²⁵⁴⁸ Hazbi Loku, T. 3211 (12 September 2006), P2296 (witness statement dated 4 June 1999), p. 4, 4D12 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 1939–1940.

²⁵⁴⁹ Hazbi Loku, P2296 (witness statement dated 4 June 1999), pp. 4–5, T. 3158 (11 September 2006).

across to the hill on the other side and into the village below.²⁵⁵⁰ He further stated that none of these men from his village was armed or a member of the KLA.²⁵⁵¹

1034. Loku could also observe a large group of women, children, and elderly men who had gathered in the field near the centre of the village, about 150 metres from his position. His cousin, who was with him, had a pair of binoculars which they both used in order to get a better view of what was going on inside and on the outskirts of the village. Loku said he could also see clearly with the naked eye what was happening to the women and children and also on the hill to the north of the village.²⁵⁵²

1035. He saw the captured men being beaten with rifle butts, kicked, and knocked down the hill. He could hear them screaming and pleading for mercy. As this was going on, other soldiers were firing in the general direction of the group of women and children, as if they were trying to frighten them. They were also spraying buildings with automatic gunfire. The panic among the villagers intensified when the captured men were beaten in view of the women and children, including members of their families.²⁵⁵³

1036. Loku described the forces involved as wearing police uniforms and bullet-proof vests that were blue camouflage in colour. Some of the policemen were also wearing black masks with eye and mouth holes. He could see that some of them had the word "POLICIJA" in white letters on their backs. Others wore red bandannas on their heads. In addition soldiers wearing green camouflage VJ uniforms with green berets on their heads were also involved in the beatings. These police and VJ soldiers had split up into groups: some of them were with the captured men; others were guarding the women, children, and elderly men; and yet another group was looting houses in the village. As they searched the village, they found other women and children who had not been able to get to the field to join the others. They were taken to the field and placed with the rest of the women and children.²⁵⁵⁴

1037. By about noon the police and VJ forces had gathered together all the remaining people from the village.²⁵⁵⁵ Loku then saw them separate the women and the children from the elderly men. The men were taken to another part of the field and made to lie face down on the ground. He could

²⁵⁵⁰ Hazbi Loku, P2296 (witness statement dated 4 June 1999), p. 4, T. 3159 (11 September 2006).

²⁵⁵¹ Hazbi Loku, P2296 (witness statement dated 4 June 1999), p. 5.

²⁵⁵² Hazbi Loku, P2296 (witness statement dated 4 June 1999), p. 4, T. 3195 (12 September 2006).

²⁵⁵³ Hazbi Loku, P2296 (witness statement dated 4 June 1999), p. 5.

²⁵⁵⁴ Hazbi Loku, P2296 (witness statement dated 4 June 1999), p. 5.

²⁵⁵⁵ Hazbi Loku, T. 3155 (11 September 2006), P2296 (witness statement dated 4 June 1999), p. 5; *see also* IC34 (Copy of the hand-drawn map attached to P2296, used by Hazbi Loku to indicate the place where the population was gathered).

see that some of them were kicked and some struck with rifle butts.²⁵⁵⁶ Some men in police uniforms took away Idriz Kuçi, a villager of about 55 to 60 years of age.²⁵⁵⁷

1038. At about 3:00 p.m. two old green VJ military trucks with canvas backs arrived in the village, and about 400 people, mainly women and children, were forcibly loaded on to them. The trucks then departed towards Kačanik/Kaçanik. Those who did not fit on the trucks walked behind them at gunpoint.²⁵⁵⁸ The elderly men were also forced to walk in the same direction, but separately from the women and children.²⁵⁵⁹ Loku saw people being beaten, maltreated, and threatened throughout the journey to Kačanik/Kaçanik.²⁵⁶⁰ They were told, “If you do not walk, we will kill you here on the road.”²⁵⁶¹ According to Loku, at the same time other members of the police and VJ were moving about the village and appeared to be preparing each house to be burned.²⁵⁶² He then saw that every building in the village, including the school, started to burn almost simultaneously.²⁵⁶³

1039. Loku then saw the group of 20 captured men being led away towards an area on the hillside to the north of the village where there were two large holes, which had been dug previously to make a well.²⁵⁶⁴ The two holes were situated about five to six metres apart, near the entrance of the village.²⁵⁶⁵ Loku again stated that he could clearly observe what was happening from his hiding place, which was about 500 to 600 metres away from the holes.²⁵⁶⁶ Initially, Loku stated that the men had their hands tied, but later explained that he could only see that they held their hands above their heads.²⁵⁶⁷ As the captured men were taken closer to the holes, they realised that they were

²⁵⁵⁶ Hazbi Loku, P2296 (witness statement dated 4 June 1999), p. 5, 4D12 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 1940–1941.

²⁵⁵⁷ Hazbi Loku, P2296 (witness statement dated 4 June 1999), p. 5, 4D12 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 1941.

²⁵⁵⁸ Hazbi Loku, P2296 (witness statement dated 4 June 1999), p. 5, T. 3156–3157 (11 September 2006), 4D12 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 1944.

²⁵⁵⁹ Hazbi Loku, P2296 (witness statement dated 4 June 1999), p. 5.

²⁵⁶⁰ Hazbi Loku, T. 3156 (11 September 2006), P2296 (witness statement dated 4 June 1999), p. 5.

²⁵⁶¹ Hazbi Loku, T. 3157 (11 September 2006).

²⁵⁶² Hazbi Loku, P2296 (witness statement dated 4 June 1999), p. 5.

²⁵⁶³ Hazbi Loku, P2296 (witness statement dated 4 June 1999), p. 6, T. 3165–3167 (11 September 2006). *See also* P48 (Photograph taken by Hazbi Loku, depicting the site of the burned school in Kotlina/Kotllina); P49 (Photograph taken by Hazbi Loku, depicting a house that was burned by the Serbian forces); P50 (Photograph taken by Hazbi Loku, depicting the scene of P49, but at a different angle).

²⁵⁶⁴ Hazbi Loku, P2296 (witness statement dated 4 June 1999), pp. 5, 9; Hazbi Loku, T. 3158–3159 (11 September 2006), T. 3229–3233 (12 September 2006).

²⁵⁶⁵ Hazbi Loku, T. 3158–3159, 3161 (11 September 2006). *See also* P360 (Close-up photograph of holes in the hillside).

²⁵⁶⁶ Hazbi Loku, P2296 (witness statement dated 4 June 1999), p. 6, T. 3159 (11 September 2006), 3197–3200, 3220–3221 (12 September 2006); *see also* Hazbi Loku, 4D13 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 2018; 4D14 (ICG/OSCE Interview Database Report of Hazbi Loku), p. 1.

²⁵⁶⁷ Hazbi Loku, T. 3160 (11 September 2006), T. 3229–3230 (12 September 2006).

probably going to be killed and they started to resist. However, they were beaten and dragged by about 150 police and VJ soldiers.²⁵⁶⁸

1040. Around 3.30 p.m. Loku saw the first two or three men being thrown into the holes, as the rest of them continued to be beaten severely. He testified that one or two of the men may also have been shot. All of them were picked up and thrown into the holes. About 30 minutes later he heard a loud explosion from the area where the holes were and saw dust and a cloud of smoke rising in the air.²⁵⁶⁹ As a result of the holes being “mined” in this manner, Loku stated that the area was “levelled”.²⁵⁷⁰

1041. The Pavković Defence questioned Loku about why in his written statement he used the term “hole” instead of “well” and referred to a “hole” instead of “holes”, and why he drew only one hole on the hand-drawn map attached to the statement.²⁵⁷¹ Loku responded that “hole” and “well” are interchangeable in his language, and that he indicated both holes with one circle on the diagram because they were very close to each other. The Defence challenged this explanation by showing him a photograph depicting the two holes, showing them to be two very large and prominent separate features. Loku pointed out that this photograph showed the holes as they were when they had been expanded in order to complete the work of exhuming the bodies from them.²⁵⁷² The Ojdanić Defence also employed a line of questioning regarding Loku’s view of the holes from his vantage point using some photographs of the area of the holes and the surrounding vegetation taken in May 2006. Loku stated that his view was much clearer than that shown in the photographs, as there was no vegetation in March.²⁵⁷³

1042. After the police and VJ forces had left in the direction of Kačanik/Kaçanik town, Loku and the others who remained came out of their hiding places and entered the village in order to remove the livestock.²⁵⁷⁴ He saw the body of Idriz Kuçi in the yard of a house and could see that he had been shot in the back of the head from close range.²⁵⁷⁵ Another group of men found the body of Vejsel Vlashi, who was about 58 years old, in one of the rooms of the same house. They told Loku

²⁵⁶⁸ Hazbi Loku, P2296 (witness statement dated 4 June 1999), p. 6, T. 3160 (11 September 2006), 3229–3230 (12 September 2006).

²⁵⁶⁹ Hazbi Loku, P2296 (witness statement dated 4 June 1999), p. 6; Hazbi Loku, T. 3160 (11 September 2006); Hazbi Loku, T. 3233 (12 September 2006).

²⁵⁷⁰ Hazbi Loku, T. 3160 (11 September 2006); P360 (Close-up photograph of holes in the hillside).

²⁵⁷¹ Hazbi Loku, T. 3218–3220 (12 September 2006); *see also* Hazbi Loku, P2296 (witness statement dated 4 June 1999), p. 9.

²⁵⁷² Hazbi Loku, T. 3220–3221 (12 September 2006); *see also* P360 (Close-up photograph of holes in the hillside).

²⁵⁷³ Hazbi Loku, T. 3197–3200 (12 September 2006); *see also* 3D88 (Photographs of the Kotlina village).

²⁵⁷⁴ Hazbi Loku, P2296 (witness statement dated 4 June 1999), p. 6, T. 3212–3213 (12 September 2006).

²⁵⁷⁵ Hazbi Loku, P2296 (witness statement dated 4 June 1999), p. 5, 4D12 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 1941.

that he had been shot several times in the chest, and the bottom half of his body had been badly burned.²⁵⁷⁶ There they also found Zimer Loku, who was still alive but very badly injured. He had wounds to his chest, and his right leg was almost completely severed below the knee. Earlier that day, Hazbi Loku had seen Zimer Loku collapse while he was walking towards the women and children in the field, but he could not see what had caused him to collapse. Zimer Loku later died from his injuries.²⁵⁷⁷

1043. When asked why they went into the village instead of looking for survivors at the holes, Loku stated that the men who returned to the village split up; some of them released the livestock, while some searched for dead bodies or injured persons. Although he did not go to the holes to look for survivors, there were others who did so.²⁵⁷⁸

1044. Three villagers agreed to stay to bury Vejsel, Idriz, and Zimer while the remaining villagers decided to leave for Macedonia. The group that left for Macedonia, including Loku, numbered 48 people. They departed at 10:00 p.m. that night and arrived at the border crossing at 5:00 the following morning. It had been difficult to count the exact number of captured men at the holes, since there were soldiers around them and they were constantly moving about. When Loku arrived in Macedonia and talked to other people, he established that 22 or 23 people were unaccounted for in relation to the incident at the wells in Kotlina/Kotllina.²⁵⁷⁹

1045. Loku also testified that, once the people who had been taken from Kotlina/Kotllina by truck, or accompanied the trucks on foot, arrived in Kačanik/Kaçanik, they were sent to different houses of local residents. Those people, including Loku's family, stayed in the town for some time, but then decided to go to Macedonia as "Serb forces" were attacking the town. They walked several nights on mountain paths before finally arriving in Blace in Macedonia.²⁵⁸⁰

1046. An order dated 21 March 1999 from the command of the 243rd Mechanised Brigade, signed by Krsman Jelić, to impose a blockade around, and break up and destroy the forces of Albanian "terrorists" in the Kotlina/Kotllina area, confirmed that a joint VJ and MUP action was ordered to take place in, among others, the villages of Kotlina/Kotllina and Ivaja on 24 March 1999. According to the order, Combat Group 3, in co-ordination with PJP units, was to break up and destroy the "ŠTS" troops along the axes of the mentioned villages, and take control of the

²⁵⁷⁶ Hazbi Loku, P2296 (witness statement dated 4 June 1999), p. 5.

²⁵⁷⁷ Hazbi Loku, P2296 (witness statement dated 4 June 1999), p. 6.

²⁵⁷⁸ Hazbi Loku, T. 3212–3213 (12 September 2006).

²⁵⁷⁹ Hazbi Loku, P2296 (witness statement dated 4 June 1999), p. 6.

²⁵⁸⁰ Hazbi Loku, T. 3157 (11 September 2006).

territory.²⁵⁸¹ A platoon from the SAJ and the IO [reconnaissance squad] was to take part in the breaking-up and destruction of the “sabotage and terrorist forces” along the Kotlina/Kotllina axis.²⁵⁸² And a PJP company, in co-ordination with the reconnaissance squad, had the task of breaking-up and destroying “ŠTS” troops along the Gajre/Gajra–Ivaja axis, protecting the troops, and gaining control of the territory.²⁵⁸³

1047. Jelić, who confirmed that Combat Groups 3 and 21 of the 243rd Mechanised Brigade were positioned on both sides of Kotlina/Kotllina and Ivaja before and during March 1999, testified that those units were in the first level of defence and were not allowed to use heavy weaponry unless they were attacked.²⁵⁸⁴ He also explained that, when the NATO airstrikes began, there was a large-scale attack against all his units in this region by “terrorist forces”. However, no tanks were used in repelling these attacks.²⁵⁸⁵

1048. When Jelić was presented with parts of Loku’s evidence, he first flatly denied that the VJ would have entered or attacked Kotlina/Kotllina on 24 March 1999, or that he had issued an order regarding that action.²⁵⁸⁶ However, when his own order was put to him, he changed his testimony and acknowledged that it was in fact his decision, planning the destruction of the “terrorist forces” in the broader region of Kotlina/Kotllina and Ivaja by VJ and MUP forces on 23 and 24 March 1999.²⁵⁸⁷ He then explained that a plan had been made with the MUP to “crush terrorist forces” in the area. The strength of the police unit was determined by the chief of the SUP.²⁵⁸⁸ Jelić confirmed that this anti-terrorist action was performed by MUP and VJ units, but with fewer units than originally planned. The MUP forces entered the village, searched it, and checked the identity papers of the local residents. The army did not enter the village as it was strictly prohibited for them to enter populated areas.²⁵⁸⁹ He further testified that he was not in charge of the MUP forces taking part in that action.²⁵⁹⁰

²⁵⁸¹ 6D1465 (Command of the 243rd Mechanised Brigade, 21 March 1999), p. 2.

²⁵⁸² 6D1465 (Command of the 243rd Mechanised Brigade, 21 March 1999), p. 2. *See also* Krsman Jelić, T. 18983–18984 (26 November 2007).

²⁵⁸³ 6D1465 (Command of the 243rd Mechanised Brigade, 21 March 1999), p. 2. *See also* 6D1466 (Combat Report of the 243rd Mechanised Brigade, 24 March 1999).

²⁵⁸⁴ Krsman Jelić, T. 18906–18907, 18909 (23 November 2007); *see also* IC142 (Map marked by Krsman Jelić).

²⁵⁸⁵ Krsman Jelić, T. 18908 (23 November 2007).

²⁵⁸⁶ Krsman Jelić, T. 18907, 18969 (23 November 2007).

²⁵⁸⁷ Krsman Jelić, T. 18977–18980 (26 November 2007); *see also* 6D1465 (Command of the 243rd Mechanised Brigade, 21 March 1999).

²⁵⁸⁸ Krsman Jelić, T. 18981–18985 (26 November 2007), T. 19143 (27 November 2007).

²⁵⁸⁹ Krsman Jelić, T. 18988–18991 (26 November 2007).

²⁵⁹⁰ Krsman Jelić, T. 19115–19118 (27 November 2007).

1049. According to a combat report from the 243rd Mechanised Brigade, dated 24 March 1999, part of the forces of Combat Group 3, with part of the forces of the 57 Border Battalion and two companies of the PJP, carried out a blockade of the general area where the Albanian “terrorist forces” were concentrated. The “terrorist forces” were routed, 26 “terrorists” were “liquidated”, about 20 barrels of weapons were captured, and in the course of the activities some mines were deactivated. Activities were carried out in the area of the villages of Straza/Strazha and Kotlina/Kotllina on the Bojevo- Globočica/Gllobočica axis.²⁵⁹¹ Jelić explained that they learned the number of casualties after the end of the action when an investigating judge arrived and an attempt was made to identify the corpses, carry out searches, and confiscate or collect weapons.²⁵⁹²

1050. When confronted with Loku’s evidence concerning the killings in the wells, Jelić stated that he only heard about that incident later on, from the media and from proceedings at the Tribunal. Since his men were not there, they were not able to give him that information and they were not informed by anyone else that something like that had happened. The military police organs did not go there, nor did a military investigating judge.²⁵⁹³ According to his information, there were about 600 to 700 “terrorists” there and the people in the wells were “most likely” killed in the combat that took place there, although he conceded that there may have been some innocent collateral victims. When told during cross-examination that these people had suffered injuries from an explosion and that their bodies were found inside pits, water-holes, on the side of a slope, he stated that, if this took place during combat, he condemned such actions as “inhumane” and “bizarre”. He further testified that the MUP forces brought an investigating judge and forensic technicians.²⁵⁹⁴

1051. Witness 6D1 testified about the on-site investigation in Kotlina/Kotllina on 24 March 1999. On the way to the village, by the Uroševac/Ferizaj–Đeneral Janković/Hani i Elezit road at the crossing to Kotlina/Kotllina, the investigating team met Jelić, who told them that the action in the village had been completed and that they could proceed.²⁵⁹⁵ The team arrived in Kotlina/Kotllina at around 5:00 p.m., at a house high up in the hills and outside the area of the village proper, where they had been told that the staff of the KLA was located. In the house they found large quantities of military equipment, rifles, ammunition, sleeping bags, and uniforms.²⁵⁹⁶ As they continued to

²⁵⁹¹ 6D1466 (Combat Report of the 243rd Mechanised Brigade, 24 March 1999); *see also* Krsman Jelić, T. 18994–18997 (26 November 2007).

²⁵⁹² Krsman Jelić, T. 18997–18998 (26 November 2007).

²⁵⁹³ Krsman Jelić, T. 19113–19114 (27 November 2007).

²⁵⁹⁴ Krsman Jelić, T. 19115–19118 (27 November 2007). *See also* Branislav Debeljković, T. 24268–24274, 24280–24281, 24283 (13 March 2008); 6D502 (Official Note from MUP, 6 June 2003).

²⁵⁹⁵ 6D1, T. 25677 (21 April 2008) (closed session).

²⁵⁹⁶ 6D1, T. 25677–25678, 25718 (21 April 2008) (closed session); 3D74 (Report on forensic examination), p. 12.

walk up a hill, 6D1 could see trenches and several bodies, next to which were fire-arms.²⁵⁹⁷ They could hear shooting from the mountains and, since the commander of the PJP unit had informed them that they could not guarantee their security, they decided to leave and return. 6D1 was informed by the same commander that there had been a large number of “terrorists” in that area, and that after the fighting they had fled in different directions into the hills, from where they could open fire again at any time.²⁵⁹⁸ The forensic technicians saw two shelters which looked like wells, and in the immediate vicinity of these shelters was a large number of corpses. In one of the shelters there was a ladder.²⁵⁹⁹ 6D1 saw six corpses and an additional ten were photographed.²⁶⁰⁰ The next day they returned to the site but had to leave because of intense shooting.²⁶⁰¹ All this information was recorded in a report. This report, which was admitted into evidence by the Chamber, contained a handwritten word “Ivaja” next to the reference to Kotlina/Kotllina.²⁶⁰² Having been shown this report in court, 6D1 stated that the word “Ivaja” was not there before.²⁶⁰³

1052. When Loku was shown the photographs in the report prepared by the investigating team, he denied that the holes were the same as the ones used during the incident. He explained that the holes were located in a mountainous area full of stones but that the holes on the photographs “do not resemble the ones in our village.” He also testified that there was water at the bottom of the hole in the photographs, but that the holes he knew were dry.²⁶⁰⁴ The Trial Chamber notes in this respect that it could not identify any water in the holes shown in the photographs. Loku was also asked during cross-examination to identify the houses shown in photographs in the report. For each picture he was shown, Loku denied that the houses represented houses in his village.²⁶⁰⁵ Loku denied that he had seen any members of an on-site investigation team.²⁶⁰⁶

1053. Considering all the evidence, the Trial Chamber concludes that there was a KLA presence of some kind in, or close to, Kotlina/Kotllina on 24 March 1999. While there may not have been KLA members in the centre of the village, the evidence demonstrates that the village occupied a hilly, wooded location, and the KLA certainly had positions in the hills in the immediate vicinity of the village.

²⁵⁹⁷ 6D1, T. 25679 (21 April 2008) (closed session).

²⁵⁹⁸ 6D1, T. 25679–25680 (21 April 2008) (closed session).

²⁵⁹⁹ 6D1, T. 25681–25682, 25685, 25722 (21 April 2008) (closed session). *See also* Branislav Debeljković, T. 24282–24283 (13 March 2008).

²⁶⁰⁰ 6D1, T. 25739–25740 (21 April 2008) (closed session).

²⁶⁰¹ 6D1, T. 25682–25684 (21 April 2008) (closed session).

²⁶⁰² 6D501 (Case file regarding an act of terrorism in Kotlina/Kotllina, 24 March 1999).

²⁶⁰³ 6D1, T. 25712 (21 April 2008).

²⁶⁰⁴ Hazbi Loku, T. 3180–3181 (12 September 2006).

²⁶⁰⁵ Hazbi Loku, T. 3177 (11 September 2006).

²⁶⁰⁶ Hazbi Loku, P2296 (witness statement dated 4 June 1999), p. 6, T. 3182, 3233 (12 September 2006).

1054. In the autumn of 1999, by which time the inhabitants of Kotlina/Kotllina had returned to the village, an Austrian forensic team attended the site and examined 22 bodies found in the holes described by Loku. Families of the victims assisted the team in their efforts to identify the victims. Loku also stated that many others came to investigate, and they would then be directed by the villagers to the holes.²⁶⁰⁷ After the bodies were recovered from the holes, most of them were buried in the schoolyard in Kotlina/Kotllina, and the rest were buried in “Kačanik cemetery”.²⁶⁰⁸

1055. According to Loku, Kačanik/Kaçanik cemetery was for “heroes” or “martyrs.”²⁶⁰⁹ While he agreed that the cemetery was associated with the KLA, he also stated that not everyone buried there was in the KLA.²⁶¹⁰ Of the people killed in Kotlina/Kotllina on 9 and 24 March 1999, about seven or eight were buried in Kačanik/Kaçanik cemetery.²⁶¹¹ On cross-examination, Loku testified that some of these people were buried in this “martyrs” cemetery because they contributed to the national cause before 24 March 1999; for example, three of them were teachers and contributed to the national cause through education.²⁶¹² These people were, according to Loku, “victims of the war”, “martyrs of the war”.²⁶¹³

1056. Loku provided the Chamber with photographs of the people killed in Kotlina/Kotllina, together with photographs that were taken during their burial.²⁶¹⁴ He identified those killed in March 1999 as follows: Adnan Loku, Ibush Loku, Mina Kuci, Bajram Loku, Zija Loku, Ismet Loku, Sali Vasliu, Naser Loku, Mahi Loku, Danush Idriz Kuci, Serif Kuci, Dzermal Muradem Kuci, Vesel Vlashi, Nexhad Ferid Kuci, Sabri Hamed Loku, Nasir Fadil Loku, Sabit Loku, Garep Loku, Agim Loku, Ismajl Loku, Ismajl Kuci, Zimer Loku, Milaim Loku, and Neshad Rexha.²⁶¹⁵

1057. Forensic evidence relating to the bodies found in Kotlina/Kotllina was provided through Dr. Eric Baccard, under reference to his report, which contains a section discussing evidence gathered from Kotlina/Kotllina by the Austrian forensic team, and their report thereon.²⁶¹⁶

²⁶⁰⁷ Hazbi Loku, T. 3161–3162 (11 September 2006).

²⁶⁰⁸ Hazbi Loku, T. 3167–3168 (11 September 2006). *See also* Hazbi Loku, 4D16 (supplemental information sheet, 5 September 2006), p. 2.

²⁶⁰⁹ Hazbi Loku, T. 3170–3171 (11 September 2006).

²⁶¹⁰ Hazbi Loku, T. 3170 (11 September 2006).

²⁶¹¹ Hazbi Loku, T. 3170 (11 September 2006), T. 3188 (12 September 2008). *See also* 3D72 (Photographs of tombstones), showing that *e.g.* Neshat Rexha, Mahim Loku and Xhemjal Kuqi were buried there.)

²⁶¹² Hazbi Loku, T. 3191–3192 (12 September 2006).

²⁶¹³ Hazbi Loku, T. 3205–3206 (12 September 2006). *See also* 3D72 (Photographs of tombstones).

²⁶¹⁴ P380 (Set of 24 photographs provided by Hazbi Loku).

²⁶¹⁵ Hazbi Loku, T. 3163–3164 (11 September 2006); Hazbi Loku, P380 (Set of 24 photographs provided by Hazbi Loku).

²⁶¹⁶ P1809 (Eric Baccard’s overview report), pp. 48–52; *see also* P361 (Austrian Forensic Team Report on Kotlina).

1058. According to Baccard, evidence was collected from a crime scene designated number XX-I (upper and lower wells) and another designated XXI-2 (mosque), from 7 to 15 September 1999, by the Austrian team. Autopsies of 25 individuals from these sites were then performed in Kačanik/Kaçanik cemetery by Dr. Christopher Markwalder and Dr. Daniel Wyler from the Swiss Disaster Victim Identification Team.²⁶¹⁷ Twenty-two individuals were in the upper and lower wells, and three in the mosque.²⁶¹⁸ In 21 cases the bodies were described as severely decomposed; in the remaining four cases the state of the body is not noted.²⁶¹⁹ According to Baccard's report, 21 individuals were identified from body parts and other materials found. In other cases bodies or body parts remained unidentified.²⁶²⁰ The gender of the victims was not documented, except in five cases. Baccard noted that 68 percent of the victims were under 40 years old.²⁶²¹

1059. Marks of an explosion and shrapnel were found on 21 bodies or body parts from the holes. In the case of the three bodies from the mosque, the cause of death was identified as gunshot wounds.²⁶²² Gunshot wounds were also found in a further ten bodies. Most of these 13 sustained only a single wound. The gunshot wounds were generally located in the trunks of the relevant bodies, whereas the explosion-related injuries covered all regions of those bodies. Baccard also noted that the Austrian report identified three cases of injuries to the head by blunt force, but could not determine whether these injuries were sustained ante- or post-mortem. In one case a sharp wound to the throat was also recorded.²⁶²³

1060. The Austrian report describes two wells, approximately ten metres apart, on a hillside above Kotlina/Kotllina, roughly 300 metres from the centre of the village.²⁶²⁴ The report also mentions that 27 of the 31 houses in the village centre had been "destroyed in the war." The report further states that the two well shafts had fallen in, attributing this to explosions, and notes that "soot-covered fragments" were found in the vicinity. It records the fact that a total of ten cartridge cases from AK47 weapons were found near the upper well.²⁶²⁵ Samples of clothing found at the well sites were sent off for chemical analysis to confirm the presence of traces of explosives. Baccard confirmed that it was common practice in forensic examination to send off artefacts recovered at a site for further chemical or scientific analysis. The Austrian report itself contains a finding, made

²⁶¹⁷ P1809 (Eric Baccard's overview report), pp. 16, 48; P361 (Austrian Forensic Team Report on Kotlina), p. 5.

²⁶¹⁸ P1809 (Eric Baccard's overview report), p. 48.

²⁶¹⁹ P1809 (Eric Baccard's overview report), p. 48.

²⁶²⁰ P1809 (Eric Baccard's overview report), p. 49; Eric Baccard, T. 10129 (19 February 2007).

²⁶²¹ P1809 (Eric Baccard's overview report), p. 17.

²⁶²² Eric Baccard, T. 10129, 10134 (19 February 2007); P1809 (Eric Baccard's overview report), p. 50.

²⁶²³ P1809 (Eric Baccard's overview report), pp. 49–50.

²⁶²⁴ P361 (Austrian Forensic Team Report on Kotlina), p. 7.

²⁶²⁵ P361 (Austrian Forensic Team Report on Kotlina), pp. 7–8.

by the chief of the Austrian forensic chemistry unit, that some samples contained traces of TNT.²⁶²⁶ Baccard testified that he was not an explosives or chemical expert, and that he was not sure now whether he reviewed the chemical analysis when preparing his own report. He focused on the information about the autopsies due to his professional profile. Nonetheless, he was convinced that the anatomical injuries to these bodies caused by shrapnel were sufficient to confirm that they had been subjected to explosion, regardless of the review of the chemical analysis.²⁶²⁷

1061. Dr. Zoran Stanković, a specialist in forensic medicine who was called as a joint Defence expert witness, challenged various aspects of the evidence relating to the events in Kotlina/Kotllina. He did not have an opportunity to examine the bodies, but reviewed the already available material and based his views on that. Although he had extensive experience of forensic pathology, he had never been a member of an international forensic medicine team conducting autopsies.²⁶²⁸ Stanković expressed his opinion that Hazbi Loku's statement as to how the victims died was untrue and not supported by the forensic or the photographic documentation.²⁶²⁹

1062. Stanković stated that it is very difficult to draw conclusions about injuries on bodies where no soft tissue remains, unless there are injuries that leave visible traces on bones.²⁶³⁰ In his opinion, the commonly accepted standards of the forensic medical community were not complied with during the exhumation and the post mortems.²⁶³¹ The post mortem records in the Austrian report were too short, only describing the injuries and explaining the cause of death of certain individuals.²⁶³²

1063. Stanković argued that the Kotlina/Kotllina victims had been killed elsewhere and then brought to the holes, and that the explosion injuries happened before the bodies were thrown into the holes.²⁶³³ He even allowed for the possibility that, during the time of inspection of the bodies by the MUP, the well was empty and the bodies had not yet been thrown into it. He concluded this when comparing the autopsy and the description of the clothing and what can be derived from the documentation of the MUP, as reported by the on site investigation report.²⁶³⁴ Stanković

²⁶²⁶ P361 (Austrian Forensic Team Report on Kotlina), pp. 42, 91; Eric Baccard, T. 10130 (19 February 2007).

²⁶²⁷ Eric Baccard, T. 10129–10134 (19 February 2007); P1809 (Eric Baccard's overview report), p. 50–51. Although Baccard said that the anatomical injuries to these bodies caused by shrapnel were sufficient to confirm the diagnosis of death caused by explosives, it is clear from reading his evidence and his report that the precise cause of death, gunshot or explosion, has not been determined in relation to a number of the bodies examined.

²⁶²⁸ Zoran Stanković, T. 26179 (14 May 2008).

²⁶²⁹ Zoran Stanković, T. 26150–26151 (14 May 2008).

²⁶³⁰ Zoran Stanković, T. 26123 (14 May 2008).

²⁶³¹ Zoran Stanković, T. 26137–26138, 26155, 26164 (14 May 2008).

²⁶³² Zoran Stanković, T. 26138 (14 May 2008). *See also* 6D670 (Zoran Stanković's Expert Report on Kotlina), para. 1.

²⁶³³ Zoran Stanković, T. 26154 (14 May 2008).

²⁶³⁴ Zoran Stanković, T. 26139 (14 May 2008).

mentioned several aspects that, in his opinion, support the conclusion that the bodies were thrown into the well only after they were dead. For example, the Austrian report failed to observe traces of a projectile or fragments of explosives on the vegetation surrounding the wells, which could indicate that the victims did not die at that location, but elsewhere, or that some of the bodies that were found there were victims of armed conflict and were brought there from somewhere else.²⁶³⁵

1064. During cross-examination Stanković clarified that, even if six months had passed between the damage and the exhumation, any damage to the vegetation from shrapnel or shot-guns, for example damage to the bark of trees, would not have disappeared during that time.²⁶³⁶ Although traces of clothing were registered outside of the wells, it was not noted how far away they were from them. According to Stanković this supports the view that the bodies could have been brought in from some other territory and thrown into the well.²⁶³⁷ He stated that it was impossible that body parts could have been ejected out of the wells to other areas outside, considering the breadth of the wells.²⁶³⁸ In addition, in the area around the wells, 12 spent shell cases were found, but at least 26 gun-shot wounds were found in the bodies of the persons who were killed, which indicates that the gun-shot wounds were inflicted somewhere else and the bodies were thrown into the wells afterwards.²⁶³⁹ He rejected the suggestion that someone could have removed the shell-cases from the site.²⁶⁴⁰

1065. Stanković gave a further reason why the explosive injuries might have been inflicted before the bodies were thrown into the wells. Had the explosives been used afterwards, the worst injuries would be in the surface layer of the well, followed by those in the central layer and the least injured would be in the deepest layer. This was not the case.²⁶⁴¹ He also concluded that, if body parts were found at different depths and there was a layer of soil in between, as was indeed the case, this shows that the mortal remains got there in different time-periods.²⁶⁴²

1066. When Stanković was further asked about the word “Ivaja”, which was handwritten on the forensic investigation report, he conceded that there was a possibility that what is depicted in the

²⁶³⁵ Zoran Stanković, T. 26140–26142 (14 May 2008); 6D670 (Zoran Stanković’s Expert Report on Kotlina), para. 3. He testified that this is true especially with regard to those that sustained serious destruction, like missing lower limbs, which indicates injuries caused by shells and explosives.

²⁶³⁶ Zoran Stanković, T. 26185–26186 (14 May 2008).

²⁶³⁷ Zoran Stanković, T. 26143 (14 May 2008); 6D670 (Zoran Stanković’s Expert Report on Kotlina), para. 4.

²⁶³⁸ Zoran Stanković, T. 26144 (14 May 2008).

²⁶³⁹ Zoran Stanković, T. 26149 (14 May 2008); 6D670 (Zoran Stanković’s Expert Report on Kotlina), para. 6.

²⁶⁴⁰ Zoran Stanković, T. 26192 (14 May 2008)

²⁶⁴¹ Zoran Stanković, T. 26150, 26193 (14 May 2008); 6D670 (Zoran Stanković’s Expert Report on Kotlina), para. 7.

²⁶⁴² Zoran Stanković, T. 26151 (14 May 2008); 6D670 (Zoran Stanković’s Expert Report on Kotlina), para. 11.

report was a different site than the one from which the bodies were recovered by the Austrian forensic team.²⁶⁴³

c. Findings

1067. The Trial Chamber finds, based on Loku's evidence, which is corroborated by Jelić and documentary evidence from the KVM, that VJ and MUP forces were present in and around Kotlina/Kotllina on 9 March 1999 and that these forces attacked and partially burned the village. Further, on 24 March 1999 elements of the 243rd Mechanised Brigade, in co-operation with MUP forces including PJP units, shelled and encircled the village. Even if the purpose of the action may have been to "destroy" the KLA, many innocent villagers were also forced to flee. Women and children were forced to board military trucks, or to walk behind the trucks towards Kačanik/Kaçanik. Some villagers who avoided such forced removal fled to Macedonia following the attack on the village.

1068. However, with respect to the events at the wells, the Trial Chamber has concerns which leave it in reasonable doubt that Loku saw what happened. In the particular circumstances presented here, the Chamber can hold the killings proved only if it accepts the evidence of Loku as to how they occurred beyond reasonable doubt. The main problem is that his evidence is not entirely consistent with the forensic evidence presented to the Chamber by the parties. For example, the Austrian forensic team's reference to gunshot wounds found on the remains of ten victims does not square with Loku's evidence that he saw only one or two men being shot while the others were thrown into the wells where they died as a result of explosions. In addition, Loku initially testified that the men taken to the hill above Kotlina/Kotllina had their hands tied while the forensic evidence does not indicate presence of ligatures of any kind at the site. Loku later changed his evidence and testified that the men were walked to the site with their hands raised above their heads.

1069. As described above, Zoran Stanković made a number of other challenges, such as the fact that the presence of the layer of soil between two layers of remains, as found by the Austrian team, might indicate that the bodies were buried there in different intervals. He also challenged the idea that biological traces of parts of bodies severed by the explosion would have disappeared completely from the enclosed space of the wells and the area surrounding them, thereby implying that these victims may have died in other locations.

²⁶⁴³ Zoran Stanković, T. 26187–26188 (14 May 2008); 6D501 (Case file regarding an act of terrorism in Kotlina/Kotllina, 24 March 1999), p. 2; P361 (Austrian Forensic Team Report on Kotlina).

1070. In addition, the Chamber was not given an account of how the scene came to be the subject of investigation by the Austrian team. Before the team arrived, villagers appear to have been involved in excavating the site. The fact that the scene may have been disturbed by the villagers prior to the Austrian team arriving is something that causes concern and may explain some of the deficiencies in the Austrian team's report. The extent of this disturbance is very difficult for the Chamber to assess without having heard from any villager who was there at the time.

1071. In addition to problems relating to discrepancies between forensic and eyewitness evidence, the Chamber also notes that Loku was observing, from a distance of at least 400 metres, events which were taking place in woodland. One contentious issue was whether there would be vegetation on the trees at the time. He suggested that the area was an area of oak trees and that there was no thick vegetation at the time that obstructed his view. It does not look like that in the photographs taken in late May. Unfortunately there were before the Chamber no photographs showing the state of vegetation in the latter part of March in spite of the fact that there have been many opportunities since to provide such.

1072. The Chamber also notes that Loku did not go to the scene to investigate at all. He said that some other villagers did, but the Chamber did not hear from them. There is not even a hearsay account of what was seen by any of the other villagers who may have gone to the scene.

1073. The Trial Chamber was also concerned by Loku's reluctance to recognise that there was a significant KLA force in the locality and that some of the victims may have been KLA members. He was initially very defensive towards the question whether some of the victims were buried in a KLA cemetery. He ultimately conceded that it was a "martyrs" cemetery, but was unable to say what service those buried there had done for the Kosovo Albanian cause to deserve the description "martyr" other than work in the parallel Albanian education system. The Chamber doubts that as an adequate explanation, especially in light of the fact that one of the victims buried there, namely Neshat Rexha, is alleged to have been only 16 years of age at the time of his death.²⁶⁴⁴

1074. Witness 6D1 gave evidence of visiting Kotlina/Kotllina on 24 March, at around 5:00 p.m., in connection with deaths there which the investigating team was told were the result of combat activity between the KLA and the FRY/Serbian forces. The attendance of the team to investigate the results of combat activities is indicative of the presence of the KLA in the area, as is their inability to complete the investigation due to the fighting on that and the following days. Further evidence of KLA activity in the area are photographs taken by the crime scene technicians of a

²⁶⁴⁴ Hazbi Loku, T. 3188 (12 September 2006). *See also* Annex A.

house in which they found weapons and KLA uniforms, and an area of woodland further up the hillside where bodies and spent cartridges were found near holes in the ground.

1075. When shown the photographs, Loku denied that they were photographs of Kotlina/Kotllina or the holes he was describing. Based on the firm evidence of 6D1 about being taken to Kotlina/Kotllina and in the absence of any other evidence about the location of the house in the photographs and clear photographs of the holes referred to by both witnesses, the houses may be in Kotlina/Kotllina and the holes may be the same. The fact that the photographs were taken during night-time further supports 6D1's evidence that the team was there at 5:00 p.m. and onwards. Even though the name of the adjacent village "Ivaja" is written on the official report of the event next to the reference to "village of Kotlina", the Chamber sees no reason why 6D1 would be told that the team was going to Kotlina/Kotllina when in fact it was sent to Ivaja. Indeed, 6D1 gave a clear description of the road on which they travelled and the turn off leading to Kotlina/Kotllina. In addition, prior to entering Kotlina/Kotllina, 6D1 recalled encountering Jelić, which was partially confirmed by Jelić who mentioned a MUP investigation team going to Kotlina/Kotllina on the day in question.

1076. Accordingly, the Trial Chamber is left in doubt as to whether Loku did indeed see what he claims to have seen in relation to the wells in Kotlina/Kotllina. The Chamber acknowledges that people were exhumed from the wells, but is not able to say beyond reasonable doubt that they were killed in the manner described by Loku. This finding, however, cannot be ascribed to deficiencies in Loku's evidence alone. It is the result of the Prosecution failing to address them.

1077. The Chamber finds that the following people were killed during the course of the attacks on Kotlina/Kotllina in March 1999 (at locations other than the wells): Milaim Loku, Emrlah Kuçi, Idriz Kuqi, Vesel Vlashi, Zymer Loku. However, it has not been established beyond reasonable doubt by whom these people were killed.

1078. For the reasons mentioned above, the Chamber is not convinced beyond reasonable doubt that any of the victims named in Schedule K of the Indictment, or in the Prosecution's Proof of Death Chart, died as a result of the events in Kotlina/Kotllina in March 1999 in the manner alleged in the Indictment.

4. Destruction of the mosque in Kotlina/Kotllina

1079. In addition to the evidence from Loku concerning the burning of Kotlina/Kotllina village, the Trial Chamber heard from András Riedlmayer about damage to the mosque in the village.²⁶⁴⁵ Riedlmayer's report described the condition of the mosque as "lightly damaged" and noted that the "[i]nterior of the mosque [was] damaged by vandalism during 1999 war."²⁶⁴⁶ While Riedlmayer did not inspect the mosque himself, he testified that, in describing the damage to it, he relied upon a photo from the EU/IMG database compiled in 2000.²⁶⁴⁷

1080. In light of the fact that this is the only evidence received relating to the mosque, the Trial Chamber finds that it has not been established that the mosque was damaged or destroyed by forces of the FRY and Serbia as alleged in the Indictment.

5. Destruction of the mosque in Ivaja

1081. Muharrem Dashi, a Kosovo Albanian resident of Stagovo/Stagova, testified that the KLA's 162nd Brigade operated in a number of villages in the municipality, including Ivaja.²⁶⁴⁸ In his written statement Hazbi Loku also stated that he knew that there were some KLA in the village of Ivaja and that he believed that they were resisting the "Serb forces."²⁶⁴⁹ Krsman Jelić described Ivaja as a "terrorist stronghold".²⁶⁵⁰

1082. As stated above, the KVM also reported that on 8 and 9 March 1999 security forces and the KLA clashed in the village of Ivaja.²⁶⁵¹ Loku confirmed this, and testified that on 8 March 1999 "Serb forces" launched an offensive against Ivaja.²⁶⁵² There were clashes between the KLA and the Serb forces and the attack lasted for one day.²⁶⁵³ Ivaja was shelled from the east, west, and north by the Serb forces, initially from the permanent positions occupied by these forces. Tanks later moved in.²⁶⁵⁴ However, at the time of the attack Loku was in not in Ivaja but in

²⁶⁴⁵ P1789 (András Riedlmayer's Expert Report). *See also* András Riedlmayer, T. 5419 (30 October 2006).

²⁶⁴⁶ P1786 (Extract from P1789 re Kotlina/Kotllina mosque).

²⁶⁴⁷ András Riedlmayer, T. 5477–5478 (30 October 2006), T. 5571 (31 October 2006). Riedlmayer explained that this database had been compiled by the International Management Group, an inter-governmental agency, upon request by the Council of Europe. András Riedlmayer, T. 5428 (30 October 2006).

²⁶⁴⁸ Muharrem Dashi, T. 4628–4629 (11 October 2006).

²⁶⁴⁹ Hazbi Loku, P2296 (witness statement dated 4 June 1999), p. 2, 4D12 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 1925, T. 3208–3209 (12 September 2006).

²⁶⁵⁰ Krsman Jelić, T. 18902 (23 November 2007).

²⁶⁵¹ 3D179 (KVM report on compliance by the parties in Kosovo, 12 March 1999), pp. 2–3, also admitted as P444. *See also* P634 (Chronology of major events in Kosovo from 15 October to 18 April 1999), p. 6.

²⁶⁵² Hazbi Loku, T. 3209 (12 September 2006).

²⁶⁵³ Hazbi Loku, T. 3209–3210 (12 September 2006), 4D13 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 2026.

²⁶⁵⁴ Hazbi Loku, P2296 (witness statement dated 4 June 1999), p. 2.

Kotlina/Kotlina. From there he could feel the shells and the explosions, and he could also hear the noise and see a lot of smoke rising from Ivaja.²⁶⁵⁵

1083. A few days later, on 11 or 12 March 1999, Loku went to Ivaja and saw some of the houses still burning. In his estimation about half of the houses in the village had been destroyed, many of them having been burned from the inside and others having been knocked down by tanks.²⁶⁵⁶ He also saw that the mosque in the village had been set on fire, and the minaret was half destroyed.²⁶⁵⁷ He did not, however, see how this damage to the village was inflicted.²⁶⁵⁸ Once again, Jelić denied that the VJ would have entered the village and also denied that it had destroyed any religious or other buildings in Ivaja.²⁶⁵⁹

1084. Milan Kotur testified that the allegations that Ivaja and the villages around it had been looted and burnt to the ground, and everybody there killed by the FRY/Serbian forces, were contrary to a report he received from Richard Ciagliniski. In a meeting with Ciagliniski on 10 March 1999 the latter reported that another member of the KVM had been in Ivaja and Kačanik/Kaçanik and established that there had been “fighting” and “shooting” there, and that some houses were damaged, but that there had been no plundering. Instead, certain houses had been searched, which Ciagliniski considered to be “normal procedure.”²⁶⁶⁰ However, Ciagliniski was not asked about this meeting and Kotur’s recollection of his report at it.

1085. Andrés Riedlmayer described the condition of the mosque in Ivaja as “almost destroyed”. Riedlmayer did not visit this site, but from photographs provided to him he observed that the mosque was “completely burned out, only perimeter walls remain” and that the roof was missing and the interior was charred.²⁶⁶¹ His report also indicated that the mosque was “[s]hot up at close range and burned by Serb forces [on] March 10, 1999, before the start of the air war.”²⁶⁶² Riedlmayer explained that he received this information from media reports, in particular from a

²⁶⁵⁵ Hazbi Loku, P2296 (witness statement dated 4 June 1999), p. 2, T. 3152 (11 September 2006), 4D12 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 1922–1924.

²⁶⁵⁶ Hazbi Loku, P2296 (witness statement dated 4 June 1999), p. 2, T. 3152 (11 September 2006), 4D12 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 1925.

²⁶⁵⁷ Hazbi Loku, T. 3152 (11 September 2006), 4D12 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 1925.

²⁶⁵⁸ Hazbi Loku, T. 3152 (11 September 2006), 4D12 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 1925.

²⁶⁵⁹ Krsman Jelić, T. 18907–18909 (23 November 2007).

²⁶⁶⁰ Milan Kotur, T. 20632–20633 (18 January 2008); 5D1387 (Report from Federal Ministry of Foreign Affairs Field Office, from a meeting between M. Kotur and R. Ciagliniski, 10 March 1999), p. 1; *see also* P680 (OSCE/KVM Fusion Working Papers), p. 1.

²⁶⁶¹ Andrés Riedlmayer, T. 5478–5479 (30 October 2006), P1787 (Extract from P1789 re Ivaja mosque).

²⁶⁶² P1787 (Extract from P1789 re Ivaja mosque).

first-person report from Reuters, which had a correspondent in the village in early March 1999.²⁶⁶³ Riedlmayer concluded that the damage to the mosque was done in two stages; first, the mosque was fired upon as was evident from the signs of projectile damage shown on the photo; and subsequently it was burned.²⁶⁶⁴

1086. Once again, in the absence of evidence, other than hearsay, concerning how the damage to the mosque was inflicted, the charges in the Indictment pertaining to it are not proved.

6. Kačanik/Kaçanik town

1087. Isa Raka, who was born in Kačanik/Kaçanik town and lived there in 1999, gave evidence about events in March 1999 and his own departure from his home at that time.²⁶⁶⁵ According to Raka, no one from his family, including him, was a member of the KLA. He testified that at the beginning of March 1999 MUP forces increased their activity in the town. On occasions from 24 to 27 March he could hear the sound of shooting coming from the police station. He heard this from his uncle's house, where he and his family were spending the nights. He further testified that at this time there was a curfew in the town, and the town residents could not, therefore, go into the streets.²⁶⁶⁶

1088. On 27 March 1999 Raka's brother, who worked in the municipality building located across the street from the police station, told him that the "municipality" was full of policemen.²⁶⁶⁷ Raka then observed and heard the trace-fire of a rocket launcher or mortar being fired from the area of the police station towards a house in the village of Bob.²⁶⁶⁸ Approximately six "rounds" were fired from the rocket launcher towards the house, which had been used previously by the KVM.²⁶⁶⁹

1089. Later that morning Raka went to see his neighbour who lived up the hill from him.²⁶⁷⁰ From his neighbour's house he saw two military jeeps and a white Niva car arriving at the lime factory, about 100 metres away from his house, across the river. These vehicles stopped by the factory and approximately 20 to 30 policemen disembarked, all wearing blue and white camouflage police uniforms. Two officers wore different uniforms, namely regular VJ green and brown

²⁶⁶³ András Riedlmayer, T. 5479 (30 October 2006).

²⁶⁶⁴ András Riedlmayer, T. 5479–5480 (30 October 2006).

²⁶⁶⁵ Isa Raka, T. 3514–3551 (19 September 2006); Isa Raka, P2301 (witness statement dated 8 September 2006).

²⁶⁶⁶ Isa Raka, P2301 (witness statement dated 8 September 2006), paras. 7–10.

²⁶⁶⁷ Isa Raka, P2301 (witness statement dated 8 September 2006), para. 9.

²⁶⁶⁸ Isa Raka, T. 3531, 3536, 3549 (19 September 2006).

²⁶⁶⁹ Isa Raka, P2301 (witness statement dated 8 September 2006), para. 11; Isa Raka, T. 3518 (19 September 2006).

²⁶⁷⁰ Isa Raka, P2301 (witness statement dated 8 September 2006), para. 12.

camouflage.²⁶⁷¹ Raka recognised the person who appeared to be in charge of this group and who was giving orders to the others as a “Deputy Commander” from the police station in Kačanik/Kaçanik whom he knew.²⁶⁷²

1090. The group circled around the factory and then entered it, taking up positions at the windows on the upper floor. The two soldiers in green uniforms climbed a ladder that led to a platform at the top of some big tanks at the factory and took up positions there. Raka continued to watch the operation from a window in his neighbour’s house.²⁶⁷³

1091. The policemen and soldiers then began shooting randomly towards the houses on Raka’s side of the river, using rifles and a rocket launcher. This lasted for approximately 30 minutes to one hour. One “grenade” hit his house and went through the roof. Based on the damage he later saw on a wall in his house, he believed that the two soldiers on the platform also used sniper rifles.²⁶⁷⁴ Raka testified that no one was firing from the direction of his house towards the factory at this time.²⁶⁷⁵ The Lukić Defence submits that the uniformed people Loku saw at the factory were members of the KLA, staging attacks from the factory to force people to leave the municipality, and refers to a MUP report suggesting that on 27 March, in the afternoon, a column of VJ vehicles was attacked by “terrorists” from the lime factory in Bob.²⁶⁷⁶ Even if the MUP report accurately reflects what happened in the afternoon, the Chamber is not persuaded by the Lukić Defence submission that the uniformed people Loku saw at the factory were members of the KLA.

1092. In 2002 Raka took some photographs showing his position and that of the police at the time of the attack.²⁶⁷⁷ On the first of these he identified the place where the jeeps arrived, the place where the police were positioned, the lime factory, and the position taken by the two soldiers—the two positions from which the firing emerged.²⁶⁷⁸ He also identified and marked the position of his house and his neighbour’s house, whence he observed the events occurring at the lime factory.²⁶⁷⁹

²⁶⁷¹ Isa Raka, P2301 (witness statement dated 8 September 2006), para. 12; Isa Raka, T. 3519 (19 September 2006).

²⁶⁷² Isa Raka, T. 3520 (19 September 2006); Isa Raka, P2301 (witness statement dated 8 September 2006), para. 13.

²⁶⁷³ Isa Raka, P2301 (witness statement dated 8 September 2006), para. 14; Isa Raka, T. 3520–3523, 3538 (19 September 2006).

²⁶⁷⁴ Isa Raka, P2301 (witness statement dated 8 September 2006), para. 15; T. 3520–3521, 3525 (19 September 2006).

²⁶⁷⁵ Isa Raka, T. 3521 (19 September 2006).

²⁶⁷⁶ Lukić Final Trial Brief, 7 August 2008 (public version), para. 1174; P1099 (MUP Report, 28 March 1999), p. 3.

²⁶⁷⁷ P2310 (Photographs provided by Isa Raka of a house and lime factory in Kačanik/Kaçanik).

²⁶⁷⁸ Isa Raka, T. 3523 (19 September 2006); Isa Raka, IC38 (Marked photograph no. K0223167 (P2310)).

²⁶⁷⁹ Isa Raka, T. 3524 (19 September 2006); Isa Raka, IC39 (Marked photograph no. K0223169 (P2310)).

Raka described the third photograph as depicting the place of his and his neighbour's houses in the foreground.²⁶⁸⁰

1093. While he was at his neighbour's house, Raka's pregnant wife was hiding in the cellar of their house, together with other relatives. At some point during the shooting she left the cellar and, as she was going through a courtyard, she was hit by a bullet which went right through her hip and into the wall.²⁶⁸¹ When the shooting from the factory stopped, Raka returned to his house and saw that his wife was wounded.²⁶⁸²

1094. On 28 March 1999 some residents from another neighbourhood in Kačanik/Kaçanik passed through Raka's neighbourhood and told him that they were leaving the town because the police were going from house to house. They also told him that the police had entered one house and taken away three people and killed one of them. For this reason Raka's family and the entire neighbourhood decided to leave their homes before the police arrived.²⁶⁸³

1095. Raka explained that he walked with a group of 500 to 1,000 people through the woods towards Macedonia via the village of Djurdjev Dol/Gjurgjedell, which lies to the south-east of the town. The group was divided into three smaller groups, and Raka travelled with 13 or 14 men who helped him carry his wife on a stretcher. The rest of his family travelled with other groups of people.²⁶⁸⁴ They stayed one night in Djurdjev Dol/Gjurgjedell, and on 29 March they continued towards Macedonia. They were able to cross the border, but only on their third attempt. During their first and second attempts Macedonian military forces stopped them from entering Macedonia.²⁶⁸⁵ The entire journey took two days, from the moment when Raka's wife was wounded until everyone in the group finally reached Macedonia.²⁶⁸⁶

1096. In Macedonia Raka's wife was sent directly to the State Hospital in Skopje. Following two operations she died on 5 April 1999.²⁶⁸⁷ When Raka later returned to his house in Kačanik/Kaçanik in June 1999, he found that it had been damaged.²⁶⁸⁸

²⁶⁸⁰ Isa Raka, T. 3525 (19 September 2006); P2310 (Photographs provided by Isa Raka of a house and Lime factory in Kačanik/Kaçanik), photograph no. K0223168.

²⁶⁸¹ Isa Raka, P2301 (witness statement dated 8 September 2006), para. 20; Isa Raka, T. 3525–3526, 3528 (19 September 2006).

²⁶⁸² Isa Raka, P2301 (witness statement dated 8 September 2006), para. 21, T. 3526 (19 September 2006).

²⁶⁸³ Isa Raka, P2301 (witness statement dated 8 September 2006), para. 22, T. 3526–3527 (19 September 2006).

²⁶⁸⁴ Isa Raka, P2301 (witness statement dated 8 September 2006), paras. 22–23, T. 3526–3527 (19 September 2006).

²⁶⁸⁵ Isa Raka, T. 3527–3528, 3546 (19 September 2006). *See also* 5D1221 (Combat report of the 57th Border Battalion, 30 March 1999).

²⁶⁸⁶ Isa Raka, T. 3527–3528 (19 September 2006).

²⁶⁸⁷ Isa Raka, P2301 (witness statement dated 8 September 2006), para. 27; Isa Raka, T. 3528 (19 September 2006).

²⁶⁸⁸ Isa Raka, P2301 (witness statement dated 8 September 2006), para. 28.

1097. Raka's evidence was put to Krsman Jelić, who stated that VJ forces did not attack the town of Kačanik/Kaçanik. He further stated that the army had no combat positions in the town itself.²⁶⁸⁹ Jelić indeed testified that on or around 27 or 28 March 1999 there were only MUP forces in Kačanik/Kaçanik, and recalled that there was an "anti-terrorist action" launched by the MUP at that time, since a MUP-patrol had been attacked by "terrorists".²⁶⁹⁰

1098. On cross-examination Jelić testified that he knew there was more than one "terrorist" attack in the area of the village of Bob from the end of March until the end of the NATO campaign. However, he could not recall that there was a factory in Bob, nor that the VJ was located there. He did state that there were almost daily attacks on VJ columns between the roads going from Doganović/Doganaj to Globočica/Glloboçica, and from Doganović/Doganaj to Đeneral Janković/Hani i Elezit.²⁶⁹¹

a. Findings

1099. In light of its concerns about the reliability of Jelić's evidence, the Trial Chamber finds that his broad denials of VJ involvement in any action in Kačanik/Kaçanik town at the end of March 1999 do not undermine the detailed and credible account given by Raka. The Chamber thus finds that both VJ and MUP forces entered the town on 27 March 1999, and started firing towards some houses. The following day, several hundred of the town's residents left their homes out of fear of the police forces, or because they were directly expelled from their homes by the police, and eventually crossed the border into Macedonia.

1100. The Trial Chamber also heard evidence in relation to the killing of Isa Raka's wife. However, since this incident has not been charged in the Indictment, the Chamber does not make any finding in this regard.

7. The village of Slatina/Sllatina and the hamlet of Vata/Vataj

1101. Slatina/Sllatina and Vata/Vataj are villages close to one another, to the north-west of Kačanik/Kaçanik town.²⁶⁹² Sejdi Lami was born, and in early 1999 lived, in the hamlet of Lama,

²⁶⁸⁹ Krsman Jelić, T. 18910 (23 November 2007); *see also* 5D1337 (Map of Defence operation of the PrK Command).

²⁶⁹⁰ Krsman Jelić, T. 18912 (23 November 2007).

²⁶⁹¹ Krsman Jelić, T. 19000 (26 November 2007). *See also* 6D1638 (Report to the US State Department, April 1999), pp. 3–4.

²⁶⁹² P615 (Kosovo Atlas), p. 12.

which was part of Vata/Vataj.²⁶⁹³ He testified about events that transpired in Vata/Vataj in 1999, in particular about an attack by “Serb forces” on 13 April 1999.²⁶⁹⁴

1102. According to Jelić, the KLA launched frequent attacks on the roads in this area, from wooded parts near villages. For example, columns of vehicles that were bringing up logistics supplies to Combat Group 3 were often attacked.²⁶⁹⁵ Jelić testified that people moved out of the area both before and during the NATO campaign. Before, people mostly moved towards Uroševac/Ferizaj, and during the airstrikes they went to Macedonia, and some to Serbia. Jelić attributed the movement of the population to the KLA.²⁶⁹⁶ He said that there was a KLA “terrorist” brigade in Slatina/Sllatina, to the south of Uroševac/Ferizaj and all the way to Đeneral Janković/Hani i Elezit.²⁶⁹⁷

1103. In January 1999 most of the women and children in Vata/Vataj went to Uroševac/Ferizaj, including members of Lami’s family. However, the men stayed behind. When he heard on 23 March that the town of Uroševac/Ferizaj would be attacked, Lami decided to bring his family back to Vata/Vataj. When the NATO airstrikes began the following day, the “Serb military” began to shell the villages in the area. Most of the population of these villages stayed in the woods during the following days, hiding from the shelling.²⁶⁹⁸

1104. Lami testified that he was not a member of the KLA, nor was there a KLA presence in Vata/Vataj until approximately 6 April 1999, when about 20 KLA soldiers arrived and established themselves in a house there. They dug some trenches on a hill about 200 metres above his home. At approximately the same time Lami’s family, together with most of the other residents of the village, set off through the woods towards Ljuboten Mountain in order to reach Macedonia. As they moved towards the border, the “Serb military” was shelling towards the mountain. For these reasons, Lami decided to return to the village with some of the children, whereas many other people continued towards Macedonia.²⁶⁹⁹ The next day he again tried to reach Macedonia, this time by car together with some of his neighbours. However, they were stopped by the VJ. After spending the night in the car, they were told that the Macedonian authorities were not accepting any more refugees and that they had to return.²⁷⁰⁰ On 12 April the KLA soldiers who had arrived in his

²⁶⁹³ Sejdi Lami, P2271 (witness statement dated 14 July 2000), p. 2.

²⁶⁹⁴ Sejdi Lami, P2271 (witness statement dated 14 July 2000), p. 2, T. 3257 (12 September 2006).

²⁶⁹⁵ Krsman Jelić, T. 18914 (23 November 2007).

²⁶⁹⁶ Krsman Jelić, T. 18915 (23 November 2007). See also IC142 (Map marked by Krsman Jelić).

²⁶⁹⁷ Krsman Jelić, T. 18915 (23 November 2007).

²⁶⁹⁸ Sejdi Lami, P2271 (witness statement dated 14 July 2000), p. 3. See also P680 (OSCE/KVM Fusion Working Papers), p. 4.

²⁶⁹⁹ Sejdi Lami, P2271 (witness statement dated 14 July 2000), pp. 2–3.

²⁷⁰⁰ Sejdi Lami, P2271 (witness statement dated 14 July 2000), p. 3.

village received orders to pull out of the village, and so the next day, when the VJ attacked Vata/Vataj, there were no KLA soldiers left there.²⁷⁰¹

1105. Lami further testified that during March and April 1999 the VJ shelled several of the villages surrounding his home from positions in a small wood called “Picrrak” in the village of “Banica” where they had tanks and bunkers. On 26 March 1999 NATO bombs destroyed this location.²⁷⁰²

a. Attack on 13 April 1999

1106. On 13 April 1999 at 5:00 a.m. the VJ entered Vata/Vataj with four Pragas and six military lorries loaded with approximately 100 soldiers. Most of the soldiers were wearing VJ camouflage uniforms, but some of them wore red and black bandannas and Lami considered them to be paramilitaries.²⁷⁰³ Lami also saw two other groups of soldiers further from the village: one group of approximately 150 was around the nearby village of Slatina/Sllatina, and the other one came from the direction of Brod in Štrpce/Shtërpe municipality.²⁷⁰⁴

1107. When Jelić was questioned about this evidence, he denied that his forces would have entered or surrounded Vata/Vataj and Slatina/Sllatina.²⁷⁰⁵ He also testified that the members of his brigade wore only one kind of uniform without any special insignia or bandannas.²⁷⁰⁶

1108. At 5:45 a.m. the VJ soldiers started shooting at Vata/Vataj from the Pragas and also using hand-held weapons.²⁷⁰⁷ When they entered the village, the local people left their homes, along with people from other villages who were there, and started walking towards the Ljuboten Mountain and to a nearby gorge, where they had previously prepared some food and shelters in case of an attack. The soldiers were constantly shooting in their direction, but they shot over their heads and no one was hurt. In Lami’s view they were looking for KLA soldiers.²⁷⁰⁸

1109. He and members of his family hid in the gorge, by a stream. His wife, however, was in a group of about 150 people, including children and elderly people, gathered in a meadow above his

²⁷⁰¹ Sejdi Lami, P2271 (witness statement dated 14 July 2000), pp. 2–3.

²⁷⁰² Sejdi Lami, P2271 (witness statement dated 14 July 2000), p. 3.

²⁷⁰³ Sejdi Lami, P2271 (witness statement dated 14 July 2000), p. 3; Sejdi Lami, T. 3265 (12 September 2006).

²⁷⁰⁴ Sejdi Lami, P2271 (witness statement dated 14 July 2000), p. 3.

²⁷⁰⁵ Krsman Jelić, T. 18913 (23 November 2007).

²⁷⁰⁶ Krsman Jelić, T. 18915 (23 November 2007).

²⁷⁰⁷ Sejdi Lami, P2271 (witness statement dated 14 July 2000), pp. 3–4; Sejdi Lami, T. 3267–3268 (12 September 2006).

²⁷⁰⁸ Sejdi Lami, P2271 (witness statement dated 14 July 2000), p. 4.

position.²⁷⁰⁹ He could not see the soldiers from his hiding place, but he was told by his wife that at around 6:30 a.m. she saw them capture four men from the village. The men were wounded and ultimately killed by the soldiers.²⁷¹⁰ She was able to observe the incident because it happened on a hill about 300 metres above her position. She could see that they were wearing camouflage uniforms.²⁷¹¹

1110. At around 3:30 or 4:00 p.m., after the soldiers left the village, Lami and his brothers left their hiding place in the gorge and went up to the place called “Gueret e Kripes”, where they found four dead bodies lying along the path. They recognised the bodies as Mahmut Caka, Hebib Lami, Rraman Lami,²⁷¹² and Brahim Lami.²⁷¹³ They collected the bodies and took them to a house in the village. Lami testified that these men were all civilians and had no weapons.²⁷¹⁴

1111. Seven other bodies of people killed in the surrounding neighbourhoods of Caka and Tifeku were brought that day to the same house in the village due to its proximity to the cemetery.²⁷¹⁵ He could remember the names of only four out of the seven: the first body that was brought was that of Ilir Osman Caka, the fifteen year old son of Osman Caka; the second one was Jakup Caka, a cousin of Ilir; the third one was “Shyqyri”, an in-law of the first two who was sheltering with the Caka family;²⁷¹⁶ the fourth one was Ramadan Xhokli.²⁷¹⁷

1112. Jelić stated that only one anti-terrorist action took place at that time in the direction of Doganović/Doganaj, Banjica/Baica and Old Banjica, and then further on to Štrpce/Shtërpce, because there was a risk that this road might be cut off. That specific action was launched by the MUP, but some elements of Jelić’s unit provided support.²⁷¹⁸ However, a combat report of the 243rd Mechanised Brigade dated 13 April 1999 records that a blockade was carried out in co-ordinated action with the PJP, and the KLA in the Firaj, Brod and Slatina/Sllatina sector was “crushed and destroyed”, pursuant to a decision of April 1999. Fourteen “terrorists” were “liquidated.”²⁷¹⁹ Jelić

²⁷⁰⁹ Sejdi Lami, T. 3259 (12 September 2006).

²⁷¹⁰ Sejdi Lami, P2271 (witness statement dated 14 July 2000), p. 4; Sejdi Lami, T. 3259–3260 (12 September 2006).

²⁷¹¹ Sejdi Lami, T. 3260 (12 September 2006).

²⁷¹² The name “Rraman Lami” was used by Sejdi Lami in his written statement. Sejdi Lami, P2271 (witness statement dated 14 July 2000), p. 4. *See also* Sejdi Lami, T. 3262 (12 September 2006).

²⁷¹³ Sejdi Lami, P2271 (witness statement dated 14 July 2000), p. 4, T. 3261 (12 September 2006). Sejdi Lami testified that Rahim Lami had his two eyes gouged out by the perpetrators; Hebib Lami had the sign of cross made on his chest; Brahim Lami was “killed on his forehead”; and Jakup Caka had about seven or eight bullets in his body and was stabbed.

²⁷¹⁴ Sejdi Lami, P2271 (witness statement dated 14 July 2000), p. 5.

²⁷¹⁵ Sejdi Lami, P2271 (witness statement dated 14 July 2000), p. 5.

²⁷¹⁶ Sejdi Lami, T. 3261 (12 September 2006).

²⁷¹⁷ Sejdi Lami, P2271 (witness statement dated 14 July 2000), p. 5; Sejdi Lami, T. 3261 (12 September 2006).

²⁷¹⁸ Krsman Jelić, T. 18916 (23 November 2007).

²⁷¹⁹ 6D736 (243rd Mechanised Brigade Combat Report, 13 April 1999), p. 1.

stated that he was not aware that 13 civilians had been killed in that area, or during this attack, nor that the MUP had entered these villages, because they were restricted to the road in their operations.²⁷²⁰ He recalled that the action was based on a written decision to the effect that in this area the “terrorist” forces should be routed and that this should be done by the VJ in concerted action with the PJP.²⁷²¹

1113. On 14 April 1999 the bodies of all 11 killed the previous day were buried in the Muslim cemetery.²⁷²² Some days after Lami returned to his village in July 1999 the bodies were exhumed by KFOR, examined by forensic experts, and reburied. One of them, Ramadan Xhokli, was buried in a KLA cemetery, which was also called the “heroes” or “martyrs’ cemetery”.²⁷²³ According to Lami, Ramadan Xhokli had been a KLA member responsible for providing foodstuffs to the KLA,²⁷²⁴ all the others were civilians.²⁷²⁵ However, Lami was shown a photograph of the martyrs’ cemetery during his testimony, and recognised graves belonging to Rrahman Lami, Hebib Lami, and Mahmut Caka.²⁷²⁶ He nevertheless reiterated that these men were not members of the KLA and that he had not seen them bearing arms on 13 April 1999.²⁷²⁷ Lami explained that the people buried in the martyrs’ cemetery were civilians who had nothing to do with the KLA or any other organisation. They called them “martyrs” because they had not died a natural death, but rather had been killed by the army during the war.²⁷²⁸

1114. After the burial of the bodies on 14 and 15 April 1999 the whole population fled Vata/Vataj and Lami went to Macedonia with his family on tractors. They were stopped by the VJ at the place called Dragomas and were asked to pay 1,000 German Marks to be allowed to cross the border. They were eventually permitted to pass after they paid 500 German Marks. When he returned to his village in July, Lami found that his and other houses in the village had been looted.²⁷²⁹

1115. The Trial Chamber received forensic evidence with regard to bodies found in Vata/Vataj through Dr. Eric Baccard. The Baccard report contains a section discussing forensic evidence

²⁷²⁰ Krsman Jelić, T. 18916–18918 (23 November 2007), T. 19006, 19010–19011 (26 November 2007).

²⁷²¹ Krsman Jelić, T. 19007 (26 November 2007).

²⁷²² Sejdi Lami, P2271 (witness statement dated 14 July 2000), p. 5.

²⁷²³ Sejdi Lami, T. 3266 (12 September 2006), 3286 (13 September 2006).

²⁷²⁴ Sejdi Lami, T. 3266 (12 September 2006). In his written statement he stated that “Ramadan Xhokli was buried in a KLA cemetery because he had been an active KLA member”. Sejdi Lami, P2271 (witness statement dated 14 July 2000), p. 5. During his testimony, however, he changed his account and clarified that in order to be buried at the cemetery one should be killed by the army during the war and not die by natural death. Sejdi Lami, T. 3266 (12 September 2006), 3286 (13 September 2006).

²⁷²⁵ Sejdi Lami, P2271 (witness statement dated 14 July 2000), p. 5.

²⁷²⁶ Sejdi Lami, T. 3284 (13 September 2006); *see also* 3D95 (Photos of cemetery).

²⁷²⁷ Sejdi Lami, T. 3285–3286 (13 September 2006).

²⁷²⁸ Sejdi Lami, T. 3286 (13 September 2006).

²⁷²⁹ Sejdi Lami, P2271 (witness statement dated 14 July 2000), p. 5.

gathered from Vata/Vataj by a Canadian Forensic Team, and written up in a report prepared by Professor Peter Markenstein from that team.²⁷³⁰ Autopsies on ten bodies were performed by Prof. Markenstein from 22 to 24 July 1999.²⁷³¹ According to Baccard, all of these bodies were in a state of putrefaction and all were male, ranging between 15 and 52 years old. In all cases, the cause of death was a gunshot wound or wounds.²⁷³² The Trial Chamber also received documentation of three other autopsies on the grave site “Sllatina” performed by pathologist Hans P. Hougen in relation to three victims; Qemajl Deda, Nazmi Elezi, and Vesel Elezi.²⁷³³

b. Findings

1116. The Trial Chamber finds, on the basis of the evidence given by Sejdi Lami and Krsman Jelić, as well as the combat report of the 243rd Mechanised Brigade, that units of the 243rd Mechanised Brigade, along with MUP forces, including members of the PJP, as well as other unidentified forces, were present in the area of Slatina/Sllatina and Vata/Vataj on 13 April 1999. Despite Jelić’s evidence, about which the Chamber has already expressed its doubts, eye-witness evidence from Sajdi Lami confirms that the forces entered the village of Vata/Vataj on 13 April 1999. Houses were burned and looted during the action and the village residents fled and later made their way to Macedonia. There is, however, no such evidence in relation to the village of Slatina/Sllatina.

1117. A description of the forensic evidence relating to each of the bodies identified from Vata/Vataj is contained in Annex A. On the basis of this evidence, along with the testimony of Sejdi Lami, the Chamber finds that the following people were killed on or around 13 April 1999 as a result of being shot: Mahmut Hasan Caka, Hebib Lami, Rraman Lami, Brahim Lami, Ilir Osman Caka, Jakup Mustaf Caka, Izahir Ilaz Salihu, Kemajl Ilaz Salihu, Sabri Illaz Salihu, Shiqeriber Haliali, and Ramadan Xhokli. Lami saw the bodies and could describe parts of the incident leading to the killing of these men, but he was not able to see the actual killings; he heard about four of them from his wife who told him what she saw. The Trial Chamber does not consider this evidence to be an adequate basis for a finding beyond reasonable doubt that killings were committed by forces of the FRY and Serbia.

1118. The Chamber has not received any direct witness evidence with regard to the killings of three victims listed in Schedule K, namely Qemajl Deda, Nazmi Elezi, and Vesel Elezi, and is

²⁷³⁰ P1809 (Eric Baccard’s overview report), p. 56. *See also* P364 (Lama forensic report); P363 (Canadian Forensic Team report, 22 July 1999).

²⁷³¹ P364 (Lama forensic report); P1809 (Eric Baccard’s overview report), p. 56.

²⁷³² P1809 (Eric Baccard’s overview report), pp. 17, 59.

therefore not able to make a finding as to by whom they were killed. It has also not been established beyond reasonable doubt that a person named Ibrahim Lama was killed.

8. Stagovo/Stagova

1119. Muharrem Dashi, a Kosovo Albanian teacher from Stagovo/Stagova village, to the north of Kačanik/Kaçanik town,²⁷³⁴ testified about events that occurred in his village in May 1999.²⁷³⁵ According to Dashi only Kosovo Albanians inhabited Stagovo/Stagova in early 1999.²⁷³⁶ He estimated that the village had 182 households and about 1,600 inhabitants at that time. In May 1999 the village was temporarily overloaded with people from other towns and villages who had fled their homes “due to the difficult situation”, such that it had a total of approximately 3,000 inhabitants.²⁷³⁷ The reason why they came to Stagovo/Stagova in particular was because there was a train station there from which one could travel to Skopje in Macedonia. When displaced people came to the village, the local residents helped them and sheltered them in their houses, before they took the train to Skopje.²⁷³⁸

1120. Dashi testified that in the early part of 1999 there was no KLA presence in Stagovo/Stagova. However, about ten days before the offensive that occurred on 21 May 1999 a KLA unit of about 10 to 12 people was formed in order to defend the population from “repression”. In addition some young men from Stagovo/Stagova, who were KLA members, were operating in other areas. The local KLA unit in Stagovo/Stagova acquired automatic rifles, a machine gun, and one V-500.²⁷³⁹ Dashi stated that he had no involvement with this KLA unit, but that on the day of the offensive of 21 May 1999 he did join up with it and carried a Kalashnikov.²⁷⁴⁰

1121. Dashi explained that he was part of an independent and apparently separate “observation” group in Stagovo/Stagova.²⁷⁴¹ This group, which was made up of civilians only, was spontaneously formed approximately ten days before the offensive of 21 May 1999. The members of the group worked in shifts to look out for the FRY/Serbian forces from an observation point on the outskirts of the village. Between them they had only one weapon (an M-48 rifle), but had never

²⁷³³ P365 (Sllatina grave site autopsy report).

²⁷³⁴ P615 (Kosovo Atlas), p. 12.

²⁷³⁵ Muharrem Dashi, T. 4521–4525 (9 October 2006), T. 4602–4647 (11 October 2006), 5D8 (witness statement dated 6 June 1999).

²⁷³⁶ Muharrem Dashi, T. 4617 (11 October 2006).

²⁷³⁷ Muharrem Dashi, T. 4522 (9 October 2006), T. 4632 (11 October 2006).

²⁷³⁸ Muharrem Dashi, T. 4634 (11 October 2006).

²⁷³⁹ Muharrem Dashi, T. 4522–4524 (9 October 2006).

²⁷⁴⁰ Muharrem Dashi, T. 4602–4603, 4622–4623 (11 October 2006), 5D8 (witness statement dated 6 June 1999), p. 2.

used it.²⁷⁴² Their main task was to observe the roads entering the village to see if the VJ was coming, and to look after the civilians.²⁷⁴³

1122. Jelić testified that part of the “terrorist forces” were in the area of the village of Stagovo/Stagova, especially in the village itself, and to the east of it.²⁷⁴⁴ He also testified that outside Stagovo/Stagova, in the area of Stari Kačanik/Kaçanik i Vjëter and Kamena Glava/Komogllava, his armoured battalion and armoured detachment were frequently attacked from the woods, across the Nerodimka River.²⁷⁴⁵

a. Events on 21 May 1999

1123. In the morning of 21 May 1999 only about 150 people were left in Stagovo/Stagova.²⁷⁴⁶ The remainder of the residents of the village, and those who had been temporarily sheltering there, had left for other places, mostly to Skopje by train. Dashi’s family had left the village on 1 May and gone to Skopje.²⁷⁴⁷

1124. At 4:00 a.m. on 21 May Dashi was at the observation point that was located on the outskirts of the village.²⁷⁴⁸ From there he was able to see only a part of the village, but he could see the main Uroševac/Ferizaj to Kačanik/Kaçanik road.²⁷⁴⁹ He could hear the noise of many vehicles from the road. An hour later police and army forces entered Stagovo/Stagova.²⁷⁵⁰ The vehicles stopped, and forces wearing police uniforms, dark blue or dark green in colour, with the word “milicija” on the arm, got off and occupied the area of Mahalla e Gudaqeve, where the observation point was located. He had previously seen these camouflage uniforms being worn in his municipality by the police.²⁷⁵¹ The VJ was stationed outside and around the village at this time, but did not enter it. Dashi saw army tanks positioned in the fields.²⁷⁵²

²⁷⁴¹ Muharrem Dashi, T. 4602–4603 (11 October 2006). *See also* Muharrem Dashi, 5D8 (witness statement dated 6 June 1999), p. 2.

²⁷⁴² Muharrem Dashi, T. 4602–4603 (11 October 2006).

²⁷⁴³ Muharrem Dashi, T. 4604, 4622, 4629–4630 (11 October 2006).

²⁷⁴⁴ Krsman Jelić, T. 18931–18932 (23 November 2007).

²⁷⁴⁵ Krsman Jelić, T. 18932–18933 (23 November 2007), T. 19020–19021 (26 November 2007).

²⁷⁴⁶ Muharrem Dashi, T. 4633 (11 October 2006).

²⁷⁴⁷ Muharrem Dashi, T. 4634 (11 October 2006).

²⁷⁴⁸ Muharrem Dashi, T. 4604, 4620 (11 October 2006). *See also* Muharrem Dashi, 5D8 (witness statement dated 6 June 1999), p. 2.

²⁷⁴⁹ Muharrem Dashi, T. 4620, 4639 (11 October 2006).

²⁷⁵⁰ Muharrem Dashi, T. 4607–4608 (11 October 2006).

²⁷⁵¹ Muharrem Dashi T. 4605–4606, 4641 (11 October 2006).

²⁷⁵² Muharrem Dashi, T. 4607 (11 October 2006).

1125. At the time when he observed these forces arriving, the local KLA unit was located down in the village. It did not fire towards the advancing VJ and MUP forces.²⁷⁵³ Instead it moved along the outskirts of Stagovo/Stagova and took shelter in Kulla e Cakes, a location that could not be seen by the VJ and MUP forces.²⁷⁵⁴ Sometime around 8:00 or 9:00 a.m. Dashi went to Kulla e Cakes and joined them.²⁷⁵⁵ From there he could see the terrain of the entire village, but not the area around the main Uroševac/Ferizaj to Kačanik/Kaçanik road.²⁷⁵⁶ Some of the KLA soldiers wore uniforms, while others were in civilian clothes, as was Dashi.²⁷⁵⁷

1126. Dashi explained that the KLA unit had been planning to fight back, but they were warned by one of the villagers that a group who had been trying to flee to the north had been surrounded by paramilitaries and the police. When they heard this, they decided not to fire their weapons because they did not want to put these people at further risk of reprisals.²⁷⁵⁸

1127. While Dashi emphasised that no shots were fired by the KLA group, Fadil Vishi, a resident of Dubrava village, located to the southwest of Stagovo/Stagova, testified that he had information about “fighting” between the KLA and the police in Stagovo/Stagova on that date.²⁷⁵⁹ However, it does not appear that Vishi himself witnessed this “fighting,” nor did he give any further details about it during his testimony.

1128. Dashi stated that from his vantage point he saw the police patrolling along the railway line, and saw them shooting at “everything”: civilians, houses, and animals.²⁷⁶⁰ At about 10:00 a.m. he saw the houses in the village begin to burn. About 96 out of a total of 182 houses were burned completely, while others were burned but not completely destroyed.²⁷⁶¹ After the VJ and MUP forces withdrew, he went into the village and saw that these houses and other buildings in the village had been burned from the inside; some of them had also been hit from the outside. The school building was burned from the inside and the mosque had been damaged by shell-fire.²⁷⁶² Dashi could see some people moving in the direction of the village of Nerodimlje/Nerodime in Uroševac/Ferizaj municipality, but they stopped.²⁷⁶³

²⁷⁵³ Muharrem Dashi, T. 4618 (11 October 2006).

²⁷⁵⁴ Muharrem Dashi, T. 4618–4619 (11 October 2006), 5D8 (witness statement dated 6 June 1999), pp. 2–3.

²⁷⁵⁵ Muharrem Dashi, T. 4613, 4645–4646 (11 October 2006).

²⁷⁵⁶ Muharrem Dashi, T. 4613, 4620–4621, 4639 (11 October 2006).

²⁷⁵⁷ Muharrem Dashi, T. 4643 (11 October 2006).

²⁷⁵⁸ Muharrem Dashi, 5D8 (witness statement dated 6 June 1999), p. 3, T. 4636–4637 (11 October 2006).

²⁷⁵⁹ Fadil Vishi, T. 3562–3563 (19 September 2006).

²⁷⁶⁰ Muharrem Dashi, T. 4613–4614, 4641 (11 October 2006).

²⁷⁶¹ Muharrem Dashi, T. 4614 (11 October 2006).

²⁷⁶² Muharrem Dashi, T. 4614–4616 (11 October 2006).

²⁷⁶³ Muharrem Dashi, T. 4614 (11 October 2006).

1129. Dashi testified that about 50 out of the 150 people who had stayed behind in Stagovo/Stagova were captured by the “Serb forces”. There were 14 of them killed and about 12 injured.²⁷⁶⁴ He could not see the killings from his position, but he learned about them from others.²⁷⁶⁵ Upon his return to the village after the withdrawal of the forces, he saw about ten bodies, some of which were people from Stagovo/Stagova who he knew.²⁷⁶⁶ He remembered the names of the following victims whose bodies he recognised: Fitim Gudaqi (seven years old),²⁷⁶⁷ Ramadan Dashi, Ibrahim Dashi (aged 30),²⁷⁶⁸ Hamdi Dashi,²⁷⁶⁹ the grandmother of Fitim Gudaqi (more than 80 years old), Bela, and Rushi.²⁷⁷⁰ According to Dashi, all were civilians.²⁷⁷¹ There were also two other bodies of Ramush Jaha (between 80 and 90 years old) and Fahri Mani (about 60 years old), which were a little further away, but he did not personally see them.²⁷⁷²

1130. The fact that an action was carried out by VJ forces in Stagovo/Stagova was confirmed by a combat report from the 3rd Army, stating that on 21 May 1999 “elements” of the 243rd Mechanised Brigade besieged Runjevo/Runjeva and Stagovo/Stagova, “crushing” the Albanian forces in those villages and liquidating five “terrorists”.²⁷⁷³

1131. On the other hand, Jelić testified that members of his brigade never entered, encircled or jeopardized the village of Stagovo/Stagova on 21 May 1999. He initially claimed that the VJ was not in the vicinity of that village at all.²⁷⁷⁴ However, after being shown the 3rd Army combat report of 22 May, Jelić stated that “terrorist” forces had attacked part of the MUP forces in Kačanik/Kaçanik, and that the MUP pushed back the “terrorist” forces via Runjevo/Runjeva and Stagovo/Stagova in a legitimate action. His unit was in Stari Kačanik/Kaçanik i Vjëter, about one kilometre away from Stagovo/Stagova village, but since the army used “self-propelled” vehicles, they could not have entered the village even if they had wanted to, due to the swampy conditions

²⁷⁶⁴ Muharrem Dashi, T. 4623–4625, 4633 (11 October 2006).

²⁷⁶⁵ Muharrem Dashi, T. 4623, 4639 (11 October 2006).

²⁷⁶⁶ Muharrem Dashi, T. 4614–4616 (11 October 2006).

²⁷⁶⁷ In his written statement Dashi testified to the injuries of some of the victims and stated that he saw that Fitim Gudaqi had a bullet hole in his throat. Fitim Gudaqi’s mother later told him that her son had been killed whilst she was carrying him in her arms. Muharrem Dashi, 5D8 (witness statement dated 6 June 1999), p. 4.

²⁷⁶⁸ Dashi stated that Ibrahim Dashi’s forehead and chin were missing and he had injuries to his stomach. Muharrem Dashi, 5D8 (witness statement dated 6 June 1999), p. 4.

²⁷⁶⁹ Dashi stated that Hamdi Dashi’s face was injured. Muharrem Dashi, 5D8 (witness statement dated 6 June 1999), p. 4.

²⁷⁷⁰ Muharrem Dashi, T. 4615–4616 (11 October 2006); 5D8 (witness statement dated 6 June 1999), p. 4. See also P368 (Interpol Disaster Victim Identification autopsy report), pp. 494, 553.

²⁷⁷¹ Muharrem Dashi, T. 4616 (11 October 2006).

²⁷⁷² Muharrem Dashi, T. 4616 (11 October 2006); *see also* 5D8 (witness statement dated 6 June 1999), p. 4.

²⁷⁷³ 4D270 (Combat Report of the 3rd Army, 22 May 1999), pp. 1, 3.

²⁷⁷⁴ Krsman Jelić, T. 18931 (23 November 2007).

there.²⁷⁷⁵ Later on Jelić conceded that the army did open fire on Runjevo/Runjeva and Stagovo/Stagova villages, but only in combat with the “terrorists”. He clarified that five “terrorists” were killed in their positions on the mountain, about one kilometre north of Stagovo/Stagova, and that one of his soldiers was killed during that combat.²⁷⁷⁶

1132. A combat report from the Priština Corps Command confirmed that the KLA had opened fire with infantry weapons and rocket launchers in the sectors of the villages of Runjevo/Runjeva and Stagovo/Stagova and that the villages were “sealed off” by the 243rd Mechanised Brigade, which “destroyed” the Kosovo Albanian forces in these villages.²⁷⁷⁷ Jelić stated that this meant that the Brigade was “in the area” of the villages, not “in” the villages, and that in “destroying” the terrorists they did not target inside the villages and did not enter them to conduct searches, nor did the MUP.²⁷⁷⁸

1133. Jelić’s attempts to deny VJ involvement in any operation in Stagovo/Stagova, and his initial position that his units were nowhere near the village on 21 May 1999, despite documentary and eye-witness evidence to the contrary, again illustrate the unreliability of his evidence.

1134. The Trial Chamber received forensic evidence with regard to bodies found in Stagovo/Stagova through Dr. Eric Baccard. The report produced by Baccard contains a section discussing autopsies conducted on bodies exhumed from Stagovo/Stagova by members of a Swiss Disaster Victims Identification Team, and written up in an Interpol Disaster Victim Identification autopsy report.²⁷⁷⁹

1135. According to Baccard, autopsies were performed on ten bodies from a burial site in Stagovo/Stagova on 24 and 25 September 1999.²⁷⁸⁰ All ten were identified by relatives; six of them were males and four were females, and ages ranged from 7 to 83 years. All had sustained at least one gun-shot injury and cause of death was attributed to injury of internal organs or of the skull/brain. In addition Baccard noted that in three cases blunt-force injuries had been sustained.²⁷⁸¹

²⁷⁷⁵ Krsman Jelić, T. 19020–19021 (26 November 2007).

²⁷⁷⁶ Krsman Jelić, T. 19021–19022 (26 November 2007). *See also* 6D1313 (Combat report from the PrK Command, 22 May 1999), pp. 1–3.

²⁷⁷⁷ 6D1313 (Combat report from the PrK Command, 22 May 1999), pp. 1–2; Krsman Jelić, T. 19024 (26 November 2007).

²⁷⁷⁸ Krsman Jelić, T. 19023–19024 (26 November 2007). *See also* Krsman Jelić, T. 19054 (26 November 2007).

²⁷⁷⁹ P1809 (Eric Baccard’s overview report), p. 59; *see also* P368 (Interpol Disaster Victim Identification autopsy report).

²⁷⁸⁰ P1809 (Eric Baccard’s overview report), p. 60.

²⁷⁸¹ P1809 (Eric Baccard’s overview report), pp. 17, 63.

1136. In addition the Trial Chamber received the “Stagov” Grave Site report, which contains autopsies of two persons, namely Fahri Mani and Ramush Jaha, performed by pathologist Hans P. Hougen.²⁷⁸²

b. Findings

1137. The Trial Chamber finds that units of the 243rd Mechanised Brigade, in a concerted action with MUP forces, attacked the village of Stagovo/Stagova on 21 May 1999. Although Muharrem Dashi witnessed shooting at civilians, houses, and animals by the MUP personnel in the village during the action and saw the bodies of ten deceased people in the village thereafter, the Chamber notes that he was not an eye-witness to any killings. The evidence establishes that Baki Bela, Hamdi Dashi, Ibrahim Avdi Dashi, Ramadan Dashi, Bahrije Elezi, Fitim Gudaqi, Hanife Gudaqi, Sevdije Gauri, Elife Jaha, Ramush Jaha, Fahri Mani, and Ibush Rrushi were killed in Stagovo/Stagova on 21 May 1999, as a result of being shot there. However, in light of the lack of direct evidence about the circumstances of these killings, the Chamber can not reach a finding beyond reasonable doubt that any of these people was killed by forces of the FRY and Serbia.

9. Dubrava/Lisnaja

1138. The village of Dubrava/Lisnaja is located about eight or nine kilometres to the north-west of Kačanik/Kaçanik town.²⁷⁸³ Fadil Vishi described events in the village in May 1999, including the kidnapping and later killing of Rrahim Vishi, Milaim Vishi, and Syleman Gurri.²⁷⁸⁴

a. Events on 5 May 1999

1139. Vishi described how in early 1999 the residents of Dubrava/Lisnaja were kept under continuous surveillance by VJ and MUP forces positioned near the factory in “Silkapor” and on the mountain of “Sharr.” From these positions they could see all of the movements in the village and were able to stop anyone going into or out of the area.²⁷⁸⁵ The soldiers Vishi saw stationed at the Silkapor factory wore military camouflage uniforms.²⁷⁸⁶ Jelić, however, denied that the army was

²⁷⁸² P369 (Stagov Grave Site autopsy report, 7 October 1999).

²⁷⁸³ Fadil Vishi, P2285 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 4446. *See also* IC142 (Map marked by Krsman Jelić); P615 (Kosovo Atlas), p. 12.

²⁷⁸⁴ Fadil Vishi, T. 3553 (19 September 2006), P2284 (witness statement dated 18 October 1999), p. 2, P2285 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 4448.

²⁷⁸⁵ Fadil Vishi, P2284 (witness statement dated 18 October 1999), p. 2, P2285 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 4451, 4454–4455.

²⁷⁸⁶ Fadil Vishi, P2285 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 4454, 4472.

in the Silkapor factory during the NATO bombing, claiming that it was further north, outside Doganović/Doganaj.²⁷⁸⁷

1140. During the night of 5 May 1999 Fadil Vishi, Rrahim Vishi (18 years old), and Milaim Vishi (55 years old) went to buy some sugar and cigarettes from Ramadan Lami.²⁷⁸⁸ On the way towards the main road Fadil Vishi met Sylejman Gurri and two other people, whom Vishi did not know, arrived.²⁷⁸⁹ Vishi then saw three “military soldiers”, wearing camouflage uniforms and carrying automatic rifles, suddenly approach Gurri from different directions.²⁷⁹⁰ They shouted at him to put his hands in the air and ordered him to walk “against” the main road.²⁷⁹¹ When Vishi returned to Dubrava/Lisnaja, he was told that Rrahim Vishi and Milaim Vishi had gone in the same direction as Sylejman Gurri.²⁷⁹² Vishi testified that after this incident no one saw Rrahim Vishi, Milaim Vishi or Sylejman Gurri alive again, and no one knew what had happened to them.²⁷⁹³ Around 25–26 May 1999 Rrahim Vishi, Milaim Vishi, Syleman Gurri, and Ramadan Lami were found dead (see below).²⁷⁹⁴ According to Vishi, none of these men was a KLA member.²⁷⁹⁵

b. Events on 25 May 1999

1141. Fadil Vishi further testified that on 25 May 1999 at 3:30 a.m. “Serbian forces”, military and paramilitaries, surrounded Dubrava/Lisnaja.²⁷⁹⁶ These forces were equipped with heavy weapons, Pragas, and APCs.²⁷⁹⁷ As in Stagovo/Stagova, the residents of Dubrava/Lisnaja had organised unarmed “guards” to watch the village and warn everyone if something happened.²⁷⁹⁸ The people on duty that night woke Vishi up, and he in turn woke up everyone else in the neighbourhood.²⁷⁹⁹ According to Vishi there was no KLA presence in Dubrava/Lisnaja itself, but the headquarters of

²⁷⁸⁷ Krsman Jelić, T. 18927–18928 (23 November 2007).

²⁷⁸⁸ Fadil Vishi, P2284 (witness statement dated 18 October 1999), p. 2, P2285 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 4456–4460, 4462–4463.

²⁷⁸⁹ Fadil Vishi, P2284 (witness statement dated 18 October 1999), p. 3.

²⁷⁹⁰ Fadil Vishi, P2284 (witness statement dated 18 October 1999), p. 3, T. 3554, 3561 (19 September 2006).

²⁷⁹¹ Fadil Vishi, P2284 (witness statement dated 18 October 1999), p. 3.

²⁷⁹² Fadil Vishi, P2284 (witness statement dated 18 October 1999), p. 3.

²⁷⁹³ Fadil Vishi, P2284 (witness statement dated 18 October 1999), p. 3.

²⁷⁹⁴ Fadil Vishi, P2284 (witness statement dated 18 October 1999), p. 2–4, P2285 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 4448, 4460, 4467.

²⁷⁹⁵ Fadil Vishi, P2285 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 4467–4468.

²⁷⁹⁶ Fadil Vishi, T. 3555–3556 (19 September 2006), P2284 (witness statement dated 18 October 1999), pp. 3–4, P2285 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 4461.

²⁷⁹⁷ Fadil Vishi, T. 3556–3557, 3564–3565 (19 September 2006).

²⁷⁹⁸ Fadil Vishi, P2284 (witness statement dated 18 October 1999), p. 3, T. 3562 (19 September 2006).

²⁷⁹⁹ Fadil Vishi, P2284 (witness statement dated 18 October 1999), p. 4, T. 3562 (19 September 2006).

the KLA's 162nd Brigade was about three kilometres away.²⁸⁰⁰ However, there was no fighting between the KLA and the army at that time.²⁸⁰¹

1142. After being woken up, all the villagers gathered near the school. Vishi advised them to leave and go towards the border with Macedonia.²⁸⁰² The villagers agreed because they knew about, and feared, what had happened in other villages.²⁸⁰³ They formed a convoy of women, old men, and children, and set out towards Macedonia.²⁸⁰⁴ The younger men, including Vishi, walked towards the woods, except for a few who drove tractors with the women, children and elderly people. Vishi stayed in the woods near to the village, and so was able to see what happened thereafter.²⁸⁰⁵ The convoy was stopped by soldiers about one kilometre from the village and six people were detained.²⁸⁰⁶ Two of these six people were released a short time after, but the other four were sent to Uroševac/Ferizaj where, Vishi later heard, they were detained and tortured in the police station for four days.²⁸⁰⁷

1143. Fadil Vishi testified that in the evening on 25 May 1999 he could see his house in Dubrava/Lisnaja burning from his hiding place in the woods nearby. When some people tried to put out the fire, they found the bodies of Rrahim Vishi and Milaim Vishi in his yard. About 50 metres from his house, two other people named Ali Tusha and Xhemail Tusha were found killed. The next day, the body of Sylejman Gurri was found in the woods about two kilometres away from the village. They also found the bodies of other villagers, namely Hajrush Qorri, his son Arben and his daughter Fetija, and Rexhep Qorri. However, Vishi did not see any of these dead bodies with his own eyes because he remained in the woods until 26 May 1999, and then walked towards Macedonia.²⁸⁰⁸

1144. Witness K31, a Kosovo Albanian woman from Kačanik/Kaçanik municipality, partially confirmed Vishi's account. The Trial Chamber notes that K31 was granted measures to protect her identity and for this reason the details of her evidence in relation to Kačanik/Kaçanik are not set out

²⁸⁰⁰ Fadil Vishi, P2285 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 4467–4468.

²⁸⁰¹ Fadil Vishi, T. 3563, 3565 (19 September 2006).

²⁸⁰² Fadil Vishi, P2284 (witness statement dated 18 October 1999), p. 4, P2285 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 4464–4466.

²⁸⁰³ Fadil Vishi, P2285 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 4469.

²⁸⁰⁴ Fadil Vishi, P2284 (witness statement dated 18 October 1999), p. 4, P2285 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 4466.

²⁸⁰⁵ Fadil Vishi, P2284 (witness statement dated 18 October 1999), p. 4.

²⁸⁰⁶ Fadil Vishi, P2284 (witness statement dated 18 October 1999), p. 4, T. 3563 (19 September 2006). *See also* Krsman Jelić, T. 18928 (23 November 2007).

²⁸⁰⁷ Fadil Vishi, P2284 (witness statement dated 8 October 1999), p. 4. *But see* Fadil Vishi, P2285 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 4447–4448, 4466, 4471.

²⁸⁰⁸ Fadil Vishi, P2284 (witness statement dated 18 October 1999), p. 4.

here. However, the Chamber found her to be a reliable witness to the events that she experienced at the end of May 1999.²⁸⁰⁹

1145. Krsman Jelić, who was confronted with Vishi's evidence, denied that his forces surrounded and attacked the villages of Dubrava/Lisnaja and Reka in May 1999.²⁸¹⁰ He also testified that the area was a strong "terrorist" stronghold and that the 162nd "Terrorist" Brigade was there. He also confirmed that the MUP had conflicts in the area and that his unit had defence positions there, but that it was only defending its own positions.²⁸¹¹ He had no tanks in this area, only Howitzers that had to be pulled along.²⁸¹²

1146. On cross-examination, however, Jelić confirmed that "terrorist forces" attacked his brigade units in Kovčevac/Kovačec, Nika/Nikaj, Reka, Bicevac/Bicec, and Dubrava/Lisnaja.²⁸¹³ He also confirmed that on 25 May 1999 part of the 243rd Mechanised Brigade performed a "joint action" under the name "Dubrava", together with MUP forces, crushing the "terrorists" and blocking them from their combat positions.²⁸¹⁴ Jelić confirmed that there were casualties as a result of the action, and that his units and the MUP confiscated several dozens of weapons from that area.²⁸¹⁵

1147. The Trial Chamber received forensic evidence with regard to bodies found in Dubrava/Lisnaja through Baccard. His report contains a section discussing autopsies conducted on eight bodies exhumed from "Dubrava Islamic Cemetery" by members of the Swiss Disaster Victims Identification Team on 20 and 21 September 1999, and written up in a report.²⁸¹⁶ According to Baccard, seven adult graves and one child's grave were investigated, and eight bodies were exhumed.²⁸¹⁷ Seven of the bodies were male and one was female. They were identified by relatives.²⁸¹⁸ Each of the bodies had sustained at least one gun-shot wound, which caused death in the majority of cases.²⁸¹⁹ Baccard also noted that one of the bodies was in a bent, kneeling position, while another had been lying down.

²⁸⁰⁹ K31, P2595 (witness statement dated 16 October 1999), p. 2–4 (under seal), P2596 (witness statement dated 10 and 12 March 2002), p. 2, T. 9239–9240 (25 January 2007) (closed session).

²⁸¹⁰ Krsman Jelić, T. 18919 (23 November 2007).

²⁸¹¹ Krsman Jelić, T. 18919–18920 (23 November 2007); *see also* 5D666 (Order of the 243rd Mechanised Brigade, 4 May 1999).

²⁸¹² Krsman Jelić, T. 18923–18924 (23 November 2007).

²⁸¹³ Krsman Jelić, T. 19014 (26 November 2007).

²⁸¹⁴ Krsman Jelić, T. 19015–19016 (26 November 2007).

²⁸¹⁵ Krsman Jelić, T. 18920–18922 (23 November 2007).

²⁸¹⁶ P1809 (Eric Baccard's overview report), p. 52. *See also* P371 (Swiss Disaster Victim Identification Team forensic report regarding killings in Dubrava, March 2000).

²⁸¹⁷ P1809 (Eric Baccard's overview report), p. 52.

²⁸¹⁸ P1809 (Eric Baccard's overview report), p. 52.

²⁸¹⁹ P1809 (Eric Baccard's overview report), pp. 16, 56.

c. Findings

1148. The Trial Chamber finds that the 243rd Mechanised Brigade, together with MUP forces and other unidentified forces, attacked the village of Dubrava/Lisnaja on 25 May 1999, forcing residents to leave the village, first to other villages and then to Macedonia.

1149. A description of the forensic evidence relating to the bodies identified from the Dubrava/Lisnaja site, and compiled and presented through Baccard, is contained in Annex A. On the basis of this evidence, along with the testimony of Fadil Vishi, the Chamber finds that Milaim Misim Vishi and Rrahim Beqir Vishi were killed around 5 May 1999; their bodies were found on 25 May 1999. The following people were killed around 25 May 1999: Arton Hajrush Qorri, Fatije Hajrush Qorri, Hajrush Mehmet Qorri, Rexhep Zejnulla Qorri, Ali Tusha, Xhemajl Tusha, and a victim not named in the Schedule, Sylejman Gurri. The Trial Chamber received direct evidence as to how and by whom the victims Fatije Hajrush Qorri and Rexhep Zejnulla Qorri were killed; however, the Chamber did not receive any direct evidence as to how and by whom the following victims were killed: Arton Hajrush Qorri, Hajrush Mehmet Qorri, Ali Tusha, Xhemajl Tusha, Rrahim Beqir Vishi, Milaim Misim Vishi, and Sylejman Gurri. The Chamber can, therefore, not conclude beyond reasonable doubt that these people were victims of crimes committed by the FRY/Serbian forces. The Chamber does, however, find that Fatije Hajrush Qorri and Rexhep Zejnulla Qorri, who were civilians, were killed by members of the FRY/Serbian forces.

N. THE OVERALL PATTERN OF EVENTS

1150. It is largely uncontested that significant numbers of people from Kosovo left their homes during the NATO bombing, many of whom crossed the borders into Albania and Macedonia. Documentary evidence and witnesses brought by both the Prosecution and Defence confirm this swift migration, primarily of Kosovo Albanians.²⁸²⁰ For example, a series of reports sent by the MUP Staff to the MUP Headquarters in Belgrade, from 24 March to 1 May 1999, record the numbers of Kosovo Albanians crossing the borders in that period, without giving any reasons for their departure.²⁸²¹ According to these reports, in the first week of the NATO bombing over

²⁸²⁰ See, e.g., P2438 (Redacted Statement of Neill Wright of UNHCR); P738 (UNHCR Estimates of Displacement and Return); 5D885 (report from commander of the 549th Motorised Brigade to the PrK Command, 3 April 1999); P2019 (War diary of the 2nd Motorised Battalion of the 549th Motorised Brigade), p. 5 (under seal); Božidar Delić, T. 19310 (29 November 2007); K54, T. 10513–10514 (26 February 2007); Knut Vollebaek, T. 9522–9524 (31 January 2007); Momir Stojanović, T. 19730–19731 (6 December 2007); Miloš Vojnović, T. 24239 (13 March 2008).

²⁸²¹ 6D1232 (overview of security events, 24 March 1999); 6D1236 (overview of security events, 28 March 1999); 6D1238 (overview of security events, 2 April 1999); 6D1239 (overview of security events, 3 April 1999); 6D1240 (overview of security events, 4 April 1999); 6D1241 (overview of security events, 5 April 1999); 6D1242 (overview of security events, 6 April 1999); 6D1244 (overview of security events, 8 April 1999); 6D1254 (overview of security events, 18 April 1999); 6D1255 (overview of security events, 19 April 1999); 6D1256 (overview of security events, 20

300,000 Kosovo Albanians had crossed into Albania or Macedonia.²⁸²² By 6 April that number doubled, and by 1 May it reached 715,158.²⁸²³

1151. The Prosecution case is that these thousands of Kosovo Albanians fled the province because of the violent and coercive actions of the forces of the FRY and Serbia, which engaged in a campaign of terror against the Kosovo Albanian population in order to expel them from their homes and force them across the borders with Albania and Macedonia. This case was supported by the consistent evidence of many Kosovo Albanian witnesses, along with some of the former VJ and MUP personnel brought by the Prosecution. However, witnesses brought by the Defence consistently denied that there was any organised expulsion of Kosovo Albanians from their homes, and many of them gave alternative reasons for the mass movement of Kosovo Albanians across the borders into Albania and Macedonia.

1152. Nebojša Ognjenović, who was the Commander of the border police station at the Vrbnica/Vërbnica (Morina) border crossing in early 1999, testified that from the beginning of the NATO bombing large numbers of people began arriving there, seeking to cross. He recorded a total of 430,000 people crossing there during the NATO campaign, with columns of people up to 20 kilometres long backed up waiting to cross.²⁸²⁴ The people seeking to cross the border gave him various reasons for their departure, mostly the NATO bombing and the conflicts between the KLA and members of the VJ.²⁸²⁵

1153. Božidar Delić authored a report to the Priština Corps Command, in which he stated that “[t]he very incidence of refugees ... came as a surprise.” He then offered the following reasons for civilian movement, inferred on the basis of “talks we had with individuals in the columns of refugees”: (1) fear of imminent armed clashes between the forces of the FRY and Serbia on the one hand, and NATO and the KLA on the other hand; (2) aim to avoid the forcible mobilisation by the KLA; (3) fear of the VJ, the MUP, and “particularly” of “Arkan’s troops”; and (4) fear of

April 1999); 6D1257 (overview of security events, 21 April 1999); 6D1259 (overview of security events, 23 April 1999); 6D1260 (overview of security events, 24 April 1999); 6D1261 (overview of security events, 25 April 1999); P1693 (overview of security events, 1 May 1999)

²⁸²² 6D1238 (overview of security events, 2 April 1999), p. 5.

²⁸²³ 6D1242 (overview of security events, 6 April 1999), p. 6; P1693 (overview of security events, 1 May 1999), p. 8. While P1693 records that between 24 April and 1 May 715,158 Kosovo Albanians had left Kosovo, the Chamber considers this to be a typographical error, as it is clear from the other reports in evidence that the time period in question is 24 March to 1 May 1999.

²⁸²⁴ Nebojša Ognjenović, T. 22888 (20 February 2008).

²⁸²⁵ Nebojša Ognjenović, T. 22882–22884 (20 February 2008).

NATO bombing.²⁸²⁶ Delić added that fear of NATO bombing was emphasised as the primary reason by the Kosovo Albanian “refugees” due to its indiscriminate nature.²⁸²⁷ Vlatko Vuković testified that, when he asked civilians who were leaving their homes about their main reason for leaving, they “invariably” mentioned their fear of NATO air-strikes.²⁸²⁸ And VJ officer Saša Antić said that Kosovo Albanian civilians from Priština/Prishtina town told him that they had to move out under pressure from the KLA, or that they did so out of fear of the NATO bombing.²⁸²⁹

1154. Krsman Jelić testified that the civilian movement in the area “to the south of Uroševac” was caused primarily by enforced mobilisation into the KLA as well as motivated by the goal to “clean” that area of civilians in order to create a corridor for the passage of NATO land forces.²⁸³⁰ However, he was not asked about, and did not explain, the basis upon which he made this assessment. Zdravko Vintar testified that a large number of Đakovica/Gjakova town residents fled to Albania due to the NATO air-strikes. He also claimed that the KLA put pressure on Kosovo Albanians to leave Kosovo in order to “create a picture of humanitarian catastrophe”.²⁸³¹ Milutin Filipović testified that the KLA distributed leaflets during the NATO bombardment in the streets of Priština/Prishtina town, calling upon the Albanian population to leave the town towards Albania and Macedonia;²⁸³² and Nebojša Bogunović said that leaflets urging the Kosovo Albanians to leave Kosovo were distributed in Kosovska Mitrovica/Mitrovica town.²⁸³³ However, none of the witnesses who testified about their own departure from Priština/Prishtina and Kosovska Mitrovica/Mitrovica mentioned seeing any such leaflets or that they left their homes because of them. Bogunović and Ljubiša Diković said that people left Kosovo due to a combination of the KLA and the NATO air-strikes.²⁸³⁴ Once again, they were not asked about, and did not clarify, the basis upon which they reached these conclusions.

1155. MUP officer Dušan Gavranović testified that Kosovo Albanian civilians leaving the village of Žegra/Zhegra in Gnjilane/Gjilan municipality did so during the first few days of the NATO campaign because of fear of NATO bombardment, in light of the village’s proximity to the VJ

²⁸²⁶ 5D885 (Document of the 549th Motorised Brigade Command, 3 April 1999), pp. 1–2; *see also* 3D1052 (3rd Army Command- Security Department Report, 13 March 1999), para. 2.2 (reporting that armed members of the KLA “entered houses of members of Albanian ethnic minority conducting forceful mobilization” on 11 and 12 March 1999).

²⁸²⁷ Božidar Delić, T. 19303–19304 (29 November 2007).

²⁸²⁸ Vlatko Vuković, T. 21335 (29 January 2008).

²⁸²⁹ Saša Antić, 5D1398 (witness statement dated 5 January 2008), paras. 13–14.

²⁸³⁰ Krsman Jelić, T. 18934 (23 November 2007).

²⁸³¹ Zdravko Vintar, 5D1394 (witness statement dated 25 December 2007), para. 15.

²⁸³² Milutin Filipović, T. 19183–19184 (27 November 2007); *see also* 5D1364 (KLA Leaflet).

²⁸³³ Nebojša Bogunović, 6D1614 (witness statement dated 2 April 2008), para. 65.

²⁸³⁴ Nebojša Bogunović, 6D1614 (witness statement dated 2 April 2008), paras. 49–50; Ljubiša Diković, T. 19906 (10 December 2007).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

²⁸⁵¹ See Section VI.B.

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

O. LEGAL FINDINGS

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

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

1. Peć/Peja

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

Albanians were either directly expelled from their homes, or fled out of fear. The Chamber is satisfied that these events amounted to an attack upon the civilian population of the town, that this attack was carried out in a systematic manner, and that these actions of the VJ and MUP forces were part of a widespread and systematic attack against Kosovo Albanian civilians in at least 13 municipalities of Kosovo. These physical perpetrators, some of whom made comments such as “Go to Albania, this is not your place, this is Great Serbia”, were undoubtedly aware that they were acting in the context of a larger attack upon the Kosovo Albanian population, at least in Peć/Peja itself.

1182. As noted above, the VJ, MUP, and associated armed forces operating in Peć/Peja at this time, either directly ordered Kosovo Albanians to leave their homes, or caused them to leave by their violent and intimidating behaviour. It is also clear, from their comments during these expulsions, that these physical perpetrators intended the Kosovo Albanians to cross the border to Albania. There was no legitimate reason for this massive expulsion of Kosovo Albanians who were in Peć/Peja lawfully. A large number of them were deliberately transported by buses or went in their own cars, or on foot, to the border with Albania, while others went to Montenegro. At the border, the Kosovo Albanians who had travelled on the buses had to disembark and were told to walk across the border.

1183. The Trial Chamber finds, therefore, that all of the elements of deportation as a crime against humanity punishable under Article 5(d) of the Statute, are satisfied. Similarly, and in light of the various witness accounts of the violence, fear, and intimidation that the forces of the FRY and Serbia systematically effected in Peć/Peja town, the Chamber is convinced that the elements of the crime of other inhumane acts (forcible transfer), punishable under Article 5(i) are also satisfied.

2. Dečani/Deçan

1184. The Chamber has found that on or around 28 March 1999 MUP and VJ forces targeted Kosovo Albanian civilians in the village of Beleg in Dečani/Deçan. These civilians were detained, harassed, physically assaulted, and were then expelled from the village in an organised manner by MUP and VJ forces. Eventually they crossed the border and went to Albania. The Chamber is satisfied that these events amounted to an attack upon the civilian population of the village, that this attack was carried out in a systematic manner, and that it was part of a widespread and systematic attack against Kosovo Albanian civilians in at least 13 municipalities of Kosovo. These actions of VJ and MUP forces were clearly part of the broader attack on the civilian population, as identity documents were taken from the displaced people, they were mistreated, and they were ordered to

go to Albania. Furthermore, the physical perpetrators, who made comments such as “Go to Albania – you have asked for NATO”, were undoubtedly aware that they were acting in the context of a larger attack upon the Kosovo Albanian population.

1185. As noted above, MUP and VJ forces operating together expelled the civilians from the village of Beleg in an organised manner. It is also clear from their comments during these expulsions that these physical perpetrators intended the Kosovo Albanians to cross the border to Albania. There was no legitimate reason for these expulsions of Kosovo Albanians who were in Beleg lawfully.

1186. The Chamber finds, therefore, that all of the elements of deportation, as a crime against humanity punishable under Article 5(d) of the Statute, are satisfied. Similarly, and in light of the various witness accounts of the violence, fear, and intimidation that these forces systematically effected in Beleg, the Chamber is convinced that the elements of the crime of other inhumane acts (forcible transfer), punishable under Article 5(i) of the Statute, are also satisfied.

1187. The Chamber is in no doubt that at least two women who were detained in Beleg by VJ and MUP forces were subjected to sexual intercourse, and another two women were subjected to acts of a sexual nature where they plainly did not consent and those attacking them knew that they did not consent. Thus, their fundamental right to physical integrity was violated, which satisfies the elements of sexual assault.

1188. Given that the Indictment charges sexual assault only as a form of persecution, the Prosecution must prove that the perpetrators acted with the intent to discriminate against Kosovo Albanians as an ethnic group. The physical perpetrators carrying out these rapes and sexual assaults made comments such as “the [KLA] did worse than they are doing. You can handle them.” Consequently, the Chamber concludes that they carried out the rapes and sexual assaults deliberately, with the intent to discriminate against the Kosovo Albanians as an ethnic group. Thus all of the elements sexual assault as a form of persecution, a crime against humanity punishable under Article 5(h) of the Statute, are satisfied.

3. Đakovica/Gjakova

a. Đakovica/Gjakova town

1189. From the beginning of the NATO air campaign and continuing through to May 1999, MUP and VJ forces targeted Kosovo Albanian civilians in the town of Đakovica/Gjakova. Houses

belonging to Kosovo Albanian residents of the town were looted and systematically burned down. A large numbers of Kosovo Albanians were expelled from the town and over the border to Albania in an organised manner by MUP and VJ forces. In addition, some residents of the town were killed. The Chamber is satisfied that these events amounted to an attack upon the civilian population of the town, that this attack was carried out in a systematic manner, and that it was part of a widespread and systematic attack against Kosovo Albanian civilians in at least 13 municipalities of Kosovo. In addition, the actions of the VJ, MUP, and other forces working together were clearly part of the broader attack on the civilian population, as the houses of Kosovo Albanians were selectively targeted for burning, identity documents were seized from the displaced people, and they were ordered to go to Albania. Furthermore, the physical perpetrators, some of whom made comments such as “this is because of NATO” or “[g]et out, we will fuck your Albanian mothers”, were undoubtedly aware that they were acting in the context of a larger attack upon the Kosovo Albanian population.

1190. As noted above, MUP, VJ, and other forces expelled civilians from Đakovica/Gjakova town, either by telling them to leave directly or causing them to leave by their violent and intimidating behaviour. It is also clear from the comments they made during the expulsions, including instructions to go to the border crossing and to Albania, that these physical perpetrators intended the Kosovo Albanians to leave. There was no legitimate reason for these expulsions of Kosovo Albanians, who were in Đakovica/Gjakova town lawfully.

1191. The Trial Chamber finds, therefore, that all of the elements of deportation as a crime against humanity, punishable under Article 5(d) of the Statute, are satisfied. Similarly, and in light of the various witness accounts of the violence, fear, and intimidation that these forces systematically effected in Đakovica/Gjakova town, the Chamber is convinced that the elements of the crime of other inhumane acts (forcible transfer), punishable under Article 5(i) of the Statute, are also satisfied.

1192. With respect to the killing by MUP forces of 20 individuals in the basement of a house on Miloš Gilić/Millosh Giliq Street, in the Ćerim/Qerim district of Đakovica/Gjakova town, on the night of 1 April 1999, it is established that the physical perpetrators caused and intended these deaths. The Chamber therefore finds that all of the elements of murder, as a violation of the laws or customs of war punishable under Article 3 of the Statute, are satisfied. In addition, these murders were committed in the context of the widespread and systematic attack directed against the civilian population; the physical perpetrators’ actions were part of that attack; and the physical perpetrators knew this to be the case. All this is shown by the fact that the perpetrators killed the women and

children, despite them clearly not being members of the KLA, and then set the house on fire as part of the campaign of burning Kosovo Albanian houses in Đakovica/Gjakova town at this time. Consequently, the Chamber finds that all of the elements of murder, as a crime against humanity, punishable under Article 5(a), are satisfied.

1193. The Chamber notes the fact that the physical perpetrators, knowing that the victims were Kosovo Albanians, killed all the women and children present (except for one) although they clearly were not members of the KLA, shows that they were targeting them because of their ethnicity. Consequently, the Chamber concludes that they carried out the killings deliberately, with the intent to discriminate against the Kosovo Albanians as an ethnic group, and thus all of the elements of murder as a form of persecution, a crime against humanity punishable under Article 5(h) of the Statute, are satisfied.

b. Villages in Đakovica/Gjakova municipality

1194. The Chamber has also found that VJ and MUP forces targeted Kosovo Albanian civilians in a number of villages in Đakovica/Gjakova municipality during the NATO air campaign, notably through the joint VJ and MUP operation in the Reka/Caragoj valley on 27 and 28 April 1999. Kosovo Albanians were systematically expelled from their villages, which were then burned down. Many were sent over the border to Albania, while others were killed. The Chamber is satisfied that these events amounted to an attack upon the civilian population of the municipality, that it was carried out in a systematic manner, and that it was also part of a widespread and systematic attack against Kosovo Albanian civilians across at least 13 of Kosovo's municipalities. The actions of the VJ and MUP forces involved were clearly part of the broader attack on the civilian population, and the physical perpetrators, who told Kosovo Albanians that they had to leave Kosovo or they would be executed, were aware that they were acting in the context of a larger attack upon the Kosovo Albanian population.

1195. As noted above, VJ and MUP forces systematically expelled Kosovo Albanians from their villages in the municipality. It is also clear from the comments they made during the expulsions that these physical perpetrators intended the Kosovo Albanians to leave. There was no legitimate reason for these expulsions of Kosovo Albanians who were in Đakovica/Gjakova lawfully.

1196. The Trial Chamber finds, therefore, that in the villages of Korenica, Dobroš/Dobrosh, Ramoc, and Meja, along with other villages in the Reka/Caragoj valley, the elements of deportation as a crime against humanity, punishable under Article 5(d) of the Statute, are satisfied. Similarly, and in light of the various witness accounts of the violence, fear, and intimidation that these forces

systematically effected in these villages, the Chamber is convinced that the elements of other inhumane acts (forcible transfer), a crime against humanity punishable under Article 5(i) of the Statute, are also satisfied.

1197. With respect to the killing of at least 287 Kosovo Albanians, many of whom were civilians, in and around Korenica and Meja on 27 April 1999 by MUP and VJ forces acting together, it is established that the physical perpetrators caused and intended these deaths. The Chamber finds, therefore, that all of the elements of murder, as a violation of the law or customs of war punishable under Article 3 of the Statute, are satisfied. In addition, these murders were committed as a part of the joint VJ and MUP operation in the Reka/Caragoj valley, which was a widespread and systematic attack directed against the civilian population. The physical perpetrators' actions were part of that attack and they knew this to be the case, as shown by the organised nature and large number of killings. Consequently, the Chamber is satisfied that all of the elements of murder as a crime against humanity, punishable under Article 5(a) of the Statute, are satisfied.

1198. Finally, the physical perpetrators targeting Kosovo Albanians during the Reka/Caragoj valley operation made comments such as describing that they were "slaughtering šiptars". The Chamber concludes that they carried out the killings deliberately, with the intent to discriminate against the Kosovo Albanians as an ethnic group, and thus all of the elements of murder as a form of persecution, punishable as a crime against humanity under Article 5(h) of the Statute, are satisfied.

4. Prizren

1199. In late March 1999 a joint VJ and MUP operation was launched in a broad area covering parts of Prizren, Orahovac/Rahovec, and Suva Reka/Suhareka municipalities. While this operation was ostensibly targeted against the KLA, the Chamber has found that, at the same time, Kosovo Albanian civilians living in the area were also systematically attacked. Among the villages attacked was Pirane/Pirana. On 25 March it was shelled by the VJ, and then MUP forces entered and began to set houses on fire. As a consequence, the Kosovo Albanian residents of the village fled to other nearby villages, with some people being killed or wounded as they departed. Then, in April 1999, Kosovo Albanians sheltering in Srbica/Sërbica, including many from Pirane/Pirana, were ordered by the police and other forces to leave for Albania, which they subsequently did. The Chamber is satisfied that these events amounted to an attack upon the civilian population of these villages, that it was carried out in a widespread and systematic manner, and that it was a part of the widespread and systematic attack against Kosovo Albanian civilians in at least 13 municipalities of

Kosovo. The actions of these forces were part of the broader attack on the civilian population, and the physical perpetrators involved in this attack, or those at whose behest they were acting, were undoubtedly aware that they were acting in the context of the larger attack upon the Kosovo Albanian population in that region.

1200. As noted above, the VJ and MUP forces involved in the attack on Pirane/Pirana and Srbica/Sërbica caused the flight of its inhabitants by their violent and intimidating behaviour. The fact that they set houses on fire in Pirane/Pirana, and MUP officers ordered that displaced Kosovo Albanians sheltering in Srbica/Sërbica be sent to Albania, also shows that the physical perpetrators intended the Kosovo Albanians to leave. There was no legitimate reason for this massive expulsion of Kosovo Albanians who were in these villages lawfully. The Trial Chamber therefore finds that all of the elements of deportation as a crime against humanity, punishable under Article 5(d) of the Statute are satisfied. Similarly, and in light of the violent and threatening manner in which the forces of the FRY and Serbia displaced Kosovo Albanians from their homes in Pirane/Pirana, and subsequently from Srbica/Sërbica, the Chamber is convinced that the elements of other inhumane acts (forcible transfer), a crime against humanity punishable under Article 5(i), are also satisfied.

1201. The Chamber has also found above that on 28 March 1999 a large number of Kosovo Albanians from Dušanovo/Dushanova, a neighbourhood of Prizren town, were violently expelled from their homes by the police, and directed towards Albania. During the course of the expulsions, these people were beaten, threatened, and robbed, and houses were set on fire. A large number of people thus expelled made their way to the border, and were further abused on the way. The Chamber is satisfied that this attack Dušanovo/Dushanova amounted to an attack upon the civilian population of this area, that it was carried out in a widespread and systematic manner, and that it was a part of the widespread and systematic attack against Kosovo Albanian civilians in at least 13 municipalities. The actions of the forces involved were part of the broader attack on the civilian population, and the physical perpetrators involved in this attack were undoubtedly aware that they were acting in the context of the larger attack upon the Kosovo Albanian population in that region as they made comments such as “Go to Albania”, “There is no place for you here”, and “Kosovo belongs to Serbia, you belong to Albania”.

1202. As noted above, the MUP drove out Kosovo Albanians from their homes in Dušanovo/Dushanova. It is also clear from the comments they made during these expulsions that the physical perpetrators intended the Kosovo Albanians to leave. There was no legitimate reason for this expulsion, nor were the Kosovo Albanians in Dušanovo/Dushanova there unlawfully

1203. Once again the Trial Chamber finds, therefore, that all of the elements of deportation, as a crime against humanity punishable under Article 5(d) of the Statute, are satisfied in relation to Dušanovo/Dushanova, part of the town of Prizren. Similarly, and in light of the witness accounts of the threats, physical abuse, and intimidation by the forces of the FRY and Serbia who expelled the residents of Dušanovo/Dushanova, the Chamber is convinced that the elements of other inhumane acts (forcible transfer), a crime against humanity punishable under Article 5(i) of the Statute, are also satisfied.

5. Orahovac/Rahovec

1204. As a preliminary matter, the Trial Chamber notes that paragraph 72(a)(i) of the Indictment contains a number of allegations concerning the displacement of Kosovo Albanians from villages in Orahovac/Rahovec municipality, without specifying from which particular villages these people were displaced. The only specific charge of forcible displacement is in relation to a large group of people gathered on a mountain near Nogavac/Nagafc on 25 March 1999, which the Chamber has found above was not proved on the facts. In relation to events on 2 April 1999, the Indictment describes the shelling of “villages” by forces of the FRY and Serbia, killing a number of people sleeping on tractors and causing others to flee to Albania. However, the evidence led by the Prosecution related only to an aerial attack upon Nogavac/Nagafc village on 2 April, which the Chamber has found above not proved to have been perpetrated by forces of the FRY and Serbia.

1205. The only charges of deportation and other inhumane acts (forcible transfer) from this municipality that the Chamber need make legal findings on are, therefore, in relation to the village of Celina, as set out in paragraph 72(a). Although the averments in paragraph 75(b) and (c) claim that the prelude to the killings in Bela Crkva/Bellacërka and Mala Kruša/Krusha e Vogël was the departure of the population, there is no charge of deportation or forcible transfer in relation to either. Thus, with regard to these two villages the Chamber will make legal findings only in relation to the murder charges.

a. Celina

1206. As discussed above, in late March 1999 a joint VJ and MUP operation was launched in a broad area covering parts of Prizren, Orahovac/Rahovec, and Suva Reka/Suhareka municipalities. While this operation was ostensibly targeted against the KLA, the Chamber has found that, at the same time, Kosovo Albanian civilians living in the area were also systematically attacked. Among the villages attacked was Celina. On 25 March Celina was shelled by the VJ, and mixed VJ and MUP forces then entered the village, looting and setting fire to houses. The villagers consequently

fled out of fear. MUP forces also beat and robbed the fleeing villagers of their valuables and personal identification documents, and killed several people. The men were forced at gunpoint to go to Prizren and then to Albania and were further assaulted by police on the way. The Chamber is satisfied that these events amounted to an attack upon the civilian population of Celina, that it was carried out in systematic manner, and that it was a part of the widespread and systematic attack against Kosovo Albanians in the area, as well as against Kosovo Albanian civilians in at least 13 municipalities of Kosovo. The actions of these forces were part of the broader attack on the civilian population, and the physical perpetrators involved in this attack, or those at whose behest they were acting, were undoubtedly aware that they were acting in the context of the larger attack upon the Kosovo Albanian population in that region.

1207. As noted above, VJ and MUP forces clearly caused the departure of the residents of Celina, who resided there lawfully, and did so without legitimate reason. The Trial Chamber is satisfied that these forces intended for the Kosovo Albanian residents of Celina to go to Prizren and then to continue to Albania.

1208. The Chamber finds, therefore, that all of the elements of deportation as a crime against humanity, punishable under Article 5(d) of the Statute, are satisfied. Similarly, and in light of the brutal manner in which the attack was carried out, causing terror among the local population who feared for their lives, the Chamber is convinced that the elements of the crime of other inhumane acts (forcible transfer), punishable under Article 5(i) of the Statute, are also satisfied.

1209. Immediately after this initial attack on Celina, the mosque in the village was destroyed by MUP forces using explosives. The Chamber is satisfied that this destruction was part of the ongoing attack against the civilian population of Celina, that the mosque was not being used for military purposes, and that the physical perpetrators carried out the destruction deliberately, with the intent to discriminate against the Kosovo Albanians as an ethnic group. Accordingly, all of the elements of destruction of or damage to religious property, as a form of persecution, a crime against humanity punishable under Article 5(h) of the Statute, are satisfied.

b. Bela Crkva/Bellacërka

1210. The Trial Chamber also found that on 25 March 1999, as part of the broader attack on Kosovo Albanian villages in the region, VJ tanks entered Bela Crkva/Bellacërka and VJ and MUP forces started to shoot at the village, forcing the villagers to leave. Hundreds of villagers fled along the Belaja river, where members of the police killed several people, including women and children. The Chamber is satisfied that these events amounted to an attack upon the civilian population of

Bela Crkva/Bellacërka, that it was carried out in a widespread and systematic manner, and that it was a part of the widespread and systematic attack against Kosovo Albanian civilians in the area, as well as the broader attack in at least 13 municipalities of Kosovo. The actions of the forces involved were part of the widespread and systematic attack on the civilian population, and the physical perpetrators involved in this attack, or those at whose behest they were acting, were undoubtedly aware that they were acting in the context of the larger attack upon the Kosovo Albanian population in that region.

1211. During this attack, MUP forces killed at least 10 people at the Belaja river, including women and children, while shouting insults at them. A group of men were robbed of their valuables and forced into the river-bed where they were shot. At least 42 men were killed in this incident. Later, seven other people were killed by the same policemen. Since there is no doubt that the physical perpetrators caused and intended the deaths of these people the Chamber finds that all of the elements of murder, as violation of the law or customs of war punishable under Article 3 of the Statute, are satisfied. In addition, given that these murders were committed in the context of the widespread and systematic attack directed against the civilian population, that the physical perpetrators' actions were part of that attack, and that the physical perpetrators, or the persons at whose behest they were acting, knew this to be the case, the Chamber is satisfied that all of the elements of murder as a crime against humanity, punishable under Article 5(a) of the Statute, are satisfied. Finally, the Chamber is convinced that the physical perpetrators of these murders targeted the victims because of their Kosovo Albanian ethnicity. In the view of the Chamber, the physical perpetrators carried out the killings deliberately, with the intent to discriminate against the Kosovo Albanians as an ethnic group. Accordingly, all of the elements of murder as a form of persecution, a crime against humanity punishable under Article 5(h) of the Statute, are satisfied.

c. Mala Kruša/Krusha e Vogël

1212. Also on 25 March 1999 VJ and MUP forces attacked the village of Mala Kruša/ Krusha e Vogël. The VJ shelled the village after which the MUP entered and looted and burned houses, along with local armed Serbs. The following day, MUP forces ordered all of the people in the village, and hiding in woods nearby, to go out into the main street, where they separated the women and children from the men. More than 100 men were grouped together, including teenagers, elderly, and mentally and physically disabled men, who were assaulted, robbed of their valuables and identity documents, and escorted by the police to an empty barn. In the barn the MUP opened fire on the men, shooting many of them, after which they set the barn on fire. One hundred and eleven men were killed during this incident. The Chamber is satisfied that these events amounted

to an attack upon the civilian population of Mala Kruša/ Krusha e Vogël, that it was carried out in a widespread and systematic manner, and that it was a part of the widespread and systematic attack against Kosovo Albanian civilians in at least 13 municipalities. The actions of the forces involved were part of the broader attack on the civilian population, and the physical perpetrators involved in this attack, or those at whose behest they were acting, were undoubtedly aware that they were acting in the context of the larger attack upon the Kosovo Albanian population in that region.

1213. Since there is no doubt that the physical perpetrators caused and intended the deaths of these 111 people, the Chamber finds that all of the elements of murder, as violation of the law or customs of war punishable under Article 3 of the Statute, are satisfied. In addition, given that these murders were committed in the context of the widespread and systematic attack directed against the civilian population in the area, that the physical perpetrators' actions were part of that attack, and that the physical perpetrators, or the persons at whose behest they were acting, knew this to be the case, the Chamber is satisfied that all of the elements of murder as a crime against humanity, punishable under Article 5(a) of the Statute, are satisfied. Finally, when committing these killings, the physical perpetrators targeted the Kosovo Albanian men of the village because of their ethnicity. In the view of the Chamber, the physical perpetrators carried out the killings deliberately, with the intent to discriminate against the Kosovo Albanians as an ethnic group. Accordingly, all of the elements of murder as a form of persecution, a crime against humanity punishable under Article 5(h) of the Statute, are satisfied.

6. Suva Reka/Suhareka

1214. On 26 March 1999 the PJP, together with local policemen, mounted an action across the town of Suva Reka/Suhareka, directing their activities against the civilians in the town, killing members of the Berisha family, as well as other civilians. In the days following this action, policemen set houses on fire and expelled Kosovo Albanians from their homes, either directly or by creating an atmosphere of fear which forced the people to leave. The Chamber is satisfied that these events amounted to an attack upon the civilian population of the town, that this attack was carried out in a widespread and systematic manner, and that it was part of the widespread and systematic attack against Kosovo Albanian civilians in the area, as well as in at least 13 municipalities of Kosovo. The actions of the MUP forces in question were part of the broader attack on the civilian population and these physical perpetrators, some of whom made comments such as "You have 15 minutes to leave for Albania and you will never see this land again", were undoubtedly aware that they were acting in the context of a broad attack upon the Kosovo Albanian population in the area of Suva Reka/Suhareka.

1215. As noted above, local policemen intentionally killed 45 members of the Berisha family on 26 March 1999, all of whom were civilians. Just before doing so, the local policemen made statements to the effect that they would kill all Albanians. This event, together with the subsequent actions of the MUP forces operating in Suva Reka/Suhareka town at this time, who either directly ordered Kosovo Albanians to leave their homes, or caused them to leave by their violent and intimidating behaviour, resulted in the exodus of Kosovo Albanians from the town. There was no reason for this massive expulsion of Kosovo Albanians who were in Suva Reka/Suhareka town lawfully. Many of them went to Albania, while others were displaced within Kosovo.

1216. The Chamber finds, therefore, that all of the elements of deportation, as a crime against humanity punishable under Article 5(d) of the Statute, are satisfied. Similarly, and in light of the various witness accounts of the violence, fear, and intimidation that the local and other MUP forces systematically effected in Suva Reka/Suhareka town, the Chamber is convinced that the elements of the crime of other inhumane acts (forcible transfer), punishable under Article 5(i) are also satisfied.

1217. Since there is no doubt that the physical perpetrators caused and intended the deaths of the 45 members of the Berisha family who were killed, the Chamber finds that all of the elements of murder, as violation of the law or customs of war punishable under Article 3 of the Statute, are satisfied. In addition, given that these murders were committed in the context of the widespread and systematic attack directed against the civilian population, that the physical perpetrators' actions were part of that attack, and that the physical perpetrators, or those at whose behest they were acting, knew this to be the case, the Chamber is satisfied that all of the elements of murder as a crime against humanity punishable under Article 5(a) are satisfied. Even though there was some evidence that the physical perpetrators also had a personal motive to target this particular family, the Chamber notes that crimes against humanity can be committed for purely personal reasons so long as the underlying offence was committed in the context of the attack directed against the civilian population, which was the case here. Finally, the physical perpetrators targeted a Kosovo Albanian family and, while doing so, made statements to the effect that they would kill all Kosovo Albanians. Thus, the Chamber finds that they carried out the killings deliberately, with the intent to discriminate against the Kosovo Albanians as an ethnic group, satisfying the requirements of murder as a form of persecution, a crime against humanity.

1218. With respect to the charge of destruction of religious property, the Chamber has found that the minaret of the mosque in Suva Reka/Suhareka was destroyed by MUP forces. This event occurred during the attack on the civilian population described above. In addition, the Chamber is

satisfied that the mosque was not being used for military purposes at the time, and that it was targeted because it was a Muslim religious building. Given that the minaret was destroyed using explosives, the physical perpetrators intended to damage the mosque and, in doing so, acted with discriminatory intent. Finally, the Chamber views the destruction of the minaret as constituting extensive damage of the mosque. Accordingly, the Chamber finds that the elements of destruction of or damage to religious property, as a form of persecution, punishable under Article 5(h) of the Statute are satisfied.

7. Srbica/Skenderaj

1219. The Chamber has found that, with the commencement of the NATO bombing campaign, VJ and MUP forces mounted attacks throughout Srbica/Skenderaj municipality. They did so in the western part of the municipality, in the area of Turićevac/Turiçec and surrounding villages such as Izbica and Tušilje/Tushila. They did the same in the eastern part of the municipality, in the area around Ćirez/Qirez. Although partly directed at the KLA, this attack was mounted in a heavy-handed and indiscriminate way, such that Kosovo Albanian villages and groups of civilians were also attacked, causing many of them to flee the area. In addition, immediately following the action in the western part of the municipality, MUP forces entered the villages in question and acted in a threatening and coercive manner, targeting the civilian population living or gathered there, looting civilian property, and burning houses. In Izbica they killed at least 93 Kosovo Albanians of an advanced age, and possibly many more. In Ćirez/Qirez and the surrounding area, VJ forces, including VJ reservists, as well as the MUP, targeted Kosovo Albanian men, detaining and abusing over 150 of them, and then transferring them to Glogovac/Gllogoc where they were held for seven days and further beaten by the police.

1220. The Chamber is, therefore, satisfied that these events amounted to an attack upon the civilian population of the municipality, that this attack was carried out in a widespread and systematic manner, and that it was part of the widespread and systematic attack against Kosovo Albanian civilians in at least 13 municipalities of Kosovo. The actions of the forces involved were part of the broader attack on the civilian population and, given the scale of the actions in the municipality and throughout at least 13 municipalities of Kosovo, these physical perpetrators, or the persons at whose behest they were acting, were undoubtedly aware that they were acting in the context of the larger attack upon the Kosovo Albanian population.

1221. As noted above, the VJ, MUP, and associated armed forces operating in the municipality in late March and throughout April, caused the Kosovo Albanians to leave their homes by their

violent and intimidating behaviour. In addition, on 28 March 1999, MUP forces killed at least 93 Kosovo Albanians in Izbica, the majority of whom were elderly men. The news of this incident spread fast and further contributed to the people leaving their homes and the municipality itself. The Chamber notes that there was no reason for this massive displacement of Kosovo Albanians in Srbica/Skenderaj lawfully. A large number of them were then intentionally directed towards the border and into either Albania or Macedonia, while others were displaced within Kosovo.

1222. The Chamber finds, therefore, that all of the elements of deportation, as a crime against humanity punishable under Article 5(d) of the Statute, are satisfied. Similarly, and in light of the various witness accounts of the violence, fear, and intimidation that the VJ and MUP forces effected in the municipality, the Chamber is convinced that the elements of the crime of other inhumane acts (forcible transfer), punishable under Article 5(i) are also satisfied.

1223. With respect to the killing of at least 93 Kosovo Albanians in Izbica, since there is no doubt that the physical perpetrators caused and intended the deaths of these people, the Chamber finds that all of the elements of murder, as violation of the law or customs of war punishable under Article 3 of the Statute, are satisfied. In addition, given that these murders were committed in the context of the widespread and systematic attack directed against the civilian population, that the physical perpetrators' actions were part of that attack, and that the physical perpetrators, or the persons at whose behest they were acting, knew this to be the case, the Chamber is satisfied that all of the elements of murder as a crime against humanity punishable under Article 5(a) are satisfied. Finally, when committing these killings, the physical perpetrators targeted Kosovo Albanians because of their ethnicity, verbally abusing them and forcing them to remove their traditional hats, thereby degrading the symbols of their ethnicity. In the view of the Chamber, the physical perpetrators carried out the killings deliberately, with the intent to discriminate against the Kosovo Albanians as an ethnic group. Accordingly, all of the elements of persecution through murder, punishable as a crime against humanity under Article 5(h) are satisfied.

1224. The Chamber is in no doubt that in Ćirez/Qirez at least four women were subjected to acts of a sexual nature, infringing their physical integrity or amounting to an outrage to their personal dignity, during the course of the attack upon the Kosovo Albanian population of the municipality. Given that all these women were detained by the physical perpetrators and that some of them were later killed, it is clear that none of them consented to these sexual acts. The Chamber is also convinced that the physical perpetrators intentionally committed these acts and that they were aware that the victims did not consent. Since the women were also verbally abused by the physical perpetrators who made specific references to Kosovo Albanian leaders, the Chamber is convinced

that the physical perpetrators carried out the sexual assaults with the intent to discriminate against the Kosovo Albanians as an ethnic group. Accordingly, all of the elements of sexual assault as a form of persecution, punishable as a crime against humanity under Article 5(h) are satisfied.

8. Kosovska Mitrovica/Mitrovica

1225. From the commencement of the NATO air campaign through to early April 1999, prominent Kosovo Albanian civilians living in Kosovska Mitrovica/Mitrovica town were targeted by the MUP, the houses of Kosovo Albanians were systematically burned down, and large numbers of Kosovo Albanians were expelled from the town in an organised manner by the MUP. A number of people, including Aferdita Hajrizi, fled to nearby Žabare/Zhabar, but they were then ordered to return to Kosovska Mitrovica/Mitrovica town on 1 April. Two days later they travelled by bus to Montenegro, whence Hajrizi and her family subsequently went to Albania.

1226. The Chamber is satisfied that these events amounted to an attack upon the civilian population of the town, that this attack was carried out in a systematic manner, and that it was part of the widespread and systematic attack against Kosovo Albanian civilians in at least 13 municipalities of Kosovo. The actions of the forces involved were part of the broader attack on the civilian population, as the houses of Kosovo Albanians were selectively targeted for burning, and they were ordered to leave Kosovo, while the members of the MUP were shouting at them, “This is not your country. This is Serbia. Go to Albania.” These statements, as well as the fact that Kosovo Albanians were told to leave or they would be killed, show that the physical perpetrators involved in the expulsions from Kosovska Mitrovica/Mitrovica town were aware that they were acting in the context of the larger attack upon the Kosovo Albanian population.

1227. As noted above, MUP forces expelled Kosovo Albanians from Kosovska Mitrovica/Mitrovica. In addition, the statement they made during these expulsions, show that the physical perpetrators clearly intended that people leave the town. There was no legitimate reason for these expulsions of Kosovo Albanians who were in the town lawfully.

1228. The Chamber finds, therefore, that in relation to Kosovska Mitrovica/Mitrovica town all of the elements of deportation as a crime against humanity, punishable under Article 5(d) of the Statute, are satisfied. Furthermore, the perpetrators intentionally inflicted serious mental and physical suffering on the Kosovo Albanian victims, which was an attack on their dignity. Consequently, the Chamber is convinced that the elements of the crime of other inhumane acts (forcible transfer), punishable under Article 5(i), are also satisfied.

1229. The Chamber has also found that in mid-April 1999, the VJ and MUP forces targeted Kosovo Albanian civilians the village of Žabare/Zhabar and surrounding villages. Kosovo Albanians were systematically expelled from their homes, which were then looted and burned down, in an action directed against the civilian population. The Chamber is satisfied that these events amounted to an attack upon the civilian population of the villages, that this attack was carried out in a systematic manner, and that it was part of a widespread and systematic attack against Kosovo Albanian civilians in at least 13 municipalities of Kosovo.

1230. The Chamber has found that large numbers of Kosovo Albanians were driven out of Žabare/Zhabar and the surrounding villages in the Kosovska Mitrovica/Mitrovica municipality by the VJ and the MUP. The actions of these forces were part of the broader attack on the civilian population, as the villages of Kosovo Albanians were selectively targeted for burning; its inhabitants were ordered to walk to the Albanian border, some under police escort, where their identity documents were taken from them. Furthermore, the physical perpetrators from the VJ and MUP, or those at whose behest they were acting, were aware that they were acting in the context of a larger attack upon the Kosovo Albanian population. There was no legitimate reason for these expulsions of Kosovo Albanians who were in these villages lawfully.

1231. The Chamber thus finds that in the village of Žabare/Zhabar, along with other neighbouring villages in Kosovska Mitrovica/Mitrovica municipality, all of the elements of deportation, as a crime against humanity punishable under Article 5(d) of the Statute, are satisfied. Similarly, and in light of the various witness accounts of the violence, fear, and intimidation that the VJ and MUP forces effected in the municipality, the Chamber is convinced that the elements of the crime of other inhumane acts (forcible transfer), punishable under Article 5(i) are also satisfied.

9. Vučitrn/Vushtrria

a. Vučitrn/Vushtrria town

1232. The Chamber has found that in late March 1999 MUP and VJ forces targeted Kosovo Albanian civilians in the town of Vučitrn/Vushtrria, and houses and shops belonging to Kosovo Albanians, as well as a mosque in the town, were systematically burned down. The Chamber is satisfied that these events amounted to an attack upon the civilian population of the town, that it was carried out in a systematic manner, and that it was part of the widespread and systematic attack against Kosovo Albanian civilians in at least 13 municipalities of Kosovo. The actions of the forces involved were clearly part of the broader attack on the civilian population, as the houses, shops, and mosque were selectively targeted for burning. Furthermore, the physical perpetrators, or

the people at whose behest they were acting, were undoubtedly aware that their actions were part of the larger attack upon the Kosovo Albanian population.

1233. As noted above, the Chamber has found that large numbers of Kosovo Albanians were driven out from their homes in Vuçitrn/Vushtrria town by the forces of the MUP. The actions of these forces were clearly part of the broader attack on the civilian population, as the houses of Kosovo Albanians were selectively targeted for burning. These actions show that the physical perpetrators intended to remove the people from the town. Furthermore, the physical perpetrators, or those at whose behest they were acting, were undoubtedly aware that they were acting in the context of a larger attack upon the Kosovo Albanian population. There was no legitimate reason for these expulsions of Kosovo Albanians who were in Vuçitrn/Vushtrria town lawfully. The Trial Chamber, therefore, finds that in relation to Vuçitrn/Vushtrria town all of the elements of forcible transfer, as a crime against humanity punishable under Article 5(i) of the Statute, are satisfied.

1234. With respect to the mosque in Vuçitrn/Vushtrria, the behaviour of those who set it on fire and the fact that they targeted a Muslim religious building, indicate that they intended to discriminate against the Kosovo Albanian ethnic group. The Chamber is also satisfied that the Vuçitrn/Vushtrria mosque was not being used for military purposes and that its destruction was caused by the actions of members of the MUP and the VJ, who clearly intended its destruction. The Chamber finds, therefore, that all of the elements of destruction of or damage to religious property, as a form of persecution, a crime against humanity punishable under Article 5(h) of the Statute, are satisfied.

b. Other parts of Vuçitrn/Vushtrria municipality

1235. With respect to the killing of three people who were travelling in a convoy near Gornja Sudimlja/Studimja e Epërme village on 2 and 3 May 1999, by MUP forces, the Chamber finds that, since the physical perpetrators of these killings clearly caused and intended the deaths, all of the elements of murder, as violation of the law or customs of war punishable under Article 3 of the Statute, are satisfied.

1236. These murders were committed in the context of an attack upon a convoy of people who were predominantly civilians and also in the context of the widespread and systematic attack against Kosovo Albanian civilians in at least 13 municipalities of Kosovo. The physical perpetrators' actions were part of that attack. The physical perpetrators, or those at whose behest they were acting, knew this to be the case, as shown by the organised nature in which the members of the MUP approached, mistreated, and subsequently killed the victims. Consequently, the

Chamber is satisfied that all of the elements of murder as a crime against humanity, punishable under Article 5(a) of the Statute, are satisfied as well.

1237. Finally, the fact that the physical perpetrators, knowing that the victims were Kosovo Albanians, killed at least three of them, despite the fact that they were clearly civilians, shows that they were targeted because of their ethnicity. Consequently, the Chamber concludes that they carried out the killings deliberately, with the intent to discriminate against the Kosovo Albanians as an ethnic group, and thus all of the elements murder as a form of persecution, a crime against humanity punishable under Article 5(h) of the Statute, are satisfied.

1238. While the Prosecution has not proved that the people making up the convoy were expelled from their homes by the forces of the FRY and Serbia, after the convoy was stopped on 2 May 1999 MUP forces directed its members to some agricultural buildings on the outskirts of Vučitrn/Vushtrria town, where they were detained overnight. The next morning the MUP separated women from men, and subsequently detained several hundred of these men in Smrekovnica/Smrakonica prison, where they were physically abused over a period of three weeks and then taken to the Albanian border. These MUP forces cursed at the men, told them to go to Albania, and took away their identity cards. Following their night in the agricultural buildings, the women, children, and elderly men from the group who had vehicles were ordered to go to Albania, while those without vehicles were sent to another village nearby.

1239. As noted above, the Chamber finds that the convoy attacked on 2 May was comprised largely of civilians, and that this attack continued into 3 May with the detention of the members of the convoy in the agricultural buildings. The MUP forces who detained these people, or those at whose behest they were acting, were aware that they were acting in the course of this attack and forced them either to go to Albania (directly or after a period of detention) or to go to other areas of Kosovo. There was no legitimate reason for this displacement of Kosovo Albanians who were in the area lawfully. The Chamber thus finds that all of the elements of deportation, as a crime against humanity punishable under Article 5(d) of the Statute, are satisfied. Similarly, and in light of the various witness accounts of the violence, fear, and intimidation that the MUP forces effected on the people in the convoy, the Chamber is convinced that the elements of the crime of other inhumane acts (forcible transfer), punishable under Article 5(i) are also satisfied.

10. Priština/Prishtina

1240. With the commencement of the NATO air campaign on 24 March 1999, VJ and MUP forces, and local armed Serbs, began targeting Kosovo Albanian civilians across the town of

Priština/Prishtina. Parts of the town were shelled by the VJ, buildings were set on fire, houses were looted, and large numbers of Kosovo Albanians were either directly expelled from their homes, or fled out of fear. The Chamber is satisfied that these events amounted to an attack upon the civilian population of the town, that this attack was carried out in a systematic manner, and that it was part of the widespread and systematic attack against Kosovo Albanian civilians in at least 13 municipalities of Kosovo.

1241. The actions of the forces involved were clearly part of the broader attack on the civilian population, and these physical perpetrators, some of whom made comments such as “Go to Albania, Kosovo is not your land” or “Albanians belong to Albania and must go, Kosovo is not yours”, were undoubtedly aware that they were acting in the context of a larger attack upon the Kosovo Albanian population, at least in Priština/Prishtina itself.

1242. As noted above, the VJ, MUP, and associated armed forces operating in Priština/Prishtina at this time, either directly ordered Kosovo Albanians to leave their homes, or caused them to leave by their violent and intimidating behaviour. There was no legitimate reason for this massive expulsion of Kosovo Albanians in Priština/Prishtina lawfully. A large number of them were deliberately transported by train to the border with Macedonia, where they had to disembark and were told, on occasion at gunpoint, to walk across the border.

1243. The Chamber finds, therefore, that all of the elements of deportation, as a crime against humanity punishable under Article 5(d) of the Statute, are satisfied. Similarly, and in light of the various witness accounts of the violence, fear, and intimidation that the forces of the FRY and Serbia systematically effected in Priština/Prishtina town, the Chamber is convinced that the elements of the crime of other inhumane acts (forcible transfer), punishable under Article 5(i) are also satisfied.

1244. In relation to the three women who said they were raped during the course of the attack upon the Kosovo Albanian population of Priština/Prishtina, the Chamber is in no doubt that what they meant is that they were subjected to sexual intercourse, where they plainly did not consent and those attacking them knew that they did not consent, and thus their fundamental right to physical integrity was violated, which satisfies all the elements of sexual assault. In one of these three cases the perpetrators broke-in to the home of the victim and raped her; in another case the victim was a young girl who was taken from her home, physically assaulted, and then raped in a hotel; and in the third case the victim was a young woman who had accompanied her injured brother to a hospital and was there held in a basement, before being beaten and raped several times.

1245. Given that the Indictment charges sexual assault only as a form of persecution, the Prosecution must prove that the perpetrators acted with the intent to discriminate against Kosovo Albanians as an ethnic group. However, it has failed to bring any evidence in these three cases from which such intent can be inferred. The Chamber finds, therefore, that it has not been proved by the Prosecution that sexual assault as a form of persecution was committed by forces of the FRY and Serbia in Priština/Prishtina.

11. Gnjilane/Gjilan

1246. The Chamber has found that in late March 1999, VJ and MUP forces, together with irregular forces, drove out Kosovo Albanians from Žegra/Zhegra and Vladovo/Lladova, in Gnjilane/Gjilan municipality, either directly or by way of threats, beatings, and killings. The Chamber has also found that on 6 April 1999 VJ reservists ordered the residents of Prilepnica/Përlepnica to leave that village which they promptly did. Given that they were told that they were being moved for their own safety and that later they returned to the village, the Prosecution has not established that these people were displaced without grounds permitted under international law, at that point in time. However, the situation was different on 13 April, when the villagers were told to leave again, this time by the regular VJ forces. At the time there was no KLA presence in the village, no evidence of NATO bombing, and therefore no apparent reason as to why over 3,000 people needed to be evacuated yet again. The Chamber is, therefore, satisfied that these events amounted to an attack upon the civilian population of these villages, that this attack was carried out in a widespread and systematic manner, and that it was part of the widespread and systematic attack against Kosovo Albanian civilians in at least 13 municipalities of Kosovo discussed above. The actions of the forces in question were part of the broader attack on the civilian population and these physical perpetrators, or the persons at whose behest they were acting, were undoubtedly aware that they were acting in the context of a broad attack upon the Kosovo Albanian population in the villages in question.

1247. As noted above, the VJ, MUP, and associated armed forces operating in these villages either directly ordered the Kosovo Albanians to leave their homes, or caused them to leave by their violent and intimidating behaviour. The Chamber notes that there was no reason for this massive displacement of Kosovo Albanians who were in those areas lawfully. A large number of them were then either escorted, or intentionally directed, towards the border and into Macedonia, while others gathered in Donja Stubla/Stublla e Poshtme, remaining within Kosovo.

1248. The Chamber finds, therefore, that all of the elements of deportation, as a crime against humanity punishable under Article 5(d) of the Statute, are satisfied. Similarly, and in light of the various witness accounts of the violence, fear, and intimidation that VJ, MUP, and other forces systematically effected in the relevant villages, the Chamber is convinced that the elements of the crime of other inhumane acts (forcible transfer), punishable under Article 5(i) are also satisfied.

1249. With respect to the charge of destruction of religious sites, the Chamber has found that the mosque in Vlačica/Llashtica, a village close to Žegra/Zhegra and Vladovo/Lladova, was heavily damaged by VJ soldiers and locals from Žegra/Zhegra, some of whom wore police uniforms. This event occurred during the attack on the civilian population described above. In addition, the Chamber is satisfied that the mosque was not being used for military purposes at the time and that it was targeted because it was a Muslim religious building. Given that the physical perpetrators burned the mosque, it is clear that they intended to damage it and, in doing so, acted with discriminatory intent. Accordingly, the Chamber finds that the elements of destruction of or damage to religious property, as a form of persecution, punishable under Article 5(h) of the Statute, are satisfied.

12. Uroševac/Ferizaj

1250. The Chamber has found that, with the commencement of the NATO bombing, VJ, MUP, and associated armed forces mounted an attack on the villages surrounding Uroševac/Ferizaj town causing the village residents to start moving from their homes. In particular, in early April 1999 they attacked the village of Sojevo/Sojeva, setting houses on fire, killing civilians, and expelling villagers, forcing them to walk to Uroševac/Ferizaj town. Then, on 8 April, they also entered Mirosavlje/Mirosala, causing the people to flee the village. In addition, on 5 April VJ volunteers arrived in Staro Selo, killed at least three people, and created a coercive environment which caused the people to start leaving their homes in large numbers. The people from these villages were first displaced to Uroševac/Ferizaj town and then from there to Macedonia. The Chamber is satisfied that these events amounted to an attack upon the civilian population of these villages, that this attack was carried out in a widespread and systematic manner, and that it was part of the widespread and systematic attack against Kosovo Albanian civilians in at least 13 municipalities of Kosovo discussed above. The actions of the forces in question were part of the broader attack on the civilian population and these physical perpetrators, having made comments that Kosovo Albanians would be sent to Albania since they did not belong in Kosovo, were undoubtedly aware, that they were acting in the context of a broad attack upon the Kosovo Albanian population in the villages in question.

1251. As noted above, the VJ, MUP, and associated armed forces operating in the villages at the time, either directly ordered the Kosovo Albanians to leave their homes, or caused them to leave by their violent and intimidating behaviour. The Chamber notes that there was no reason for this massive displacement of Kosovo Albanians who were in those areas lawfully. A large number of them were then intentionally directed towards the border and into Macedonia.

1252. The Chamber finds, therefore, that all of the elements of deportation, as a crime against humanity punishable under Article 5(d) of the Statute, are satisfied. Similarly, and in light of the various witness accounts of the violence, fear, and intimidation that VJ, MUP, and other forces systematically effected in the relevant villages, the Chamber is convinced that the elements of the crime of other inhumane acts (forcible transfer), punishable under Article 5(i) are also satisfied.

13. Kačanik/Kaçanik

a. Kotlina/Kotllina

1253. The Chamber has found that, at the beginning of March 1999, before the commencement of the NATO bombing campaign, VJ and MUP forces attacked and partially burned the village of Kotlina/Kotllina, in Kačanik/Kaçanik municipality. Kotlina/Kotllina was attacked again on 24 March 1999, when VJ and MUP forces shelled and then encircled the village, causing the local residents to flee. Houses in the village were then looted and set on fire and a large group of mainly women and children were loaded on to trucks which took them towards Kačanik/Kaçanik town. Others who avoided capture fled out of fear to Macedonia following the attack on the village. The Chamber is satisfied that these events amounted to an attack upon the civilian population in the area, that this attack was carried out in a widespread and systematic manner, and that it was part of the widespread and systematic attack against Kosovo Albanian civilians in at least 13 municipalities of Kosovo. The actions of the forces involved were part of the broader attack on the civilian population, and these physical perpetrators, or the persons at whose behest they were acting, were aware that they were acting in the context of the larger attack upon the Kosovo Albanian population in that region.

1254. As noted above, the VJ and MUP forces clearly caused the departure of the residents of Kotlina/Kotllina. The fact that houses were set on fire and people were abused shows that the physical perpetrators intended for the Kosovo Albanian residents of Kotlina/Kotllina to go to Macedonia, which many of them did. In addition, there was no reason for this displacement of Kosovo Albanians who were in that area lawfully.

1255. The Chamber finds, therefore, that all of the elements of deportation, as a crime against humanity punishable under Article 5(d) of the Statute, are satisfied. Similarly, and in light of the violent manner, fear, and intimidation that the VJ and MUP forces effected in the municipality, the Chamber is convinced that the elements of the crime of other inhumane acts (forcible transfer), punishable under Article 5(i), are also satisfied.

b. Kačanik/Kaçanik town

1256. The Chamber also found that both VJ and MUP forces entered the town of Kačanik/Kaçanik on 27 March 1999, and started firing towards houses there. The following day several hundred of the town's residents left their homes out of fear of the police forces, or having been directly expelled from their homes by the police, and eventually crossed the border into Macedonia. The Chamber is satisfied that these events amounted to an attack on the Kosovo Albanian civilian population of Kačanik/Kaçanik, that this attack was carried out in a widespread and systematic manner, and that it was part of the widespread and systematic attack in at least 13 municipalities of Kosovo discussed above. The actions of these forces were part of the broader attack on the civilian population, and the physical perpetrators, or those at whose behest they were acting, were aware that they were acting in the context of the larger attack.

1257. As noted above, the VJ and MUP forces caused the departure of residents of Kačanik/Kaçanik through acts of violence and intimidation intending that they go to Macedonia, which many people did. In addition, there was no reason for this displacement of Kosovo Albanians who were in that area lawfully. The Chamber finds, therefore, that all of the elements of deportation, under Article 5(d) of the Statute, and other inhumane acts (forcible transfer), under Article 5(i), are also satisfied in relation to these events.

c. Vata/Vataj

1258. Finally, as discussed above, Sejdi Lami testified that there was a KLA presence in Vata/Vataj beginning on 6 April 1999, at which time the VJ began shelling. On 13 April the VJ began shooting towards Vata/Vataj and then entered the village, at which point the remaining civilians left. Lami described how these forces shot over the heads of the departing people and expressed the view that they were looking for members of the KLA. Lami did not witness any destruction of civilian property in the village, although on his return to his home in July 1999 he found that it and other houses had been looted. In light of the fact that this was the only evidence presented by the Prosecution in relation to the attack on Vata/Vataj, the Chamber is not satisfied that it was an attack upon the civilian population of that village, or that it was connected to a

broader attack in the area, or indeed the widespread and systematic attack against the Kosovo Albanian civilian population in 13 municipalities of Kosovo. Thus, the charges of deportation and forcible transfer pertaining to Vata/Vataj are dismissed.

d. Dubrava/Lisnaja

1259. The Chamber found that the VJ, together with MUP forces, attacked the village of Dubrava/Lisnaja on 25 May 1999, forcing residents to leave the village, first to other villages and then to Macedonia. At least two civilians were killed in the course of this attack. The Chamber is satisfied that these events amounted to an attack on the village, that this attack was an attack upon the Kosovo Albanian civilian population of the village, that it was carried out in a widespread and systematic manner as part of the broader attack against Kosovo Albanian civilians in at least 13 municipalities. Thus, the actions of the forces involved were part of the broader attack on the civilian population. The VJ and MUP forces involved in the attack, or the people at whose behest they were acting, were aware that they were acting in the context of the larger attack upon the Kosovo Albanian population.

1260. As noted above, it was the actions of the VJ and MUP forces that caused the Kosovo Albanians from Dubrava/Lisnaja to leave their homes out of fear of the consequences should they remain. The Chamber is also convinced that these forces intended to displace the residents of Dubrava/Lisnaja and for them to go to Macedonia. In addition, there was no reason for this displacement of Kosovo Albanians who were in Dubrava/Lisnaja lawfully.

1261. The Trial Chamber finds, therefore, that all of the elements of deportation, as a crime against humanity punishable under Article 5(d) of the Statute, are satisfied, as well as the elements of other inhumane acts (forcible transfer), punishable under Article 5(i), given the terrifying circumstances in which the victims were forced to leave.

1262. In relation to the two Kosovo Albanians who were killed during the course of the attack on Dubrava/Lisnaja, since there is no doubt that the physical perpetrators caused and intended the deaths of these people, the Chamber finds that all of the elements of murder, as violation of the law or customs of war punishable under Article 3 of the Statute, are satisfied. In addition, given that these murders were committed in the context of the widespread and systematic attack directed against the civilian population, that the physical perpetrators' actions were part of that attack, and that the physical perpetrators, or the persons at whose behest they were acting, knew this to be the case, the Chamber is satisfied that all of the elements of murder as a crime against humanity punishable under Article 5(a) are satisfied. Finally, when committing these killings, the physical

perpetrators targeted Kosovo Albanians because of their ethnicity. In the view of the Chamber, the physical perpetrators carried out the killings deliberately, with the intent to discriminate against the Kosovo Albanians as an ethnic group. Accordingly, all of the elements of murder as a form of persecution, a crime against humanity punishable under Article 5(h) of the Statute, are satisfied.

P. EFFORTS TO CONCEAL CRIMES

1263. The Prosecution argues that the concealment of bodies of Kosovo Albanians killed during the implementation of the common criminal plan provides additional evidence of the existence of that joint criminal enterprise.²⁸⁵² This concealment is said to have been planned at a high level by a number of members of the joint criminal enterprise, namely Slobodan Milošević, Vlastimir Đorđević, Vljako Stojiljković, Radomir Marković, Dragan Ilić, Sreten Lukić, and Nikola Šainović.²⁸⁵³ Bodies were exhumed from mass and individual graves in Kosovo and transported to other parts of Serbia, where they were concealed in various sites, which were under MUP and VJ jurisdiction.²⁸⁵⁴ The Prosecution also alleges that the copious evidence relating to the exhumation of these remains, including DNA identification and forensic findings relating to causes of death, leads to the inescapable inference that these persons were killed as part of the execution of the common criminal purpose.²⁸⁵⁵

1264. The Defence mostly concedes that the concealment of bodies took place, but challenge the Prosecution's theory on various grounds. For example, the military accused (Pavković, Ojdanić, and Lazarević) argue that the VJ was not involved in this matter and that, rather than trying to hide the crimes, it was trying to uncover them.²⁸⁵⁶ The Lukić Defence, on the other hand, challenges the Prosecution claim that the bodies found belonged to those who were killed as a result of the execution of the common criminal plan, and asserts that their deaths could be attributed to participation in and consequences of the KLA attacks, as well as to legitimate combat between the forces of the FRY and Serbia and the KLA.²⁸⁵⁷ The Lukić Defence argues that Lukić fully investigated any crimes committed by the MUP in Kosovo, and thus could not have been a participant in such crimes or in any attempt to cover them up.²⁸⁵⁸ Specifically, Lukić set up the

²⁸⁵² Prosecution Final Trial Brief, 29 July 2008 (public version), para. 278.

²⁸⁵³ Prosecution Final Trial Brief, 29 July 2008 (public version), paras. 279–281.

²⁸⁵⁴ Prosecution Final Trial Brief, 29 July 2008 (public version), paras. 282–287.

²⁸⁵⁵ Prosecution Final Trial Brief, 29 July 2008 (public version), para. 288.

²⁸⁵⁶ Ojdanić Final Trial Brief, 29 July 2008 (public version), paras. 215–217; Pavković Final Trial Brief, 28 July 2008 (public version), paras. 289–290; Lazarević Final Trial Brief, 29 July 2008 (public version), paras. 692–696.

²⁸⁵⁷ Lukić Final Trial Brief, 7 August 2008 (public version), paras. 597–602.

²⁸⁵⁸ Lukić Final Trial Brief, 7 August 2008 (public version), para. 1485.

working group that uncovered the complete picture of the “clandestine transport of bodies from Kosovo-Metohija by Serbian MUP personnel to several sites within Serbia.”²⁸⁵⁹

1265. The Chamber has carefully analysed the evidence presented by the parties in relation to this issue and outlines that evidence below, starting from the burial sites in Kosovo right through the transport of the bodies found therein, and the subsequent investigation conducted by the MUP and different forensic teams. The Chamber notes here that some of the witnesses to these events had concerns for their own personal safety. It is for this reason that the Chamber has found it appropriate to reduce the level of detail on some of the issues, in an effort to minimise any risk to the safety of witnesses. References to the confidential trial record have been included, where this would not endanger the witnesses. However, some references to the relevant evidence have had to be omitted. All the relevant evidence was, of course, considered.

1. Exhumation of bodies

1266. The Chamber heard evidence from two witnesses, namely K72 and Ali Gjogaj, who participated in exhumation of bodies from mass or individual graves in Kosovo. K72 lived in Đakovica/Gjakova where he worked as an excavator operator. He testified about taking part in the excavation of bodies in three different locations in Đakovica/Gjakova municipality, namely the Bistražin/Bistrazhin bridge, the Brekovac/Brekoc cemetery located on the outskirts of Đakovica/Gjakova town, and the village of Guska, as well as the forest nearby.

1267. K72 recounted that, during the NATO bombing, he was ordered to work as an excavator operator for the VJ, the MUP, and the civilian protection. The work he did for the VJ consisted of digging trenches in order to disguise military vehicles. He received a daily allowance at the VJ barracks, but would receive no proof of the payment. Simultaneously K72 worked for the MUP, also for a daily allowance, which he would collect from the MUP station in Đakovica/Gjakova. Whether he worked for the MUP or the VJ on a particular day depended upon who picked him up first.²⁸⁶⁰

1268. For MUP work, K72 would get picked up from his house by either a marked or unmarked police car and would be driven to his excavator. The drivers who came to pick him up wore blue camouflage uniforms.²⁸⁶¹ One day in April 1999, at around 9:00 p.m., K72 was picked up by an unknown policeman wearing a blue camouflage uniform, in order to perform some “delicate work”

²⁸⁵⁹ Lukić Final Trial Brief, 7 August 2008 (public version), para. 1471.

²⁸⁶⁰ K72, T. 5318–5320 (25 October 2006), T. 5322–5323, 5336–5341 (26 October 2006), P2551 (witness statement dated 26 October 2005), paras. 10–12.

without further specification. They collected K72's excavator and then drove to the area of Bistražin/Bistrashin bridge, which is located east of the Đakovica/Gjakova town.²⁸⁶²

1269. When they arrived, K72 saw 10 to 15 policemen securing the area in which he was to excavate. When he started, he realised from the stench alone that he was digging out bodies. He saw arms and heads falling out as they were hit by the excavator. As a result he became sick. When he asked a policeman how much work there was to be done, the response was that there were some 100 or 120 bodies to be dug out.²⁸⁶³ K72 noticed that the bodies were still recognisable, they were all males, and all wore civilian clothing. He also observed at the site some four to six people wearing civilian clothing who were helping to load the bodies onto two unmarked trucks.²⁸⁶⁴ One was a refrigerated truck, the other was a regular truck, and both were of a similar size. When asked if this refrigerated truck was the one that was later found in the Danube river, as will be described below, K72 explained they were similar but that he could not tell if it was the exact one.²⁸⁶⁵

1270. About a month later, some two to three weeks before the end of the NATO campaign, the police picked up K72 from his home in the evening. He collected his excavator and again followed a police car, this time to the public cemetery in Brekovac/Brekoc.²⁸⁶⁶ When K72 entered the cemetery he saw a number of vehicles and some 20 policemen in blue camouflage uniforms. He was shown the individual graves he was to dig out. Some of these graves were marked with wooden poles with names written on them. Almost all names were Albanian.²⁸⁶⁷ Outside the cemetery was a big truck, twice the size of the refrigerated truck used in Bistražin/Bistrashin. Also present were the same four to six people, again helping load the bodies onto the truck.²⁸⁶⁸ More bodies were exhumed in this location than in Bistražin/Bistrashin. K72 saw that they were all male and wore civilian clothes. He noticed bullet holes in some of the bodies and that one of them had the hair on its head shaved in the form of the letters "KLA".²⁸⁶⁹

1271. Soon thereafter K72 was sent to Guska to dig up more bodies. As on previous occasions, he was escorted to the location by the police, and again in the evening. Once there he dug up 10 to 12 individual graves. The area was secured by some 10 to 15 police officers in blue camouflage uniforms. The bodies were loaded into a small truck and driven away. Additional bodies were also

²⁸⁶¹ K72, T. 5323 (26 October 2006).

²⁸⁶² K72, T. 5323–5324, 5338–5339 (26 October 2006), P2551 (witness statement dated 26 October 2005), para. 13.

²⁸⁶³ K72, T. 5325, 5339 (26 October 2006), P2551 (witness statement dated 26 October 2005), paras. 13–14.

²⁸⁶⁴ K72, T. 5326 (26 October 2006), P2551 (witness statement dated 26 October 2005), paras. 13–15.

²⁸⁶⁵ K72, T. 5326–5327 (26 October 2006).

²⁸⁶⁶ K72, T. 5328 (26 October 2006); IC86 (map marked by witness K72 and showing location of Brekovac/Brekoc).

²⁸⁶⁷ K72, T. 5328–5329 (26 October 2006), P2551 (witness statement dated 26 October 2005), paras. 16–17.

²⁸⁶⁸ K72, T. 5329–5330 (26 October 2006), P2551 (witness statement dated 26 October 2005), para. 17.

exhumed from various parts of a nearby forest throughout which they were dispersed. The victims were all male and wore civilian clothing. K72 noticed bruises on some of them. He could not remember how many bodies he dug out on that occasion but he believed it was more than ten.²⁸⁷⁰ During the exhumations in Guska K72 was approached by a MUP officer and told not to tell anyone about these activities or he would be killed.²⁸⁷¹

1272. Altogether K72's exhumation activities were carried out over a period of 15 to 20 days and were completed sometime in May 1999. All the bodies were males in civilian clothes, aged somewhere between 30 and 50. It was a big operation and seemed very well organised, suggesting that it was authorised at a high-level.²⁸⁷² K72 further testified that he did not "take part in the removal of the dead bodies of the Kosovo-Albanians who were killed in Meja and Korenica in April 1999"²⁸⁷³ and that the VJ never asked him to exhume bodies.²⁸⁷⁴

1273. The Lukić Defence called Radovan Zlatković, who worked as an inspector at Đakovica SUP at the time, to refute some of the evidence of K72. Zlatković denied that there was a mass grave in the Bistražin/Bistrashin area. He stated that this is a large, open area, near a Catholic church and private homes, where any mass grave would have been easily noticeable, and added that it would have been impossible to carry out the excavation described by K72 with noisy machinery, which would have to be brightly lit, during the NATO bombardment. Zlatković also asserted that NATO regularly bombed the area of Bistražin/Bistrashin bridge, and stated that the bodies of identified civilian casualties would be given to their relatives, while unidentified bodies were buried at a Muslim cemetery in Đakovica/Gjakova town. He denied that the police had any information about the existence of a mass grave at this site.²⁸⁷⁵ Zlatković also stated that he was unaware of K72 performing any rig machinery work, or other work for the Đakovica SUP, from 1997 to May 1999.²⁸⁷⁶

1274. Having reviewed the challenges to K72 made by Zlatković, the Chamber accepts the evidence of K72 on this matter. From observing both witnesses and recalling how they recounted these events the Chamber finds the account given by K72 to be compelling and credible. The

²⁸⁶⁹ K72, T. 5330–5332, 5343 (26 October 2006), P2551 (witness statement dated 26 October 2005), para. 17.

²⁸⁷⁰ K72, T. 5333–5334 (26 October 2006), P2551 (witness statement dated 26 October 2005), para. 19.

²⁸⁷¹ K72, T. 5334, 5342–5343 (26 October 2006), P2551 (witness statement dated 26 October 2005), para. 20.

²⁸⁷² K72, P2551 (witness statement dated 26 October 2005), paras. 21–22.

²⁸⁷³ K72, P2551 (witness statement dated 26 October 2005), para. 26.

²⁸⁷⁴ K72, P2551 (witness statement dated 26 October 2005), para. 27.

²⁸⁷⁵ Radovan Zlatković, 6D1627 (witness statement dated 13 April 2008), para. 37.

²⁸⁷⁶ Radovan Zlatković, 6D1627 (witness statement dated 13 April 2008), para. 36.

Chamber's confidence in his evidence is not shaken by anything said by Zlatković. In any event, the two accounts are not entirely inconsistent.

1275. Ali Gjogaj was a worker at a cleaning company called "*Higijena*" in Prizren. He testified about exhumations he undertook at a firing range located on the road between Suva Reka/Suhareka and Prizren,²⁸⁷⁷ and also in the village of Pusto Selo/Pastasella in Orahovac/Rahovec municipality. The Chamber has found his evidence compelling and reliable.

1276. Gjogaj testified that the excavation at the firing range outside of Prizren took place in April 1999. One evening, probably in the first two weeks following the start of the NATO bombing, and at an unusual time of about 8:00 p.m., Budimir Spasić, Gjogaj's boss, came to his house with three of his colleagues. According to Gjogaj, Spasić was wearing a green camouflage VJ uniform.²⁸⁷⁸ These men told Gjogaj to come with them and eventually drove to the military firing range near Prizren. Once there, Gjogaj saw two excavators, operating at two different locations, three trucks, and four or five police pinzgauers. He also saw several policemen dressed in blue camouflage uniforms, but did not recognise them.²⁸⁷⁹

1277. When asked during cross-examination why, when giving a statement to the Belgrade war crimes prosecutor,²⁸⁸⁰ he never mentioned the fact that Spasić wore a VJ uniform, Gjogaj responded that he was never asked about this. He conceded, however, that the uniform did not necessarily mean that Spasić was a VJ soldier, seeing as many civilians in the area wore old army uniforms at the time.²⁸⁸¹ Spasić himself was never called to give evidence. Given Gjogaj's concession on cross-examination, as well as his failure to mention a VJ uniform on prior occasions, and the fact that green camouflage uniforms were worn by PJP at the time, the Chamber considers that this is not an appropriate basis on which to find that the VJ was involved in the operation.

1278. Spasić then ordered Gjogaj and the other three men to work at one of the locations and transfer the bodies buried there into one of the available trucks. They had an excavator at their disposal, which was operated by a former employee of the *Higijena* company who was now wearing a green camouflage uniform and carrying an automatic weapon.²⁸⁸² He dug about two

²⁸⁷⁷ P120 (photographs of the firing range outside Prizren).

²⁸⁷⁸ Ali Gjogaj, T. 3726–3729 (21 September 2006), P2317 (witness statement dated 24 June 2000), p. 2.

²⁸⁷⁹ Ali Gjogaj, T. 3729–3730, 3734–3735, 3739–3740 (21 September 2006), P2317 (witness statement dated 24 June 2000), p. 2; IC42 (photograph marked by Gjogaj showing blue camouflage uniform worn by the policemen he saw at the firing range); IC43 (photograph marked by Gjogaj showing blue camouflage uniform worn by the policemen he saw at the firing range). Gjogaj explained on cross-examination that the firing range is a large open area or a meadow. Ali Gjogaj, T. 3750–3751 (22 September 2006).

²⁸⁸⁰ 4D21 (Ali Gjogaj's statement for Belgrade Special Court).

²⁸⁸¹ Ali Gjogaj, T. 3743–3750 (22 September 2006).

²⁸⁸² Ali Gjogaj, T. 3728–3729 (21 September 2006), P2317 (witness statement dated 24 June 2000), p. 3.

metres until he finally reached the bodies, which were then transferred by Gjogaj and his colleagues into the available truck.²⁸⁸³ Gjogaj estimated that they dug out somewhere between 80 and 90 bodies from this mass grave. The victims all wore civilian clothes and included men, women, and some seven to eight children. He did not, however, see any wounds on the bodies, nor did he recognise any of the victims. He estimated that they had been buried some two weeks earlier.²⁸⁸⁴

1279. The other excavator was operating some 20 metres from Gjogaj's mass grave. The work done there was done by the members of the police rather than the employees of the *Higijena* company. Gjogaj could see men dressed in blue camouflage uniforms digging out bodies and loading them into another refrigerated truck, which was identical to the one he was using. He estimated that there were more than 30 bodies.²⁸⁸⁵

1280. The Chamber notes here that it has been established that the bodies of the members of the Berisha family, including a number of women and children, were transported to Prizren following the killings in Suva Reka/Suhareka on 26 March 1999.²⁸⁸⁶ The Chamber also recalls the evidence of Hysni Berisha who testified that in August 1999 he accompanied a British Forensic team who visited the site of the mass grave at the firing range. There they found a number of items of clothing, shoes, and other objects belonging to members of the Berisha family killed in Suva Reka/Suhareka town on 26 March 1999, as described above.²⁸⁸⁷ Accordingly, it is more than likely that the Berishas were among the corpses exhumed by Gjogaj and the others at this location.

1281. Once the work was done, Gjogaj and the other men were ordered to get into the third refrigerated truck and were driven to the rubbish dump on the other side of the main road to Suva Reka/Suhareka. One of the excavators was already there, digging another hole which was about three metres deep and two metres wide and long. Bodies were unearthed at a depth of one and a half metres. Once again they all wore civilian clothing and included both men and women, but this time no children. He estimated that they exhumed some 20 bodies from this hole. Gjogaj and the others finished their work around 4:00 a.m. and were driven back home by Spasić.²⁸⁸⁸

1282. Following this event, Gjogaj also participated in another exhumation, in Pusto Selo/Pastasella in Orahovac/Rahovec municipality. This time, however, the circumstances were very different, indicating a more legitimate exercise. For example, unlike on the previous occasion,

²⁸⁸³ Ali Gjogaj, T. 3735–3736 (21 September 2006), P2317 (witness statement dated 24 June 2000), p. 3.

²⁸⁸⁴ Ali Gjogaj, T. 3736–3737 (21 September 2006), P2317 (witness statement dated 24 June 2000), p. 3.

²⁸⁸⁵ Ali Gjogaj, T. 3735, 3738 (21 September 2006), P2317 (witness statement dated 24 June 2000), p. 3.

²⁸⁸⁶ See Section VII.F.

²⁸⁸⁷ Hysni Berisha, P2282 (witness statement dated 20 August 2001), pp. 8–9.

²⁸⁸⁸ Ali Gjogaj, T. 3737 (21 September 2006), P2317 (witness statement dated 24 June 2000), p. 4.

Gjogaj was with 15 other employees of his company, they had a police escort, VJ soldiers were present at the location, the exhumations were carried out during the day, the bodies exhumed had been buried in some 90 individual graves, and were photographed and placed in body bags, taken to Prizren hospital and examined, and finally moved to the Priština/Prishtina morgue. A guard at the morgue told Gjogaj that “the court had requested the police in Prizren to examine the bodies”, which is where the autopsies were eventually performed. The bodies were then reburied in individual graves in graveyards in Prizren, Orahovac/Rahovec, Zrze/Xërxa, and Dušanovo/Dushanova.²⁸⁸⁹ Thus, it would appear that Gjogaj’s services were used for both clandestine reburial operations as well as legitimate clearing of the terrain.

2. Transport and reburial of bodies

1283. The Chamber heard from several witnesses about the way in which bodies were secretly transported to different parts of Serbia and buried in three different locations there. The Chamber also heard about how this clandestine operation was almost jeopardised when one of the trucks transporting the bodies ended up in the Danube river, thereby causing a number of additional people to become involved in the cover-up. The evidence of all these witnesses was by and large consistent. It is outlined below.

a. Danube river incident

1284. In 1999 Boško Radojković worked in the police station in Kladovo, a town in eastern Serbia, in the Department of Crime Police.²⁸⁹⁰ On 5 April 1999²⁸⁹¹ he was called to a scene in the Danube river, near the village of Tekija, after a fisherman reported that there was a large crate in the water which resembled the back of a truck. Radojković went to the scene with a diver, Živojin Đorđević, who confirmed that this was indeed a truck, that there were no bodies in the passenger booth, that there was no trace of a driver or a passenger, and that there was a large stone on the

²⁸⁸⁹ Ali Gjogaj, T. 3752–3757 (22 September 2006), P2317 (witness statement dated 1 March 2000), pp. 2–7, e-court pp. 16–17, P2318 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 7392–7394, 7396–7411. Gvozden Gagić, who at the time headed the MUP department for preventing murder and sex-related offences, confirmed that he went to Pusto Selo/Pastasella to investigate the grave site and ensure all necessary logistics for the forensic specialists and physicians. According to Gagić, the procedures followed during this investigation were regular and in accordance the FRY Law on Criminal Procedure (ZKP). They resulted in reports relating to individual victims, as well as a single report compiling all the activities of the investigators. Gvozden Gagić, T. 24442–24444 (18 March 2008).

²⁸⁹⁰ Boško Radojković, T. 7432 (27 November 2006).

²⁸⁹¹ Radojković testified that this happened on 4 April 1999. *See* Boško Radojković, T. 7433 (27 November 2006). However, he was somewhat confused about the dates in general and his statement to the MUP working group stated that the truck surfaced on 5 April and was observed by policemen on the road late on 4 April. Another Prosecution witness, and Radojković’s superior, Časlav Golubović testified that this happened on 5 April and was generally more convincing when it came to the dates relating to this incident. *See* Časlav Golubović, T. 7401–7402 (27 November 2007).

accelerator pedal.²⁸⁹² Radojković called a crane to try to pull out the truck and investigate. However, the truck could only be partially pulled out because the crane was too small. The men left the scene for the night, having clearly marked it with a buoy and having tied the truck to a tree. Radojković went back to the police station. A dispatch was sent by a colleague to the SUP in Bor to the effect that a citizen had reported the finding in the river, that this was probably a traffic accident, that a team was assigned to investigate, and that the work was still ongoing.²⁸⁹³

1285. The following day, early in the morning, Radojković and his team, some 15 people altogether, returned to the scene. Around noon they managed to lift the freight box of the truck out of the water, but not the whole truck. Radojković took photographs while the extraction was taking place.²⁸⁹⁴ He observed that the truck had no licence plates and the back door of the freight box, in its lower right hand corner, was broken. Two legs and an arm were protruding from the broken part of the door.²⁸⁹⁵ When the door was finally opened, Radojković saw a number of corpses piled up in the freight box. Also present at this time were various officials, including the chief of the crime prevention squad in Kladovo, the deputy municipal prosecutor, an investigative judge from the Kladovo District Court, a crime scene technician, and a coroner from the medical centre in Kladovo. The investigative judge was informed of what was in the truck and he told Radojković that he should inform the District Court in Negotin because this was within its jurisdiction.²⁸⁹⁶

1286. As a result of the investigative judge's refusal to investigate,²⁸⁹⁷ Radojković sent a dispatch to the Bor SUP informing his superiors of the events that had taken place that afternoon. He also informed the chief of the Kladovo police station, Vukašin Sperlić, of the find.²⁸⁹⁸ That evening there was a meeting in the police station, attended by Sperlić, and a discussion ensued on how to prevent any leaks of information. It was agreed that the inscription on the truck should be painted over and that Bor licence plates should be put on the truck, all in order to conceal that the truck was from Prizren. In addition, Radojković suggested that people should be told that the bodies

²⁸⁹² Boško Radojković, T. 7432–7433 (27 November 2006).

²⁸⁹³ Boško Radojković, T. 7434–7435 (27 November 2006); P573 (Working Group notes of interview with Boško Radojković), p. 1. *See also* Časlav Golubović, T. 7402 (27 November 2006).

²⁸⁹⁴ Boško Radojković, T. 7435–7436 (27 November 2006); P594 (photograph taken by Radojković of partially extracted truck).

²⁸⁹⁵ Boško Radojković, T. 7437–7438 (27 November 2006); P596 (photograph taken by Radojković showing protruding legs and an arm); IC113 (photograph P596 marked by Radojković to indicate the protruding leg).

²⁸⁹⁶ Boško Radojković, T. 7438–7439 (27 November 2006); *See also* Časlav Golubović, T. 7402–7403 (27 November 2006).

²⁸⁹⁷ Časlav Golubović, T. 7404–7405 (27 November 2006).

²⁸⁹⁸ Boško Radojković, T. 7439–7440 (27 November 2006).

belonged to Kurds who were crossing into Serbia illegally from Romania.²⁸⁹⁹ After the meeting Radojković went back to the scene to work on disguising the truck as discussed.²⁹⁰⁰

1287. The next day, 7 April 1999, a larger crane was brought to the scene and the truck was recovered. The chief of the Kladovo police station failed to turn up but sent some six or seven coffins instead. At 2:00 or 3:00 p.m. Radojković called Toma Miladinović from the Bor SUP to ask whether they were aware of what was happening. Shortly thereafter he was sent a message by his chief in Kladovo to suspend all activities and secure the area. He went back to the police station and waited for the chief of the Bor SUP, Časlav Golubović, another witness in this case.²⁹⁰¹

1288. Radojković's evidence was confirmed by Golubović, who testified that he received a call from Toma Miladinović, who told him that he had received a dispatch informing him that a truck filled with corpses had been found in the Danube. The two men went to Kladovo police station²⁹⁰² and a meeting took place there, attended by the chief of the Kladovo police station, Sperlić, the municipal prosecutor from Kladovo, the investigating judge, the president of the court in charge of the investigations, a representative of the RDB, two men from OUP Kladovo, and a commander from the nearby border crossing to Romania.²⁹⁰³ Radojković joined the meeting some hours after it had begun and reported to Golubović about the situation on the site.²⁹⁰⁴ Among other things, Golubović was told that there were both men and women among the corpses, that the women were wearing billowy trousers, and that the truck was most probably from Prizren.²⁹⁰⁵

1289. Petar Dujković, who was Head of the MUP Border Police Administration at the time, and who after the NATO bombing became the deputy of the Accused Lukić, testified that he was informed of this meeting by one of its participants, Branislav Mitrović, who was a commander of the Kladovo border police station.²⁹⁰⁶ He denied that Mitrović told him that the truck contained corpses, stating that he first heard this piece of information sometime in 2001. He clarified that his understanding, following the conversation with Mitrović, was that some people had died as a result of the truck skidding off the road and ending up in the Danube. He further explained that he was

²⁸⁹⁹ Boško Radojković, T. 7440–7442 (27 November 2006); P573 (Working Group notes of interview with Boško Radojković), p. 4.

²⁹⁰⁰ Boško Radojković, T. 7441–7443 (27 November 2006); P600 (photograph showing truck cabin); P603 (photograph showing truck licence plates).

²⁹⁰¹ Boško Radojković, T. 7443–7446 (27 November 2006).

²⁹⁰² Časlav Golubović, T. 7400–7401 (27 November 2006); P569 (Working Group notes of interview with Časlav Golubović), p. 1.

²⁹⁰³ Časlav Golubović, T. 7401 (27 November 2006).

²⁹⁰⁴ Boško Radojković, T. 7447–7448 (27 November 2006); Časlav Golubović, T. 7402–7405 (27 November 2006).

²⁹⁰⁵ Časlav Golubović, T. 7411–7412 (27 November 2006).

²⁹⁰⁶ Petar Dujković, T. 23413–23414 (28 February 2008). *See also* P584 (Working Group notes of interview with Branislav Mitrović), p. 2.

never interviewed in 2001 by the MUP working group which investigated these events at that time.²⁹⁰⁷

1290. Once he had been briefed, Golubović called his superior in the MUP, Vlastimir Đorđević, seeking instructions on how to proceed.²⁹⁰⁸ According to Golubović, Đorđević was surprised and said he would call back after consulting with the Minister of the Interior, Vljako Stojiljković. Fifteen minutes later Đorđević called Golubović and told him to try to retrieve all the bodies and bury them in Kladovo. According to Golubović, it was thought at that point that there were only 30 bodies in the truck.²⁹⁰⁹ Golubović further explained that an agreement was reached between him and Đorđević that this incident would not be publicised, mostly in order not to “disturb the citizens” rather than keep this a secret. Accordingly, Golubović issued orders to his subordinates to implement Đorđević’s instructions.²⁹¹⁰

1291. While the whole team departed for Tekija, Golubović stayed in a nearby office.²⁹¹¹ However, it soon became apparent that there were more than 30 bodies in the truck, and this was reported to him. He, in turn, called Đorđević and told him that they did not have sufficient resources to deal with the situation and proposed that it would be best for the bodies to be transported to a major urban centre, either Niš or Belgrade, where proper examination and investigation could be undertaken. Đorđević eventually agreed with this suggestion and asked that the bodies be transported by truck to Belgrade.²⁹¹²

1292. Radojković was in the meantime working on the scene. He testified that he saw two children among the retrieved bodies, as well as men and women. None was dressed in uniform. He estimated that the bodies were of people who had been dead not longer than three to four days, and observed injuries mainly from objects such as large blades. He observed a gunshot wound on one of the bodies, a male, whose hands were tied with wire.²⁹¹³

1293. That night 30 of the bodies were retrieved, wrapped in sheets, loaded into a truck and driven away to Belgrade.²⁹¹⁴ Golubović had several conversations with Đorđević during the night and also had to persuade his own driver to drive the truck to Belgrade. The arrangement was that the driver would be met by somebody upon entering Belgrade and led to the final destination; the truck was

²⁹⁰⁷ Petar Dujković, T. 23414–23417 (28 February 2008).

²⁹⁰⁸ Časlav Golubović, T. 7406 (27 November 2006).

²⁹⁰⁹ Časlav Golubović, T. 7406–7408 (27 November 2006).

²⁹¹⁰ Časlav Golubović, T. 7417–7418 (27 November 2006).

²⁹¹¹ Časlav Golubović, T. 7408–7409 (27 November 2006); Boško Radojković, T. 7446–7448 (27 November 2006).

²⁹¹² Časlav Golubović, T. 7409–7410, 7412 (27 November 2006).

²⁹¹³ Boško Radojković, T. 7449–7450 (27 November 2006).

also to be escorted to Belgrade by the traffic police.²⁹¹⁵ When the driver returned, he told Golubović that a Volkswagen Golf car met him at the entrance of Belgrade and escorted him until, on the road to Novi Sad, the truck was taken over by other persons. Sometime around 15 April 1999 the driver went back to Belgrade to retrieve the truck from the car park of the Ministry of Interior.²⁹¹⁶

1294. After the truck left the scene of the initial discovery, Golubović had another conversation with Đorđević and asked him to secure another truck for the remaining bodies. Once everything was organised and tasks assigned, around 5:00 or 6:00 a.m. on 7 April 1999, Golubović and Miladinović left for Bor.²⁹¹⁷ Later that night Radojković and his men continued with the task of unloading the bodies. A further 53 corpses and three decapitated heads were unloaded on this occasion from the refrigerated truck. None was wearing a uniform.²⁹¹⁸ They were loaded onto another truck, also with Belgrade licence plates, and driven to Belgrade by another witness in this case, Božidar Protić, as discussed below. Around 8 or 9 April 1999 the refrigerated truck was transported to Petrovo Selo, close to Kladovo, where it was destroyed by Radojković, on the instructions of Toma Miladinović, the chief of the crime police in Bor. Golubović testified that he was instructed by Đorđević that the truck was to be destroyed.²⁹¹⁹ Golubović also testified that he later read in the media that the bodies' final destination was Batajnica.²⁹²⁰ The people not connected to the Kladovo OUP, such as the workers of the public utility company, were paid *per diem* by the Ministry. Đorđević provided the money by sending someone from Belgrade with cash. According to Golubović, this was nothing unusual but rather a regular chain of communication between the Ministry and the SUPs.²⁹²¹

b. Reburial of bodies

1295. The Chamber heard from two witnesses, K87 and K88, concerning the reburial of bodies in the Batajnica centre. Although the accounts of these two witnesses contain slight discrepancies, the Chamber is of the view that they are generally consistent with each other. In addition the Chamber notes that K87 was not cross-examined and is of the view that K88, despite the challenges to his evidence on cross-examination, was a particularly reliable witness.

²⁹¹⁴ Boško Radojković, T. 7447–7449 (27 November 2006); Časlav Golubović, T. 7412–7413 (27 November 2006).

²⁹¹⁵ Časlav Golubović, T. 7413–7414 (27 November 2006).

²⁹¹⁶ Časlav Golubović, T. 7414–7415 (27 November 2006).

²⁹¹⁷ Časlav Golubović, T. 7415 (27 November 2006).

²⁹¹⁸ Boško Radojković, T. 7450–7452 (27 November 2006); Časlav Golubović, T. 7416 (27 November 2006).

²⁹¹⁹ Boško Radojković, T. 7453–7454 (27 November 2006); Časlav Golubović, T. 7417 (27 November 2006).

²⁹²⁰ Časlav Golubović, T. 7423 (27 November 2006).

²⁹²¹ Časlav Golubović, T. 7419–7420 (27 November 2006).

1296. As discussed in Section VI.A.3, the SAJ was part of the RJB, headed by Vlastimir Đorđević, who answered to the Minister of Interior, Vlado Stojiljković. It had a training centre located on the main Batajnica road, near Belgrade. About 500 metres before the centre's main gate there were VJ barracks but, according to K87 and K88, these were completely separate from and independent of the centre.²⁹²² In order to gain access to the centre, one had to go through two checkpoints. The first was controlled by the VJ, and the second by the MUP.²⁹²³

1297. Following the start of the NATO bombing, the SAJ forces based at Batajnica were relocated to an area some three to four kilometres away. After this relocation the centre remained completely empty and unguarded, but the staff would occasionally go back to check on things. Anyone could enter and leave.²⁹²⁴ It is not, however, clear whether the VJ remained at the checkpoint.²⁹²⁵

1298. Sometime between the middle and end of April 1999, K87 received a call from Đorđević and was told to come to his office at 9:00 a.m. the next day, which he did. Nobody else was present. Đorđević explained that two trucks were parked at the centre, that they contained the bodies of victims of the NATO bombing, and that these should be temporarily buried at the SAJ centre, at Batajnica. Đorđević also said that, once the conflict was over, the bodies would be exhumed, identified, and given a proper burial. The two men then discussed the logistics of this task, and Đorđević said that the bodies should be buried in a mass grave. K87 never received any written orders in relation to this task.²⁹²⁶

1299. The main discrepancy between the accounts of K88 and K87 concerned the particular date in April when the reburials took place. While K87 testified that they started in mid to late April, K88 placed their start on 8 April 1999. The Chamber finds K88 more reliable in this respect since his evidence was generally more specific. In addition, it is in line with the dates on which the bodies were discovered in Tekija and transported from Tekija to Batajnica.

1300. K88 testified that sometime in early April he saw three civilian trucks parked around the shooting range at the training centre, one of which was similar to the vehicles the MUP would use. After two of these trucks had left, a guard informed him that there was a bad smell coming from the remaining one. K88 explained that they assumed the truck contained bodies of Serbs killed during

²⁹²² K87, P2756 (witness statement dated 26 October 2004), paras. 6–11 (under seal); K88, P2800 (witness statement), paras. 11–12. *See also* Geza Farkaš, T. 16383–16384 (25 September 2007).

²⁹²³ K84, T. 5200–5201 (19 October 2006) (closed session).

²⁹²⁴ K87, T. 11817 (16 March 2007), P2847 (witness statement dated 26 October 2004), paras. 8–9; K88, T. 10463–10464 (22 February 2007), P2800 (witness statement), para. 11.

²⁹²⁵ K84, T. 5229–5230 (19 October 2006) (closed session).

²⁹²⁶ K87, T. 11815–11817 (16 March 2007), P2756 (witness statement dated 26 October 2004), paras. 12–14 (under seal).

the conflict and that the government was trying to cover up the seriousness of the situation in Kosovo. K88 later heard from a colleague in charge of security that the two trucks which had left also contained bodies, but he never saw them again.²⁹²⁷

1301. K88 testified that around 8 April 1999 K87 called him and told him that the remaining truck contained corpses and that someone higher than the centre's commanders had ordered that the bodies be buried in the centre.²⁹²⁸ K87, K88, and two MUP officers who were the drivers of high-ranking MUP officials, decided to bury the bodies in the most remote part of the centre.²⁹²⁹

1302. When the bodies were thrown into the hole that had been dug, neither K87 nor K88 could tell if they were male or female, nor what kind of clothes they were wearing. K87 could not estimate how many bodies were buried in the hole.²⁹³⁰

1303. According to K87, over the next ten days two or three more trucks arrived with bodies, following the same type of call. The same procedure was followed. K87 remembered that a new hole was dug, but could not remember if a third one was also dug. The trucks, as well as their drivers, were different each time, according to K87. He did not know any of them.²⁹³¹

1304. K88's testimony is slightly more detailed in respect of the subsequent burials. He explained that, some three to five days after the first burial, another truck with bodies arrived at the centre. K88 saw that it was an articulated truck with a trailer attached and no licence plates. He could see blood leaking out of it, which he and the others later tried to cover up by pouring gasoline on the ground and burning it off.²⁹³²

1305. This new load of bodies was buried in the firing range area of the centre. While they were trying to unload the bodies from the truck, the trailer part fell into the hole that had been dug. It remained there until the bodies were exhumed years later.²⁹³³

²⁹²⁷ K88, T. 10446–10448 (21 February 2007), P2681 (witness statement), paras. 14–16 (under seal). *See also* map 1 attached to the statement (under seal); IC124 (map 1 marked by K88 to clarify the location of the first truck) (under seal).

²⁹²⁸ K88, P2681 (witness statement), para. 17 (under seal).

²⁹²⁹ K88, T. 10451–10453 (21 February 2007) (private session), T. 10466 (22 February 2007) (private session), P2681 (witness statement), para. 18 (under seal).

²⁹³⁰ K87, P2847 (witness statement dated 26 October 2004), para. 19; K88, T. 10447 (21 February 2007), P2681 (witness statement), para. 20 (under seal), P2800 (witness statement), map 2 attached to the statement.

²⁹³¹ K87, T. 11817–11818 (16 March 2007), P2756 (witness statement dated 26 October 2004), paras. 21–22 (under seal).

²⁹³² K88, T. 10448–10449 (21 February 2007), T. 10464 (22 February 2007), P2681 (witness statement), para. 22 (under seal), P2800 (witness statement), para. 22, map 1 attached to the statement.

²⁹³³ K88, P2800 (witness statement), paras. 23–24 .

1306. According to K88 there were other occasions when they had to bury more bodies at Batajnica. However, they never re-opened the same hole to do so. On one of these occasions a Mercedes truck was used, and the driver informed K88 that it contained 35 bodies, which were then buried in a third hole. Together with this truck was another big refrigerated truck. It was then emptied into another separate hole. Two of the truck drivers were wearing the blue camouflage uniforms of the police.²⁹³⁴

1307. At some point during the disposal of the bodies K87 met with Đorđević in the latter's office and asked that this be stopped due to the unpleasant feeling it was causing. Soon afterwards the bodies stopped coming. K87 later informed his immediate commander that the bodies were buried there, but the latter did not react and did not want to see the location of the mass graves.²⁹³⁵

1308. K88 concluded that, altogether, bodies were brought to the centre over about 20 days with intermittent intervals of two to three days. Towards the end of those 20 days a man who K88 thought was from the RDB came and told him that he should keep quiet about this operation or he would be killed.²⁹³⁶ K88's evidence concerning the timing of the reburials is consistent with the evidence that the bodies of people killed in the area of Meja on 27 April 1999 were among those found in the mass graves at Batajnica.

c. Transport of bodies

1309. The Chamber also heard from two persons involved in transport of bodies to Batajnica and Petrovo Selo in April and May 1999. Božidar Protić drove the trucks that contained the bodies, while Čedomir Šakić acted as his escort. While Protić was called as a witness by the Prosecution, Šakić was brought by the Lukić Defence for the purpose of challenging Protić's credibility on a number of issues, the most important being the involvement of the Accused Lukić in the organisation of the transportation of bodies. However, as far as the manner in which the bodies were transported is concerned, which is what this section of the judgement is concerned with, the evidence of Šakić and Protić is generally consistent, as outlined below. In addition, Protić's evidence is also consistent with the evidence of those involved in the discovery of the truck in the Danube and the re-burial of bodies in Batajnica, as described above.

1310. Protić was a driver for the MUP from 1975 until his retirement in 2001.²⁹³⁷ He claims to have transported bodies to Batajnica on four separate occasions, once from Tekija and three times

²⁹³⁴ K88, T. 10450 (21 February 2007), P2800 (witness statement), paras 27–28.

²⁹³⁵ K87, P2847 (witness statement dated 26 October 2004), paras. 23–25.

²⁹³⁶ K88, T. 10453–10454 (21 February 2007) (private session), P2681 (witness statement), para. 35 (under seal).

²⁹³⁷ Božidar Protić, T. 11307–11308 (9 March 2007).

from Kosovo, starting from the beginning of the NATO campaign. For each trip Protić received orders from Petar Zeković, who was at the time the Assistant Minister of Interior. With respect to the Kosovo trips, Zeković would instruct Protić to go to Priština/Prishtina to report to a certain location from where he was to make a phone call in order to receive further instructions.²⁹³⁸ Protić testified that on his Kosovo trips he had a security escort from Belgrade and that this was Čedomir Šakić.²⁹³⁹ This was later confirmed by Šakić. Šakić also stated that he undertook each trip on orders of his superior officer, Mladen Šipovac.²⁹⁴⁰ Šakić was initially very reluctant to acknowledge that he knew what was being transported in the trucks but, following an intervention by the Chamber, conceded that he did become aware of what was going on and that he reported these activities to Šipovac.²⁹⁴¹

1311. Protić's first trip, according to him, was to Tekija in eastern Serbia. With respect to his trips to Kosovo, Protić claimed that he went to Janjevo/Janjeva, Kosovska Mitrovica/Mitrovica, and the *Rilindija* car park in Priština/Prishtina, in that order.²⁹⁴² Šakić, on the other hand, claimed to have escorted Protić into Kosovo four times. The first trip was to a marketplace in Priština/Prishtina, a location not mentioned by Protić.²⁹⁴³ The next three trips were mentioned by Protić, but Šakić inverted their chronological order. His claim is to have accompanied Protić first to the *Rilindija* car park in Priština/Prishtina, then to Kosovska Mitrovica/Mitrovica, and finally to Janjevo/Janjeva.²⁹⁴⁴

1312. Concerning the trip to Tekija, Protić testified that his boss called him to his office and asked whether he could find a truck in order to do an important task for the country. Protić borrowed a Mercedes truck from a neighbour and, accompanied by a retired police officer whom he knew well, started driving at around 5:00 p.m. During the ride Protić was not told much as regards their destination, but was told to keep quiet about the assignment.²⁹⁴⁵ When they arrived in Tekija, he noticed a column of vehicles waiting on the road. A police patrol car helped them overtake the column and took them to Kladovo OUP. There they were greeted by the chief of the OUP Vukašin Sperlić, "technician Boško", who was most likely Boško Radojković, and several policemen. They all went to a car park where they saw a refrigerated truck. Protić then witnessed a number of workers transfer bodies from the refrigerated truck into the one he drove. When this was done,

²⁹³⁸ Božidar Protić, T. 11354–11359 (9 March 2007); P2817 (Protić's statement to Belgrade Prosecutor Stanković), p. 2; P2816 (Transcript of Protić's interview with Dilparić), p. 5.

²⁹³⁹ Božidar Protić, T. 11382 (9 March 2007) (private session).

²⁹⁴⁰ Čedomir Šakić, T. 22079 (11 February 2008).

²⁹⁴¹ Čedomir Šakić, T. 22121–22122 (11 February 2008).

²⁹⁴² Božidar Protić, T. 11321–11322, 11327–11328 (9 March 2007).

²⁹⁴³ Čedomir Šakić, T. 22079 (11 February 2008).

²⁹⁴⁴ Čedomir Šakić, T. 22084, 22088–22089, 22097, 22100 (11 February 2008).

²⁹⁴⁵ Božidar Protić, T. 11320, 11355 (9 March 2007); P2816 (Transcript of Protić's interview with Dilparić), pp. 1–2; P2817 (Protić's statement to Belgrade Prosecutor Stanković), p. 4.

around 1:00 a.m., Protić and his companion left for Belgrade.²⁹⁴⁶ Before departing, Protić was told by the workers that there were around 54 bodies in the truck. He also personally observed that there were children and elderly amongst the bodies, and that about ten bodies were dressed in uniforms.²⁹⁴⁷ Considering that Protić's evidence is generally consistent with the evidence of Golubović and Radojković in relation to the truck pulled out of the Danube described above, the Chamber is satisfied that Božidar Protić was the driver who was sent from Belgrade to pick up the bodies recovered from the Danube in early April 1999. This is, in the Chamber's view, a further indication that Protić was generally a credible witness.

1313. Protić drove these bodies to the SAJ training centre in Batajnica. He parked the truck at the car park, where he noticed another truck and was told by a MUP employee that it also contained bodies as was evident from the stench coming from it. Next to the truck he could see a large stain of either oil or petrol and traces of something that had been burned. The MUP employee received the truck and told Protić to come back for it in two days' time. He did so and was told that they tried "to burn them but they wouldn't burn".²⁹⁴⁸ Although challenged on these points, the Chamber finds Protić's evidence credible.

1314. Čedomir Šakić testified that he first escorted Protić into Kosovo some time in late April, when he drove him to a marketplace in Priština/Prishtina.²⁹⁴⁹ Protić did not mention this trip in his testimony. They travelled in a group of eight people divided among two Mercedes jeeps, including Šakić, Protić, two drivers, and four policemen.²⁹⁵⁰ Protić spoke two or three times on his cell phone, each time merely stating the group's location.²⁹⁵¹ Šakić claimed that Protić later stated that he had been speaking to Đorđević.²⁹⁵² Protić directed the group to the marketplace, where they were met by a security detail including uniformed and non-uniformed persons. After speaking with the uniformed members of the detail, Protić took charge of a refrigerated truck.²⁹⁵³ Šakić and the two jeeps then escorted the truck driven by Protić back to Belgrade, where they left Protić at the

²⁹⁴⁶ P2816 (Transcript of Protić's interview with Dilparić), pp. 2–3.

²⁹⁴⁷ Božidar Protić, T. 11320–11321, 11391–11392 (9 March 2007); P2816 (Transcript of Protić's interview with Dilparić), p. 6; P600 (photograph showing truck cabin). Protić testified that he saw this truck both in Tekija and then later in Petrovo Selo where it was destroyed with explosives. Božidar Protić, T. 11321–11322 (9 March 2007).

²⁹⁴⁸ Božidar Protić, T. 11310–11311 (9 March 2007); P2816 (Transcript of Protić's interview with Dilparić), pp. 3, 7; P2817 (Protić's statement to Belgrade Prosecutor Stanković), pp. 3–4.

²⁹⁴⁹ Čedomir Šakić, T. 22079 (11 February 2008).

²⁹⁵⁰ Čedomir Šakić, T. 22079–22080 (11 February 2008).

²⁹⁵¹ Čedomir Šakić, T. 22081 (11 February 2008).

²⁹⁵² Čedomir Šakić, T. 22082 (11 February 2008).

²⁹⁵³ Čedomir Šakić, T. 22081 (11 February 2008).

MUP's emergency medical service building.²⁹⁵⁴ Šakić contended that Protić made no calls from a land line while on this trip.²⁹⁵⁵

1315. Following his first trip to Tekija, Protić testified that he received another call from Zeković, in which he was told to pick up a truck from a company by the name of *Gemaks* and to go to Priština/Prishtina. Zeković also gave him a phone number which he was to call once in the Priština MUP headquarters. Protić testified that he called as instructed and that the person on the other end of the phone, who he believed was the Accused Lukić,²⁹⁵⁶ then told him to go in the direction of Skopje and that a dark red Golf car would travel in front of him. That is what happened. The Golf took Protić to Janjevo/Janjeva village located in Lipljan/Lypjan municipality, some 20 kilometres from Priština/Prishtina. Protić's escort from Belgrade was driving behind him. The local police in Janjevo/Janjeva led Protić to a clearing on the hills above the village. Several minutes after they arrived, a tractor with a trailer arrived, as well as an excavator. The trailer was loaded with bodies and soil, which were transferred to Protić's truck by the excavator. According to Protić 17 to 19 bodies in total were loaded onto his truck.²⁹⁵⁷ Protić then drove the bodies to Petrovo Selo in Serbia. He passed through Kladovo where Vukašin Sperlić directed him to the MUP training centre in Petrovo Selo. Upon reaching the centre Protić saw a clearing behind it where two grave pits had already been dug out and a number of people were present, wearing a mixture of civilian clothes and camouflage uniforms. After the bodies had been unloaded into the pit Protić went back to Belgrade. He left the empty truck at the Batajnica training centre.²⁹⁵⁸ Putting aside Šakić's evidence about this trip being their last trip together, and the fact that he made no mention of Lukić talking to Protić on the phone, Šakić's evidence about this trip is generally consistent with Protić's.²⁹⁵⁹

1316. Sometime later Protić received another phone call from Zeković. Following the call he obtained a confiscated dumper truck. Protić dialled the number given to him earlier by Zeković and was instructed by the same voice to go to Kosovska Mitrovica/Mitrovica to collect more bodies and take them to Petrovo Selo. He was again accompanied by an escort. His destination was a heavy machinery repair shop of a timber manufacturing company. He found over 50 bodies stacked in

²⁹⁵⁴ Čedomir Šakić, T. 22083 (11 February 2008).

²⁹⁵⁵ Čedomir Šakić, T. 22082 (11 February 2008).

²⁹⁵⁶ The Chamber's findings on whether or not this was in fact Sreten Lukić can be found below in Section VIII.H.

²⁹⁵⁷ Božidar Protić, T. 11322, 11373–11375 (9 March 2007); P2816 (Transcript of Protić's interview with Dilparić), p. 3; P2817 (Protić's statement to Belgrade Prosecutor Stanković), pp. 2–3; P2824 (Transcript of Protić's testimony in Belgrade District Court), pp. 4–5; 6D196 (excerpt from Protić's statement to MUP 27 August 2002), p. 2.

²⁹⁵⁸ Božidar Protić, T. 11373–11374 (9 March 2007); P2816 (Transcript of Protić's interview with Dilparić), pp. 3–4, 11–13; P2817 (Protić's statement to Belgrade Prosecutor Stanković), p. 3; P2824 (Transcript of Protić's testimony in Belgrade District Court), pp. 5–14.

²⁹⁵⁹ Čedomir Šakić, T. 22093–22094, 22097–22098 (11 February 2008).

pits normally used by auto-mechanics to fix vehicles. There Protić was met by some 15 people in civilian clothes, whom he described as “chiefs of secretariats sent to Kosovo from Serbian municipal secretariats”.²⁹⁶⁰ The bodies were loaded onto his truck and he drove them to the training centre in Petrovo Selo.²⁹⁶¹ Šakić confirmed that this trip took place and that he escorted Protić to Kosovska Mitrovica/Mitrovica and the timber processing plant.²⁹⁶²

1317. Protić’s last trip was to Priština/Prishtina, this time in an official Toyota vehicle, and again under Zeković’s instructions. He went to the *Rilindija* building where he was met by police officers who gave him a confiscated refrigerated truck with some 500 bodies inside to drive to Batajnica.²⁹⁶³ Šakić, however, asserted that the trip to the *Rilindija* building was the first of the three trips to which both he and Protić testified.²⁹⁶⁴ He testified that Protić called him and arranged to meet at a business near the MUP’s Emergency Medical Services building.²⁹⁶⁵ From there they again departed in a two vehicle group and drove to the car park of the *Rilindija* building in Priština/Prishtina, which had a wire fence and police-guarded gate.²⁹⁶⁶ He disputed the allegation by Protić that they travelled in an unmarked Toyota vehicle, claiming that every trip had been made in the Mercedes jeeps, which were official police vehicles.²⁹⁶⁷ Despite these discrepancies in detail, the Chamber is of the view that the evidence of the two men once again paints a consistent picture of a clandestine operation.

1318. Protić estimated that he transported around 600 bodies altogether. As for the three Kosovo trips, they involved mostly male bodies dressed in civilian clothes, but also in some sort of military camouflage uniforms.²⁹⁶⁸ Protić could not say how many loads of bodies were transported to Batajnica altogether, but did name the same drivers of MUP Generals mentioned above by K88.²⁹⁶⁹

1319. The Chamber notes that, aside from Šakić, the Lukić Defence called a number of witnesses who dealt with Protić during the investigation of these events by the Serbian authorities. Most of these witnesses testified that Protić was confused, changed his story often, and gave a contradictory

²⁹⁶⁰ Božidar Protić, T. 11329 (9 March 2007).

²⁹⁶¹ Božidar Protić, T. 11322, 11327 (9 March 2007); P2816 (Transcript of Protić’s interview with Dilparić), pp. 4, 11–12; P2817 (Protić’s statement to Belgrade Prosecutor Stanković), p. 2; P2824 (Transcript of Protić’s testimony in Belgrade District Court), pp. 15–16.

²⁹⁶² Čedomir Šakić, T. 22087–22089, 22091 (11 February 2008).

²⁹⁶³ Božidar Protić, T. 11322–11323, 11328 (9 March 2007); P2816 (Transcript of Protić’s interview with Dilparić), p. 4; P2817 (Protić’s statement to Belgrade Prosecutor Stanković), pp. 4–5; *see also* Čedomir Šakić, T. 22085–22086 (11 February 2008).

²⁹⁶⁴ Čedomir Šakić, T. 22084 (11 February 2008).

²⁹⁶⁵ Čedomir Šakić, T. 22084 (11 February 2008).

²⁹⁶⁶ Čedomir Šakić, T. 22084, 22086 (11 February 2008).

²⁹⁶⁷ Čedomir Šakić, T. 22138–22139 (12 February 2008).

²⁹⁶⁸ P2817 (Protić’s statement to Belgrade Prosecutor Stanković), p. 4.

²⁹⁶⁹ Božidar Protić, T. 11333–11334 (9 March 2007) (private session).

account of events.²⁹⁷⁰ Despite all these challenges, however, the Chamber finds that Protić's evidence was largely internally consistent and persuasive with respect to the way in which the bodies were transported from Kosovo to Serbia. In addition Šakić broadly corroborates Protić. The most important and major discrepancy between the two witnesses revolves around the identification of Lukić as someone involved in this operation. The same can be said for the challenges posed to Protić by other witnesses called by Lukić. The issue of Lukić's involvement, however, does not affect the Chamber's view that Protić's evidence as to the transport of the bodies is largely an accurate account of how this was done. On these issues, the Chamber finds Protić to be a credible witness.

3. Investigation by MUP

1320. Following the publication of an article on 1 May 2001 in a local Serbian newspaper, which claimed that a refrigerated truck containing corpses from Kosovo was discovered in the Danube in April 1999, the Minister of Interior and Lukić established a working group to investigate these events. At the time Lukić was the Head of the RJB. The group consisted of the following members: Dragan Karleuša, Dragan Furdulović, Milorad Veljović, and Bora Banjac. Karleuša headed the group.²⁹⁷¹ Lukić instructed the working group to make sure not to exclude anyone from the investigation or give any favours, and gave the working group full authorisation and powers in its investigation. According to Furdulović, the working group was able to work completely independently and without hindrance in taking lawful measures against any member of the MUP.²⁹⁷² It started collecting evidence on 12 May 2001.²⁹⁷³

1321. During the working group's initial inquiries it became apparent that a similar article had been published in the same magazine and by the same author some two years earlier. However, it was not accessible to the broader public, and nothing was done at the time to investigate the

²⁹⁷⁰ Aleksandar Kostić, T. 24112–24114, 24130–24133 (11 March 2008); Gvozden Gagić, T. 24466 (18 March 2008), T. 24528–24529 (19 March 2008); Dragan Furdulović, T. 24709–24711 (1 April 2008).

²⁹⁷¹ Dragan Furdulović, 6D1605 (witness statement dated 26 March 2008), para. 3; Časlav Golubović, T. 7421–7422 (27 November 2006); 6D91 (Press release of MUP informative service); P565 (article in "Timok Crime Review" entitled: "50 Bodies in a Refrigerator Truck – State Secret."). *See also* Aleksandar Kostić, T. 24098, 24125–24126 (11 March 2008); Zoran Živković, T. 24673–24674 (1 April 2008).

²⁹⁷² Dragan Furdulović, 6D1605 (witness statement dated 26 March 2008), para. 7. The fact that the working group had broad authority and was able to interview anyone regardless of the rank and the position was confirmed by Aleksandar Kostić. *See* Aleksandar Kostić, T. 24101, 24110–24111 (11 March 2008). In addition, Gvozden Gagić testified that the RJB and the MUP took all necessary measures to investigate the transport of bodies from Kosovo to Serbia. Gvozden Gagić, T. 24463–24464 (18 March 2008).

²⁹⁷³ Dragan Furdulović, 6D1605 (witness statement dated 26 March 2008), para. 3.

incident further, despite the fact that Časlav Golubović informed Đorđević of the existence of the article.²⁹⁷⁴

1322. At the initial stages of the inquiry the working group had a brief meeting with Đorđević at which he refused to answer questions regarding his knowledge of the refrigerated truck incident. The group told him that they would speak to him again once more information was collected, but this never happened because the working group was later unable to find him. The working group also attempted to interview Stojiljković on three different occasions, but was unsuccessful. Some time later, after indictment by this Tribunal, Stojiljković committed suicide.²⁹⁷⁵

1323. In the period from 12 to 15 May 2001 the working group interviewed in excess of 30 police officers and civilians, who included MUP employees from Kladovo OUP, Bor SUP, and others who may have had some knowledge about the refrigerated truck that led them to the sites in Batajnica and Petrovo Selo. The working group prepared separate interview notes, which were then provided to the District Public Prosecutor in Belgrade.²⁹⁷⁶ Those interviewed included Boško Radojković and Časlav Golubović.²⁹⁷⁷ The working group also spoke to Slobodan Borisavljević who was at the time assistant to the chef de cabinet of Đorđević's office. He gave a statement in which he explained that he was the person who received a phone call about Kladovo and who relayed this information to Đorđević. He also indicated in the statement that he was instructed by Đorđević to make arrangements for the payments of the persons who worked on transporting the bodies.²⁹⁷⁸ Borisavljević gave another statement in which he stated that sometime in April 1999 Đorđević informed Dragan Ilić, Head of Crime Police Administration in Belgrade and an alleged member of the joint criminal enterprise, that clearing up of the battlefield should be carried out on the territory of Kosovo and that workers should be sent to the MUP Staff in Priština.²⁹⁷⁹

1324. Several others were interviewed by the working group. Throughout the investigation there were frequent contacts with Lukić but, curiously, a statement was never taken from him, nor did the group treat him the way they treated other participants in the inquiry, despite the fact that he was the Head of the MUP Staff in Kosovo at the time of the clandestine movement of bodies.

²⁹⁷⁴ P566 (article in "Timok Crime Review" entitled: "Refrigerator Truck in the Danube, Bodies in the Truck"); P569 (Working Group notes of interview with Časlav Golubović), p. 3.

²⁹⁷⁵ Dragan Furdulović, 6D1605 (witness statement dated 26 March 2008), para. 7; P590 (Official note of Working Group's attempt to interview Vljko Stojiljković) (under seal).

²⁹⁷⁶ Dragan Furdulović, T. 24714 (1 April 2008), 6D1605 (witness statement dated 26 March 2008), paras. 5–6.

²⁹⁷⁷ Časlav Golubović, T. 7422–7424 (27 November 2006); P569 (Working Group notes of interview with Časlav Golubović); P573 (Working Group notes of interview with Boško Radojković).

²⁹⁷⁸ P592 (Second statement made to Working Group by Slobodan Borisavljević).

²⁹⁷⁹ P591 (First statement made to Working Group by Slobodan Borisavljević) (under seal).

According to Furdulović, the working group did not have any evidence that would link Lukić to the refrigerated truck incident.²⁹⁸⁰

1325. The working group published two communiqués summarising its findings. The first was issued on 25 May 2001 and dealt with the events surrounding the refrigerated truck in early April 1999. It also stated that the former Minister of Interior, Stojiljković, and the Chief of the RJB, Đorđević, had declared this case a state secret and launched an operation “Dubina 2” (“Depth 2”) to deal with it. It was for that reason that the Negotin District Public Prosecutor, as mentioned above,²⁹⁸¹ halted the investigation. The workers who exhumed and transferred the bodies had been paid from the MUP’s special expenses fund.²⁹⁸² The communiqué further reported that there had been a meeting in March 1999 in the office of Slobodan Milošević, attended by Milošević himself, as well as Stojiljković, Đorđević, and Radomir Marković (Chief of RDB), during which Đorđević raised the issue of clearing up of the terrain in Kosovo, called “*asanacija*”. Milošević then ordered Stojiljković to “take measures to remove all traces which could indicate the existence of evidence of the crimes committed.”²⁹⁸³ According to the communiqué, the problem was further discussed, also in March 1999, in Stojiljković’s office. The aim was to remove civilian victims who could potentially become the subject of investigation by the Tribunal. Stojiljković issued orders to Đorđević and Ilić to carry out this task.²⁹⁸⁴ A third meeting then took place sometime later, where Đorđević made arrangements in respect of the clearing up of the bodies from Kosovo.²⁹⁸⁵

1326. Gvozden Gagić, who was subordinated to Ilić at the time, confirmed that in May 1999 Ilić visited Kosovo and on 5 May met with chiefs of crime police departments to give instructions on how the work of the crime investigation police was to proceed. A plan for the “restoration” of the territory (“*saniranje teritorije*”) was created and then apparently distributed to all the SUPs.²⁹⁸⁶ Gagić, who was not present at this meeting, first said that he never personally came across this plan and that, if it had been in existence, he would have had to have seen it.²⁹⁸⁷ However, on cross-examination, he conceded that a dispatch he personally authored, and Ilić later signed, could have been the plan in question. This document referred to serious crimes being committed in Kosovo and instructed the SUP chiefs to, among other things, collect information on the crimes and co-

²⁹⁸⁰ Dragan Furdulović, T. 24738–24742 (2 April 2008).

²⁹⁸¹ See above para. 1285.

²⁹⁸² P567 (Working Group Communiqué, 25 May 2001).

²⁹⁸³ P567 (Working Group Communiqué, 25 May 2001), p. 3.

²⁹⁸⁴ P567 (Working Group Communiqué, 25 May 2001), p. 3; 6D92 (Record of MUP press conference held on 25 May 2001), p. 5.

²⁹⁸⁵ P591 (First statement made to Working Group by Slobodan Borisavljević) (under seal).

²⁹⁸⁶ P1996 (Minutes of the MUP Staff meeting, 7 May 1999), pp. 9–10.

²⁹⁸⁷ Gvozden Gagić, T. 24454–24457 (18 March 2008), T. 24494–24499 (19 March 2008). See also Miroslav Mijatović, T. 22260–22262 (13 February 2008), T. 22519–22520 (15 February 2008).

operate with military and civilian organs, all in order to ensure immediate prosecution of crimes and prevent further crimes.²⁹⁸⁸ It is unclear whether Đorđević, when talking to Ilić, was referring to legal or illegal clearing up of the terrain.

1327. The second communiqué was issued on 26 June 2001 and included much of the information provided by Radojković including that the refrigerated truck contained bodies wearing KLA uniforms which, according to Radojković, was incorrect. Radojković thought that this mistake occurred because he was, at the time, involved with exhumations of bodies in Petrovo Selo, some of which were indeed wearing KLA uniforms. The working group simply merged the information he gave them with respect to Petrovo Selo with the information he provided regarding the refrigerated truck. Radojković called then Minister of Interior, Dušan Mihajlović, for whom the working group prepared a note, and informed him of this mistake.²⁹⁸⁹ The 26 June communiqué also stated that the bodies had been driven to the SAJ training centre in Batajnica in two trucks and that the second privately-owned truck was driven by Božidar Protić.²⁹⁹⁰

1328. Following this communiqué the matter was reported to the District Public Prosecutor in Belgrade, and subsequently Goran Čavlina, an investigating judge at the District Court in Belgrade, ordered that a suspected mass grave at Batajnica be exhumed and that an autopsy be performed on the corpses found. In order to execute that order, he engaged the Forensic Medicine Institute in Belgrade and ordered the Serbian MUP to secure the site.²⁹⁹¹ Several mass graves were discovered in the vicinity of the training centre; identification of some of the exhumed corpses indicated that the victims were from Kosovo and, more specifically, from Suva Reka/Suhareka. This, in turn, led to the investigation into the killings of the Berisha family in Suva Reka/Suhareka town. The investigation lasted from 2001 to 2003.²⁹⁹²

1329. The working group's investigation also led to the discovery of more mass graves in Serbia. First, the group obtained information that two mass graves were located near the SAJ training centre in Petrovo Selo. The investigative judge from Negotin ordered the exhumation of 75 bodies found there, and post mortem examinations were performed by the Forensic Medicine Institute in

²⁹⁸⁸ Gvozden Gagić, T. 24523–24525 (19 March 2008); 6D874 (MUP Staff dispatch to Kosovo SUPs, 6 May 1999).

²⁹⁸⁹ Boško Radojković, T. 7454–7455 (27 November 2006).

²⁹⁹⁰ P568 (Working Group Communiqué, 26 June 2001).

²⁹⁹¹ Dragan Furdulović, 6D1605 (witness statement dated 26 March 2008), para. 6.

²⁹⁹² Dragan Furdulović, T. 24699–24705 (1 April 2008), 6D1605 (witness statement dated 26 March 2008), para. 8; William Fulton, T. 5028-5030 (17 October 2006); 6D93 (Record of working group interview with Radojko Repanović); 6D94 (Record of working group interview with Nenad Jovanović); 6D95 (Record of working group interview with Dobrivoje Vitošević). *See also* 6D1608 (Dragan Furdulović's request to Sreten Lukić to conduct an interview with Radojko Repanović, 22 March 2002); 6D1609 (Dragan Furdulović's request to Sreten Lukić to conduct an interview with Ramiz Papić, 28 March 2002); 6D1610 (Dragan Furdulović's request to Sreten Lukić to conduct an interview with Milorad Obradović, 28 March 2002).

Niš. The bodies were also from Kosovo,²⁹⁹³ and included two brothers named Bityqi who had been killed after the conflict and outside of Kosovo.²⁹⁹⁴

1330. Information obtained also indicated that there was a mass grave on the shore of Lake Perućac in western Serbia. Some 48 bodies were exhumed from that location. The investigation uncovered that another refrigerated truck containing bodies had been found in the nearby Drina river and that the Užice SUP, which was in charge of that area, had contacted Belgrade and been ordered to collect the bodies and bury them. This was also done on the orders of Đorđević and it was assumed that these bodies were also from Kosovo.²⁹⁹⁵ None of the bodies exhumed at Lake Perućac has been linked directly by the evidence in this case to any crimes alleged in the Indictment.

4. Involvement of non-MUP officials

1331. Many high ranking members of the VJ testified that they had no knowledge of the transport and reburial of bodies when it was taking place, and that they only found out about it later. For example, Geza Farkaš testified that he heard about it after the war.²⁹⁹⁶ Momir Stojanović, who was deputy head of the security department in the Priština Corps at the time, also testified that he heard about it from the media and stated that the military security service had no intelligence indicating involvement of VJ members in the transportation of these bodies.²⁹⁹⁷

1332. The Prosecution claims that, in addition to Lukić, the Accused Šainović was also involved in the operation to conceal the bodies and offers in support the testimony of Aleksandar Vasiljević and an excerpt from the notebook of Obrad Stevanović in which a note was made of a meeting (most likely sometime in May 1999) allegedly attended by Milošević and Šainović. When interviewing him, the Prosecution showed this excerpt from the diary to Vasiljević who then tried to interpret Šainović's role from the diary which was difficult to read. Although Stevanović gave evidence in the *Milošević* trial, he was not called as a witness in this trial.²⁹⁹⁸ Vasiljević testified before this Chamber that, since he did not attend the meeting in question, he could not be sure that

²⁹⁹³ Dragan Furdulović, T. 24714 (1 April 2008), 6D1605 (witness statement dated 26 March 2008), para. 9.

²⁹⁹⁴ Dragan Furdulović, T. 24706–24707 (1 April 2008), 6D1605 (witness statement dated 26 March 2008), paras. 9–10; 6D1611 (Dragan Furdulović's request to Sreten Lukić to conduct interviews with six MUP officials, 28 March 2002);

²⁹⁹⁵ Dragan Furdulović, 6D1605 (witness statement dated 26 March 2008), para. 11; Aleksandar Kostić, T. 24098 (11 March 2008); K84, T. 5202–5203 (19 October 2006) (closed session), P2387 (witness statement), p. 9 (under seal).

²⁹⁹⁶ Geza Farkaš, T. 16382 (25 September 2007).

²⁹⁹⁷ Momir Stojanović, T. 19851–19853 (7 December 2007), T. 20089–20090 (12 December 2007).

²⁹⁹⁸ Aleksandar Vasiljević, T. 8778 (22 January 2007), P2600 (witness statement dated 14 January 2007), para. 72. *See also* P1898 (Obrad Stevanović's notebook), e-court p. 106.

Šainović was present, or that Milošević used the words ascribed to him by Stevanović.²⁹⁹⁹ Accordingly the Chamber does not place much weight on this exhibit in so far as it is alleged to prove that Šainović was present at this particular meeting.³⁰⁰⁰

5. Examination of bodies

1333. The Chamber received evidence that all the bodies and/or remains discovered in the three locations outwith Kosovo were exhumed and examined by local experts, as well as forensic experts from various international organisations. In addition the Chamber received evidence to the effect that some of the bodies involved in this clandestine operation had already been examined during the conflict while still in Kosovo. This evidence relates to a number of victims found in Petrovo Selo who were killed in Izbica, after which their bodies were examined in Kosovska Mitrovica/Mitrovica by forensic experts from the Military Medical Academy (VMA).³⁰⁰¹

a. Forensic examinations in Kosovo

1334. As stated above, already on 31 March 1999, Lazarević issued an order on clearing up of the battlefield which was then conveyed by lower level commanders to their troops.³⁰⁰² On 26 April 1999 Lazarević also sent a request to the 3rd Army and the “Supreme Commander” asking for a military forensic pathologist, as follows:

Due to the demonstrated need for exhumation and professional processing of bodies buried in graves on the [Priština Corps] territory, where the persons who carried out the clearing of the bodies are unknown and there are indications that members of the Army were responsible, we request that you urgently assign an appropriate expert – military forensic pathologist (expert witness).³⁰⁰³

1335. The next day the 3rd Army Command responded by telegram stating that Major Milosavljević, forensic pathologist at the VMA, was being sent to be involved in the exhumation and examination of bodies in Kosovo.³⁰⁰⁴ Lazarević was cross-examined about this telegram and asked what prompted him to send it. He responded that it was his second initiative of this kind,³⁰⁰⁵ and was done to prepare the VJ to perform on-site investigations during the war, and thereby prevent any cover-ups of crimes. He further clarified that his reference to indications of VJ

²⁹⁹⁹ Aleksandar Vasiljević, T. 8829–8830 (22 January 2007).

³⁰⁰⁰ P1898 (Obrad Stevanović’s notebook), e-court p. 106.

³⁰⁰¹ This evidence is analysed closely in Annex A.

³⁰⁰² 5D352 (Order on clearing up the battlefield signed by Lazarević, 31 March 1999). *See also* 5D1028 (Order of 37th Motorised Brigade, 5 April 1999).

³⁰⁰³ 5D379 (Request from Vladimir Lazarević to PrK command, 26 April 1999).

³⁰⁰⁴ 5D383 (3rd Army Response to PrK, 27 April 1999).

³⁰⁰⁵ Lazarević testified that he asked for forensic experts once before and that one such person was sent to Kosovo on 20 April 1999. Vladimir Lazarević, T. 18127–18128 (12 November 2007).

involvement in crimes came from various sources, including local residents, unidentified persons, and the MUP, but stated that often these were mistaken as local residents were unable to distinguish between uniforms and equipment used by the VJ and the MUP; this telegram was prompted by first reports of VJ involvement, which the VJ investigated together with the MUP. Lazarević then referred to two locations in Lipljan/Lypjan municipality, from which the VMA specialists exhumed 36 bodies. He also stated that he knew of two other requests for the involvement of these VMA specialists, and said that were they involved in six locations within Kosovo.³⁰⁰⁶

1336. Dr. Gordana Tomašević, a forensic medicine specialist employed by the VMA,³⁰⁰⁷ gave evidence about forensic examinations she performed in Kosovo from May 1999. Only one of those related to a crime site alleged in the Indictment, namely Izbica. On 10 May 1999 she received a telephone call from Dr. Štrbac at the VMA, who told her that the two of them, as well as some other experts in the field, were to travel to the Niš Military Hospital and report to the hospital's director, Dr. Kostić. They did so and were told by Kostić that the whole team would be travelling to Priština/Prishtina the next day. Tomašević received only oral instructions, both to meet with Kostić and then from Kostić himself. She was given no information as to the tasks she would be expected to perform. She gave evidence that this was not regular procedure, because she would have expected to receive written instructions.³⁰⁰⁸ She tracked down a telegram directing her team's activities after her return from Kosovo on 14 June, but only because she insisted on having a written document.³⁰⁰⁹

1337. On 12 May 1999 the team travelled to Priština/Prishtina and had a meeting with the Accused Pavković and Lazarević where nothing much was discussed. The team sat around for ten days doing nothing and then on 22 May 1999 had another meeting with Pavković and Lazarević, and were informed by the former that the team was to use its expertise for the purposes of "*asanacija*" or, as explained by Pavković, the taking of all hygienic, sanitary, and technical measures in relation to animal and human corpses to ensure the non-spreading of disease. This task also involved taking the necessary steps for identification and cause of death.³⁰¹⁰ However,

³⁰⁰⁶ Vladimir Lazarević, T. 18645–18647 (20 November 2007).

³⁰⁰⁷ Gordana Tomašević, P2490 (witness statement dated 5 March 2003), p. 2.

³⁰⁰⁸ Gordana Tomašević, T. 7022–7023 (21 November 2006), P2490 (witness statement dated 5 March 2003), paras. 11, 14.

³⁰⁰⁹ Gordana Tomašević, T. 7023 (21 November 2006), P2490 (witness statement dated 5 March 2003), para. 12; P2491 (Annex JZ-1: Telegram from Momčilo Krgović to Pera Spasić, 10 May 1999).

³⁰¹⁰ Gordana Tomašević, T. 7022–7025, 7044 (21 November 2006), P2490 (witness statement dated 5 March 2003), paras. 15–16; P2507 (witness statement dated 25 July 2006), para. 2.

Tomašević observed that the task of identification is usually impossible without the assistance of family members, to whom she did not have access while she was in Kosovo.³⁰¹¹

1338. At the 22 May meeting Pavković instructed Tomašević to begin her work at an abandoned house at Staro Čikatovo/Qikatova e Vjetër.³⁰¹² Tomašević informed Pavković that she only worked on the basis of written orders from an investigating judge, to which Pavković responded, “there is no order, I’m ordering you verbally.”³⁰¹³ Radomir Gojović, who was Chief of the Legal Department of the VJ General Staff at the time, testified that there was nothing unusual in this and that it was done in accordance with the Law on Criminal Procedure. He clarified that an order from an investigating judge was not needed in this case because the matter was urgent.³⁰¹⁴

1339. Twelve carbonised bodies were located in an abandoned house in Staro Čikatovo/Qikatova e Vjetër.³⁰¹⁵ At least some of these bodies had their arms and legs bound.³⁰¹⁶ Tomašević did not carry out autopsies on the bodies because of ongoing combat activity in the area.³⁰¹⁷ However, she did perform full external and dental examinations of them.³⁰¹⁸ Tomašević prepared a report on her findings, hoping that someone would ask for it, but no one ever did.³⁰¹⁹ She did not know where the report is now.³⁰²⁰

1340. Two of the examinations conducted by Tomašević after those at Staro Čikatovo/Qikatova e Vjetër took place after she was contacted by military investigative judges from the Priština Corps.³⁰²¹ The first order came on 30 May 1999, and directed her to conduct an investigation at the Belo Polje/Bellopoja cemetery in the village of Ljubenić/Lubeniq, in Peć/Peja.³⁰²² The forensic team exhumed and examined bodies from 14 separate graves. Tomašević believed, based on their level of decomposition, that they had died some three months previously. She gave evidence that the injuries she examined were most likely caused by fire-arms.³⁰²³ The next order from the Priština Corps came on 1 June 1999 and sent Tomašević and her team to the village of Malo

³⁰¹¹ Gordana Tomašević, T. 7043 (21 November 2006).

³⁰¹² Gordana Tomašević, T. 7025–7026 (21 November 2006).

³⁰¹³ Gordana Tomašević, T. 7026 (21 November 2006); *see* Gordana Tomašević, P2490 (witness statement dated 5 March 2003), para. 17 (quoting Pavković’s comment as “I give the order”).

³⁰¹⁴ Radomir Gojović, T. 16701-16702 (2 October 2007).

³⁰¹⁵ Gordana Tomašević, T. 7040–7041 (21 November 2006), P2490 (witness statement dated 5 March 2003), para. 18.

³⁰¹⁶ Gordana Tomašević, P2490 (witness statement dated 5 March 2003), para. 19.

³⁰¹⁷ Gordana Tomašević, T. 7040 (21 November 2006).

³⁰¹⁸ Gordana Tomašević, T. 7040 (21 November 2006); P2490 (witness statement dated 5 March 2003), para. 20.

³⁰¹⁹ Gordana Tomašević, T. 7026–7027 (21 November 2006); P2490 (witness statement dated 5 March 2003), para. 21.

³⁰²⁰ Gordana Tomašević, T. 7027 (21 November 2006).

³⁰²¹ Gordana Tomašević, T. 7041–7042 (21 November 2006).

³⁰²² Gordana Tomašević, P2490 (witness statement dated 5 March 2003), para. 23; P2492 (Annex JZ-2: Order to Exhume Bodies in Ljubenić, 30 May 1999).

³⁰²³ Gordana Tomašević, P2490 (witness statement dated 5 March 2003), para. 30.

Ribare/Ribar i Vogël in Lipljan/Lypjan municipality.³⁰²⁴ The team exhumed and examined 25 bodies that had been individually buried at a cemetery next to the village mosque. She again placed the date of death at some three months earlier. However, she noted at the time that some of the bodies might have been exposed to the elements before burial, which could accelerate decomposition and affect the accuracy of her estimates.³⁰²⁵

1341. Tomašević gave evidence that military investigators are required to give the forensic pathologist certain materials, such as photographic documentation, video documentation, and a plan of the site.³⁰²⁶ However, the military crime technicians at Staro Čikatovo/Qikatova e Vjetër, Belo Polje/Bellopoja, and Malo Ribare/Ribar i Vogël did not provide her with these materials.³⁰²⁷ Although she remembered that not all of the bodies examined at these three sites were adult males, Tomašević could not recall which sites included women and children.³⁰²⁸

1342. At one point Tomašević's team also received an official order from a civilian court, namely an order from the District Court in Kosovska Mitrovica/Mitrovica dated 31 May 1999.³⁰²⁹ It provided for the exhumation of the bodies discovered in Izbica for the purpose of forensic examination with a view to establishing the time and the cause of death. The order also provided that the bodies were to be reburied following the examination.³⁰³⁰ Tomašević explained that she did not know why she was tasked with a job from a civilian court, although Gvozden Gagić testified that an investigating judge had the authority to choose the institution which would carry out forensic examination.³⁰³¹ She also stated that, aside from Dr. Štrbac, she and the team were not present for the exhumation of the bodies; she only heard that they were exhumed from individual graves in Izbica.³⁰³² The bodies were brought on a truck by civilian workers and were in individual body bags, there being 101 of them in total.³⁰³³ The bodies were dressed in civilian clothes for the most part, but Tomašević indicated that "several" of them wore black KLA uniforms.³⁰³⁴ Up to

³⁰²⁴ Gordana Tomašević, P2490 (witness statement dated 5 March 2003), para. 32; P2493 (Annex JZ-3: Order to Exhume Bodies in Belo Ribare, 1 June 1999).

³⁰²⁵ Gordana Tomašević, P2490 (witness statement dated 5 March 2003), para. 36.

³⁰²⁶ Gordana Tomašević, P2490 (witness statement dated 5 March 2003), para. 26.

³⁰²⁷ Gordana Tomašević, P2490 (witness statement dated 5 March 2003), paras. 18, 26, 37.

³⁰²⁸ Gordana Tomašević, P2490 (witness statement dated 5 March 2003), paras. 19, 30, 37.

³⁰²⁹ P2496 (District Court of Kosovska Mitrovica order re Izbica graves).

³⁰³⁰ Gordana Tomašević, T. 7028–7029 (21 November 2006), P2490 (witness statement dated 5 March 2003), paras. 43, 49; P2496 (District Court of Kosovska Mitrovica order re Izbica graves).

³⁰³¹ Gordana Tomašević, P2490 (witness statement dated 5 March 2003), para. 46, P2507 (witness statement dated 25 July 2006), para. 2; Gvozden Gagić, T. 24483–24484 (18 March 2008).

³⁰³² Gordana Tomašević, P2490 (witness statement dated 5 March 2003), para. 50; P2507 (witness statement dated 25 July 2006), para. 3.

³⁰³³ See Section VII.G.

³⁰³⁴ Gordana Tomašević, T. 7032 (21 November 2006), P2490 (witness statement dated 5 March 2003), paras. 50, 52, P2507 (witness statement dated 25 July 2006), paras. 3, 5.

five KLA-uniformed bodies were accompanied by grave markers with KLA inscriptions.³⁰³⁵ The post-mortems were attended by the civilian police. The external examination of the bodies was conducted in Kosovska Mitrovica/Mitrovica over a period of three days, between 3 and 5 June 1999. As the team did not have the necessary equipment to conduct full forensic examination, the bodies were never examined internally. Tomašević completed a full expert report in relation to the examinations.³⁰³⁶ Of the five bodies she identified through grave markers and identity documents, none was found in Petrovo Selo. Furthermore, given that the majority of the alleged Izbica victims were in fact found in Kosovska Mitrovica/Mitrovica, the Chamber is of the view that none of the 101 bodies examined by Tomašević were later transported to Petrovo Selo.

1343. The involvement of the Kosovska Mitrovica SUP in the Izbica forensic investigation was confirmed by Nebojša Bogunović, deputy chief of Kosovska Mitrovica SUP, and by Gagić. Both testified that an investigating team from the SUP was sent to the village on 27 May 1999, after having heard of the existence of graves in Izbica through the media. When the team arrived, it encountered VJ soldiers who knew nothing about a mass grave but told the investigators that there was a new graveyard in the village. When the team reached the site, it was shot at and had to leave. The public prosecutor and an investigative judge were subsequently informed about this and ordered that the bodies be exhumed. Gagić also informed his superior, Ilić, about this investigation. He confirmed that the bodies were externally examined by the experts from the VMA and then buried at the Muslim Cemetery in Kosovska Mitrovica/Mitrovica.³⁰³⁷

b. Forensic examinations outwith Kosovo

1344. Of the three locations found outside of Kosovo which contained mass graves, the Chamber heard detailed evidence on only two, namely Batajnica and Petrovo Selo. This evidence is outlined below.

i. Batajnica

1345. As stated above, a number of people were involved in exhuming and examining the bodies found at Batajnica. The Chamber admitted into evidence numerous reports relating to, and heard

³⁰³⁵ Gordana Tomašević, T. 7053 (21 November 2006).

³⁰³⁶ Gordana Tomašević, T. 7029–7030, 7032–7034 (21 November 2006); P2490 (witness statement dated 5 March 2003), paras. 53, 55–70; P2507 (witness statement dated 25 July 2006), paras. 5, 7; P248 (Gordana Tomašević's autopsy reports). All reports are mistakenly dated 3 June 1999 even though the autopsies were conducted over a period of three days, between 3 and 5 June 1999. P2507 (witness statement dated 25 July 2006), para. 7. *See also* Radomir Gojović, T. 16701–16702 (2 October 2007).

³⁰³⁷ Nebojša Bogunović, T. 25128–25129 (10 April 2008), 6D1614 (witness statement dated 2 April 2008), para. 83; Gvozden Gagić, T. 24447–24450, 24483–24484 (18 March 2008); 6D116 (MUP Report on the forensic examination of

testimony of those who attended, supervised, and participated in, the exhumations and identification of bodies from 2001 onwards. Dr. Dušan Dunjić, who was at the time the Head of the Institute of Forensic Medicine in Belgrade, headed the exhumation and identification efforts.³⁰³⁸ Dr. Branimir Aleksandrić was appointed by Dunjić to take over part way through the work on the Batajnica sites.³⁰³⁹ The Chamber also heard from William Fulton, a member of the Tribunal Prosecution team who supervised the exhumations in Batajnica, Jon Sterenberg who worked for the International Commission on Missing Persons (ICMP) and also supervised the exhumation of Batajnica sites, and from Jose-Pablo Barayabar who is the Head of the Office of Missing Persons and Forensics (OMPF) of UNMIK. The Chamber received evidence from Dr. Antonio Alonso, an expert in genetic identification from the Spanish Ministry of Justice, who analysed a number of samples collected from Batajnica in order to identify corpses.

1346. Altogether five different mass graves were found in Batajnica, namely sites labelled Batajnica I, II, III, V, and VII, a number roughly corresponding to the number of deliveries made to Batajnica as testified to by K88.³⁰⁴⁰ Dunjić participated in the exhumations at Batajnica I and Batajnica II sites, and prepared overview reports with respect to both.³⁰⁴¹ The procedure used in both sites was as follows: the autopsies were performed under a tent on the exhumation site; one or two members of the team examined the remains while another would make contemporaneous notes on the findings as they were dictated; one final report was then compiled for each individual autopsy conducted; and, finally, samples of bone were taken from each individual body, or body part that could not be matched with a body, and handed over to Alonso for DNA testing.³⁰⁴²

1347. With respect to the Batajnica I site, all body parts and bodies were labelled “Ba” and given a number from 1 upwards; all loose clothing was given the label “Ba-SG” and a number; and all loose items found were given the code “Ba-P” also followed by a number. The objects/clothing

the site in Izbica, 2 June 1999). *See also* 6D613 (SUP Kosovska Mitrovica document regarding Izbica), pp. 655–658, also admitted as 6D115.

³⁰³⁸ Dušan Dunjić, T. 5245 (25 October 2006); P2389 (witness statement dated 11 May 2006), para. 3; P2395 (Letter sent to the Dean of the Medical School of Belgrade from the Belgrade District Court Investigating Judge, 31 May 2001); P2396 (Order of the Belgrade District Court Investigating Judge to the Forensic Institute, 31 May 2001).

³⁰³⁹ Branimir Aleksandrić, P2412 (witness statement dated 2 June 2006), para. 3.

³⁰⁴⁰ The remaining exhumation sites, namely Batajnica IV and VI were not mass graves. P2476 (Expert Report on Exhumations: Batajnica, Petrovo Selo, Derventa Canyon, Lake Perućac, 24 November 2005), p. 9; Branimir Aleksandrić, T. 5297–5298 (25 October 2006); William Fulton, T. 5014–5015 (17 October 2006).

³⁰⁴¹ Dušan Dunjić, T. 5249, 5262 (25 October 2006); P2389 (witness statement dated 11 May 2006), paras. 4, 13; P168 (Record of Exhumations and Autopsies Conducted at Location no. I); P2410 (Report on Exhumations and Autopsies Conducted at Location no. II). *See also* P2405 (Archaeological Excavation Report, Batajnica 2001); P2406 (Archaeological Excavation Log); P2404 (Horizontal plane measurement log for Batajnica I); P2401 (Field photo log from Batajnica I).

³⁰⁴² Dušan Dunjić, T. 5250 (25 October 2006); P2389 (witness statement dated 11 May 2006), paras. 7–9. *See also* P159 (Topography of exhumation site at Batajnica I site).

found on or with each body were recorded under the label used for the body itself.³⁰⁴³ All items and human remains found were photographed,³⁰⁴⁴ as was the site once these items and remains were removed.³⁰⁴⁵ There were at least 36 bodies found in the Batajnica I mass grave, of both genders and varying age groups. Of those 36, nine were established to be younger than seven years of age and one was an unborn child.³⁰⁴⁶ The forensic reports and the photographs were then submitted to the District Court in Belgrade.³⁰⁴⁷ The Chamber notes that one of the victims from Suva Reka/Suhareka was a pregnant woman.³⁰⁴⁸

1348. The same procedure was followed with respect to the Batajnica II site and the samples were handed over to Alonso and the officials from the International Commission for Missing Persons (ICMP) for DNA analysis.³⁰⁴⁹ At least 269 bodies, all male, were labelled “2Ba” and given a sequence number.³⁰⁵⁰ Once these samples had been analysed, Dunjić participated in identification of the bodily remains found in Batajnica I and II. After identification they were repatriated to Kosovo.³⁰⁵¹ Due to other work commitments, Dunjić did not participate in further exhumations of sites numbered Batajnica III to VIII, which were, therefore, headed by Aleksandrić, and which led to the discovery of approximately another 400 corpses.³⁰⁵² Aleksandrić explained that the methodology used to excavate these sites and label the bodies corresponded to the one used by Dunjić.³⁰⁵³ He recalled that the team found a large number of burned tyres in the graves, with the bodies both under and on top of those tyres, as well as a large number of bullets and shell cases.

³⁰⁴³ Dušan Dunjić, T. 5250–5251 (25 October 2006); P168 (Record of Exhumations and Autopsies Conducted at Location no. I), p. 2.

³⁰⁴⁴ Dušan Dunjić, T. 5259–5260 (25 October 2006). Samples of such photographs have been admitted as P139, P140, P141, P142, P143, P144, P145, P146, P147, P148, P149, P150, P151, P152, P153, P154, P155, and P156.

³⁰⁴⁵ Dušan Dunjić, T. 5260–5261 (25 October 2006); P166 (Index of Completion of exhumation process at Batajnica); P167 (Photographs of excavated Batajnica I site). The Chamber notes that the forensic team found wooden railway sleepers at the bottom of the pit; P2405 (Archaeological Excavation Report, Batajnica 2001), p. 9.

³⁰⁴⁶ Dušan Dunjić, T. 5253 (25 October 2006); William Fulton, T. 5018–5021 (17 October 2006); P2407 (individual forensic reports of bodies from Batajnica I); P2399 (Belgrade District Court Press Release). *See also* P2402 (Table of completed unrelated cases – loose body parts); P2403 (Table of examination of intact victims). The forensic reports of persons later identified by DNA analysis have also been admitted separately from P2407 as P169, P170, P171, P172, P173, P174, P175, P176, P178, P179, P180, P181, P182, P183, P184, P185, P186, P187, P188, *see* Dušan Dunjić, T. 5251–5252, 5254–5255 (25 October 2006).

³⁰⁴⁷ P2397 (Order to Forensic Institute to submit to Belgrade District Court photographs relating to Batajnica I, 20 December 2001); P2398 (Order to Forensic Institute to submit to Belgrade District Court forensic reports relating to Batajnica I, 20 December 2001); P2400 (Notification of submission of evidence from Batajnica I to Belgrade District Court).

³⁰⁴⁸ *See* Section VII.F.

³⁰⁴⁹ Dušan Dunjić, T. 5262–5263 (25 October 2006), P2389 (witness statement dated 11 May 2006), para. 13. *See also* Antonio Alonso, T. 6680–6681 (16 November 2006).

³⁰⁵⁰ P2410 (Report on Exhumations and Autopsies Conducted at Location no. II), pp. 5, 7; P942 (Documents and forensic reports relating to Batajnica II). *See also* William Fulton, T. 5032 (17 October 2006).

³⁰⁵¹ Dušan Dunjić, T. 5263–5264, 5266–5267 (25 October 2006).

³⁰⁵² Branimir Aleksandrić, T. 5297 (25 October 2006); Dušan Dunjić, P2389 (witness statement dated 11 May 2006), para. 15.

However, the bullets and shell cases could have been unconnected to the bodies since this site had been a firing range for many years and was, thus, littered with such items.³⁰⁵⁴ Again, a separate autopsy report was completed for each body or body part, and samples were taken and handed over to the ICMP for DNA analysis. The identified bodies were then repatriated to Kosovo.³⁰⁵⁵

1349. Jon Sterenberg is a professional archaeologist who, by virtue of being the Head of the Excavation and Examination Division of ICMP, was involved in the exhumations at Batajnica. The Prosecution tendered through him an ICMP report regarding the excavation, examination, and repatriation of mortal remains relevant to the Kosovo conflict,³⁰⁵⁶ as well as reports dealing with the organisation's methodology for, and the results of, the DNA analysis.³⁰⁵⁷

1350. Jose-Pablo Baraybar testified that the Batajnica exhumations and forensic examination conducted by the Serbian authorities took place prior to the establishment of the OMPF. Nevertheless, an OMPF expert was sent to observe the re-exhumation of bodies from a holding facility for the exhumed mortal remains and to ensure their secure transport to the border with Kosovo. OMPF then performed a forensic inspection on each body in Orahovac/Rahovec and issued its own medical death certificate.³⁰⁵⁸ Baraybar also noted that the autopsy reports relating to Batajnica and prepared by the Serbian authorities indicated that the cause of death was not established for any of the exhumed victims. OMPF experts, on the other hand, were able to establish the cause of death for 506 of the 744 cases at Batajnica.³⁰⁵⁹ Looking at Batajnica and Lake Perućac together, Baraybar testified that, out of 535 cases for which the cause of death was ascertained by OMPF, it was established that 531 individuals died of gunshot wounds, while three sustained shrapnel wounds, and one sustained both. The location of these gunshot injuries on the 535 bodies found in those two locations was as follows: 300 individuals sustained at least one

³⁰⁵³ Branimir Aleksandrić, T. 5297–5298 (25 October 2006); Dušan Dunjić, P2389 (witness statement dated 11 May 2006), paras. 5–7, 10–11.

³⁰⁵⁴ Branimir Aleksandrić, T. 5312–5313 (25 October 2006), P2412 (witness statement dated 2 June 2006), paras. 9, 12.

³⁰⁵⁵ Branimir Aleksandrić, P2412 (witness statement dated 2 June 2006), paras. 13–15; P2414 (Autopsy reports and photo documentation of 243 bodies exhumed from Batajnica V site – part 1); P2415 (Autopsy reports and photo documentation of 243 bodies exhumed from Batajnica V site – part 2); P2416 (Autopsy reports and photo documentation of 243 bodies exhumed from Batajnica V site – part 3); P2417 (Autopsy reports and photo documentation of 243 bodies exhumed from Batajnica V site – part 4).

³⁰⁵⁶ Jon Sterenberg, T. 8203–8204 (11 December 2006); P2476 (Expert Report on Exhumations: Batajnica, Petrovo Selo, Derventa Canyon, Lake Perućac, 24 November 2005). Sterenberg's witness statement expands on the report; see P2475 (witness statement dated 21 September 2006), para. 2.

³⁰⁵⁷ Jon Sterenberg, T. 8225–8227 (11 December 2006); P2557 (Methodology Report 2001–2006, DNA Process, 11 September 2006) (under seal); P2558 (Notice of DNA Reports) (under seal); P2559 (Addendum to Expert Report) (under seal).

³⁰⁵⁸ Jose-Pablo Baraybar, T. 11001–11006 (6 March 2007), P2794 (witness statement dated 1 November 2006), paras. 25–26; P943 (OMPF Reports); P944 (OMPF Reports); P2394 (OMPF Reports); P2454 (OMPF Reports).

³⁰⁵⁹ Jose-Pablo Baraybar, T. 11010–11012, P2794 (witness statement dated 1 November 2006), Appendix C; P2795 (Corrigendum to page 11 of Appendix C of P2794).

gunshot wound through the head, 323 through the chest, 116 through the upper limbs, and 153 through the lower limbs—with some individual bodies bearing more than one wound.³⁰⁶⁰

1351. Baraybar also testified that the OMPF produced a consolidated list of missing persons from Kosovo, which was updated at regular intervals. It was prepared in conjunction with the ICRC, and aims to be an exhaustive record of all those unaccounted for after the Kosovo conflict.³⁰⁶¹ As previously mentioned, the Chamber also heard from Antonio Alonso, an expert in genetic identification, who analysed the samples from some of the remains found in Batajnica. In the course of 2001 he received 56 skeletal remains from Dunjić, and 13 blood reference samples belonging to family members of persons allegedly killed in Suva Reka/Suhareka, from the ICMP for genetic analysis.³⁰⁶²

ii. Petrovo Selo

1352. A number of death certificates and autopsy reports, prepared by the Niš Institute of Forensic Medicine and relevant to the bodies exhumed from the mass graves in Petrovo Selo, related to the victims from Izbica.³⁰⁶³

1353. Jon Sterenberg produced a report regarding the excavations, examinations, and repatriation of mortal remains from Petrovo Selo.³⁰⁶⁴ According to this report, there were two different sites, namely Petrovo Selo I (PS/I) and Petrovo Selo II (PS/II). These sites were investigated by the Negotin District Court with the assistance of an expert team from the Niš Institute of Forensic Medicine; 75 bodies were recovered and the disposition of the bodies and their good state of preservation enabled the Niš forensic team to perform “high quality autopsies”.³⁰⁶⁵ The report also notes that the PS/I pit was lined with a large plastic sheet and that a black plastic bag was found at its base. It contained many surgical gloves as well as clothing belonging not to one of the victims but to someone dealing with the remains.³⁰⁶⁶ The report concluded that there were several indicators that the bodies may have been from different spatial and temporal contexts. For

³⁰⁶⁰ Jose-Pablo Baraybar, P2794 (witness statement dated 1 November 2006), Appendix C, pp. 14–15.

³⁰⁶¹ Jose-Pablo Baraybar, P2794 (witness statement dated 1 November 2006), para. 31; P2798 (OMPF list of missing persons).

³⁰⁶² Antonio Alonso, T. 6664–6665 (16 November 2006); P2486 (Report of the Biology Service, 17 November 2004); P2487 (Letter to ICTY OTP from Antonio Alonso, 13 June 2006).

³⁰⁶³ See Section VII.G.

³⁰⁶⁴ Sterenberg, T. 8203–8204 (11 December 2006); P2476 (Expert Report on Exhumations: Batajnica, Petrovo Selo, Derventa Canyon, Lake Perućac, 24 November 2005). Sterenberg’s witness statement expands on the report; see P2475 (witness statement dated 21 September 2006), para. 2.

³⁰⁶⁵ P2476 (Expert Report on Exhumations: Batajnica, Petrovo Selo, Derventa Canyon, Lake Perućac, 24 November 2005), pp. 28–29. See also William Fulton, T. 5033–5034 (17 October 2006).

³⁰⁶⁶ P2476 (Expert Report on Exhumations: Batajnica, Petrovo Selo, Derventa Canyon, Lake Perućac, 24 November 2005), p. 30.

example, there was a variety of different body bags found with the bodies. Although the majority of the bodies seemed to be the remains of civilians, one body was dressed in a KLA uniform, two were dressed in partial uniforms, and one was wearing the “special policeman” uniform. Seven of the bodies were female. Ligatures were found at both sites, including on bodies that had their wrists tied together. Two bodies were recovered with their ankles wired together and the wire attached to a length of rope. Three bodies were blindfolded and had been shot in the head.³⁰⁶⁷

1354. Jose-Pablo Baraybar testified about the OMPF’s involvement with identification and repatriation of the bodies recovered from Petrovo Selo.³⁰⁶⁸ As with Batajnica, an OMPF expert was sent to observe the re-exhumation of bodies from a holding facility for the exhumed mortal remains and to ensure their secure transport to the border with Kosovo. The OMPF then performed a forensic inspection on each body in Orahovac/Rahovec and issued death certificates.³⁰⁶⁹

1355. Baraybar noted that the autopsy reports relating to Petrovo Selo and prepared by the Serbian authorities indicated that the cause of death was established for 52.4 per cent of the 61 documented cases. OMPF experts, on the other hand, were able to establish the cause of death for 86.8 per cent of cases (53 bodies), leaving only eight documented cases without an established cause of death.³⁰⁷⁰ The OMPF established that all 53 individuals for which the cause of death was established died as a result of gunshot wounds. Twenty individuals sustained at least one gunshot wound through the head, 21 through the chest, five through the upper limbs, and 13 through the lower limbs.³⁰⁷¹

6. Conclusion

1356. Having reviewed the evidence outlined above, the Chamber is of the view that there can be no doubt that a clandestine operation involving the exhumation of over 700 bodies originally buried in Kosovo and their transportation to Serbia proper took place during the NATO bombing. The main personalities involved in organising this large scale operation were the Minister of Interior, Vljajko Stojiljković; the President of the FRY, Slobodan Milošević; and the Head of the RJB at the time, Vlastimir Đorđević, all of whom are also, in this Indictment, named members of the joint criminal enterprise. The events described above are very damning of the MUP and many of its employees, who not only worked to exhume, transport, and rebury the bodies, but also participated

³⁰⁶⁷ P2476 (Expert Report on Exhumations: Batajnica, Petrovo Selo, Derventa Canyon, Lake Perućac, 24 November 2005), pp. 31–32. *See also* William Fulton, T. 5033–5034 (17 October 2006).

³⁰⁶⁸ Jose-Pablo Baraybar, P2794 (witness statement dated 1 November 2006), para. 16.

³⁰⁶⁹ Jose-Pablo Baraybar, T. 11001–11006 (6 March 2007), P2794 (witness statement dated 1 November 2006), paras. 25–26; P943 (OMPF Reports); P944 (OMPF Reports); P2394 (OMPF Reports); P2454 (OMPF Reports).

³⁰⁷⁰ Jose-Pablo Baraybar, T. 11010–11011; P2794 (witness statement dated 1 November 2006), Appendix C, p. 14; P2795 (Corrigendum to page 11 of Appendix C of P2794).

³⁰⁷¹ Jose-Pablo Baraybar, P2794 (witness statement dated 1 November 2006), Appendix C, pp. 14–15.

in the institutional cover-up of the truck containing many bodies discovered in the Danube river. However, aside from Gjogaj and his evidence about Spasić wearing a VJ uniform, the witnesses involved in this operation did not mention the involvement of the VJ, and given that the Batajnica centre was deserted by both the VJ and the MUP at the time the reburials were taking place, the involvement of the VJ has not been proved beyond reasonable doubt. Tomašević's evidence suggests that some unconventional action may have been taken by Pavković. However, this does not assist the Prosecution greatly, as much of Tomašević's work was not of clandestine nature and only a small number of Izbica victims, none of whom appear to have been examined by her, were later found in Petrovo Selo. The issue of Lukić and Šainović's involvement in this clandestine operation is dealt with later in sections dealing with their responsibility.

1357. The Chamber is convinced that the purpose of this operation was to conceal over 700 bodies scattered throughout Kosovo from both citizens of the FRY and Serbia, and from the international community, including this Tribunal and NATO ground forces, whose presence on the ground in Kosovo was anticipated following the NATO bombing. The fact that the persons involved felt this concealment to be necessary in the first place also leads the Chamber to conclude that they knew that the great majority of the corpses moved were victims of crime, as opposed to combatants or people who perished during legitimate combat activities, such as the victims from the area of Meja and from Suva Reka/Suhareka town.