

United Nations
Nations UniesInternational Criminal Tribunal
for the former Yugoslavia
Tribunal Pénal International
pour l'ex-Yougoslavie

(IT-05-87)

ŠAINOVIĆ *et al.***The Prosecutor v. Nikola Šainović, Dragoljub Ojdanić,
Nebojša Pavković, Vladimir Lazarević, Sreten Lukić & Milan Milutinović***NIKOLA ŠAINOVIĆ***Convicted of deportation; other inhumane acts (forcible transfer);
murder and persecutions on political, racial or religious grounds*

From February 1994 until November 2000, Deputy Prime Minister of the Federal Republic of Yugoslavia (Serbia and Montenegro).

- Sentenced to **22 years'** imprisonment*Crimes convicted of (examples):***Deportation, other inhumane acts (forcible transfer), murder, persecutions on political, racial or religious grounds** (crimes against humanity) and**Murder** (violations of the laws or customs of war)

- Nikola Šainović had the intent to forcibly displace part of the Kosovo Albanian population, both within and without Kosovo, and thereby change the ethnic balance in the province to ensure continued control by the FRY and Serbian authorities over it.
- He was responsible for committing (through his participation in a joint criminal enterprise) a number of crimes, specified in the judgement, in the following locations in Kosovo: Peć/Peja, Dečani/Dečan, Đakovica/Gjakova, Prizren, Orahovac/Rahovec, Suva Reka/Suhareka, Srbica/Skenderaj, Kosovska Mitrovica/Mitrovica, Vučitrn/Vushtrria, Priština/Prishtina, Gnjilane/Gjilan, Uroševac/Ferizaj and Kačanik/Kaçanik .

NIKOLA ŠAINOVIĆ

Born	7 December 1948 in Bor, Serbia
Indictment	Initial indictment: 24 May 1999, made public on 27 May 1999; amended indictment: 29 June 2001; second amended indictment: 29 October 2001; third amended indictment: 5 September 2002; redacted third amended joinder indictment: 26 June 2006
Surrendered	2 May 2002
Transferred to ICTY	2 May 2002
Initial appearance	3 May 2002, pleaded not guilty to all counts
Trial Chamber Judgement	26 February 2009, sentenced to 22 years of imprisonment

* Following the acquittal of Milan Milutinović the name of the case was changed from Milutinović *et al* to Šainović *et al*

DRAGOLJUB OJDANIĆ*Convicted of deportation and other inhumane acts (forcible transfer)*

From 24 November 1998, Chief of the General Staff of the Yugoslav Army (VJ); from 15 February 2000 until 3 November 2000, Minister of Defence of the Federal Republic of Yugoslavia (Serbia and Montenegro).

- Sentenced to **15 years' imprisonment**

Crimes convicted of (examples):

Deportation, other inhumane acts (forcible transfer) (crimes against humanity)

- Dragoljub Ojdanić knew of the campaign of terror, violence and forcible displacement being carried out by VJ and Serbian Ministry of Internal Affairs (MUP) forces against Kosovo Albanians but he refrained from taking effective measures at his disposal, such as specifically inquiring into the forcible displacements, despite his awareness of the incidents.
- He was responsible for aiding and abetting the crimes in the following locations: Peć/Peja, Đakovica/Gjakova, Prizren, Orahovac/Rahovec, Srbica/Skenderaj, Priština/Prishtina, Gnjilane/Gjilan, Uroševac/Ferizaj and Kačanik/Kaçanik.

DRAGOLJUB OJDANIĆ

Born	1 June 1941 in the village of Ravni, municipality of Užice, Serbia
Indictment	Initial indictment: 24 May 1999, made public on 27 May 1999; amended indictment: 29 June 2001; second amended indictment: 29 October 2001; third amended indictment: 5 September 2002; redacted third amended joinder indictment: 26 June 2006
Surrendered	25 April 2002
Transferred to ICTY	25 April 2002
Initial appearance	26 April 2002, pleaded not guilty to all counts
Trial Chamber Judgement	26 February 2009, sentenced to 15 years of imprisonment

NEBOJŠA PAVKOVIĆ*Convicted of deportation; other inhumane acts (forcible transfer); murder and persecutions on political, racial or religious grounds*

From 25 December 1998 until early 2000, Commander of the Third Army of the VJ; from February 2000 until 24 June 2002, Chief of the General Staff of the VJ.

- Sentenced to **22 years' imprisonment**


Crimes convicted of (examples):

Deportation, other inhumane acts (forcible transfer), murder, persecutions on political, racial or religious grounds (crimes against humanity) and

Murder (violations of the laws or customs of war)

- Nebojša Pavković intended to forcibly displace part of the Kosovo Albanian population and shared this intent with other members of the joint criminal enterprise, the object of which was to forcibly displace Kosovo Albanians and deport them from Kosovo in order to maintain control over the province.
- He was responsible for committing (through his participation in a joint criminal enterprise) a number of crimes, specified in the judgement, in the following locations in Kosovo: Peć/Peja, Dečani/Dečan, Đakovica/Gjakova, Prizren, Orahovac/Rahovec, Suva Reka/Suhareka, Srbica/Skenderaj, Kosovska Mitrovica/Mitrovica, Vučitrn/Vushtrria, Priština/Prishtina, Gnjilane/Gjilan, Uroševac/Ferizaj and Kačanik/Kaçanik .

NEBOJŠA PAVKOVIĆ	
Born	10 April 1946 in the village of Senjski Rudnik, municipality of Despotovac, Serbia
Indictment	Initial indictment: 2 October 2003, made public on 20 October 2003; redacted third amended joinder indictment: 26 June 2006
Surrendered	25 April 2005
Transferred to ICTY	25 April 2005
Initial appearance	28 April 2005, pleaded not guilty to all counts
Trial Chamber Judgement	26 February 2009, sentenced to 22 years of imprisonment


VLADIMIR LAZAREVIĆ <i>Convicted of deportation and other inhumane acts (forcible transfer)</i>	
	<p>From 1998, Chief of Staff of the Priština Corps of the VJ; from 25 December 1998, Commander of the Priština Corps; from 28 December 1999, Chief of Staff of the Third Army of the VJ; from 13 March 2000, Commander of the Third Army of the VJ.</p> <p>- Sentenced to 15 years' imprisonment</p>

Crimes convicted of (examples):

Deportation, other inhumane acts (forcible transfer) (crimes against humanity)

- Vladimir Lazarević was responsible for aiding and abetting the crimes in the following locations: Peć/Peja, Dečani/Dečan, Đakovica/Gjakova, Prizren, Orahovac/Rahovec, Srbica/Skenderaj, Priština/Prishtina, Gnjilane/Gjilan and Kačanik/Kaçanik.
- He provided practical assistance, encouragement and moral support to members of the VJ, who were involved in the commission of forcible transfer and deportation in the specific crime sites, which had a substantial effect on the commission of these crimes.

VLADIMIR LAZAREVIĆ	
Born	23 March 1949 in the village of Grnčar, municipality of Babušnica, Serbia
Indictment	Initial indictment: 2 October 2003, made public on 20 October 2003; amended joinder indictment: 16 August 2005; second amended joinder indictment: 5 April 2006; third amended joinder indictment: 12 May 2006; redacted third amended joinder indictment: 26 June 2006
Surrendered	3 February 2005
Transferred to ICTY	3 February 2005
Initial appearance	7 February 2005, pleaded not guilty to all counts
Trial Chamber Judgement	26 February 2009, sentenced to 15 years of imprisonment

SRETEN LUKIĆ <i>Convicted of deportation; other inhumane acts (forcible transfer); murder and persecutions on political, racial or religious grounds</i>	
	<p>From May 1998, Head of the Serbian Ministry of Internal Affairs (MUP) Staff for Kosovo & Metohija; from June 1999, Assistant Chief of the Public Security Service (RJB) and the Chief of Border Administration of the Border Police in the MUP; from 31 January 2001, Assistant Minister and Chief of the RJB.</p> <p>- Sentenced to 22 years' imprisonment</p>


Crimes convicted of (examples):

Deportation, other inhumane acts (forcible transfer), murder, persecutions on political, racial or religious grounds (crimes against humanity) and

Murder (violations of the laws or customs of war)

- Sreten Lukić had the intent to forcibly displace part of the Kosovo Albanian population, both within and without Kosovo, and thereby ensure continued control by the FRY and Serbian authorities over the province.
- He was responsible for committing (through his participation in the joint criminal enterprise) a number of crimes, specified in the judgement, in the following locations in Kosovo: Peć/Peja, Dečani/Dečan, Đakovica/Gjakova, Prizren, Orahovac/Rahovec, Suva Reka/Suhareka, Srbica/Skenderaj, Kosovska Mitrovica/Mitrovica, Vučitrn/Vushtrria, Priština/Prishtina, Gnjilane/Gjilan, Uroševac/Ferizaj and Kačanik/Kaçanik .

SRETEN LUKIĆ	
Born	28 March 1955 in Višegrad, Bosnia and Herzegovina
Indictment	Initial indictment: 2 October 2003, made public on 20 October 2003; redacted third amended joinder indictment: 26 June 2006
Surrendered	4 April 2005
Transferred to ICTY	4 April 2005
Initial and further appearances	6 April 2005, did not enter a plea; 4 May 2005, pleaded not guilty to all counts
Trial Chamber Judgement	26 February 2009, sentenced to 22 years of imprisonment

MILAN MILUTINOVIĆ <i>Found not guilty</i>	
	<p>From 21 December 1997 until 29 December 2002, President of Serbia and a member of the Supreme Defence Council of the Federal Republic of Yugoslavia (Serbia and Montenegro).</p> <p>- Acquitted</p>

MILAN MILUTINOVIĆ	
Born	19 December 1942 in Belgrade, Serbia
Indictment	Initial indictment: 24 May 1999, made public on 27 May 1999; amended indictment: 29 June 2001; second amended indictment: 29 October 2001; third amended indictment: 5 September 2002; redacted third amended joinder indictment: 26 June 2006
Surrendered	20 January 2003
Transferred to ICTY	20 January 2003
Initial appearance	27 January 2003, pleaded not guilty to all counts
Trial Chamber Judgement	26 February 2009, acquitted

STATISTICS

Trial days	285
Witnesses called by Prosecution	113
Prosecution exhibits	1455
Witnesses called by Defence	118
Defence exhibits	2896
Witnesses called by Chambers	2
Chambers exhibits	18

TRIAL	
Commenced	10 July 2006
Closing arguments	19 August - 27 August 2008
Trial Chamber III	Judge Iain Bonomy (presiding), Judge Ali Nawaz Chowhan, Judge Tsvetana Kamenova, Judge Janet Nosworthy (Reserve Judge)
Counsel for the Prosecution	Thomas Hannis, Chester Stamp, Patricia Neema, Daniela Kravetz
Counsel for the Defence	For Milan Milutinović: Eugene O' Sullivan and Slobodan Zečević For Nikola Šainović: Toma Fila and Vladimir Petrović For Dragoljub Ojdanić: Tomislav Višnjić and Norman Sepenuk For Nebojša Pavković: John Ackerman and Aleksandar Aleksić For Vladimir Lazarević: Mihajlo Bakrač and Đuro Čepić For Sreten Lukić: Branko Lukić and Dragan Ivetić
Judgement	26 February 2009

APPEALS	
Appeals Chamber	Judge Mehmet Güney (presiding), Judge Fausto Pocar, Judge Liu Daqun, Judge Andriësa Vaz and Judge Theodor Meron
Counsel for the Prosecution	Paul Rogers
Counsel for the Defence	For Nikola Šainović: Toma Fila and Vladimir Petrović For Dragoljub Ojdanić: Tomislav Višnjić and Peter Robinson For Nebojša Pavković: John Ackerman and Aleksandar Aleksić For Vladimir Lazarević: Mihajlo Bakrač and Đuro Čepić For Sreten Lukić: Branko Lukić and Dragan Ivetić

RELATED CASES	
<i>by geographical area</i>	
ĐORĐEVIĆ (IT-05-87/1.1) "KOSOVO"	
HARADINAJ <i>et al.</i> (IT-04-84)	
LIMAJ <i>et al.</i> (IT-03-66)	
MILOŠEVIĆ (IT-02-54) "KOSOVO, CROATIA & BOSNIA"	

INDICTMENT AND CHARGES

All of the charges against Milan Milutinović, Nikola Šainović, Dragoljub Ojdanić, Nebojša Pavković, Vladimir Lazarević and Sreten Lukić were in relation to the crimes committed in the territory of Kosovo, beginning on or about 1 January 1999 and continuing until 20 June 1999.

The initial indictment against Milutinović, Šainović, Ojdanić, Slobodan Milošević and Vljako Stojiljković (case number IT-99-37) was confirmed on 24 May 1999 and made public on 27 May 1999. This indictment was amended on 29 June 2001. The indictment was further amended on 29 October 2001 (second amended indictment) and on 5 September 2002 (third amended indictment). In the third amended indictment, the charges against Milošević and Stojiljković were removed, due to the death of Stojiljković and the fact that Milošević was being tried separately (case number IT-02-54). The case was then called Milutinović *et al.*

The initial indictment against Pavković, Lazarević, Lukić and Vlastimir Đorđević (case number IT-03-70, "Pavković *et al.*") was confirmed on 2 October 2003 and made public on 20 October 2003.

On 1 April 2005 the Prosecution filed a motion seeking to join the cases Milutinović *et al.* and Pavković *et al.* The motion was granted on 8 July 2005, and the Trial Chamber ordered the Prosecution to file an amended joinder indictment. The amended joinder indictment was filed on 16 August 2005. This indictment was challenged by the Defence and, following an order from the Trial Chamber, the Prosecution submitted the second amended joinder indictment on 5 April 2006. On 11 May 2006, the Trial Chamber ordered the Prosecution to file a final copy of the indictment. On 12 May 2006, the Prosecution filed the third amended joinder indictment.

On 17 May 2006, the Pre-Trial Judge ordered the Prosecution to correct some typographical errors in the third amended joinder indictment and to sever Đorđević, who was still at large, from the other accused, in order for the trial to commence as scheduled. On 21 June 2006, the Prosecution requested leave to replace the third amended joinder indictment with the corrected version of the indictment filed that day, and leave to sever Đorđević from the case. On 26 June 2006, the Trial Chamber granted the severance and accepted the redacted third amended joinder indictment as the operative indictment against the six accused. Đorđević was assigned a new case number (IT-05-87/1).

The indictment alleged that the accused participated in a joint criminal enterprise that came into existence no later than October 1998 and continued throughout the time period when the crimes alleged in the indictment occurred. The purpose of the joint criminal enterprise was, among other things, the modification of the ethnic balance in Kosovo in order to ensure continued Serbian control over the province. This purpose was to be achieved by criminal means consisting of a widespread or systematic campaign of terror and violence that included deportations, murders, forcible transfers and persecutions directed at the Kosovo Albanian population during the indictment period.

It was alleged that forces of the Federal Republic of Yugoslavia (FRY) and Serbia, in a deliberate and widespread or systematic manner, forcibly expelled and internally displaced hundreds of thousands of Kosovo Albanians from their homes across the entire province of Kosovo. To facilitate these expulsions and displacements, forces of the FRY and Serbia intentionally created an atmosphere of fear and oppression through the use of force, threats of force, and acts of violence.

The indictment stated that throughout Kosovo, forces of the FRY and Serbia engaged in a deliberate and widespread or systematic campaign of destruction of property owned by Kosovo Albanian civilians. This was accomplished by the widespread shelling of towns and villages, the burning and destruction of property, including homes, farms, businesses, cultural monuments and religious sites, and the destruction of personal property. As a result of these orchestrated actions, villages, towns, and entire regions were rendered uninhabitable for Kosovo Albanians.

It was further alleged that, in addition to the deliberate destruction of property owned by Kosovo Albanian civilians, forces of the FRY and Serbia committed widespread or systematic acts of brutality and violence against Kosovo Albanian civilians in order to perpetuate a climate of fear, and create chaos and a pervading fear for life. Forces of the FRY and Serbia went from village to village and, in the towns and cities, from area to area, threatening and expelling the Kosovo Albanian population. Kosovo Albanians were frequently intimidated, assaulted or killed in public view to enforce the departure of their families

and neighbours. Many Kosovo Albanians who were not directly forcibly expelled from their communities fled as a result of the climate of terror created by the widespread or systematic beatings, harassment, sexual assaults, unlawful arrests, killings, shelling and looting carried out across the province. Forces of the FRY and Serbia persistently subjected Kosovo Albanians to insults, racial slurs, degrading acts and other forms of physical and psychological mistreatment based on their racial, religious, and political identification. All sectors of Kosovo Albanian society were displaced including women, children, the elderly and the infirm.

The indictment stated that thousands of Kosovo Albanians, who fled their homes as a result of the conduct of the forces of the FRY and Serbia, joined convoys of persons that moved toward Kosovo's borders with Albania and the former Yugoslav Republic of Macedonia (FYROM). Allegedly, forces of the FRY and Serbia manned checkpoints along the routes to the border crossings and subjected the displaced Kosovo Albanians to beatings, extortion, robbery, harassment, assaults, illegal arrests and killings. At other times, forces of the FRY and Serbia escorted groups of expelled Kosovo Albanians to the borders.

According to the indictment, approximately 800,000 Kosovo Albanian civilians were deported. In order to facilitate these expulsions and displacements, forces of the FRY and Serbia deliberately created an atmosphere of fear and oppression through the use of force, threats of force and acts of violence. Throughout Kosovo, in a deliberate and widespread or systematic effort to deter expelled Kosovo Albanians from returning to their homes, forces of the FRY and Serbia looted and pillaged the personal and commercial property of Kosovo Albanians. Forces of the FRY and Serbia used wholesale searches, threats of force, and acts of violence to rob Kosovo Albanians of money and valuables, and in a widespread or systematic manner, authorities at FRY border posts stole personal vehicles and other property from Kosovo Albanians being deported from the province.

In addition, throughout Kosovo, forces of the FRY and Serbia systematically seized and destroyed the personal identity documents and licenses of vehicles belonging to Kosovo Albanian civilians. As Kosovo Albanians were forced from their homes and directed towards Kosovo's borders they were subjected to demands to surrender identity documents at selected points en route to border crossings and at border crossings into Albania and FYROM. These actions were undertaken in order to erase any record of the deported Kosovo Albanians' presence in Kosovo and to deny them the right to return to their homes.

In sum, it was alleged that, throughout Kosovo, forces of the FRY and Serbia systematically shelled towns and villages, burned homes and farms, damaged and destroyed Kosovo Albanian cultural and religious institutions, murdered Kosovo Albanian civilians and other persons taking no active part in the hostilities, and sexually assaulted Kosovo Albanian women.

The operative indictment charged Milutinović, Šainović, Ojdanić, Pavković, Lazarević and Lukić on the basis of their individual criminal responsibility (Article 7(1) of the Statute) and on the basis of their superior criminal responsibility (Article 7(3) of the Statute) with:

- **Deportation, other inhumane acts (forcible transfer), murder, persecutions on political, racial or religious grounds** (crimes against humanity, Article 5),
- **Murder** (violations of the laws or customs of war, Article 3).

PRE-TRIAL

Following the Trial Chamber decision of 14 April 2005, the accused Milutinović, Ojdanić, Šainović and Lazarević were provisionally released on 15 April 2005.

Pursuant to the Trial Chamber decision of 3 October 2005, Lukić was provisionally released on 5 October 2005.

On 21 November 2005, Pavković was provisionally released, pursuant to a decision rendered on 18 November 2005 by the Trial Chamber.

All of the accused returned to the Detention Unit on 4 July 2006.

THE TRIAL

The Milutinović *et al.* trial commenced on 10 July 2006. The accused were granted temporary provisional release from 15 July until 31 July 2006. The Prosecution completed its case-in-chief on 1 May 2007.

The Defence case commenced on 6 August 2007 and was completed on 16 May 2008.

From 19 May until 21 May 2008, the parties examined a witness called by the Trial Chamber. On 8 July and 9 July 2008, the parties examined another witness called by the Trial Chamber.

The closing arguments were held from 19 August until 27 August 2008.

RULE 98bis PROCEEDINGS

After the conclusion of the presentation of Prosecution evidence, the Trial Chamber can rule whether there is a case to answer. If the Chamber believes that the Prosecution has not presented sufficient evidence to prove certain charges, it can dismiss those charges and enter a judgement of acquittal before the beginning of the presentation of defence evidence.

On 18 May 2007, the Trial Chamber in the Milutinović *et al.* case issued an oral decision pursuant to Rule 98bis and concluded there was evidence capable of supporting a conviction for the crimes charged in all the counts. Therefore, the Chamber dismissed the Defence motions for acquittal for each of the accused.

TRIAL CHAMBER JUDGEMENT

The judgement was rendered on 26 February 2009.

In general, the Trial Chamber found 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, 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, also suggested that such killings were criminal in nature.

Milan Milutinović was the President of Serbia throughout 1998 and 1999, and much of the evidence brought by both the Prosecution and Milutinović's Defence concerned the nature and extent of his powers in that position. The Chamber found that, as President of Serbia, Milutinović did not have direct individual control over the VJ, a federal institution. His formal role in relation to the VJ was as an *ex officio* member of the Supreme Defence Council (SDC), which comprised FRY President Slobodan Milošević and the Presidents of Serbia and Montenegro, and which made strategic decisions with respect to the VJ. However, analysis of the records of SDC sessions in evidence did not indicate the formulation or implementation of the common plan alleged in the indictment. Moreover, there was no direct evidence of SDC meetings after 23 March 1999, the eve of the NATO air campaign, although the Chamber was convinced that Milutinović and FRY President Milošević continued to meet during the NATO bombing, and retained formal command over the VJ through the SDC or a similar body known as the Supreme Command. The evidence did not indicate, however, that Milutinović took part in the exercise of command over the VJ after 23 March 1999. The Chamber also found that, in practice, it was Milošević, sometimes termed the "Supreme Commander", who exercised actual command authority over the VJ during the NATO campaign. In 1998 and early 1999, Milutinović was involved in the negotiations with representatives of the Kosovo Albanian community, as well as those brokered by the international community, to seek to resolve the Kosovo crisis. Having analysed the voluminous evidence in relation to all these negotiations, the Chamber was not satisfied that the evidence established that Milutinović had an obstructive attitude aimed at ensuring their failure, as submitted by the Prosecution. The evidence led by the Prosecution also did not convince the Chamber that Milutinović had a close personal or professional relationship with Milošević, or that he held a position of significant influence in the Socialist Party of Serbia, the dominant political party

at that time. The Chamber found that he was relatively well informed about the situation in Kosovo, and that he was aware that criminal acts had been committed by VJ and MUP forces in Kosovo both in 1998 and early 1999, mainly through his dealings with foreign diplomats, negotiators, and observers. However, he was also told by state officials that any crimes that had been committed in Kosovo were being dealt with. The Chamber found that, as the President of Serbia, Milutinović had powers that potentially could allow for significant oversight of the work of the Serbian Government Ministries, most importantly the Ministry of Interior. But the evidence did not establish extensive interaction between Milutinović and the MUP in the relevant period, and his *de facto* powers over the MUP were not significant. Furthermore, the Chamber was not satisfied beyond reasonable doubt that Milutinović made a significant contribution to the joint criminal enterprise. Moreover, the Chamber was unconvinced that Milutinović shared the intent to use criminal means, namely deportation and forcible transfer, to retain control over Kosovo by the state authorities.

In addition to being a Deputy Prime Minister of the FRY, Nikola Šainović was the Chairman of the FRY Commission for Co-operation with the OSCE Kosovo Verification Mission (KVM), a body set up following the various agreements concluded in October 1998 by the FRY and Serbian authorities and the international community. The Chamber found that a body known by some as the Joint Command did come into existence in mid-1998, in order to co-ordinate the activities of the VJ and MUP and other state bodies involved in the Kosovo conflict. Notes of meetings of the Joint Command held between July and October 1998, taken by one of the participants, were entered into evidence, and gave insight into the nature of the body. These Notes revealed that Šainović was an active participant in Joint Command meetings, as were the accused Pavković and Lukić, and, on occasion, Lazarević. Indeed, Šainović issued instructions at the meetings, including in relation to matters concerning the activities of the VJ and MUP. There was direct evidence of only one Joint Command meeting in 1999, in June, but military orders were issued with a Joint Command heading, in order to ensure the co-operation and co-ordination of MUP forces with the VJ. Šainović also attended a number of other high-level meetings concerning the situation in Kosovo in 1998 and 1999, and was often present in Kosovo both in 1998 and during the NATO air campaign. FRY President Milošević was instrumental in sending Šainović to Kosovo in the summer of 1998, and in his appointment as the Chairman of the Commission for Co-operation with the Kosovo Verification Mission in October 1998, which enabled him to continue liaising with VJ and MUP personnel in Kosovo, as well as the international observers there. His dealings with and influence over the accused Pavković, from the VJ, and Lukić, from the MUP, therefore continued without interruption. Šainović met with Milošević frequently during 1998 and early 1999, as well as speaking with him by telephone, and a number of witnesses gave evidence about the nature of the relationship between the two men. On the basis of this evidence the Chamber found that Šainović was one of the closest and most trusted associates of Milošević, which led to him taking a leading role in both the Joint Command, and the Commission for Co-operation with the KVM. He was a powerful official in the FRY Government, who not only relayed information to Milošević and conveyed Milošević's instructions to those in Kosovo, but also had a great deal of influence over events in the province and was empowered to make decisions.

Šainović met with former Kosovo Albanian political leader Ibrahim Rugova during the NATO air strikes, in a period when Rugova was effectively being held under house arrest. The Chamber did not consider these meetings to have been a genuine attempt to negotiate a solution to the Kosovo situation, but rather a campaign which involved threats to the personal safety of Rugova and his associates, designed to show that the FRY and Serbian authorities were meeting with Kosovo Albanians, in the hope that this would lead to cessation of the NATO bombing. Šainović knowingly and wilfully participated in this campaign. The Chamber also found that Šainović was very well informed about events in Kosovo, both in 1998 and 1999, and that he was aware that criminal acts had been committed by VJ and MUP forces in Kosovo both in 1998 and 1999, including during the NATO air strikes. He failed to use his extensive authority in Kosovo and his own initiative to ensure the cessation of such criminal conduct. The Chamber was satisfied that Šainović had substantial *de facto* powers over both the MUP and the VJ operating in Kosovo, and that he was the political co-ordinator of these forces. The Chamber was convinced that he made a significant contribution to the joint criminal enterprise and that, indeed, he was one of the most crucial members of that common enterprise. From all of the evidence, the Chamber found that Šainović had the intent to forcibly displace part of the Kosovo Albanian population, both within and without Kosovo, and thereby to change the ethnic balance in the province and ensure continued control by the FRY and Serbian authorities over it. The Chamber also found that the murder of Kosovo Albanian civilians by VJ and MUP forces executing the common criminal plan was reasonably foreseeable to Šainović, as was the destruction of or damage to religious property, namely mosques. However, by majority, the Chamber did not find that the commission of sexual assault was foreseeable to him.

Judge Chowhan dissented on the issue of the foreseeability of sexual assault to Šainović.

As Chief of the General Staff, Dragoljub Ojdanić attended SDC meetings and was an active participant in the discussions held. The evidence did not establish that he participated in the body known as the Joint Command, but he was aware of it and accepted its operation. In addition, he was aware of VJ involvement in the arming of the non-Albanian civilian population in Kosovo. He also supported the appointment to high-level posts of VJ personnel who either supported the activities of the VJ in Kosovo, such as the accused Pavković, or else simply raised no objection thereto. Furthermore he was aware of the removal of high-level VJ officers who objected to the use being made of the VJ in Kosovo. Leading up to and during the NATO air campaign, Ojdanić issued orders for the VJ to carry out operations throughout Kosovo, including in support of the MUP. He also mobilised extra VJ units for deployment in Kosovo during the time-period when the majority of crimes found by the Chamber to have been committed took place.

Through the VJ reporting system, Ojdanić was kept well-informed on a daily basis of the situation on the ground in Kosovo both before and during the NATO air strikes. Specific information about the use of excessive or indiscriminate force by VJ and MUP units was conveyed to him throughout 1998 and 1999. He was also aware that volunteers incorporated into the ranks of the VJ during the NATO bombing had been involved in the commission of criminal acts. He did take some action in response to the reports that he was receiving, such as issuing orders for adherence to international humanitarian law, mobilising the military justice system, and dispatching senior officers from the Security Administration to investigate. Nonetheless, he continued to order the VJ to participate in military operations with the MUP in Kosovo. The Chamber found that, although there was considerable evidence supporting the Prosecution's allegation that Ojdanić was supportive of the commission of crimes throughout Kosovo by VJ and MUP forces in a widespread and systematic attack targeting Kosovo Albanians, it was not proved beyond reasonable doubt that he shared the intent to ensure continued FRY and Serbian control over the province by way of the deportation and forcible transfer of a significant proportion of the Kosovo Albanian population. However, by his continued actions in command of the VJ forces subordinated to him, the Chamber found that Ojdanić provided practical assistance, encouragement, or moral support to members of the VJ who he knew intended to commit deportation and forcible transfer. His conduct had a substantial effect on the actual commission of these crimes by VJ forces in some of the locations charged in the indictment. However, the Chamber found that Ojdanić did not have knowledge that VJ forces had the intent to kill or sexually assault Kosovo Albanian civilians, or to damage or destroy religious property.

In 1998 Nebojša Pavković was the Commander of the VJ Priština Corps, which had responsibility for the territory of Kosovo. At the end of that year he was made Commander of the 3rd Army, which encompassed both the Priština Corps and the Niš Corps. In both positions he had *de jure* and *de facto* control over the units subordinated to him, and a central role in the planning and implementation of the activities of the VJ in Kosovo, in co-ordination with the MUP. Indeed, the Chamber heard convincing evidence that in 1998 he advocated a greater role for the VJ in Kosovo and took the lead in proposing specific activities by the VJ and MUP. He had direct access to FRY President Milošević, who supported and adopted his proposals, despite protestations from others in the VJ. When he was Commander of the Priština Corps, Pavković clashed with his direct superior, the then Commander of the 3rd Army, and clearly had his differences with the then Chief of the General Staff over the use of the VJ in Kosovo, both men were later removed from their positions and Pavković made 3rd Army Commander. The Chamber found that in 1998 Pavković was involved in the arming of the non-Albanian civilian population in Kosovo, and simultaneous disarming of the Kosovo Albanians, despite his knowledge of the divisions and animosity in Kosovo along ethnic lines.

As Commander of the Priština Corps in 1998, Pavković issued numerous orders for the deployment of VJ units, often in joint operations with the MUP. He was informed of allegations of excessive or indiscriminate force by the VJ and MUP in Kosovo, including through his frequent participation in Joint Command meetings where the situation in Kosovo was discussed in detail, and yet continued to engage his units. Once Commander of the 3rd Army, he brought extra units into Kosovo to augment the VJ and sent one particular brigade into the interior of Kosovo in the face of a direct instruction from Ojdanić not to. In the lead up to and during the NATO bombing, Pavković continued to issue orders, as 3rd Army Commander, for the engagement of VJ units in Kosovo, including in areas where the Chamber found that crimes were committed by VJ and MUP forces. He also continued to work closely with FRY President Milošević in this period. He did not, however, have direct control over MUP forces engaged in Kosovo, despite orders for the resubordination of the MUP to the VJ issued in April 1999. In 1998 and 1999, Pavković was present in Kosovo the majority of the time. Through his presence in Joint Command and other meetings in 1998, the regular VJ reporting system, and his tours of VJ units deployed across Kosovo, he had a detailed knowledge and understanding of the situation on the ground and the activities of his and the MUP forces.

This knowledge extended to the commission of crimes by both the VJ and MUP, including the forcible displacement of Kosovo Albanians, murder, and sexual assaults. The Chamber found that, while Pavković knew about criminal acts committed by VJ members in Kosovo, he sometimes under-reported and minimised the serious criminal wrongdoing in his reports to the Supreme Command Staff. Although he issued some orders calling for adherence to international humanitarian law in the course of these operations, the Chamber did not consider these to have been genuine measures to limit the commission of crimes in Kosovo. The Chamber found that Pavković had substantial *de jure* and *de facto* command authority over VJ forces in Kosovo in 1998 and 1999, and that he was in a position of influence, including through his participation in the Joint Command. There was no doubt that his contribution to the joint criminal enterprise was significant, as he utilised the VJ forces at his disposal to terrorise and violently expel Kosovo Albanian civilians from their homes. The Chamber also found that Pavković had the intent to forcibly displace the Kosovo Albanian population in order to ensure continued control by the FRY and Serbian authorities over the province. Moreover, the Chamber considered that, in the circumstances, the commission of murder, sexual assault, and the deliberate destruction of or damage to mosques, by the VJ and MUP forces executing his orders, were reasonably foreseeable to Pavković.

When Pavković became the 3rd Army Commander at the end of 1998, his former Chief of Staff in the Priština Corps, Vladimir Lazarević, was appointed to replace him as Commander of the Priština Corps. While he held these positions, Lazarević was based in Kosovo, first in Đakovica, and later in and around Priština. One of his duties when Chief of Staff of the Priština Corps was monitoring the state border between Kosovo and Albania. He also contributed to the implementation of joint VJ and MUP operations in that area in the second half of 1998. The Chamber found that, in 1998, Lazarević was aware of the fact that criminal acts were being committed against civilians and civilian property during VJ and MUP operations in Kosovo. He also knew that this had resulted in the displacement of a significant number of civilians. Following his appointment to the position of Commander of the Priština Corps, Lazarević had *de jure* and *de facto* control over the units subordinated to him, including regular VJ units and, from early April 1999, military territorial detachments. He did not have direct control over MUP units engaged in Kosovo. The evidence proved that Lazarević significantly participated in the planning and execution of joint VJ and MUP operations conducted from March to June 1999 in Kosovo, including in places where the Chamber found that crimes were committed, and that he continued to do so, despite his knowledge of the commission of such crimes. However, unlike Pavković, Lazarević was not involved in or necessarily aware of all the political decision-making that generally took place in Belgrade, and did not participate in high-level meetings there. The Chamber found that, although there was considerable evidence supporting the Prosecution's allegation that Lazarević was supportive of the commission of crimes throughout Kosovo by VJ and MUP forces in a widespread and systematic attack targeting Kosovo Albanians, it had not been proved beyond reasonable doubt that he shared the intent to ensure continued FRY and Serbian control over the province by way of the deportation and forcible transfer of a significant proportion of the Kosovo Albanian population. However, by his continued actions in command of the VJ forces subordinated to him, the Chamber found that Lazarević provided practical assistance, encouragement, or moral support to members of the VJ who he knew intended to commit deportation and forcible transfer. His conduct had a substantial effect on the actual commission of these crimes by VJ forces in some of the locations charged in the indictment. However, the Chamber found that Lazarević did not have knowledge that VJ forces had the intent to kill or sexually assault Kosovo Albanian civilians, or to damage or destroy religious property.

The central issue of contention during the trial concerning the alleged criminal responsibility of Sreten Lukić related to the nature and powers of the body called the MUP Staff for Kosovo, of which Lukić was the head. The Lukić Defence brought a number of witnesses who testified that the MUP Staff was a body with logistical functions, and no real power or authority over MUP forces deployed in Kosovo in 1998 and 1999. This evidence contrasted starkly with both the content of the decisions establishing the body, which set out its tasks, and many other documents in evidence which revealed the role played by the MUP Staff in 1998 and the first half of 1999. Some witnesses also ascribed a greater degree of responsibility for the various MUP forces in Kosovo to the MUP Staff and to Lukić as its head than suggested by the Lukić Defence. The Chamber was convinced that the MUP Staff was a key body in both 1998 and 1999, with substantial authority over units falling under the MUP Public Security Department, including special police units when they were deployed to Kosovo, although it did not replace the chains of command within the various MUP units and secretariats. The MUP Staff liaised with the VJ to ensure full co-ordination of MUP and VJ activities in Kosovo, and had an important role in the planning of joint VJ and MUP operations. It also provided a link to the MUP headquarters in Belgrade, to which it regularly reported. The Chamber was satisfied that, as head of the MUP Staff, Lukić was endowed with significant authority over the MUP forces answering to the MUP Staff. Indeed, he was understood to be the commander of MUP forces in Kosovo by the foreign diplomats and observers with whom he interacted in Kosovo, and he attended

meetings with them on behalf of the MUP. He also regularly attended and participated in meetings of the Joint Command and other high-level meetings, including in Belgrade. The Chamber found, therefore, that Lukić was a *de facto* commander of MUP forces in Kosovo from mid-1998 to mid-1999, as well as being the bridge between the actions of the MUP on the ground in Kosovo and the overarching policies and plans decided in Belgrade. The evidence established that Lukić had detailed knowledge of events in Kosovo, as they developed, as well as being informed of allegations of criminal conduct by MUP personnel there. However, the Chamber was not convinced that Lukić was involved in the concealment of these crimes through the clandestine transportation of civilian bodies from Kosovo to other parts of Serbia. The Chamber found that Lukić had substantial authority over MUP units deployed in Kosovo in 1998 and 1999, and that he was responsible for planning, organising, controlling, and directing the activities of the MUP in the province, and also that he worked closely with the leadership of the VJ and other state bodies, and participated in high-level meetings to discuss the situation in Kosovo. On the basis of all of the evidence, the Chamber found that Lukić was indeed an important participant in the joint criminal enterprise, and made a significant contribution through his control of the MUP forces involved in its execution. The Chamber also found that Lukić shared the intent to forcibly displace the Kosovo Albanian population, to ensure continued control over the province by the FRY and Serbian authorities. It further found that the murder of Kosovo Albanian civilians by VJ and MUP forces executing the common plan was reasonably foreseeable to Lukić, as was the destruction of or damage to religious property, namely mosques. However, by majority, the Chamber did not find that the commission of sexual assault was foreseeable to him.

Judge Chowhan dissented on the issue of the foreseeability of sexual assault to Lukić.

On 26 February 2009, the Trial Chamber rendered its judgement:

Milan Milutinović was found not guilty on all charges, and acquitted

Nikola Šainović, Nebojša Pavković and Sreten Lukić, on the basis of individual criminal responsibility (Article 7(1) of the Statute of the Tribunal) were found guilty of:

- Deportation, other inhumane acts (forcible transfer), murder, persecutions on political, racial or religious grounds (crimes against humanity, Article 5)
- Murder (violations of the laws or customs of war, Article 3)

Sentence: 22 years' imprisonment

Dragoljub Ojdanić and Vladimir Lazarević, on the basis of individual criminal responsibility (Article 7(1) of the Statute of the Tribunal) were found guilty of:

- Deportation and other inhumane acts (forcible transfer) (crimes against humanity, Article 5)

Sentence: 15 years' imprisonment

APPEALS PROCEEDINGS

On 27 May 2009, the Prosecution filed its notice of appeal in respect of all of the accused except Milutinović. On the same day, all Defence teams filed their notices of appeal.

On 21 August 2009, the Prosecution filed its appeal brief.

On 23 September 2009, all Defence teams filed their appeal briefs.

On 30 September 2009, the Defence of Pavković filed its amended appeal brief.

On 7 and 20 October 2009 respectively, the Defences of Lukić and Lazarević refiled their appeal briefs. On 11 December 2009, the Defence of Ojdanić filed its amended appeal brief.