

THE INTERNATIONAL CRIMINAL TRIBUNAL  
FOR THE FORMER YUGOSLAVIA

Case № : **IT-05-87-T**

IN THE TRIAL CHAMBER

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

REGISTRAR: Mr. Hans Holthuis

DATE FILED: **29<sup>th</sup> of July 2008**

THE PROSECUTOR

V.

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

- PUBLIC -  
REDACTED

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**VLADIMIR LAZAREVIC'S FINAL TRIAL BRIEF**

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**- PUBLIC -  
REDACTED**

VLADIMIR LAZAREVIC'S FINAL TRIAL BRIEF

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Pursuant to Rule 86(B) of the Rules of Procedure and Evidence (hereinafter "Rules") of the 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, at the Hague (hereinafter "Tribunal"), the Defence of General Vladimir Lazarevic (hereinafter "Defence" and "Accused" respectively) herewith submits its PUBLIC REDACTED – Vladimir Lazarevic's Final Trial Brief (hereinafter "Defence Final Brief").

## I INTRODUCTION

1. With a view to provide certain directions for the reading of this Defence Final Brief, the defence shall, within this introductory part, point at the system to the Trial Chamber, by which the Final Brief is conceptualized.
2. The process-material context of this analysis shall find its reliance in the positions of routine practice of the Tribunal and Rules of the Statute in view of the elements, indispensable for the responsibility establishment like pursuant to article 7 (1) like pursuant to article 7 (3) of the Statute for each of the acts the Accused is charged with.
3. At the mere beginning of Defence Final Brief, the defence shall look back at the allegations of the indictment in view of responsibility aspects and acts that the Accused Lazarević is charged with as well as the standard which is, according to here mentioned sources, indispensable to achieve in order to consider some thesis proved, beyond a reasonable doubt.
4. The defence shall make the comparative analysis of the most relevant admitted written statements, material evidences and oral testimonies in the objective procedure. First of all, the focus of this analysis shall be directed to relevant legal facts that process the topic of the crime base and whereby the defence shall, through discussion and coping with presented evidences, show to the Trial Chamber that the prosecution did not prove beyond a reasonable doubt any single thesis, when it comes to the Accused Lazarević and the units, being under his command or control. This conclusion shall be explained in the chapter VI of this Defence Final Brief.
5. The analysis of the Joint Criminal Enterprise shall, in terms of the subject, follow the line, established by the Prosecution Pre-Trial Brief and within, the defence shall point at major number of evidences that indisputably show that the prosecution did not, beyond a reasonable doubt, prove a single thesis when it comes to the matter of the Accused Lazarević and his alleged participation in JCE.
6. Further on, in the resuming form, and which does not deprive this analysis of its complete meaning at all, the defence shall look back to the responsibility pursuant to article 7 (1) and 7 (3) of the Statute. In this part, the defence shall indicate some of the evidences and at the same time, refer to many other, already analyzed in previous chapters, by which it will show that the

prosecution did not, beyond reasonable doubt, prove that the Accused Lazarević is responsible, neither pursuant to article 7 (1) or pursuant to article 7 (3) of the Statute for the acts he is charged with by the indictment.

7. The last part of the analysis shall be dedicated to the matters of sentencing.

## II THE CRIMES ALLEGED IN THE INDICTMENT

8. Pursuant to the Third Amended Joinder Indictment, dated the 21 June 2006, the Accused was charged with:

**Count 1:** Deportation, a **CRIME AGAINST HUMANITY**, punishable under Article 5(d) of the Statute of the Tribunal.

**Count 2:** Other Inhumane Acts (Forcible Transfer), a **CRIME AGAINST HUMANITY**, punishable under Article 5(i) of the Statute of the Tribunal.

**Count 3:** Murder, a **CRIME AGAINST HUMANITY**, punishable under Article 5(a) of the Statute of the Tribunal.

**Count 4:** Murder, a **VIOLATION OF THE LAWS OR CUSTOMS OF WAR**, punishable under Article 3 of the Statute of the Tribunal and recognised by Article 3(1)(a) (murder) of the Geneva Conventions.

**Count 5:** Persecutions on political, racial and religious grounds, a **CRIME AGAINST HUMANITY**, punishable under Article 5(h) of the Statute of the Tribunal.

9. Pursuant to the Indictment the Accused is individually responsible for the crimes alleged against him under Articles 3, 5 and 7 of the Statute of the Tribunal.<sup>1</sup>

10. The Prosecutor charges the Accused that he planned, instigated, ordered, committed, or otherwise aided and abetted in the planning, preparation, or execution of these crimes. For the modes of liability of planning, instigating or ordering the crimes charged, the Indictments states that the accused acted with the awareness of the substantial likelihood that the crimes would be committed in the execution of the plan, order or instigation. For the mode of liability of aiding and abetting, the Indictments states that the accused acted with the knowledge that the acts performed would assist in the commission of the crimes.<sup>2</sup>

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<sup>1</sup> Prosecutor v. Milutinovic et al. (IT-05-87-T), "Third Amended Joinder Indictment" dated 21 June 2006, para. 16

<sup>2</sup> Ibid. para. 17

11. Pursuant to the Indictment the crimes enumerated in Counts 1 to 5 of this Indictment were within the object of the joint criminal enterprise and the accused shared the intent with the other co-perpetrators that these crimes be perpetrated. Alternatively, the crimes enumerated in Counts 3 to 5 were natural and foreseeable consequences of the joint criminal enterprise and the accused were aware that such crimes were the possible consequence of the execution of that enterprise.<sup>3</sup>
12. The Prosecution holds that despite his awareness of the foreseeable consequences, the Accused, decided to participate in the joint criminal enterprise. Pursuant to the Indictment the Accused and other participants in the joint criminal enterprise further shared the intent and state of mind required for the commission of each of the crimes charged in counts 1 to 5. According to the Indictment, on this basis, under Article 7(1) of the Statute, the accused bears individual criminal responsibility for the crimes alleged in Counts 1 to 5.<sup>4</sup>
13. Furthermore, the Indictment holds that the Accused while holding positions of superior authority, is also individually criminally responsible for the acts or omissions of his subordinates, pursuant to Article 7(3) of the Statute of the Tribunal for the crimes alleged in Counts 1 to 5 of this indictment.<sup>5</sup>

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<sup>3</sup> Ibid.para.21

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.para22

### III STANDARD OF PROOF

14. The widely accepted case law, although not expressly established by the Statute of the International Criminal Tribunal for the Former Yugoslavia (hereinafter: "Statute") and Rules of Procedure and Evidence (Rules) has upheld that the burden of proof, in cases processed before the Tribunal, rests on the Prosecution.<sup>6</sup>

15. Roman Statute of the International Criminal Tribunal (hereinafter "ICC Statute"), especially in its article 66 (*Presumption of innocence*) clearly states that:

**1. Everyone shall be presumed innocent until proved guilty before the court in accordance with the applicable law**

**2. The onus is on the Prosecutor to prove the guilt of the accused**

**3. In order to convict the accused, the Court must be convinced of the guilt of the accused beyond reasonable doubt.**

16. Another provision of ICC Statute as a source of international law, as per defense opinion, represents significant provision in principle of legality. It is incorporated in many criminal laws and even in regulations of former Yugoslavia and precisely frames the case of proof. Article 74 (2) (Requirements for the Decision) of the ICC Statute says:

**"The Trial Chamber's decision shall be based on its evaluation of the evidence and the entire proceedings. The decision shall not exceed the facts and circumstances described in the charges and any amendments to the charges. The Court may base its decision only on evidence submitted and discussed before it at the trial. "**

17. The Statute foresees the presumption of innocence of the accused until proved guilty:<sup>7</sup>

"The accused shall be presumed innocent until proved guilty according to the provisions of the present Statute."

<sup>6</sup> Prosecutor v. Delalic et al. (IT-96-21-T), Judgment dated 16 November 1998, para. 599

<sup>7</sup> The Statute of the International Criminal Tribunal for the Former Yugoslavia, Article 21 (3)

The Trial Chambers of the Tribunal have taken more definite positions, using standardized principles, about the standard of proof beyond reasonable doubt.

18. In Celebici Case it is stated the following:<sup>8</sup>

**“In relation to the charges being laid against him, the accused is only required to lead such evidence as would, if believed and uncontradicted, induce a reasonable doubt as to whether his version might not be true, rather than that of the Prosecution. Thus the evidence which he brings should be enough to suggest a reasonable possibility. In any case, at the conclusion of the proceedings, if there is any doubt that the Prosecution has established the case against the accused, the accused is entitled to the benefit of such doubt and, thus, acquittal”**

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<sup>8</sup> Prosecutor v. Delalic et al. (IT-96-21-T), Judgment dated 16 November 1998, para603

#### **IV PRESENTED EVIDENCE**

19. In the course of the trial proceedings which lasted for two years, 235 witnesses have given their testimonies before the Trial Chamber. The body of the evidence amounts to around 10 000 exhibits that have been thus far admitted as well as 26 768 pages of trial transcript.
  
20. In its Defence Final Brief, the Defence shall analyze the most important documents and testimonies refuting Prosecution's allegations and at the same time proving its own standings. Other pieces of evidence speak for themselves and unambiguously corroborate the Defence's position. By doing so, the Defence does not wish to diminish either importance or probative value thereof but rather expects from the Trial Chamber to perform, pursuant to its competences and duties, a comprehensive and detailed analysis of all the evidence presented during the trial proceedings.

## V CRIME BASE

### ORAHOVAC MUNICIPALITY

#### 1. Bela Crkva

#### Counts 3-4, para.75 (b)

#### Count 5

21. In counts 3, 4 and 5 of the Indictment the Prosecution suggests an incident that allegedly took place in the village of Bela Crkva on 25 March 1999 stating that forces of the FRY and Serbia surrounded and attacked the village and that subsequently murders were committed. The Prosecution heard witnesses Isuf Zhuniqi and Sabri Popaj. Both of the witnesses changed their statements on numerous occasions so their testimonies may not be valued as reliable.
22. Witness Sabri Popaj says that on or about 18 March 1999 both the Army and the Police started digging trenches about 1km above the village of Bela Crkva and that they placed there two anti-aircraft guns.<sup>9</sup> This is refuted by General Bozidar Delić who points out that there was no need for any such trenches to be dug and positions to be fortified at that particular area.<sup>10</sup> The fact that at that time OSCE mission was still active in the area and that no such digging activity was registered by it although the mission closely followed each and every significant movement of army units speaks in favor of the above statement given by General Delić. The OSCE mission accurately marked all areas the VJ forces were stationed in when out of the barracks and it is clear from its records that no positions were occupied near the village of Bela Crkva<sup>11</sup>
23. Prosecution witnesses Isuf Zhuniqi and Sabri Popaj allege that on 25 March 1999, Yugoslav and Serbian forces surrounded and attacked the village of Bela Crkva.<sup>12</sup>
24. Such allegations with respect to the VJ are refuted by three Defence witnesses. General Delić states that the village of Bela Crkva was never surrounded. On 25 March 1999, early in the

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<sup>9</sup> T.5653.

<sup>10</sup> T.19355.

<sup>11</sup> P 2772, p.85, MM9.

<sup>12</sup> P2331, p2, para.3; P2446, p.3, para.1.

morning, about 5 or 6 a.m., he passed through the village on his way to his command post.<sup>13</sup> At about the same time, BG 2/549 also passed through the village marching, moving from the west towards the east, in the direction of Amovac, and the brigade never stopped in the village.<sup>14</sup> General himself stopped shortly in the village just to check if the unit was moving according to the plan and if everything was all right. During these hours spent in that area, forces of the VJ did not conduct any actions and everything was quiet in the village itself.<sup>15</sup> General Delić marked directions of movements of his forces in the area on the map.<sup>16</sup>

25. His words were confirmed by the Defence witness, Colonel Vlatko Vuković. Although the order of the Commander of 549<sup>th</sup> brigade included a task to conduct a search in Bela Crkva for the purpose of destroying the ŠTS in the greater Retimlje area<sup>17</sup> and the task was rewritten in the war log of the 2/549<sup>18</sup>, members of the unit, headed by Colonel Vuković, never conducted any search of the village. Witness Vuković pointed out that forces under his command passed through the village of Bela Crkva some time between 5.00 and 5.30 a.m.<sup>19</sup> and that they passed riding on vehicles, taking no actions and having no contact with civilian population whatsoever.<sup>20</sup> The 23<sup>rd</sup> detachment of the PJP MUP (police unit) was already in the village and while the army units were passing through the village everything was peaceful and quiet.<sup>21</sup> He outlined directions of his forces' movements on the maps.<sup>22</sup>

26. (REDACTED) also confirms the statements given by General Delić and Colonel Vuković, stressing that early that morning he passed through the village in a vehicle, (REDACTED) and that everything was quiet in the village and that he himself took part in no actions there.<sup>23</sup>

27. Isuf Zhuniqui said that on 25 March 1999, 12 tanks (there were no other vehicles) came from the direction of Orahovac, entered Bela Crkva and came to a standstill near the mosque which was

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<sup>13</sup> T.19354-19355.

<sup>14</sup> T.19355.

<sup>15</sup> T.19355.

<sup>16</sup> IC150.

<sup>17</sup> P1981 count.5.5.

<sup>18</sup> P2019.

<sup>19</sup> 5D1401, para.22.

<sup>20</sup> 5D1401, para.23.

<sup>21</sup> 5D1401, para.21.

<sup>22</sup> IC 175, IC176 i IC177.

<sup>23</sup> T.20199-T.20200.

only 50m from his house, which he marked on the exhibit IC 53.<sup>24</sup> Isuf Zhuniqi, however, changes his statement during testimony alleging that the tanks left the village only to return again whereupon he went to the Belaj River and railroad bridge<sup>25</sup>, although in his statement he never mentioned return of the tanks.<sup>26</sup>

28. However, the other Prosecution witness, Sabri Popaj says that early in the morning on 25 March 1999, 5 tanks passed through the village of Bela Crkva and that two of those five tanks entered the schoolyard and remained there until 4 May 1999.<sup>27</sup> The witness actually confused his own testimony since he pointed out that five tanks came to the village that day and that shortly after he saw all those five tanks leaving.<sup>28</sup>
29. Allegations of the Prosecution witnesses on this issue are in serious collision with respect to the number and direction of movement of tanks and the witnesses themselves keep changing their statements rendering their testimonies absolutely unreliable.
30. Defence witnesses refute allegations of both the above witnesses. Namely, on that morning, the tank platoon of the BG 2/549<sup>th</sup> brigade (the existence of which is confirmed in P01981, item 5.5.) consisted of only three tanks which, just like the rest of the unit, never stopped in the village.<sup>29</sup>
31. In connection to the alleged massacre at the Belaj River, both the above Prosecution witnesses expressly mention police forces only, without any participation of the Army.<sup>30</sup> That the Army was at a considerable distance from the place and could not have had any knowledge of or insight in the massacre is obvious from the combat documents of the 549<sup>th</sup> brigade<sup>31</sup>, and from the testimony given by Defence witnesses General Delić who also outlined directions of movements

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<sup>24</sup> T.4101.

<sup>25</sup> T.4111.

<sup>26</sup> P2331.

<sup>27</sup> T.5693.

<sup>28</sup> P2446, p.3, para.1.

<sup>29</sup> 5D1401, para 19-23; Vuković, T21380-21381.

<sup>30</sup> Zhuniqi, T.4102-4103 i P2331, p.3-5; Popaj, T.5657, 5666 i P2446, p.3-4.

<sup>31</sup> P1981 i P1995.

of his troops<sup>32</sup>,(REDACTED) <sup>33,34</sup>,and from the statement given by Colonel Vuković who confirms all the above facts and clearly outlines directions of movements of his forces.<sup>35</sup>

32. The fact that the village of Bela Crkva was actually one of the strongholds of the KLA has been confirmed by both Prosecution and Defence witnesses as well as by numerous documents<sup>36</sup>and statements given by members of the KLA.<sup>37</sup>

33. Prosecution witness General Maisonneuve confirms that the village of Bela Crkva was one of the strongholds of the KLA.<sup>38</sup>In his report to ECMM dated 23.-24 January 1999<sup>39</sup>:in paragraph 2.1.2. it is stated that the burial of an KLA fighter in Bela Crkva was conducted in presence of about 700 members of the KLA.<sup>40</sup>

#### **Count 5, para. 77 (d)**

34. Witness Delić pointed out that members of the Army, with the exception of the morning passage through the village on 25 March 1999,were not present in the village of Bela Crkva and therefore had no knowledge of events related to the mosque.<sup>41</sup>

## **2.Celina**

#### **Count 1, para 72 (a)**

#### **Count 2**

35. In connection to the alleged incidents in the village of Celina, the Trial Chamber has heard testimonies given by the Prosecution witnesses Agim Jemini and Reshit Salihu.

36. In his statement, witness Reshit Salihu says that the village of Celina was surrounded by the forces of the VJ positioned about 500 to 600m away from his position and that they shelled the

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<sup>32</sup> IC150, IC151.

(REDACTED)

(REDACTED)

<sup>35</sup> IC175, IC176, IC177 and IC181.

<sup>36</sup> 5D878, 3D104 count 2.5.

<sup>37</sup> 3D183, 3D122, p.1, para.1 and also 3D97, p.11, para.5. 3D119, p.3; 3D120, p.2.

<sup>38</sup> T.11141.

<sup>39</sup> 3D114.

<sup>40</sup> 3D114, p.1-2.

<sup>41</sup> T.19626.

village almost the whole day<sup>42</sup>. During his testimony, witness Salihu clarified that members of the Army did in fact surround them but did not inflict any damages upon civilian population.<sup>43</sup> Witness Salihu expressly stated that it had been the Police forces that entered the village itself.<sup>44</sup> In his statement the witness says that the village was shelled on 25 March 1999 by the VJ forces and that the shelling lasted for almost the whole day.<sup>45</sup> However, during his testimony, this witness never mentioned participation of the Army in events that took place in the village.<sup>46</sup> He points out that on 26 March 1999, a number of trucks and the police arrived (in blue camouflage outfits) and they ordered them to get on the trucks whereupon they were transported towards Žur in direction of Albania.<sup>47</sup>

37. Defence witnesses General Delić, Colonel Vuković and SD1 refute all the above allegations pointing out that they never surrounded the village, never shelled it and never conducted any search of the village. Colonel Vuković explained that with his unit, BG 2/549, he moved from the direction of Bela Crkva along the Brod-Amovac-Brestovac route when a heavy gunfire was opened from the direction of the village of Celina. The battle with the ŠTS lasted for less than an hour whereupon the ŠTS forces probably fled to the village of Randubrava. The search of the village was conducted by a police unit while the 2/549<sup>th</sup> brigade of the VJ passed through the village at about 10.00 hours.<sup>48</sup> The witness further states that at or about 14.00 hours on that same day he was near the Hočanska River<sup>49</sup> and that he and his unit spent the night in the village of Brinje<sup>50</sup>. (REDACTED)<sup>51, 52</sup> quite far from the village of Celina. (REDACTED) is sure that during the entire day of 25 March 1999, (REDACTED) units never fired a single shot.<sup>53</sup>

38. The above statements of Defence witness Vuković are confirmed by General Delić who further explains that the village of Celina was in fact organized and ready for combat and that it was the venue of a real gun fire exchange at about 7.00 hours. The Police neutralized the activities of the

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<sup>42</sup> P2336 p.2, para.3

<sup>43</sup> T.4209.

<sup>44</sup> T.4205,4206,4212.

<sup>45</sup> P2336,p.2,para.3.

<sup>46</sup> T.4204-4206.

<sup>47</sup> T.4222.

<sup>48</sup> 5D1401,para.27.

<sup>49</sup> 5D1401,para.30.

<sup>50</sup> 5D1401,para.31.

<sup>51</sup> (REDACTED)

(REDACTED) ■

<sup>53</sup> T.20229.

ŠTS in the village and combat activities continued in the direction of Velika Kruša and Randubrava.<sup>54</sup> Forces stationed at Amovac continued activities toward Nogavac, Brestovac and Mala Hoča, and a part of Delić's own forces passed through the village of Celina at about 10.00 hours.<sup>55</sup> After them, the MB-120 platoon also passed through the village without opening fire from the Bela Crkva sector since there was no need to, and went on towards another combat position east of the village of Celina.<sup>56</sup> Delić insists that the units did not stay in the village but continued towards Nogavac, Brestovac and Mala Hoča, in the direction of Retimlje.<sup>57</sup> He marked the dispositions of the units on exhibit IC 150.<sup>58</sup>

39. Defence witness Božidar Delić points out that the units did not shell the village of Celina. He states that the fire support was provided above the village of Celina where the terrorist trenches were located. The fire was aimed at the positions of the ŠTS forces, above the village, so no damage was inflicted upon the village houses.<sup>59</sup> Shelling of the village would have also been illogical since the police forces were stationed there and, for a time, an army unit, i.e. MB 120mm platoon, was also in the village.
40. In addition to statements given by the Defence witnesses, an analysis given by General Delić<sup>60</sup> clearly shows that statement of witness Jemini on the alleged two-day stay of the Army in Celina is not true. Namely, on 25 March 1999, the Army passed through Bela Crkva and then partly through Celina only to get to the village of Retimlje that same day.<sup>61</sup>
41. Agim Jemini's allegation that he recognized some of the soldiers from Orahovac aged between 30 and 40<sup>62</sup>, was refuted by General Delić pointing out that there had never been any units of the VJ in Orahovac and therefore no garrison or barracks either and, regarding the age of the troops

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<sup>54</sup> T.19363.

<sup>55</sup> T.19363-19364.

<sup>56</sup> T.19364.

<sup>57</sup> Ibid.

<sup>58</sup> T.19369.

<sup>59</sup> T.19363.

<sup>60</sup> P1995.

<sup>61</sup> Delić, T.19365 and P1995.

<sup>62</sup> T.4277.

he says that his soldiers were actually recruits serving the mandatory military duty and they were all 20 to 21 years of age.<sup>63</sup>

42. Witness Jemini is also unreliable in his description of uniforms. He said that the Army members had been wearing green-brown uniforms<sup>64</sup>. During his testimony, however, he gives an entirely different description of the uniforms, insisting that the troops were wearing blue camouflage uniforms with cartridges of different colors.<sup>65</sup> Obviously, this witness is not to be trusted since none of the mentioned uniforms was worn by the Army. As General Delić points out, all soldiers in his brigade wore uniforms M-89, and military police wore the M-94, camouflage uniforms of greenish color.<sup>66</sup>

43. Based on the pictures contributed by the Prosecution witness Jemini<sup>67</sup>, it is obvious that most of the houses in the village sustained no damage.

44. As already mentioned, the army formations passed through Celina on 25 March and not a single member of the Army was in the village on 26 March 1999.<sup>68</sup>

### **Count 5, para 77(d)**

45. Prosecution witness Popaj explained the alleged destruction of a mosque in Celina, allegedly committed by police.<sup>69</sup> Undisputedly, however, the Army was nowhere near Celina and its surrounding on either of the said day.<sup>70</sup>

### **3. Nogavac**

#### **Count 1, paras 72 (a) (i)**

#### **Count 2**

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<sup>63</sup> T.19368.

<sup>64</sup> P2338, p.2, para.4.

<sup>65</sup> T.4233.

<sup>66</sup> T.19367-19368.

<sup>67</sup> IC58,59,60,62,63.

<sup>68</sup> 5D1401, para.27; SD 1, T.20230; Delić, T.19364, 19369.

<sup>69</sup> P2446, p.11, para.4-5.

<sup>70</sup> P1995, P2019.

46. Ali Hoti and Isuf Zhuniqi were the Prosecution witnesses testifying about events in the village of Nogavac.
47. None of the witnesses noticed any presence of the Army in the village but still, they alleged that at 2.00 hours in the morning on 2 April 1999 Yugoslav warplanes had bombed the village of Nogavac, and they were sure those had not been NATO warplanes.<sup>71</sup> It was pointed out that later on, pieces of a bomb with Cyrillic signs were found.<sup>72</sup>
48. These allegations have been absolutely refuted by Defence witnesses. General Božidar Delić confuted the Prosecution witnesses pointing out that Nogavac had, indeed, been bombed that night but by the NATO aviation. NATO had absolute superiority over the airspace effectively preventing any attempt of the VJ warplanes to even leave the ground.<sup>73</sup>
49. The video material recorded after the Nogavac air raid<sup>74</sup>, during a field investigation, shows a piece of the bomb General Delić identified as an antiradar bomb HARM used only by NATO forces.<sup>75</sup> The video recording clearly shows the signs on the bomb undoubtedly pointing to its origin. General Delić explains that early in the morning on 2 April, NATO warplanes bombed houses in the village of Nogavac destroying several houses in the process and killing numerous civilians while the people who were wounded that night were taken to and treated in the Prizren hospital.<sup>76</sup> On the very next day, members of the police force from the SUP Prizren conducted an onsite investigation and established the facts of the incident.<sup>77</sup>
50. Defence witness 6D-2 corroborates the above statement. He states that on 2 April 1999, during the investigation conducted by the OKP Prizren in the village of Nogavac, 11 dead people were found, all of them victims of the NATO bombing.<sup>78</sup>

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<sup>71</sup> Zhuniqi, T.4121; Hoti, T.4153.

<sup>72</sup> T.4122.

<sup>73</sup> T.19383.

<sup>74</sup> 5D1242,4.clip -Nogavac

<sup>75</sup> T.19386.

<sup>76</sup> T.19384.

<sup>77</sup> T.19384.

<sup>78</sup> 6D1631, para.61.

51. The third Defence witness, General Spasoje Smiljanić, commander of the VJ air force also confirms the above statements offering the same arguments as General Delić with respect to the origin of the bomb and the fact that the VJ aircrafts never flew<sup>79</sup>.

52. For all the above reasons, the Trial Chamber must find that the incident in Nogavac on 2 April 1999 was created by a NATO air raid causing numerous deaths, damaging numerous houses and eventually leading to migration of civilian population.

#### **4. Velika Kruša and Mala Kruša**

**Count 1, para 72 (a)(i)**

**Count 2;**

**Counts 3-4, para 75(c);**

**Count 5**

53. Ali Hoti gave his testimony as a Prosecution witness with respect to alleged events in the village of Velika Kruša and Mehmet Avdyli-Krasniqi, Lufti Ramadani, witness (REDACTED) and John Sweeney testified about alleged events in the village of Mala Kruša.

54. Witnesses Hoti, Avdyli-Krasniqi and Ramadani say that the above villages were surrounded with tanks in the morning of 25 March 1999<sup>80</sup>. Defence witness General Delić dismisses the allegations pointing out that the forces of the VJ did not surround the villages but were passing by, using the main highway while only the MUP (Police) forces passed through the villages Velika and Mala Kruša en route to Randubrava.<sup>81</sup> The fact that the Army did not pass through the village was confirmed by the Prosecution's own witness Lufti Ramadani who states that the Army had remained along the asphalt road while the Police entered the village<sup>82</sup>; the same was confirmed by another Prosecution witness, K25, member of the Police force.<sup>83</sup>

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<sup>79</sup> T.15759,15760.

<sup>80</sup> Hoti, T.4142; Avdyli-Krasniqi, T.4372; Ramadani, T.4284-4285.

<sup>81</sup> T.19371.

<sup>82</sup> T.4285.

<sup>83</sup> T.4673.

55. The only time any member of the Army passed through the village using the main road on 25 March was on or about 19.00 hours when General Delić himself passed through a part of Velika Kruša, in order to provide assistance to personnel of an overturned police transporter.<sup>84</sup>
56. General Delić points out that on 25 March 1999 fire was opened on several occasions on the forces of the VJ and the Police from the villages of Velika and Mala Kruša<sup>85</sup> This was confirmed by Prosecution witness (REDACTED)<sup>86</sup>. Witness (REDACTED) points out that his police officers captured 6 members of the KLA in some houses near the main road in the morning of 25 March 1999.<sup>87</sup>
57. Ali Hoti's allegation that the village of Velika Kruša was shelled on 25 March 1999 until 16.00 hundred hours has been confuted even by Prosecution's own witnesses. Witness (REDACTED) clearly points out that the Army never fired a shot or used artillery on Velika and Mala Kruša.<sup>88</sup>
58. Ali Hoti clearly shows his bias and partiality when he states that the KLA was never present in Velika Kruša, and that the KLA members were only stationed in the inner villages, Semetište, Samodreža and Drenoc, of the Mališevo area<sup>89</sup>.
59. The above statement of witness Ali Hoti, that there were no members of the KLA in Velika Kruša<sup>90</sup>, has been refuted by Defence as well as by Prosecution witnesses. General Delić states that ever since January 1999 Velika Kruša among other places, had been under control of terrorist forces.<sup>91</sup> His statement is backed by the exhibit 3D00098 and other documents.<sup>92</sup> For these reasons witness Ali Hoti should certainly be deemed unreliable.
60. Witness Lufti Ramadani attempted to change his own statement—he tried to amend his previously given statement that the Army had never used artillery<sup>93</sup> during his testimony,<sup>94</sup> and later on, he

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<sup>84</sup> T.19375-19376.

<sup>85</sup> T.19372.

<sup>86</sup> P2365,p.13,para.11.

<sup>87</sup> P2365,p.13,para.3.

<sup>88</sup> T.4716-4717.

<sup>89</sup> T.4174.

<sup>90</sup> T.4173.

<sup>91</sup> T.19367.

<sup>92</sup> 5D887,count 1 and 3D113,para.1.1.,2.3.5.

<sup>93</sup> (REDACTED) *Transcript from the Milošević case*, T. 6721; 6D82,p.4,para. 1.

<sup>94</sup> T.4343.

corrected even that new allegation of his<sup>95</sup>. He gave controversial statements on another issue as well, stating, at first, that there had been no Army and then again giving a statement to the opposite,<sup>96</sup> as noted by the honorable Presiding Judge of the Trial Chamber.<sup>97</sup> After that, he again corrected his own statement.<sup>98</sup> All the above is a clear illustration of credibility of the witness.

61. Mehmet Avdyli-Krasniqi and Lufti Ramadani point to the alleged incident which, allegedly took place on 26 March 1999 in Mala Kruša, saying that a number of local civilians (women and children) had been previously ordered to leave toward Albania<sup>99</sup>, and that, later on, 105 Albanian men were killed. Both of them pointed out that the perpetrators had been wearing blue, Police uniforms.<sup>100</sup> and then they singled out some local Serbs – criminals as perpetrators, participants in the alleged incident stating even their names.<sup>101</sup>
62. The fact that the Army was not in the villages of Velika and Mala Kruša on 26 March 1999 as well, was clearly elaborated by General Delić. Namely, the forces of the blockade remained along the main highway outside the village and the forces that went on a mission toward Retimlje, spent the night between 25 and 26 March 1999 at a considerable distance north of the villages of Velika and Mala Kruša in the direction of Retimlje, which General Delić explained and marked on the map IC 151<sup>102</sup>, whereupon, on 26 March 1999, the forces on the move continued moving in the opposite direction – to the north, in the direction of Retimlje which was their task objective. The General further says that on 26 March 1999 he was at Krasta, his commanding post, some 5-6km far from Mala Kruša and in the opposite direction, on the Orahovac-Suva Reka highway.<sup>103</sup> General Delić says that the first time he ever heard about this crime was in the year of 2000 when he was summoned by General Pavković.<sup>104</sup>

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<sup>95</sup> T.4344.

<sup>96</sup> T.4332.

<sup>97</sup> T.4332.

<sup>98</sup> T.4334.

<sup>99</sup> Avdyli-Krasniqi, T.4394; Ramadani, T.4294.

<sup>100</sup> Avdyli-Krasniqi, T.4291; Ramadani T.4373.

<sup>101</sup> Avdyli-Krasniqi, 6D89, p.2-3; Ramadani, T.4325 and P2357, p.4.

<sup>102</sup> T.19370-19374; T.19378-19379.

<sup>103</sup> T.19378-19379.

<sup>104</sup> T.19378.

**Count 5, para 77 (d)**

63. The expert report of the Prosecution expert witness Riedlmayer states that the mosque in Velika Kruša was destroyed on 3 April 1999.<sup>105</sup> However, in his testimony, the witness “in charge of” Velika Kruša, Ali Hoti, never stated that the mosque in the village had been destroyed. For that reason, and for other reasons of general nature, the findings of the expert witness Riedlmayer may not be accepted.

**Greater Orahovac Area**

64. The Trial Chamber has heard a testimony given by Prosecution witnesses (REDACTED) and (REDACTED) about alleged events in the Greater Orahovac Area.

65. Witness (REDACTED) is deemed unreliable for numerous reasons. (REDACTED) alleges that in the morning of 24 March 1999 Major Vuković addressed his troops and told them that not a single Albanian ear may remain in Kosovo and that all personal documents were to be destroyed in order to prevent them from coming back.<sup>106</sup> Witness (REDACTED) himself changes this statement of his during his testimony admitting that the speech may have actually referred to the terrorists.<sup>107</sup>

66. The above allegation was clearly refuted by (REDACTED) Vuković<sup>108</sup>. (REDACTED) proves that the allegation is simply impossible, by explaining that Major Vuković commanded and issued orders only to his subordinated officers and not directly to the troops since the hierarchy in the Army is quite clear and there existed three commanding levels between Major Vuković and common privates.<sup>109</sup> (REDACTED) further points out that Major Vuković could have never said something like that, in fact, such an idea would never even cross his mind, let alone come out of his mouth.<sup>110</sup> (REDACTED) also states that his troops never had any contacts with civilians and no unlawful orders were ever issued to them and, taking full responsibility for his words, he states that they never checked or destroyed any personal documents belonging to civilian

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<sup>105</sup> P1789, p.51-52.

<sup>106</sup> T.9124.

<sup>107</sup> T.9179.

<sup>108</sup> T.21330-21331.

<sup>109</sup> (REDACTED)

<sup>110</sup> (REDACTED)

population.<sup>111</sup>In addition,Prosecution witness (REDACTED) , points out that Major Vuković never ordered persecution of civilians.<sup>112</sup>

67. Allegations of (REDACTED) that, at the beginning of bombardment in 1999,during activities around Orahovac he witnessed killings,<sup>113</sup>that corpses were transported following orders issued by a superior officer<sup>114</sup> to the Obilić electric plant<sup>115</sup>are completely unfounded<sup>116</sup>(REDACTED)<sup>117</sup>.(REDACTED) is categorical in his statement that the above never happened and that there were no even technical means for such an activity.<sup>118</sup>

68. Witness (REDACTED) could not pinpoint a single concrete place of any alleged killing or other similar incident.<sup>119</sup>Witness (REDACTED) expressly states that the alleged killings took place in the area of Oragovac in mid April.<sup>120</sup> (REDACTED) Colonel Vuković deny the allegation,pointing out that this particular formation of the VJ returned to the region of the village of Žub by 3 April 1999 and that later on,the unit never moved in the direction of Orahovac.<sup>121</sup>This is confirmed by the unit's own documents.<sup>122</sup>

69. Witness (REDACTED) is adamant in his allegation that in June,1998 when he joined the unit, he found there Second Lieutenant Dejanović and Major Vukovića, who were already with the unit.<sup>123</sup>

70. (REDACTED).<sup>124</sup> <sup>125</sup>

71. Witness (REDACTED) was convicted by a court of law in (REDACTED) for the criminal offence of illegal(REDACTED) .<sup>126</sup>In her statement given to the Police of (REDACTED) spouse

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(REDACTED)

<sup>112</sup> T.9273.

<sup>113</sup> T.9143;

<sup>114</sup> T.9149;

<sup>115</sup> T.9208.

<sup>116</sup>(REDACTED)

(REDACTED)

(REDACTED) █

<sup>119</sup> T.9145,9174-9175,9208.

<sup>120</sup> T.9177.

<sup>121</sup> (REDACTED) .

<sup>122</sup> (REDACTED),P2019.

<sup>123</sup> T.9165.

<sup>124</sup> (REDACTED)

(REDACTED)

admits that they lied about alleged threats and says that her husband decided to testify so that the two of them could get necessary entry visas and seek employment in the (REDACTED).<sup>127</sup>

72. The Trial Chamber must dismiss the testimony of the witness (REDACTED) in its entirety as unfounded and unreliable.

73. Witness (REDACTED) points out that the Army behaved differently than the Police and that members of the Army were arrested if there was any knowledge of their involvement in looting.<sup>128</sup> (REDACTED) confirms that the VJ and its members conducted professionally in every respect during their stay in the territory.<sup>129</sup>

### **Summary submission for Orahovac municipality**

74. All the presented evidence singled out above by the Defence speak in favor of legal conduct of the units of the VJ under command and control of General Lazrević in the course of performing their legitimate tasks in the fight against terrorist forces in the outlined territory. Escalation of Albanian separatism, terrorism and armed rebellion during the subject time and within the subject area has been confirmed by numerous statements and documents admitted as exhibits in this trial procedure.

75. Among numerous other documents, a report of the 549<sup>th</sup> mtbr dated 15 February 1999 also speaks about escalation of the armed rebellion.<sup>130</sup> It is clear from the document that the territory between Prizren-Suva Reka and Orahovac had fallen under full control of the terrorist forces and that the headquarters of the 124<sup>th</sup> brigade of the KLA was stationed in G.Retimlje. An order of the KLA, Operational zone Pastrok, dated 24 February 1999 unequivocally confirms the effective control the KLA had over the area of the villages Celina, Nogavac, Mala Hoca, Brestovac.<sup>131</sup> Prosecution witness Maisonneuve confirms he was aware of the presence of the KLA in Bela Crkva.<sup>132</sup> Presence of the 124<sup>th</sup> brigade of the KLA in the territory of the Orahovac Municipality was also

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<sup>126</sup> K89, T.9189-9190.

<sup>127</sup> 5D110.

<sup>128</sup> T.9728; 6D180, para.36.

<sup>129</sup> T.9728.

<sup>130</sup> 5D878.

<sup>131</sup> 6D77.

<sup>132</sup> T.11141.

confirmed by Prosecution witness Bislim Zirapi.<sup>133</sup> In addition, the map this witness sketched, clearly shows that the said area was under control of the KLA.<sup>134</sup> Documents of the observation missions<sup>135</sup> as well as documents of the Yugoslav Army speak about a major concentration of forces and preparation for the spring offensive of the KLA through mobilization<sup>136</sup>, preparation of actions<sup>137</sup>, digging of trenches and fortifying positions in the wider region.<sup>138</sup> Forces of the KLA in the region of the Orahovac Municipality consisted of thousands of fighters attacking civilians, the VJ and the MUP forces during the war<sup>139</sup>

76. The evidence presented clearly indicate that the relation between the VJ and the MUP was that of coordination, support but in no way of re-subordination. Such a conclusion may be drawn beyond any doubt based on numerous admitted statements, both verbal and written, as well as based on material evidence. Thus, for instance, an order issued to the 549<sup>th</sup> mtbr to destroy STS in the region of the village of Retimlje and to deblock the communication route Suva Reka-Orahovac, dated 23 March 1999, shows that it was about anti-terrorist action of providing support to the MUP forces in deblocking communication routes at area for the purpose of possession of more favorable defence positions.<sup>140</sup> Furthermore, this particular order shows that the tasks were given only to the units of the VJ and such tasks were to be accomplished with support of the units of the PJP. The Defence points to the fact that in this particular order it is stated that the 549<sup>th</sup> mtbr with part of its forces supported by the 37<sup>th</sup> unit of the PJP Niš, is to deblock the communication<sup>141</sup>, although the subsequent situation in the field proved to be different, as explained by witness (REDACTED). In his statement he says that in fact the 23<sup>rd</sup> detachment of the PJP was actually sent to the field and the VJ provided support to that unit<sup>142</sup>.

77. Therefore, it is clear that the actions of the VJ and the MUP were approved by separate commands of the VJ and MUP respectively. Further to the point, it is also clear from the

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<sup>133</sup> T.5993.

<sup>134</sup> P2447.

<sup>135</sup> 3D114,3D113.

<sup>136</sup> 3D1040 count 2.2.

<sup>137</sup> 3D1041 count 2.5.

<sup>138</sup> 3D1050 count 2.1.

<sup>139</sup> P1995, and see also e.g. 6D614, p.529 - count 47, p.531 - count 53, p.532 - count 56, p.554 - count 137, p.579 - count 44, p.580 - count 50.

<sup>140</sup> P1981.

<sup>141</sup> P1981, para.2.

<sup>142</sup> P2365.

statement given by witness (REDACTED) that units of the MUP independently planned their own actions. Namely, the witness says that members of his own detachment received from their commander Josipović maps with instructions precisely outlining the routes of their movement. Also, he says that the detachment commander Josipović had visited the SUP Prizren the day before where he was briefed on the role of the 23<sup>rd</sup> detachment of the PJP in the action. The said maps included written instructions on movements of all the companies. This witness further states that Lieutenant Petrov, the company commander of the 23<sup>rd</sup> detachment of the PJP also received a plan of the entire action and that he had attended a meeting held at the SUP headquarters in Djakovica the day before. In his statement, witness (REDACTED) points out that all units of the MUP deployed in Kosovo were under command of the commanding post of the MUP in Pristina. In his statement, the witness also says that when actions were to be taken, the MUP headquarters decided on deployment of units of the MUP forces.

78. In his statement, this witness says that from his experience he knows that there was never a situation when the VJ would issue orders to the MUP and that there was too much of a rivalry and mistrust between the two organizations to allow for such a possibility. He also says that the MUP forces had the principal role in field actions taken in the fight against the OVK while the primary task of the VJ forces was to take positions and deploy units in case of possible NATO ground invasion.<sup>143</sup>

79. There were battles with terrorist forces and later on 25<sup>th</sup> oktobr had taken up defence positions in order to defend the country from aggression.<sup>144</sup> This unit's own documents confirm that battles were waged with terrorist forces even after March 1999.<sup>145</sup>

80. Testimonies and admitted documents clearly illustrate humane treatment of civilian population practiced by the members and units of the VJ.<sup>146</sup> On 26 March 1999, Colonel Vuković, upon receiving information that a group of civilians was stuck in the zone of combat activities, immediately took steps to safely evacuate the civilians from the zone in an effort to protect

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<sup>143</sup> Ibid.

<sup>144</sup> 5D966.

<sup>145</sup> 5D969 and 5D970, 5D1391, para31.

<sup>146</sup> 5D888, 5D897.

them.<sup>147</sup> Prosecution witness (REDACTED) says that conduct of the Army toward civilian population was fully professional.<sup>148</sup>

81. Numerous documents of the 252<sup>nd</sup> VJ brigade, which was deployed later on in the area, speak about active and prompt measures taken for the purpose of protection of civilian life and health. In his testimony, General Mandić, commander of the 252<sup>nd</sup> brigade of the VJ, states that members of his unit created conditions for sheltering civilian population pursuant to the orders received from the PrK Command<sup>149</sup>, persuading the locals to return to their homes and offering full support in the process, as well as providing other forms of humanitarian aid.<sup>150</sup>

82. Item 4 of a report of the 252<sup>nd</sup> brigade of the VJ sent to the PrK Command on 24 April 1999 states that “civilians in the region of brigade’s responsibility are fully protected”. Further on, under the same item it is stated that “measures are actively taken and implemented for the purpose of protection of life and health of civilians as well as measures foreseen by International humanitarian law...”<sup>151</sup> In a report of the 252<sup>nd</sup> brigade of the VJ, item 1, dated 20 April 1999 it is stated that “In the region of MAD sheltering of refugees commenced at about 19.00 hours (mothers with children and elderly persons of Albanian ethnicity from the village of Jović were transported in numerous round-trips by 2 vehicles and 1 bus. They were given food – soldier rations and part of the package of v/o MAD (food)...”<sup>152</sup>

83. The Trial Chamber must find that the Prosecution failed to prove beyond a reasonable doubt that members of the VJ under command or control of General Lazarević participated in or had knowledge of any crimes committed in the area of the Orahovac Municipality as charged in the Indictment.

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<sup>147</sup> 5D1401, para 32.

<sup>148</sup> T.9728.

<sup>149</sup> P1306.

<sup>150</sup> Mandić, T.20895-20900 and 5D963, 5D964, 5D965, 5D973, 5D974.

<sup>151</sup> 5D1071.

<sup>152</sup> 5D1072.

## PRIZREN MUNICIPALITY

### Pirane

#### Count 1, Para 72 (b)

#### Count 2

84. Prosecution witness Rahim Latifi testified in connection with an alleged incident in the village of Pirane. He says that on 25 March 1999,<sup>153</sup> a military convoy left in the Pirane-Reti direction and that police forces torched village houses,<sup>154</sup> He points out that the village had an organized group in charge of evacuations.<sup>155</sup>
85. General Delić dismisses the above allegations by pointing out that army units never surrounded or shelled the village. Army units were on the main highway heading toward the villages of Zojić and Medvedce and, partially, toward Randubrava.<sup>156</sup> The army units were fired upon from a northern part of the village and the mosque was not damaged on that day.<sup>157</sup> Upon neutralizing of the ŠTS located at the outskirts of the village, the VJ units continued towards Randubrava, Donje Retimlje and Medvedica.<sup>158</sup>
86. Prosecution witness Latifi himself refutes allegations from the Indictment that the village was shelled and a number of villagers killed.<sup>159</sup> Witness Latifi namely says that nobody was killed and that nothing was damaged by the shelling.<sup>160</sup>
87. Village Pirane was a KLA stronghold<sup>161</sup>.<sup>162</sup> Numerous documents from various sources confirm abductions of people, attacks on the main road and expulsion of civilians committed by the ŠTS  
<sup>163</sup> <sup>164</sup>

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<sup>153</sup> T.4960;T.4962.

<sup>154</sup> P2381,p.2,last paragraph.

<sup>155</sup> P2381,p.2,last paragraph.

<sup>156</sup> T.19373.

<sup>157</sup> T.19373.

<sup>158</sup> T.19374, T.19379; IC151.

<sup>159</sup> P2381,p.2.

<sup>160</sup> P2381,p.2,last paragraph.

<sup>161</sup> 3D1048count 2.6

<sup>162</sup> T.19373.

88. Witness Delic points out that there were no artillery units positioned in the village of Donja Srbica is also clearly evident from the brigade's own documents.<sup>165</sup>

89. General Delić points out that the villages of Randubrava, Donje Retimlje (Gorane) and Retimlje were freed from terrorists as early as 26 March 1999. There were no civilians living in any of those villages. All of the villages were well fortified for combat activities and the command of the 124<sup>th</sup> brigade of the KLA was stationed in Retimlje.<sup>166, 167</sup>

## **Town of Prizren**

### **Count 1, Para 72(b)**

#### **Count 2**

90. In para 72 (b) of the Indictment, the Prosecution alleges that in the town of Prizren itself, from 28 March on, forces of the FRY and Serbia committed crimes. However, not a single witness has been called to testify to that effect in connection with the town of Prizren. Prosecution has called R. Krasniqi and H. Krueziu to testify about an alleged incident in the village of Dusanovo on 28 March 1999.<sup>168, 169, 170, 171</sup>

91. The allegations of these witnesses are clearly refuted by General Delic who states that the army never conducted any search of the village and neither were any tanks of the VJ ever stationed there. Forces of the VJ were engaged in the borderline zone and, partially only, in execution of an antiterrorist operation in the area of Mališevo<sup>172</sup>, whereupon those units, too, were withdrawn to the state border zone.<sup>173</sup> Forces of the VJ had only 31 tanks deployed in the area, two malfunctioning ones were left near the village of Landovica and the rest were engaged in

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<sup>163</sup> 3D137count 5;3D138count 2.2., 3D139, 3D140, 3D141.

<sup>164</sup> 3D1048,count 2.6

<sup>165</sup> P2576

<sup>166</sup> T.19347.

<sup>167</sup> 3D1044 count 2.2.;3D1048count2.5

<sup>168</sup> P2378, Krueziu;P2514.

<sup>169</sup> P2378, para3

<sup>170</sup> T.4938.

<sup>171</sup> P2378page3

<sup>172</sup> P1995,P2002 andP2574.

<sup>173</sup> T.19389.

operations together with the units stationed as explained above.<sup>174</sup> General Delić adds that his unit actually never had any 105mm artillery pieces.<sup>175</sup>

92. Witness Delić explains that the area along the Prizren–Vrbica highway was mined<sup>176</sup> and in order to prevent civilian casualties, soldiers were deployed along the road protecting civilian passers-by.<sup>177</sup> A special order was also issued to that effect.<sup>178</sup> Border crossings and control of persons were within the competence of the police and customs.<sup>179</sup>

### Count 5 , para 77(d)

93. Speaking in connection with alleged destruction of mosques, General Delić refutes charges listed in the Indictment pointing out that—save for the mosque in Landovica which, as explained in the previous paragraph, was a legitimate target, he has no knowledge of any alleged destruction of mosques in the villages of Suva Reka, Celina, Rogovo, Bela Crkva, Brestovac, Velika Kruša, Vlastica and Djakovica.<sup>180</sup>

94. Although the Prosecution did not call any witness in connection to the alleged destruction of a mosque in Landovica<sup>181</sup>, Defence witness Delić explains that on 26 March 1999, only the mosque minaret was damaged since on that day fire was repeatedly opened on members of the VJ from it, killing two soldiers and wounding one.<sup>182</sup>

95. General Delić and Colonel Mitic, who points out that there were more than 30 mosques in Prizren and none of them was destroyed, both agree that no religious objects were ever destroyed intentionally.<sup>183</sup> This is corroborated by General Božidar Delić and a video clip dated 13 June 1999, of the famous Sinanpaša mosque in Prizren.<sup>184</sup>

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<sup>174</sup> P1995;P2002.

<sup>175</sup> T.19390.

<sup>176</sup> T.19306;5D 885 first para.

<sup>177</sup> T.19307.

<sup>178</sup> 5D891.

<sup>179</sup> T.19455;OgnjenovicT.22846

<sup>180</sup> T.19391.

<sup>181</sup> Prosecution Pre trial brief para 47-footnote 113, witness Halil Morina did not testify.

<sup>182</sup> T.19391.

<sup>183</sup> 5D1390 para.59

<sup>184</sup> 5D1242; *Prosecutor v. Milutinović et al, Case IT-05-87-T*, Defence Notice Regarding Exhibit 5D 1242 Delić, 15 January 2008, para.5; Delić, T.19396.

### Ljubizda–firing range

96. In the region of the Prizren Municipality there is a fire range, Ljubizda. Prosecution witness Alji Gjogaj and General Lukic defence witness (REDACTED) gave their testimonies about. Witness Ali Gjogaj speaks about alleged exhumation of a body from dumping ground in the vicinity of the Suva Reka main highway.<sup>185</sup> Witness Gjogaj points out that the alleged exhumation was guarded by the police<sup>186</sup>, and he clearly explains that no members of the military but only members of the police were involved<sup>187</sup>. There is a police station near the firing range.<sup>188</sup> The firing range was an open range without any fences.<sup>189</sup> Witness (REDACTED) too, confirms that the area around the firing range was unsecured and no members of the VJ were present.<sup>190</sup> He did not see any military personnel there throughout the war.<sup>191</sup>

97. The trial Chamber must find that the VJ had nothing to do with any alleged exhumations at the sites of a dumping ground along the Suva Reka highway and Ljubizda. Firing range

### Summary submission for Prizren municipality

98. That the area of the Prizren Municipality was impregnated by terrorist strongholds<sup>192</sup> is confirmed also by Prosecution witness Maisonneuve.<sup>193</sup> In addition to holding bases in the villages, the KLA even imposed a curfew in the territory under its control<sup>194</sup>.

99. In addition to numerous bombardments, region of the Prizren Municipality was also exposed to a ground aggression from the territory of the Republic of Albania, particularly by the end of May, 1999, during the Arrow II operation in the area of Mt. Pastrok<sup>195</sup>. This is conformed by

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<sup>185</sup> P2317p.2

<sup>186</sup> T.3760;IC42.

<sup>187</sup> T.3762-3763;IC43, 6D74, 4D21.

<sup>188</sup> T.3739.

<sup>189</sup> T.3751,P120.

<sup>190</sup> 6D-2,T.25369.

<sup>191</sup> 6D-2,T.25369.

<sup>192</sup> 5D1334

<sup>193</sup> T.11135,11136.

<sup>194</sup> T.11137-11138, P2772–MM 14A

<sup>195</sup> 5D 916,T.19291

Prosecution witness, chief of staff of the KLA, Colonel Zyrapi. He states that he was involved in planning of the actions.<sup>196</sup>

100. Witness Maissonneuve confirms that members of his mission recorded seizure of large quantities of arms from the KLA<sup>197</sup> This witness points out that even before the bombardment, members of the military always conducted professionally.

THE WITNESS: In my experience, Your Honour, yes, the VJ conducted themselves professionally<sup>198</sup>

101. The city of Prizren itself was full of people<sup>199</sup>, bakeries, shops were open for business and so were numerous commercial companies, although they were operating under much more difficult conditions due to bombardment campaigns<sup>200</sup>.

102. Witness soldier-volunteer Gloncak gives examples of aid provided to civilian victims by members of the Yugoslav Army. Thus, near the said village of Pirane, he was involved in aiding residents who fell victim to bombardment in mid April of 1999.<sup>201</sup> On 1 May 1999, the town of Prizren was exposed to massive bombardment.<sup>202</sup> General Delić explains the situation when bombs fell on a town district inhabited by civilians of various nationalities.<sup>203</sup> The video clip shows members of the Yugoslav Army, Civil Defence, police and ordinary citizens rescuing victims.<sup>204</sup> Particularly drastic is the example of civilian casualties caused by NATO bombs near the village of Koriš in mid May of 1999.<sup>205</sup> Witness Glončak, hearing that there were scores of civilian casualties, immediately went to Prizren hospital and gave blood for the wounded.<sup>206</sup>

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<sup>196</sup> T.6230-6231,6236-6237,5D19.

<sup>197</sup> 5D116,

<sup>198</sup> T.11132

<sup>199</sup> 5D1242 9.clip 13-14 06.1999.,T.19396.

<sup>200</sup> 5D1390para58.

<sup>201</sup> 5D1395para7.

<sup>202</sup> 5D1395para9.

<sup>203</sup> T.19321;5D1374;5D911

<sup>204</sup> 5D1374.

<sup>205</sup> T.19317-19318,5D914

<sup>206</sup> 5D1395para 11.

General Delic points out that all blood transfusion reserves kept for the military were given to save the wounded in the attack.<sup>207</sup>

103. Oral testimonies and admitted documents clearly show human conduct of members and units of the VJ toward civilian population. Just one of numerous orders to that effect is the order of the command of the 549 mtbr dated 17 April 1999 ordering measures for sheltering and protection of civilian population.<sup>208</sup> This order, based on an order of the command of the PrK, calls for protection of civilian population, protection of personal property and safety and human conduct in accordance with all regulations of the VJ and provisions of International humanitarian law.<sup>209</sup> The order of the command of the 549<sup>th</sup> mtbr dated 24 April 1999 also contains measures for protection of civilian population.<sup>210</sup>

104. That the army acted exceptionally professionally and humanly is confirmed by Prosecution witness (REDACTED) page 9721 line 12-20

*JUDGE BONOMY: Going back slightly. You told us yesterday, did*

*you not, that in Ljubizda people were moved out and then moved back?*

*THE WITNESS: [Interpretation] Yes.*

*JUDGE BONOMY: You've just answered a question, "do you know that Ljubizda was never moved out," by saying, "yes, I do." Now, what is the position?*

*THE WITNESS: [Interpretation] Because they were sent back by the army, and after that we didn't expel them again.*

*JUDGE BONOMY: Thank you.*

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<sup>207</sup> T.19318

<sup>208</sup> 5D888.

<sup>209</sup> 5D891.

<sup>210</sup> 5D897.

105. General Delić confirms that his units kept sending people back to their homes around Ljubižda.<sup>211</sup>
106. In a document dated 3 April 1999,<sup>212</sup> commander of the 549<sup>th</sup> Brigade of the VJ, Colonel Delić explains reasons of relocation of a number of residents found among refugees. Previously, he states that members of the VJ insisted in their talks with the civilians that they should go back to their respective places of residence but that they were obeyed by only a small number of them while others remained in line waiting to leave the country.<sup>213</sup> Reasons for leaving their homes listed by civilians were:a) fear of the looming major conflicts between the VJ/MUP forces and the NATO and KLA,b) forcible mobilization by the KLA<sup>214</sup>,c) fear of alleged paramilitary units, while pointing out their good relationship with the VJ, d) fear of NATO bombardment. Elsewhere in the document it is stated that about 30% of the Serbs have left the territory as well.<sup>215</sup>
107. That the town of Prizren was full of civilians is clearly evident from a video clip showing arrival of the KFOR units in mid June of 1999.<sup>216</sup>
108. The Trial Chamber must find that the Prosecution has failed to prove beyond a reasonable doubt either involvement or knowledge of members of the army under command or control of General Lazarevic in any alleged incident which has not already been processed, in the area of the Prizren Municipality as charged in the Indictment.

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<sup>211</sup> T.19310.

<sup>212</sup> 5D885,

<sup>213</sup> 5D885 para 2.

<sup>214</sup> Also in 3D1052 count 2.2

<sup>215</sup> 5D885 count 2 para 2

<sup>216</sup> 5D1242-9.clip Prizren 13-14 06.1999.

## SUVA REKA MUNICIPALITY

### Suva Reka

#### Count 1, paragraph 72(c)

#### Count 2,

#### Counts 3 and 4, paragraph 75(d)

#### Count 5

109. Halit Berisha, Hysni Berisha, Shirete Berisha and (REDACTED) testified in connection with alleged incidents in the town of Suva Reka. Almost none of the witnesses mentioned presence of the army in the town of Suva Reka. Witness Halit Berisha points out that he heard from the Elshani family members that they had seen an army vehicle, a “Gazika”<sup>217</sup> in Suva Reka on the occasion of destruction of a mosque. However, witness (REDACTED) explains that police on patrol used that particular type of vehicles<sup>218</sup>. Witness (REDACTED) explicitly states that the army was not present in the town.<sup>219</sup>

110. General Delic also explains that the army was not stationed in the town of Suva Reka pointing out that the only time his forces were there was early in the morning of 25 March 1999 – between 4.00 and 4.30h when a segment of his forces, passed through Suva Reka on their way to Rastani on a mission, and that there was never a garrison in Suva Reka and neither was there ever stationed any army unit. This is confirmed by Colonel Mitic, commander of the Prizren Military District who points out that most of the VTO Suva Reka forces were deployed outside of the town, toward Koriša, while all the town services were kept operational.<sup>220</sup>

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<sup>217</sup> T.3615.

<sup>218</sup> K83,T.3999.

<sup>219</sup> K83,T.3967,T.3998.

<sup>220</sup> 5D1390para.29.

111. In connection with the alleged incidents in Suva Reka and the ordeal of the Berisa family charged in the Indictment, a legal procedure has been already initiated against certain members of the MUP. No one has veer mentioned involvement of members of the VJ in the incidents.<sup>221</sup>

112. The Prosecution has failed to prove, beyond a reasonable doubt, involvement of forces of the VJ under command or control of General Lazarevic in the alleged incidents of deportation, murder, forcible relocation and persecution in Suva Reka.

## **Belanica**

### **Count 1, 72(d)**

### **Count 2**

113. Šefqet Zogaj, Hamide Fondaj and Bislim Zyrapi testified as Prosecution witnesses in connection with an alleged incident in the village of Belanica.

114. Prosecution witnesses, Shefqet Zogaj and Hamide Fondaj allege that on 31 March 1999, a huge number of Albanians escaped into the village of Belanica and that the village was then shelled,whereupon they were forced to leave the village.<sup>222</sup>However,in his testimony,witness Zogaj points out that the shelling was directed toward targets around the village<sup>223</sup>Witness Fondaj says that that they were harassed in Belanica by policemen wearing black uniforms.<sup>224</sup>

115. Witness Krsman Jelić, commander of the 243<sup>rd</sup> brigade of the VJ states that the unit under his command never shelled the village of Belanica or expelled its residents to Albania. He explains that the expulsion allegation is essentially absurd since, if their intention had been to expel the people they would have certainly forced them to move in the opposite direction and not toward their own positions, i.e.,in the same direction they moved on that day.<sup>225</sup> Jelić further points out that the antiterrorist action was carried out for the purpose of unblocking the road leading from the village of Blace,about 1.5-2km away from Belanica, the task assigned to a

<sup>221</sup> 6D93,6D94,6D95,6D1608,6D1609,6D1610.

<sup>222</sup> Zogaj,T.3780;T.3790;Fondaj,T.3828;T.3830.

<sup>223</sup> T.5912.

<sup>224</sup> T.3832.

<sup>225</sup> T.18952.

combat group providing support to the MUP forces while the MUP conducted a search for terrorists who had been involved in the terrorist activities.<sup>226</sup>

116. The defence witness, Lieutenant-Colonel Marinkovic Vladimir, member of the 15th brigade of the VJ asserts that, as his unit came eastern from Mališevo near the village of Banja, in the late March 1999, and which is in the vicinity of the village of Belanica, he saw thousands of gathered civilians, elderly, women and children, among them, quite openly, members of the KLA moved around amongst them. They were armed and wearing uniforms. His unit did not continue to advance and here it stopped. Due to indicated situation, because KLA was mixed with civilians, and to avoid the jeopardy of civilians, the unit was ordered to go back.<sup>227</sup>

117. Witness Zogaj casts a shade of doubt on his own allegation about the exact number of people living in Belanica by saying that the whole village consisted of some 220 households and that at the time about 80.000 gathered there, which would mean as many as 400 persons per each household. Elsewhere, he disclosed a completely illogical allegation that there were 200 persons sheltered in his house alone.<sup>228</sup>

118. Witness Hamide Fondaj points out that on the night of 1 April 1999 NATO bombs were falling around the village of Belanica.<sup>229</sup> Witness Zogaj confirms his cooperation with the KLA and NATO<sup>230</sup>.

119. Both the above witnesses are highly biased toward the KLA. Witness Zogaj alleges that he went with members of the KLA to see the consequences of their actions<sup>231</sup> and that he received information from them<sup>232</sup>. Hamide Fondaj's husband was a member of the KLA and they had a bunker in front of their house in the village of Pećane.<sup>233</sup> Every family had at least one member who had joined the KLA.<sup>234</sup> She used to see members of the KLA in other villages

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<sup>226</sup> T.18952-18953.

<sup>227</sup> T.20262-20263

<sup>228</sup> T.5911

<sup>229</sup> P2283, p.3, last paragraph.

<sup>230</sup> T.5920.

<sup>231</sup> T.5916.

<sup>232</sup> T.5869.

<sup>233</sup> T.3827, T.3836.

<sup>234</sup> T.3844.

around Suva Reka as well<sup>235</sup>, and presence of the KLA in the villages of Suva Reka is confirmed by witness Zogaj as well<sup>236</sup>. In his statement, Ylmet Fondaj Hamide Fondaj's husband, member of the KLA explains tactics used by the KLA in the area, asking residents to vacate a village so that they could initiate a fight with the Serb forces from their combat positions. He states that the tactics were used in the period between 25 March and 6 April 1999.<sup>237</sup>

120. Just how passionately biased witness Zogaj is can be seen from his allegation that the forces were headed by the six accuseds in the courtroom<sup>238</sup>. Both of the witnesses refuse to admit that the KLA was present in the village of Belanica on 1 April 1999. However, KLA's own documents prove that quite the opposite was the case. An order issued by the General Staff of the KLA on 1 April 1999, establishes a line of defence leading through Belanica and ORDERS the residents to retreat from Belanica to the village of Guncat.<sup>239</sup> This order was signed by Prosecution witness Bislim Zyrapu personally.

#### **Summary submission for Suva Reka municipality**

121. Prosecution witness Zyrapu confirms that numerous brigades of the KLA were deployed across the area.<sup>240</sup> Using a map, he explained which areas had been under control of his forces.<sup>241</sup> He pointed out that civilians had also been under control of the KLA.<sup>242</sup>

122. General Maisonneuve also states that there were numerous KLA brigades in the region headed by commander Drini the Mission frequently met with<sup>243</sup> and that their strongholds were positioned inside the villages.<sup>244</sup>

123. Based on all the abovementioned in connection with the area around the village of Belanica, one can easily draw a conclusion that there were armed conflicts with the KLA and if any shelling was involved, the missiles were targeting positions of the KLA outside the villages.

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<sup>235</sup> T.3844, T.3856-3857.

<sup>236</sup> P2323, p.3, para.6.

<sup>237</sup> 6D76.

<sup>238</sup> T.5865

<sup>239</sup> P2457.

<sup>240</sup> T.6242-6245

<sup>241</sup> Ibid. T.5990 and P2447

<sup>242</sup> T.5998

<sup>243</sup> T.11133, P2772, MM14, MM14a

<sup>244</sup> T.11135-11138

Any and all movements of civilian population in the area were carried out under orders issued by the KLA.

124. The Trial Chamber must find that the Prosecution has failed to prove beyond a reasonable doubt, involvement of the armed forces under command or control of General Lazarevic in any crime against civilian population or knowledge thereof in the area of the Suva Reka Municipality.

**SRBICA MUNICIPALITY****Izbica****Count 1, Paragraph 72 (c)****Count 2****Count 3-4, Paragraph 75 (f)**

125. As prosecution witnesses for the alleged incident in the village of Izbica testified Mr Milazim THACI, Mr Mustafa DRAGA, Mr Liri LOSHI and Dr. Gordana TOMAŠEVIĆ.

126. For the alleged crime, reportedly committed on the 28 March 1999, prosecution witnesses Milazim THACI and Mustafa DRAGA in their statements place responsibility solely with the police forces.<sup>245</sup>

127. In his statement, witness Mustafa DRAGA points out that the group of men which appeared on the 28 April 1999 and surrounded the men in the field were wearing blue camouflage uniforms, and some also green camouflage uniforms, which carried the insignia 'MILICIJA'/POLICE/, so he assumes they were members of the police force.<sup>246</sup>

128. Witnesses THACI<sup>247</sup>, DRAGA<sup>248</sup> and LOSHI<sup>249</sup> claim that they all heard artillery shelling in that period and in that area, however, none of the witnesses could precisely say whether they saw any visible destruction to the private or public property in the area, resulting from shelling.

129. Witness statements of DRAGA and THACI are in conflict with one another, because Mustafa DRAGA, who alleges that he was also in the field outside Izbica that day on 27 March

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245 P2246 and P2244  
 246 P2244, page 3, paragraph 6  
 247 P2246, page 3  
 248 P2244, page 3  
 249 T.5380

1999 claims that he saw the village Broćna on fire.<sup>250</sup> However, witness Milazim THACI, who comes from Broćna, does not state that his village was burned down.<sup>251</sup>

130. Upon analysing the statement of Milazim THACI and the additional photographs on which he shows the three holes on his clothing<sup>252</sup>, Dr. STANKOVIĆ clearly argued and rejected this claim, relying upon the fact that, had the events occurred as the witness described them, the witness would have been wounded, however; there are no traces of blood on his pullover<sup>253</sup>, and finally, had the grazing occurred, as alleged by the witness, the entity firing the bullets would have had to be aligned parallel with the body, as well as being simultaneously on their side, which is impossible.<sup>254</sup> Based on the aforementioned analysis, Dr. STANKOVIĆ concluded that holes which this witness has shown on his pullover are such that it is not likely they were inflicted by the gun fire, in the way that he described it.<sup>255</sup>

131. That the village of Izbica was a terrorist stronghold has also been confirmed by the prosecution witnesses, as well as the available documentation.<sup>256 257 258 259</sup>

132. The statements above evidently show the level of unreliability of the witnesses THACI and DRAGA, as well as the bias of the witness LOSHI, thus we are of the opinion that their statements cannot be admitted.

133. Any involvement of the Army or any possible findings regarding an alleged incident in the village of Izbica has been clearly disputed by the defence witness General Ljubiša DIKOVIĆ, commander of the 37th brigade of the VJ, which, at the time, was the one nearest to the village of Izbica.

134. General DIKOVIĆ explained evidently and in detail which route his unit had taken when carrying out operations in that area. Witness DIKOVIĆ clearly pointed out that his unit did not

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250 P2244, page3, paragraph4  
 251 P2246  
 252 P227  
 253 T.26157  
 254 6D670, page9, paragraph8  
 255 T.26157  
 256 IC105, P2045 count4  
 257 T.5372  
 258 T.5374  
 259 Ibid

enter Izbica.<sup>260</sup> Following the order of the PrK Commander, they were advancing along the route of Vitak, Kladernica and Voćnjak,<sup>261</sup> which the witness outlined on the map number IC 157.<sup>262</sup> Witness DIKOVIĆ claims that the closest range his unit got to the village of Izbica was 1 kilometre, and that they were unable to see it.<sup>263</sup> The witness further claims that his forces did not open fire in the direction of Izbica.<sup>264</sup> He stopped their progress outside the village of Voćnjak because of fleeing civilians.<sup>265</sup>

135. These claims by General DIKOVIĆ are also confirmed in full by the General LUKIĆ's defence witness, police officer Sladjan PANTIĆ, who was advancing with one platoon of PJP and VJ towards Voćnjak. Mr Sladjan PANTIĆ stated that they did not enter Izbica, but that they moved along the corridor between Kladernica and Izbica, which is a fair distance away from Izbica, over forested and mountainous terrain, so that one could not see much ahead or to the either side, thus also unable to see Izbica. The witness pointed out that the members of the VJ did not open fire on that occasion.<sup>266</sup> Witness PANTIĆ stressed the fact that the Army units stopped outside the village of Voćnjak and returned, whereas the police forces continued their advancement.<sup>267</sup>

136. General DIKOVIĆ also explained that his unit did not enter Izbica or Voćnjak.<sup>268</sup> He pointed out that during the whole operation his unit did not have any contact with the civilians.<sup>269</sup> Although their mission was for the unit to advance towards the village of Broćna, general DIKOVIĆ stopped their operation and any further advancement of his troops, because they observed civilians in the area of Voćnjak. General DIKOVIĆ carried out his decision following a briefing and approval of his senior commander from the PrK Command. Witness DIKOVIĆ

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260 T.20016  
 261 T.19887  
 262 T.19888  
 263 T.20017  
 264 T.20016  
 265 T.19890-19891  
 266 T.23680,23681  
 267 T.23679  
 268 T.20016  
 269 T.19891

stopped any further advancement of his troops, and headed back in the direction of Srbica, so as to avoid danger to the civilians.<sup>270</sup>

137. These claims are supported by the field combat reports of the 37th brigade of VJ. In the report of 28 March 1999, DIKOVIĆ asks for instructions and orders of his Corps Command(er) due to the expected fleeing of civilians in the area of the village of Voćnjak.<sup>271</sup> From the report of 29 March 1999 it is evident that the unit commander DIKOVIĆ was in Srbica, in order to receive orders for another operation,<sup>272</sup> whereby the unit would carry out occupation of the Srbica-Kruševac-Prekaze district<sup>273</sup>, which is on an entirely different axis.

138. At the end of May and beginning of June 1999 SUP of Kosovska Mitrovica conducted an on-site investigation in the town of Izbica, as well as the exhumation of the bodies, pursuant to the Motion for Exhumation of the District Public Prosecutor and Order for Exhumation of the District Court in Kosovska Mitrovica.<sup>274</sup> Pursuant to the court order, SUP in Kosovska Mitrovica, alongside the exhumation, completed an on-site forensic investigation report. This is confirmed by the General LUKIĆ' defence witness, Mr Nebojša BOGUNOVIĆ, employed at the time at the SUP in Kosovska Mitrovica.<sup>275</sup>

139. Following this (exhumation), the bodies were transported to Kosovska Mitrovica, in order to complete the post-mortem examination by the forensic medicine expert, pursuant to the investigating judge's warrant. Prosecution witness Dr. Gordana TOMASEVIĆ states that she performed the post-mortem examination of exhumed bodies from Izbica in Kosovska Mitrovica, which were exhumed pursuant to the Warrant of the investigating judge at the District Court in Kosovska Mitrovica.<sup>276</sup> This witness states that she had no further information as to what occurred to the bodies following the post-mortem examination she performed.<sup>277</sup>

140. Independently of the civilian juridical bodies, the military juridical bodies undertook the investigative operations in order to establish whether there was any potential involvement of the

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270 T.20016  
 271 P2046 last paragraph  
 272 P2048 first paragraph  
 273 P2048 past paragraph  
 274 6D613  
 275 T.25128-25129  
 276 P2490 paragraph43,50  
 277 P2490 paragraph50,53

army units in this incident. This was confirmed by the defence witness Mr Djura BLAGOJEVIĆ, who claims that the Military Prosecutor, Mr Radosavljević conducted his own investigation and concluded that there were no VJ involvement, and notified the District Public Attorney in Kosovska Mitrovica of his findings.<sup>278</sup> The fact that military staff also conducted their independent investigation is supported by the documentary evidence.<sup>279</sup>

141. Every rational Trial Chamber must conclude that the Prosecution did not prove beyond reasonable doubt that the VJ forces under the control and command of the General LAZAREVIĆ attacked and destroyed the village of Izbica, Voćnjak and any other village in their vicinity. Nor that they shelled the village of Izbica on 27 March 1999 or that the members of VJ had any involvement in the incident in the village of Izbica on 28 March 1999 or around that date.

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278 T.21559

279 4D171last page;P955,page76

**ĆIREZ / QUIREZ****Count 1, Paragraph 72(c)****Count 2****Count 5; Paragraph 77(d)**

142. For the alleged incidents in the area of the villages of Ćirez, Kožice and Baks testified witnesses; Ms Xhevahire RRAHMANI, (REDACTED), and Mr Abdulah SALIHU.

143. The prosecution witness, (REDACTED) unmistakably stated that the soldiers who entered the village wore red armbands and camouflage hats, and who she clearly identified on the photograph, exhibit number IC 84 as not belonging to the Yugoslav Army.<sup>280</sup>

144. The defence witness, general DIKOVIĆ clearly denied any involvement by the VJ in the village of Ćirez on 29 March 1999 or around that date. DIKOVIĆ claims that the VJ units were neither in Ćirez nor in Kožice.<sup>281</sup> From the report of 29 March 1999 BG-37 it is evident that there is no presence of that unit in the area, but moreover, that the unit commander DIKOVIĆ was in Srbica, in order to take orders for another operation<sup>282</sup>, and also that they performed a reconnaissance task near the village of Donje Prekaze, (from) where the unit was to carry out the occupation of the Srbica-Kruševac-Prekaze district.<sup>283</sup> At the time in this area there was only one combat team from the formation of the 37th brigade of the VJ, whereas the brigade itself arrived at the beginning of April 1999.<sup>284</sup> In the field combat report BG-37 of 30 March 1999 (P02049) under the count 5.1 the distribution of troops is clearly marked in this area, confirming what is stated above. And also, another unit which was assigned in the area of Srbica was not in the vicinity of the villages of Ćirez and Kožice. This is apparent from the documentation of the 125th brigade of the VJ stating that the units were not deployed in the village of Ćirez and its surroundings, but in the area of Gornja and Donja Klina, Tomislav and Prekaz.<sup>285</sup> Therefore, all units of the Yugoslav Army were on 29 March 1999 and around that date were significantly

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280 T.4773  
 281 T.19897-19898  
 282 P2048, first paragraph  
 283 P2048, first paragraph  
 284 5D1027  
 285 P2616

removed from the villages of Ćirez and Kožice, on the opposite side of the mountain of Kraljica.<sup>286</sup>

145. Beside this point, members of the Army did not wear at the time the marking armbands.<sup>287</sup>

146. For the alleged crime in the village of Ćirez, the witness RRAHMANI pointed out that there were also men in black and brown coloured uniforms, and some of them had a beard and long hair, and that someone told her they belonged to the paramilitary group 'Crna Ruka' /'Black Arm'/.<sup>288</sup>

147. She further stated that these were the men who seized young women and mothers, whom they never saw again.<sup>289</sup> The prosecution witness (REDACTED) stated that this group in Ćirez was the paramilitary group 'Tigrovi' /'Tigers'/.<sup>290</sup> Witness (REDACTED) still pointed out that it was a policeman in a dark blue uniform.<sup>291</sup>

148. These statements clearly demonstrate that the perpetrators of the alleged crime were not members of the Yugoslav Army.

149. The fact that the members of the Yugoslav Army, which arrived later in this area, conducted themselves in a respectable and humane manner is confirmed by the witnesses, who stress that they brought food and nappies for their babies.<sup>292</sup> Witness (REDACTED) claims that one of the officers expressed his regret regarding the whole incident and requested information in order to find this group of perpetrators.<sup>293</sup>

150. Witness (REDACTED) further states that the members of the Army forces treated her well and that they brought her to the hospital, where she received medical assistance.<sup>294</sup>

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286 P2616  
 287 6D237, page 2; Živanović, T.20486  
 288 T.1868  
 289 T.1835  
 290 T.4784  
 291 T.4781  
 292 P2239, page 8, paragraph 2; T.1841, 1867; P2367, page 4, paragraph 3  
 293 P2367, page 8, paragraphs 2-3 and P2239, page 7, paragraph 7-8  
 294 P2367, page 8, paragraph 4; P2368, p.8180

151. Witness Rrahmani shows a special bias during her testimony with the statement that she did not know of the KLA attacks, however, she stated, if there were attacks by the KLA on the Albanians who remained loyal to the Serbian government or on those that rejected the KLA, then they must have deserved it.<sup>295</sup>
152. Thus, we are of the view that the Trial Chamber must reject the witness statement of Xhevahire RRAHMANI in its entirety, as it is a statement of an unreliable and biased witness.
153. The witness Abdulah SALIHU claims that he was captured on the 29 April 1999 by the paramilitary forces, Serbs and 'Gypsies', and that he was taken to the mosque in Ćirez, in which there were in total 176 captured men.<sup>296</sup> The witness SALIHU has identified this mosque<sup>297</sup> on the photograph.<sup>298</sup> On the picture one can see a small facility, so it is simply illogical that such a large group of men would be detained in such a small space.
154. The witness states that before they were handed over to the police in Glogovac<sup>299</sup>, allegedly several men were executed en route, near the town of Shavarin.<sup>300</sup> The witness altered his initial statement<sup>301</sup> noting that the commander of that unit was a paramilitary.<sup>302</sup>
155. The actual description of this commander (long hair, a scarf wrapped around the head and one tooth)<sup>303</sup> and other clearly point to the fact that there was no military involvement in this incident.
156. The fact that there were no members of the VJ in the 'Feronikl' factory was confirmed by the defence witness of General LUKIĆ, Mr Petar DAMJANAC.<sup>304</sup>

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295 T.1885  
 296 P2255, page 2; T.2001  
 297 T.1993  
 298 P1801  
 299 P2255, page 6, paragraph 7  
 300 T.1996  
 301 P2255, page 6, paragraph 7  
 302 T.2038  
 303 P2255, page 5, paragraph 3  
 304 T.23810

157. Witness SALIHU claims that the mosque in Ćirez was destroyed fifteen days before the Serbian forces left Kosovo. However, he does admit that he was not an eye-witness of that event/episode.<sup>305</sup>

158. Witness SALIHU admits that there were members of KLA<sup>306</sup>; KLA/ in his village, and that he regrets not becoming a member of the KLA.<sup>307</sup> He expresses his bias by denying that the members of the KLA possessed any weapons.<sup>308</sup>

159. Therefore, the Trial Chamber cannot accept the witness statement of Mr SALIHU as a credible and factual one.

## **TURIĆEVAC, TUŠILJE, LEČINA and KLADERNICA**

### **Count 1, 72(c)**

#### **Count 2**

160. For the alleged incidents in the villages of Turićevac, Tušilje, Voćnjak, Leočina and Kladernica testified the prosecution witness Ms Hadije FAZLIJU.

161. This witness claims that on the 26 March 1999 Serbian Army and the police attacked the village of Turićevac by shelling it from the direction of Broćne.<sup>309</sup>

162. Another prosecution witness, Mr Mustafa DRAGA claims that the village of Broćna was shelled<sup>310</sup>, so it is simply impossible for it to be shelled as well as to conduct shelling from there on the same day. Witness FAZLIJU further claims that on the 29 March 1999 the village of Tusilje was surrounded, and that the police units first arrived on foot, and then the soldiers arrived in vehicles and tanks.<sup>311</sup>

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305 T.1994

306 T.2008

307 T.2002

308 T.2016

<sup>309</sup> P2241, page 2, paragraph 6; T.1953

<sup>310</sup> P2244 page 3, paragraph 4

<sup>311</sup> P2241, page 3, paragraph 1

163. The defense witness, general Dragan ŽIVANOVIĆ also marked it on the map IC164, the route which his units followed from the direction of Gornja Klina, arriving up to the outside of Turičevac. They did not get any further than the line marked on the map,<sup>312</sup> which means that they arrived from the direction opposite of Broćna. Once they arrived on that line, they returned to Gornja Klina from where they started, and then continued to Srbica.<sup>313</sup>

164. This is attested by the evidence exhibit P1968, which evidently states the mission of the 125 brigade, is supporting the MUP forces in fighting and destroying of ŠTS on the corridor of Gornja and Donja Klina-s.Lausa-s.Turičevac and s.Kruševac-s.Rezala-s.Obilić.<sup>314</sup> All of these operations were completed by the members of the Army by 28 March 1999, which is evident from the war logbook of the 125<sup>th</sup> brigade of the VJ.<sup>315</sup> After a completed combat-operation with the KLA, the Army units were based in the area of Gornja and Donja Klina, Tomislav and Prekaz, also preparing for carrying out of other tasks.<sup>316</sup>

165. Witness FAZLIJU claims that on the 4 April 1999, on the way to Djakovica to Čafa Prušit, there were many soldiers, and that nothing happened to them at that time, on the contrary; the soldiers conducted themselves in a humane manner. They warned them of the NATO bombardment, as well as that they should stay on the road, as both sides of the road were mined.<sup>317</sup> In this area there was a deployed unit of the VJ under the command of Major Vlatko VUKOVIĆ.<sup>318</sup>

166. Witness FAZLIJU claimed in her statement that during the war in 1999 there were men from the village who were members of the KLA and that the KLA had a base in the village school building, but that she did not know how many there were in total, as people kept on joining them.<sup>319</sup>

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<sup>312</sup> T.20468,20469

<sup>313</sup> T.20469

<sup>314</sup> P1968,count5.2

<sup>315</sup> P2616 see 29 and 30 March 1999

<sup>316</sup> Ibid

<sup>317</sup> P2241,page5,paragraph2

<sup>318</sup> P2019

<sup>319</sup> P2241,page2,paragraph4

### Summary submission for Srbica municipality

167. Numerous documents indicate the large presence of the KLA forces and the many attacks in the area of Srbica municipality and in their surroundings during the whole period.<sup>320</sup> The terrorists had plans to occupy/take over Srbica and Glogovac.<sup>321</sup>
168. There is a video footage<sup>322</sup> which shows the strength and preparations of the KLA for a spring attack, for which General ŽIVANOVIĆ gave explanation to be the celebration dedicated to the brothers JASARI, which took place in the first half of March 1999. Members of the VJ did not take any action, although they had all the information.<sup>323</sup> After this celebration, there is an increase in the amount of attacks on the members of the VJ and MUP.<sup>324</sup>
169. The prosecution witnesses alone admit that many towns in that area were terrorist strongholds.<sup>325</sup> Prosecution witness Zyrapi confirmed that in the village of Izbica there were units of the 112<sup>th</sup> brigade, and on the map, exhibit number IC 105 marked a large zone for the area of Srbica under the control of the OVK prior to 24 March 1999.<sup>326</sup> Defense witness, General DIKOVIĆ confirmed this, and also marked it on the map, exhibit number IC 156, the zone under the control of the OVK which was significantly larger than Zyrapi's outline.<sup>327</sup> All of this was confirmed by the defense witness, General ŽIVKOVIĆ, who outlined the terrorist location in those areas on the map, exhibit number IC 164.<sup>328</sup>
170. That around the end of March there were severe conflicts in this area between the police forces and the Army on one side, and the KLA on the other, has been clearly confirmed and described by one of the KLA commanders, Mr Sylejman SELIMI.<sup>329</sup> In this interview, Selimi claims that the conflicts in this area were led by four KLA brigades; 111<sup>th</sup>, 112<sup>th</sup>, 113<sup>th</sup> and 114<sup>th</sup>. He gives a detailed account of the front lines and under whose command each of the above mentioned brigades fought in this area. Among other, the 112<sup>th</sup> brigade, supported by the special

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<sup>320</sup> 3D997 page 2, paragraph 2

<sup>321</sup> 3D1040 count 2.3

<sup>322</sup> 5D1241 3.clip – village of Prekaze

<sup>323</sup> T.20460-20461

<sup>324</sup> T.20461

<sup>325</sup> Draga, T.2361; Thaci, 2246; Loshi, T.5372, 5382, 5395; K24, T.4773, 4774; Gerxhaliu, T.2493; Zyrapi, T.6244

<sup>326</sup> T.6244

<sup>327</sup> T.19887

<sup>328</sup> T.20468

<sup>329</sup> 6D67, page 28, 29

unit, fought on the front line of Skenderaj-(Srbica)-Klina.<sup>330</sup> This member of the KLA then explained that there was an excellent cooperation between the NATO forces and the KLA.

171. On the other hand, the fact that the Army troops, beside the constant terrorist attacks during the whole bombardment period showed a great deal of care and humanity for civilians, is evident from the vast documentation of the 37<sup>th</sup> brigade of the VJ.<sup>331</sup>

172. General DIKOVIĆ described during his testimony the difficult situation in the village of Glogovac, which consisted 100% or nearly 100% of Albanian population,<sup>332</sup> as well as his efforts, and those of General LAZAREVIĆ, to assist the civilians in Glogovac. Thus, pursuant to the order issued by the Pristina Corps Command of 16 April 1999, to create balance of accounts for food supplies and other necessities of the local population,<sup>333</sup> General DIKOVIĆ sent a request to the Pristina Corps Command on 20 April 1999, in order to obtain humanitarian aid which could be distributed to the people of Srbica and Glogovac.<sup>334</sup>

173. The report by the General DIKOVIĆ of 5 May 1999 clearly shows the result of efforts of Army members, in order to provide humanitarian aid to the local people, so that the population of Glogovac received 22 sacks of flour,<sup>335</sup> as well as the report of 13 May 1999 which shows that after the local doctor had escaped, the military doctor carried on providing medical assistance to the civilians.<sup>336</sup>

174. The Trial Chamber must conclude that the Prosecution did not prove beyond reasonable doubt any engagement of the Yugoslav Army forces under the control and command of General LAZAREVIĆ, nor that they had any possible findings regarding any of the crimes committed in the area of Srbica municipality and its surroundings.

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<sup>330</sup> 6D67, page 28, last paragraph

<sup>331</sup> 5D1033, 5D1083, 5D1060, 5D1023, 5D1037

<sup>332</sup> T. 19906, 19909

<sup>333</sup> P1306, count 3

<sup>334</sup> 5D1034, paragraph 1

<sup>335</sup> 5D1059, paragraph 4, second sentence

<sup>336</sup> 5D1086, count 3 (b)

**PEĆ MUNICIPALITY****Peć****Count 1, paragraph 72(e)****Count 2****Count 5, paragraph 77(d)**

175. Edison Zatriqi and Ndrec Konaj have testified as Prosecution witnesses about alleged incidents in the city of Peć. Witness Konaj alleges that on 28 March 1999 soldiers and policemen were stationed along the street, directing the Kosovo Albanians towards the town center<sup>337</sup>. Zatriqi alleges that on 27 March 1999 the Serbian Army started shelling from the hospital courtyard and the high school in Peć, firing at the residential district of Kapešnica and that he saw this with his own eyes.<sup>338</sup> Zatriqi further points out that when he returned to Peć on 26 July 1999 he saw that the Qarshia mosque and the red mosque in Kapešnica had been destroyed.<sup>339</sup> As the perpetrators of the alleged forcible expulsion from their homes, witness Zatriqi marks police forces.<sup>340</sup>

176. Witness Konaj, on the other hand, with respect to the abovementioned 28 March 1999, could not identify possible members of the military<sup>341</sup>, or say whether a certain vehicle belonged to the Army or not and neither could he identify the type of vehicle in question<sup>342</sup>.

177. Defence witness General Živanović, commander of the 125<sup>th</sup> brigade of the VJ, categorically refutes these allegations, claiming that he never used a hospital, a school or any other similar object for military purposes and a place to fire from. Only a part of a logistics-medical unit that provided aid to both Albanian and Serbian population was stationed in the hospital<sup>343</sup>.

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<sup>337</sup> T.4890.

<sup>338</sup> P2347, p.2, para.10.

<sup>339</sup> T.4418.

<sup>340</sup> T.4418-4419.

<sup>341</sup> T.4893.

<sup>342</sup> T.4900.

<sup>343</sup> T.20471.

All combat units from his formations had left their barracks before the aggression started and had positioned themselves out of the populated areas<sup>344</sup>. This is backed by the unit documents<sup>345</sup>. General Živanović has no knowledge whatsoever of the mosques destruction and is certain that his units did not act in this area.<sup>346</sup>

178. Police General Lukić Defence witness, Colonel Paponjak, says in his testimony that the Army members were not present in the city of Peć on 28 March 1999.<sup>347</sup>

### **Summary submission for Pec municipality**

179. The General Lukić defence witness, Pantić Momir indicated a concrete example of a remarkable relation of VJ members and civilians, that, immediately near the municipality of Peć, in the area of Klina, village Zlokućani, that the local Albanians and army members during the war mutually helped each other, that they lived together and that the army members cooked them food<sup>348</sup>.

180. The Prosecution has failed to prove beyond a reasonable doubt that the Army members under command or control of General Lazarević either participated in the alleged incidents in the city of Peć, or that they had any knowledge whatsoever thereof.

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<sup>344</sup> T.20461.

<sup>345</sup> P2616,P2618,P2032 and P2033.

<sup>346</sup> T.20471;P2616, P2618.

<sup>347</sup> 6D1603, para.55; T.24575,T.24585.

<sup>348</sup> 6D 1604;T.24767

## MUNICIPALITY OF KOSOVSKA MITROVICA

### Kosovska Mitrovica

#### Count 1, paragraph 72 (f)

#### Count 2

181. Sadije Sadiku, Mahmut Halimi, Aferdita Hajrizi and Ljubinko Cvetić have testified as Prosecution witnesses about alleged incidents in the area of the city of Kosovska Mitrovica.

182. Witness Sadije Sadiku in her testimony as the perpetrators of the alleged incidents always identifies members of police forces.<sup>349</sup> This witness mentions the Army members only in the context of encountering them, while they moved along and that they gave them food, mostly to children.<sup>350</sup>

183. Prosecution witness Aferdita Hajrizi has testified about the murder of her family members on the night of 24 to 25 March 1999.<sup>351</sup> It has been confirmed that the perpetrators of this crime had been identified and processed.<sup>352</sup> This witness further points out that the Serbian forces forced people out of their homes in the village of Tavnik on 28 March 1999<sup>353</sup>. However, the witness mentions forces in general but cannot make the difference regarding their type, apart from pointing out that they looked like regular forces.<sup>354</sup>

184. Witness Cvetić alleges that some members of police forces committed theft, looting, arson, but he does not know the exact number of the perpetrators.<sup>355</sup>

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<sup>349</sup> P2252, P 2256, T.1890-1950.

<sup>350</sup> P2256, para. 17.

<sup>351</sup> P2319, P 2320.

<sup>352</sup> P51.

<sup>353</sup> T.4054-4055.

<sup>354</sup> T.4067,4072 and 4073.

<sup>355</sup> T. 8112.

185. The allegations of Prosecution witness Mahmut Halimi are unreliable for several reasons. He first points out that in the mid April 1999 he, among other things, saw military forces in the villages of Šipolje, Tavnik, Zabrđe and Suvi Dol, to the west of Kosovska Mitrovica.<sup>356</sup> However, on cross examination he admits that this is hearsay information<sup>357</sup>, and that he is not certain which forces those were<sup>358</sup>. Honorable Judge of the Trial Chamber pointed out the unreliability of information provided by this witness.<sup>359</sup>

186. General Živanović confutes witness Halimi, pointing out that his forces were not stationed in that area and at that time.<sup>360</sup> It is clear from military documents<sup>361</sup> as well as from the testimony of General Živanović<sup>362</sup> that forces of the FRY were not present in the area of Tavnik and Žabare during that period. This is also backed by the document of the MUP RS, which shows that this area was under control of the PJP forces.<sup>363</sup>

187. Witness Halimi admits that there was a military hospital of the KLA in Žabare<sup>364</sup> and that he was in contact with the KLA<sup>365</sup>. His bias is especially evident from his answer that he had an excellent cooperation with the KLA.<sup>366</sup> He points out that members of the Army did not do anything bad on checkpoints.<sup>367</sup> He further says that members of the VJ warned civilians about the measures they should take in order to protect themselves from the NATO bombings, since on the previous day a number of civilians were killed, and also warned them of landmines placed near the road.<sup>368</sup>

188. Mahmut Halimi also mentions that checkpoints were located in that area.<sup>369</sup> General Živanović states that he did not have any checkpoints in that sector at any time during the war. He further states that he had two mixed or combined checkpoints, one in the area of Ibarska

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<sup>356</sup> T.4450.

<sup>357</sup> T.4477.

<sup>358</sup> T.4478.

<sup>359</sup> T.4482.

<sup>360</sup> T.20462; P2616, P2618.

<sup>361</sup> P2616, P2618, P2032, P2033, P2034, P2035.

<sup>362</sup> T.20461.

<sup>363</sup> 5D1417 under II - Secretariat in Kosovska Mitrovica.

<sup>364</sup> T.4447 and 4448.

<sup>365</sup> T.4447.

<sup>366</sup> T.4494.

<sup>367</sup> T.4491.

<sup>368</sup> T.4492.

<sup>369</sup> T.4491; T. 4512.

Slatina and another in the area of Savine Vode. The latter was abandoned by his forces at the end of April 1999.<sup>370</sup>

**Count 5, paragraph 77 (d)**

189. Witness Halimi alleges that the only mosque in Kosovska Mitrovica was destroyed and that possible perpetrators of this crime were some Serbian companies and some Serbs<sup>371</sup>. The witness was not an eye witness to the destruction<sup>372</sup> and could not provide reliable information with respect to it in this respect.

190. Credibility of witness Halimi is even more undermined by the fact that he admits having committed corruption,<sup>373</sup> and that he failed to report it later.<sup>374</sup> From all the above, it is clear that witnesses Aferdite Hajrizi and Mahmut Halimi are unreliable and have provided no valid arguments. We are of the opinion that the Trial Chamber cannot accept their testimonies.

**Transport of corpses from Kosovska Mitrovica**

191. Lukić Defence witness, Čedomir Šakić, has testified about transport of corpses from Kosovska Mitrovica<sup>375</sup>, pointing out that none of the members of the VJ had participated in that.<sup>376</sup>

192. Prosecution witness Dr Gordana Tomašević points out that she examined the corpses in Kosovska Mitrovica, stating that the bodies were exhumed by the police under an order from the Investigating judge.<sup>377</sup> This witness alleges that she has no knowledge of what happened with the corpses after the examination.<sup>378</sup>

193. The Trial Chamber must conclude that members of the VJ did not take any part in or had any knowledge whatsoever of the transport of corpses in the area of Kosovska Mitrovica.

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<sup>370</sup> T.20462.

<sup>371</sup> T.4461.

<sup>372</sup> T.4461.

<sup>373</sup> T.4472.

<sup>374</sup> T.4473 and 4474.

<sup>375</sup> T.22091-22092.

<sup>376</sup> T.22113-22114.

<sup>377</sup> P2490, para. 50.

<sup>378</sup> P2490, para. 53.

**Summary submission for Kosovska Mitrovica municipality**

194. The Prosecution has not proved beyond a reasonable doubt that the Army members under command or control of General Lazarević took part in any crime whatsoever, or had any knowledge thereof, as alleged in the Indictment for the area of Kosovska Mitrovica Municipality.

**MUNICIPALITY OF DEČANI****Dečani-Beleg****Count 1, paragraph 72 (l)****Count 2,**

195. (REDACTED) and Mehmet Mazrekaj have testified as Prosecution witnesses for the alleged incident in the village of Beleg – Dečani municipality, at the end of March 1999.

196. Witness (REDACTED) alleges that there were fights with the KLA in this area.<sup>379</sup> As the perpetrators of the alleged crimes she marks members of the police and the military. She thinks that they were members of the military since they were wearing green-brown camouflage uniforms.<sup>380</sup> The witness could not clearly identify anything else apart from that. Namely, she could not recognize the insignia<sup>381</sup>, or clearly recognize the uniforms.<sup>382</sup> Therefore we deem that this witness is unreliable regarding the identification.

197. Witness (REDACTED) identifies members of the police that were wearing blue uniforms and paramilitaries around a tank<sup>383</sup>. She further points out that the village and its surrounding area was shelled incessantly, day and night, without even a half-hour break.<sup>384</sup> However, the witness could not indicate a single house damaged by the shelling.<sup>385</sup> Such an answer is likewise in contradiction with the rest of the testimony and the testimonies of other witnesses regarding this alleged incident, since a logical question arises-if there was incessant shelling, how could police forces be in the village. Therefore, the testimony of this witness cannot be deemed reliable.

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<sup>379</sup> T.10067.

<sup>380</sup> P2649-page 2520.

<sup>381</sup> T.10063.

<sup>382</sup> T.10067.

<sup>383</sup> T.7464.

<sup>384</sup> T.7471.

<sup>385</sup> T.7471

198. Witness Mehmet Mazrekaj alleges that he recognized the policemen that were in the village of Beleg on this occasion, for instance, the son of Musha Jakupi and Zoran Gjurisic.<sup>386</sup>
199. Witness Mehmet Mazrekaj alleges that Isnij and other locations were shelled from locations Zalli and Strelcit and “Te Podi I Geshtenjave”.<sup>387</sup> Later on he confutes himself claiming that he has no knowledge of the shelling consequences.<sup>388</sup> That there was no artillery stationed at the locations marked by the witness is obvious evident from the war log of howitzer artillery battalion<sup>389</sup>.
200. In his testimony, witness Mazrekaj<sup>390</sup> identifies only the police as perpetrators of the alleged incident. However, 7 years later he testifies that there were the police, the army and the paramilitary.<sup>391</sup> On cross examination, the witness avoids to give any specific answer.<sup>392</sup> Therefore the testimony of this witness cannot be deemed reliable and credible.
201. General Živanović explains that there were no members of the VJ in the village of Beleg on 28 March 1999.<sup>393</sup> Živanović states that on 29 March 1999, members of the Army came with three tanks with the aim to provide support to the MUP forces in the area of the village of Požar. During the fighting with the KLA one of the tanks was hit and destroyed with an Armburst missile, as a result of which one soldier was killed.<sup>394</sup> The statements of General Živanović are also backed by the combat documents of his unit.<sup>395</sup>

### Summary submission for Decani municipality

202. The Trial Chamber must find that the Prosecution has not proved beyond a reasonable doubt, participation in or knowledge of the alleged incident against civilians in the area of the Dečani Municipality as charged in the Indictment, of the VJ units under command or control of General Lazarević.

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<sup>386</sup> T.5814.

<sup>387</sup> T.5839.

<sup>388</sup> T.5840.

<sup>389</sup> P2618.

<sup>390</sup> P2374.

<sup>391</sup> T.5808.

<sup>392</sup> T.5846.

<sup>393</sup> T.20471.

<sup>394</sup> T.20569

<sup>395</sup> P2616 and P2034.

## MUNICIPALITY OF PRIŠTINA

### Priština city

#### Count 1, Para 72 (g)

#### Count 2

203. Dr.Emin Kabashi,Nazlie Bala, (REDACTED),Baton Haxhiu and Adnan Merovci were called to testify about the alleged incidents of forcible expulsion of Albanian civilians from Priština and the surrounding area.

204. Prosecution witness Dr.Emin Kabashi states that he was expelled from his house in the Dragodan residential district on 28 March 1999 by combined army and police forces, pointing out that members of the army wore light blue uniforms.<sup>396</sup>However, he elsewhere discredited his own statement by admitting a possibility that those were not members of the army at all<sup>397</sup>. Indeed,nowhere in the entire procedure and physical evidence presented is it stated that members of the military wore blue uniforms.

205. Witness Kabashi further states that NATO never bombed Priština before 18.00h.<sup>398</sup> Witness Milutin Filipović rejects this statement by pointing out that the city of Priština as well as the surrounding area were bombed every day: days, nights, mornings, afternoons, evenings, holidays<sup>399</sup>,and this is confirmed by numerous written reports on the issue.<sup>400</sup>

206. Witness Kabashi also says that there were logistic units of the KLA deployed at numerous locations all over Priština in charge of guerrilla warfare.<sup>401</sup>

207. The witness shows how biased he actually is by alleging that he is not aware of any terrorist incident in Priština prior to and at the very beginning of the bombardment.<sup>402</sup>He admits

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<sup>396</sup> P2250, p. 4.

<sup>397</sup> T.2057.

<sup>398</sup> P2250, p. 5, para. 3.

<sup>399</sup> T.19171.

<sup>400</sup> 5D981,5D241,5D302,5D305,5D307,5D308,5D309.

<sup>401</sup> T.2083-2084.

<sup>402</sup> T.2076-2080.

that he was a member of the KLA since 1997<sup>403</sup> and he volunteers that freedom should be achieved by the use of arms.<sup>404</sup> Elsewhere in his testimony he confirms that as a member of the KLA, in January 1999 he was busy performing his KLA tasks all over Kosovo.<sup>405</sup>

208. In her statement, Prosecution witness Nazlie Bala alleges that on 26 March 1999, Priština was blocked and that all roads were occupied by members of the army, MUP and Serb civilians. She also says that the blocking checkpoints were encompassed with barbed wire and that Albanians were not permitted to move freely about the city at all.<sup>406</sup> Such allegations are clearly and logically refuted by Defence witness, Colonel Filipović. He states that the above is a lie and that neither the Army nor anyone else ever blocked Priština. The story about barbed wire is absolutely preposterous and a pure lie since there was no barbed wire anywhere in Priština or around it. He further explains that numerous media reporters were in Priština at the time, who freely moved around the area along with numerous citizens and they could all see there were no barbed wires there and bear witness to that fact. Neither blockades nor barbed wires existed and citizens were most certainly not prevented from moving around freely.<sup>407</sup>

209. In her statement, Nazlie Bala says that she resided at 30 Llapi Street. In her additional statement she says that her house was quite near the center of Priština on a hill next to the old farmers' market from where she had a good view and that from her rooftop she could see, among other things the village of Kojlovica<sup>408</sup> which she marked on the map.<sup>409</sup> When the map was subsequently shown to witness Filipović, he refuted her statement by pointing out that the spot she marked on the map is not near the old farmers' market but rather near the present day market, i.e., that this is an entirely different market and that what has been also marked on the map is not Llapi Street. From that particular spot she could see most of Vranjevac but most certainly not Koljevica, not even from the roof.<sup>410</sup>

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<sup>403</sup> T.2061.

<sup>404</sup> T.2061.

<sup>405</sup> T.2079.

<sup>406</sup> P2262, p. 3, para. 1.

<sup>407</sup> T.19178.

<sup>408</sup> T.2137.

<sup>409</sup> IC15.

<sup>410</sup> T.19180.

210. Witness Filipović explains that this particular street is not located as marked by witness Bala, but quite further from the center of Priština, in the suburbs, near the residential district of Vranjevac.<sup>411</sup> On the map of Priština,<sup>412</sup> witness Filipović marked the said locations correctly<sup>413</sup> and explained that the distance between Llapi Street and the old farmers' market is about 1,500m.<sup>414</sup>
211. Witness Bala says that the train she was riding on her way from Priština to Djeneral Jankovic and the railway line itself were guarded by members of the police and the army.<sup>415</sup> This allegation is clearly refuted by Lukic defence witness Milomir Bogosavljević, member of the MUP, who points out that that railway lines and trains were secured exclusively by the MUP forces.<sup>416</sup> This witness further indicated that none of the trains went from the railway station Kosovo Polje starting from 24<sup>th</sup> of March 1999 in the next 4 to 5 days<sup>417</sup>.
212. Prosecution witness (REDACTED) says that the village of Majince, located near the main highway Priština-Podujevo, was a KLA stronghold and that members of the KLA told them to leave the village.<sup>418</sup> The witness identifies 6 policemen and as many soldiers as perpetrators of the forcible expulsion but he did not notice any insignia on the soldiers' uniforms.<sup>419</sup> In connection with other alleged crimes, this witness identifies members of the police force only.<sup>420</sup> This witness says that members of the KLA joined the lines of people leaving their homes.<sup>421</sup>
213. Witness (REDACTED) is unreliable in identification of those "military" forces and therefore we are of the opinion that his testimony is unacceptable.
214. Testimony of witness (REDACTED) in connection with alleged rape in Priština Hospital is full of contradictory statements on essential issues. In her statement given in 1999 she does not mention any rape saying only that she was placed together with her brother on the third floor of

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<sup>411</sup> T.19178.

<sup>412</sup> P615- map of Priština.

<sup>413</sup> IC148.

<sup>414</sup> T.19180.

<sup>415</sup> P2262,p.4,para.4.

<sup>416</sup> T.23864.

<sup>417</sup> T.23863

<sup>418</sup> P2643, p. 2.

<sup>419</sup> P2643p.3,para.3.

<sup>420</sup> P2643.

<sup>421</sup> T.10978.

the hospital.<sup>422</sup> Later on, however, in her statement given in 2002, she says that she was actually in the basement of the building and that her brother was given a bed on the fifth floor of the hospital.<sup>423</sup> As the alleged perpetrator, she identifies a person about 30 years of age, clean shaven, i.e., without any facial hair, she had never seen before.<sup>424</sup> However, in her testimony she gives a substantially different description of the alleged perpetrator by saying that he was about 40 years of age, with a beard and he had followed her all the way from Kačanik.<sup>425</sup> Defence witness Filipović explains that members of the VJ were not involved in guarding the hospital.<sup>426</sup>

215. For all the above reasons, testimony of witness (REDACTED) cannot be accepted as reliable.

216. A procedure for contempt of the court has been instigated before this Tribunal against Prosecution witness Baton Haxhiu in the case No.IT-04-84-R77. Therefore we believe there is no need for any further discussion about the credibility of the witness and authenticity of his testimony.

217. Witness Adnan Merovci alleges that on 21 March 1999 there were refugee columns streaming toward Macedonia and that journalists already knew bombardment was inevitable.<sup>427</sup>

218. Witness Merovci is highly biased and this is reflected in his statement that he has no knowledge of any crimes of the KLA committed against civilians, members of the VJ and the MUP<sup>428</sup>, nor is he aware of the fact that the KLA controlled a significant part of the territory by the time the Holbrooke-Milosević agreement was about to be signed.<sup>429</sup>

219. It is simply impossible for someone presenting himself as a close associate of dr.Rugova's and a person who traveled to France as member of the negotiating team not to be familiar with such facts.

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<sup>422</sup> P2595, p.5, penultimate paragraph.

<sup>423</sup> P2596, p.6, para. 2 and 3.

<sup>424</sup> T.9254-9255.

<sup>425</sup> P2596, p.2, para. 5.

<sup>426</sup> T.19154.

<sup>427</sup> T.8547.

<sup>428</sup> T.8541.

<sup>429</sup> T.8541.

220. The Trial Chamber must completely dismiss testimonies given by witnesses dr.Emin Kabashi, Nazlie Balla,Adnan Merovci and Baton Haxhiu as incredible and unfounded.

221. Witnesses (REDACTED) do not mention members of the military as perpetrator of alleged incidents.

### Summary submission for Priština

222. Based on the abovementioned, it is safe to conclude that the Prosecution has failed to prove beyond a reasonable doubt involvement of members of the VJ under command and control of General Lazarević in expulsion of Kosovo Albanians living in the city of Pristina and the surrounding villages and, indeed, in any crimes against civilian population not previously processed.The Prosecution,in its Pre-Trial, has not marked the military as a possible perpetrator.<sup>430</sup>

223. Even Prosecution's own witnesses confirm that Priština and its surroundings were KLA's bases.<sup>431</sup>The presence of terrorist forces is confirmed by relevant documents as well.<sup>432</sup>

224. Only very few non-combat units of the VJ remained in the city of Priština which never fired a single shot throughout the entire bombing campaign.<sup>433</sup>

225. NATO forces targeted the greater Priština area exactly 406 times, hitting civilian targets 199 times.<sup>434</sup> City water supply installation Priština – Badovac<sup>435</sup> was among the civilian targets hit and the city itself was exposed to attacks by cluster bombs as well<sup>436</sup>.Colonel Filipović describes one of the heaviest bombardments suffered by the beginning of April when the Main post office building was hit in the center of Priština along with numerous other buildings causing death of numerous civilians and consequently leading to additional exodus of civilians who fled out of fear of bombardments.<sup>437</sup>

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<sup>430</sup> Prosecution Pre-Trial Brief , para.44.

<sup>431</sup> K 14 and dr.Kabashi.

<sup>432</sup> 5D1310 count 11, para I and II, 5D 512, 5D 981 para 4.

<sup>433</sup> Filipović,T.19152, T.19162;5D348.

<sup>434</sup> 5D1336.

<sup>435</sup> T.19192.

<sup>436</sup> T.19199.

<sup>437</sup> T.19174-19176, 5D 1242 1.clip 03-06-1999 Priština.

226. From a clip<sup>438</sup> as well as based on what Colonel Filipović has said, it is obvious that the few members of the VJ who remained in Priština immediately came to victims' rescue in that as well as in numerous other similar incidents.<sup>439</sup>
227. Witness Filipović describes columns of civilians obviously moving in circles through and around Priština and the surrounding areas since the same people were spotted over and over again.<sup>440</sup> Terrorists who had previously disposed of their weapons were "injected" into the columns of those civilians.<sup>441</sup> The witness also confirms that a notorious ideologue of the terrorists, Adem Demaci, was seen in the streets of Priština throughout the bombardment campaign.<sup>442</sup>
228. Leaflets with a KLA letterhead were distributed around the city of Priština openly calling for evacuation of towns.<sup>443</sup>
229. Both Serb and Albanian civilians left Priština due to bombardment. Witness Filipović lists concrete examples of civilians who fled Priština out of fear of bombardment.<sup>444</sup> The same is confirmed by witness (REDACTED)<sup>445</sup> and certain documents. Thus, a report of the Command of Military District dated 5 April 1999<sup>446</sup> in the fifth paragraph states that certain numbers of residents still move out of Kosovo's towns, with Albanians leaving toward the Republic of Macedonia and Serbs toward Niš and other towns.<sup>447</sup>
230. Witness (REDACTED) explains that he and his entire family moved out of Priština and Kosovo at the end of the bombardment campaign out of fear for the safety of the family caused by anonymous phone threats he received because he used to work for a state institution.<sup>448</sup>

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<sup>438</sup> 5D1242 1.clip 03-06-1999.

<sup>439</sup> T.19176.

<sup>440</sup> T.19194.

<sup>441</sup> T.19193.

<sup>442</sup> T.19195.

<sup>443</sup> T.19183-19185, 5D1364.

<sup>444</sup> T.19182.

<sup>445</sup> 5D1393, para. 9.

<sup>446</sup> 5D980.

<sup>447</sup> 5D980, para. 5.

<sup>448</sup> 5D1393, para 15 and 16.

231. Witness Filipović points out that numerous people kept leaving Kosovo and coming back as many as several times during the aggression.<sup>449</sup> Witness (REDACTED) confirms that there were people who came back from the Macedonia state borders.<sup>450</sup> That citizens also returned to their respective homes is confirmed by certain documents<sup>451</sup>. Item 5 of a report of the 15<sup>th</sup> brigade of the VJ dated 25 April 1999, states that attacks on the VJ are intensified simultaneously with return of Albanian population to the villages of Stanovce, Mlečane, Kišna Reka.<sup>452</sup>
232. Prosecution witness Colonel Zlatimir Pešić commander of the KVOK personally tried to bring back home a group of civilians some time by the end of April, 1999.<sup>453</sup>
233. Defence witnesses, Colonel Filipović and (REDACTED) have clearly, giving detailed explanations and examples, described the kind of living conditions people had in Priština and its surroundings during the bombardment campaign. Shops were open<sup>454</sup>, hospitals treated patients. More than 100 babies of Kosovo Albanian ethnicity were delivered in Priština hospital during the said period<sup>455</sup>. Pensions were delivered to citizens even under such difficult conditions regardless of their place of residence, nationality or religious beliefs.<sup>456</sup>
234. The prosecution witness, Colonel Ciaglanski emphasized that he was an eyewitness of the independent antiterrorist action after the attack to the seniors of the Yugoslav Army on the road Podujevo-Priština, mid March 1999. The action has been carried out independently by the army members. The action was extremely professional, without any casualties or damage<sup>457</sup>.
235. Documents and testimony of the Colonel Gergar speak about the relation of VJ members towards the civilians in the course of war in Podujevo area which is near Pristina. Return of the 15 000 refugees-returns that the army took care of is established from the report of the 354<sup>th</sup> brigade from 18<sup>th</sup> of April 1999<sup>458</sup>. In his report from 26<sup>th</sup> of April 1999, Colonel Gergar requests the following: Humanitarian aid is needed for the Albanian population/refugees, primarily food,

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<sup>449</sup> T.19197-19198.

<sup>450</sup> 5D1393 para.14.

<sup>451</sup> 5D986, count 1, last paragraph; 5D946.

<sup>452</sup> 5D946.

<sup>453</sup> T.7206.

<sup>454</sup> 5D1393 para 8; T.19196.

<sup>455</sup> Filipović, T.19196.

<sup>456</sup> Filipović, T.19197.

<sup>457</sup> P2488, page 8, T.

<sup>458</sup> 5D499, count 3, T.21483

because they have run out of food, which needs to be made available urgently. All reserves in the Podujevo area have been distributed.”<sup>459</sup>

236. None of the religious buildings was damaged in the city of Priština prior to arrival of the KFOR.<sup>460</sup> Defence expert witness Branimir Jokić confirms that all the damages in Priština occurred only after the police withdrew from Priština on 13 June 1999.<sup>461</sup>

237. Both Defence witnesses agree that, among the citizens, regardless of their nationality and religious beliefs, mutual solidarity and aid prevailed.<sup>462</sup>

238. A reasonable Trial Chamber must find that the Prosecution has failed to prove beyond a reasonable doubt any involvement of members of the VJ under command or control of General Lazarević in the alleged incidents against civilians in the city of Priština and the surrounding areas.

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<sup>459</sup> 5D615count 9

<sup>460</sup> T.19198 and 19267

<sup>461</sup> T.25924 i 25925

<sup>462</sup> T.19201, 5D1393 para 12-14.

**GNJILANE MUNICIPALITY****Count 1, Para 72 (i)****Count 2,****Count 5, Para 77 (d)****Žegra, Vladovo**

239. The Prosecution witnesses concerning the alleged crimes in the village of Žegra were Qamil Shabani and (REDACTED).

240. Witness (REDACTED) stated that he himself left Vladovo and that (REDACTED) heard about the crime in the village of Žegra at the end of March 1999<sup>463</sup>. This witness pointed out that the members of the army he has seen in the vicinity of his village had a professional demeanor.<sup>464</sup> But, during the testimony he said that he saw from the hill that crimes were committed, although he could not identify the insignia of those forces.<sup>465</sup> Due to this, we submit that this is not a reliable witness and his testimony the Trial Chamber should not accept.

241. The allegations that there existed organized pressure on the Albanian population to leave the village of Žegra and surrounding areas were countered clearly and in a well-argued manner i by General Lukić's defense witness, Dušan Gavranić. At the time, this witness was head of SUP Gnjilane.

242. This witness stated the reasons why civilians began to leave the village of Žegra. First of all, it was fear of bombardment, since NATO was targeting the VJ positions on the nearby mountain Mučibaba, as well as a multiple murder which was committed so first the Serbs left that village out of fear from revenge.<sup>466</sup> Witness Gavranić explained that they received a report that a murder and robbery were committed in the village.<sup>467</sup> With the aid from VJ garrison commander Ranko Milinović police officers arrested a number of military reservists, who were

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<sup>463</sup> P2268

<sup>464</sup> P2268 2. page

<sup>465</sup> T.7082

<sup>466</sup> T.22681

<sup>467</sup> T.22688

detained and the investigative judge and prosecutor in Gnjilane were informed, as well as the military prosecutor.<sup>468</sup> All this has been documented.<sup>469</sup>

243. The fact that the Zegra case has been processed, *versus Zmajevic et al*, is confirmed by the List of criminal procedures against the members of the VJ.<sup>470</sup>

### Prilepnica

244. Prosecution witness for the alleged crimes in the village of Prilepnica was Abdylhaqim Shaqiri.

245. This witness named specific persons in military uniforms as perpetrators of alleged crimes.<sup>471</sup>

246. But, the defense witness Dušan Gavranić explained in detail what was actually happening during those days. He stated that on April 6, he received the information, that they made a verification with the garrison command and that they established that it was not the army that committed the crime, so they called upon the villagers to return, which they did, and the police sent a patrol to guard them.<sup>472</sup>

247. A week later, when the bombing was most intense, nearby army positions were also bombed. Out of fear from bombing, a civilian column from a number of villages formed, including Prilepnica. The spoke again with the civilians and nobody was able to persuade them to stay. They were convinced that they want to reach Macedonia, and the only thing they wanted is police escort. Witness Gavranić stated that the cases of Prilepnica and Žegra were atypical.<sup>473</sup>

248. Witness Shaqiri as the perpetrators of crimes in the village of Prilepnica identified persons in military uniforms, Goran Denić and Negovan Denić.<sup>474</sup> Witness Gavranić clearly explained that these persons were not members of Yugoslav Army, along with MUP documents.

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<sup>468</sup> T.22690-22691

<sup>469</sup> 6D69,5D825

<sup>470</sup> P955 page 20

<sup>471</sup> T.2863

<sup>472</sup> T.22703

<sup>473</sup> T.22704-22705

<sup>474</sup> T2862

Witness Gavranić stated that Denić Goran was arrested for theft, along with other persons.<sup>475</sup> The MUP document clearly states that Denić Goran and other persons are civilians.<sup>476</sup> Also, Negovan Denić was also arrested for theft on 20 April 1999.<sup>477</sup> The MUP document clearly confirms that Denić Negovan was also a civilian.<sup>478</sup>

Witness Gavranić explained that there were occurrences of military uniform abuse<sup>479</sup>

249. The abuse of military uniforms is also confirmed by the documents.<sup>480</sup>

Count 5 para 77 d

250. Concerning the destruction of the Mosque in the village of Vlačica, witness Gavranić explained that he has learned about the incident, that an investigation was done and that a criminal procedure against unknown person(s) was instigated.<sup>481</sup>

#### **Summary submission for Gnjilane municipality**

251. The abovementioned clearly indicates that there did not exist an organized campaign of forcing the civilians to move out, but that the authorized state organs responsibly performed their duties in hardship conditions.

252. Individual incidents have been in the largest instance uncovered and the responsible persons were processed.

253. Due to this, the Trial Chamber must find that the Prosecution did not prove beyond any reasonable doubt that the VJ troops under the command and control of general Lazarević did participate in any crime against civilians that was not processed .

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<sup>475</sup> T.22682-22683

<sup>476</sup> 6D614 page 36 count 85

<sup>477</sup> T.22717

<sup>478</sup> 6D614 page 350 count 987

<sup>479</sup> T.22730-22731

<sup>480</sup> 5D549, 4D174 count 4 and 5

<sup>481</sup> T.22795-22796

## UROŠEVAC MUNICIPALITY

### Count 1, Para 72 (j)

### Count 2

254. The Indictment alleges that in the period from 24 March until 14 April 1999 FRY and Serbia forces shelled and attacked the villages in the Uroševac municipality, and that they allegedly entered some of the villages and ordered the inhabitants to leave.

#### 1.Staro Selo

##### Bajram Bucaliu

255. The Prosecution witness for the alleged crimes in Staro Selo was Bajram Bucaliu, who stated that on 2 April 1999 the Yugoslav Army surrounded Staro Selo (Uroševac municipality).<sup>482</sup>This witness stated that the army searched the houses in the village.<sup>483</sup>

256. Defense witness Krsman Jelić refutes this allegation, stating that Staro Selo is located along the main between Priština and General Janković and that there were never any troops in that village. There was an army unit southeast of that village, and this was during a period when the units were camouflaged, in hiding, preparing for defense against the aggression. The army in general did not hold positions in the villages, since its function was not to defend the villages and cities, but to protect the territory.<sup>484</sup>

257. Bajram Bucaliu states that he was deprived of a car and a truck and that he did not receive a receipt, and that these vehicles still have not been returned, even though he has asked for it.<sup>485</sup>General Jelić is not aware of this specific case, but he explained that, if those vehicles were taken from him to be used during mobilization, which is permitted by law, he can achieve his right according to law, and in the case that this was done unlawfully he should then have

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<sup>482</sup>P02298, p.2, para.3; T.2059.

<sup>483</sup> T.2984.

<sup>484</sup> T.18938.def.witn.N.Stamenkovic

<sup>485</sup> T.3020-3023.

reported to MUP, which then should process the claim.<sup>486</sup> All this clearly indicates that testimony of witness Bucaliu is unreliable.

258. The witness explained that the army was in the village from 2 to 5 April 1999. It can easily be deduced that, even if it was in the village itself, that there was no forceful expulsion or any other crime.<sup>487</sup>

## 2. Softović, Rahovica and Zlatare

### Florim Krasniqi

259. Prosecution witness, Florim Krasniqi, stated that on 4 April he saw that villages of Rahovica and Zlatare were shelled from the direction of village Softović. The same witness heard that during that shelling, in Zlatare four people were killed and five were wounded.<sup>488</sup>

260. Witness Krsman Jelić stated that a unit was located near Softović, but that it could not shell the named villages because they would hit its own army. On the map he showed that part of the forces were in the vicinity of these villages, but not in the villages themselves, which would mean that, if they were shooting in the direction that Krasniqi indicated, they would shoot at their own units. Besides that, Jelić states that the use of artillery and guns was very limited during the war due to the attacks of the NATO aircraft, because this would uncover the army positions. Firing was permitted only in case of a direct attack on the positions and units.<sup>489</sup>

261. A logical question arises what the witness could have actually seen from a large distance.

## 3. Mirosavlje, Sojevo

262. Prosecution witness Florim Krasniqi alleges that the Army held positions in the villages of Sojevo and Kamena Glava.<sup>490</sup>

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<sup>486</sup> T.18938-18939.

<sup>487</sup> P2298, p.2, para. 3-4 and p.3, para.1.

<sup>488</sup> P2269, p.2, para5.

<sup>489</sup> T.18944.

<sup>490</sup> T.3096.

263. Defense witness Krsman Jelić states that some units were located in those areas, but not in the villages. The main object to prevent entrance of NATO forces into Kosovo was located on the road from Grlice to Vitina. An anti-armoured unit was located there, as well as two strong units of the brigade, since this was the center of the defense. There was no need for them to enter the villages since those were mountainous regions and were not suitable for defense. The villages are usually located in the valleys while tactical positions were located at higher levels so that a response could be mounted to the aggressor.<sup>491</sup>
264. Florim Krasniqi stated that at the control point in the vicinity of the village of Sojevo M-84 tanks were located.<sup>492</sup> General Jelić said that this is incorrect, stating that unfortunately, his unit did not have any tanks M-84, only T-55 tanks. Along with that, the Army did not set up any control points.<sup>493</sup>
265. Florim Krasniqi admits that he was a member of the LDK (DSK) and that the LDK goal was Kosovo independence.<sup>494</sup>
266. The testimony of Florim Krasniqi is not based on facts, is bias and based on assumptions, so we submit that the Trial chamber cannot accept it

#### 4. Biba

##### Bedry Hyseni

267. Prosecution witness Bedri Hyseni stated that there were some paramilitary units in the village of Sojevo, lead by Novica Mijović from the village of Nikodim.<sup>495</sup>
268. Witness Krsman Jelić first of all states that he is not aware whether some paramilitary units existed there, but if they did, they were not part of his brigade. As far as Novica Mijović, is concerned, General Jelić said that he is over 54 or 55 years of age and that he worked in Yugoslav Army officers' club throughout the war. General Jelić stresses that this man had a heart operation and two bypasses so he was given a lighter job, so that it would be absurd to think that

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<sup>491</sup> T.18947.

<sup>492</sup> P2269, p.5, para.5.

<sup>493</sup> T.18946.

<sup>494</sup> T.3057, 3065.

<sup>495</sup> T.3098.

he could command some non-existent paramilitary units. That was a sick man who could not move, let alone command some unit. Witness Jelić also stated that he suspects that statements of Bedri Hyseni might be a result of some neighbor quarrel.<sup>496</sup>

269. Bedri Hyseni stated that he heard from other villagers that in April the Army ordered the civilians to leave Sojevo and go to Uroševac.<sup>497</sup> So again, hearsay source, refuted by General Jelić who stated that there was no forcible expulsion in that, or any other village, nor did the Army send civilians anywhere, even not to Uroševac.<sup>498</sup>

270. Bedri Hyseni also stated that at the beginning of the war the house of his father in law was hit from the garrison in Uroševac.<sup>499</sup>

271. Krsman Jelić sternly dismisses this statement as false, stating that at the beginning of the war the Army was at its positions with all the personnel and equipment. All combat units left the garrisons on 24 March 1999 so this allegation is impossible.<sup>500</sup>

272. The garrison in Uroševac, as is the case with other garrisons in Kosovo and elsewhere where the primary target of NATO air attacks, so nobody wanted to risk being a live target. If the house was really hit, it could have been by a shell fragment when NATO aircraft shot at the garrison.

273. The Defense submits that the Trial Chamber cannot accept the testimony of witness Bedri Hyseni since he gave unreliable information and expresses bias.

### **Summary submission for Uroševac municipality**

274. The area of the Uroševac municipality was bombed 224 times, of which 74 civilian targets were hit.<sup>501</sup> The military garrison in town was a frequent target, which was shot at with

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<sup>496</sup> T.18947-18948.

<sup>497</sup> T.3099.

<sup>498</sup> T.18948.

<sup>499</sup> T.3102.

<sup>500</sup> T.18948-18949.

<sup>501</sup> 5D1336,5D673,5D683

cluster bombs.<sup>502</sup> During a single day, villages of Biba and Sojevo were hit 17 times.<sup>503</sup> The area of the village of Sojevo was hit with cluster bombs.<sup>504</sup>

275. General Jelić explained the term area of responsibility of the brigade, stating that the Army was tasked to defend the country, while the civil institutions of authority and MUP took care of public order, peace and personal and property safety, which is their task according to law.<sup>505</sup>

276. Witness, (REDACTED) in (REDACTED) testimony confirmed that civil institutions and judiciary performed their duties in the hardship of war.<sup>506</sup>

277. The Trial Chamber must determine that the Prosecution did not prove beyond any reasonable doubt that the VJ troops under the command and control of general Lazarević did participate in any crime or had any knowledge of them in the area of Uroševac municipality.

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<sup>502</sup> 5D660.

<sup>503</sup> 5D232 count 1.1. under 11

<sup>504</sup> 5D676

<sup>505</sup> T.18862, 18863.

<sup>506</sup> T.25682-25683.

## KAČANIK MUNICIPALITY

### 1.Kotlina, Ivaja

#### Count 1, Para. 72 (k)(i)

#### Count 2,

#### Counts 3-4, Para 75 (k)(i)

#### Count 5 , Para 75 (d)

278. Testifying for the Prosecution about the alleged crimes in the villages Ivaja and Kotlina during March of 1999 was witness Hazbi Loku.

279. The witness stated that on 8 March 1999 the village of Ivaja was attacked and the day later an attack was carried out on the village of Kotlina.<sup>507</sup>

280. Defense witness, general Jelić, contested these allegations, stating that members of the army never attacked a single village. According to the information he later received, a terrorist attack occurred in that area, during which MUP patrol leader was killed (captain Steletović)<sup>508</sup>. Sometime between 28, February and 8, or 9, March, MUP forces clashed with the terrorists.<sup>509</sup> As a confirmation to this, it is stated in the MUP Daily report for 08 March 1999 that KLA members carried out a terrorist attack from bunkers, trenches and other fortifications located in the village of Ivaja, during which two police officers were heavily wounded.<sup>510</sup>

281. General Jelić explained that his troops were deployed in the wider region which had the task to prevent spreading of the KLA units from the territory of the Republic of Macedonia, as well as the defense of the State in case of a ground attack, by NATO forces which were stationed in neighboring Macedonia. All the positions at which the Army was deployed were away from these villages.<sup>511</sup>

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<sup>507</sup> T.3151; T.3152.

<sup>508</sup> 6D614, p.678,count 493.

<sup>509</sup> T.18904.

<sup>510</sup> 6D614, p.683,count 512.

<sup>511</sup> T.18906.

282. Witness Loku alleges that when the attack on the village began on March 24, 1999, the grenades fell outside the village so that people would be prevented to run away from it<sup>512</sup> troops entered the village Kotlina and that the village was attacked by heavy artillery.<sup>513</sup> This was denied by the Defense witness general Jelić who explained that this was the day before the bombing campaign began, when the units were leaving the garrisons and were being deployed in the defense areas and were performing necessary camouflage.<sup>514</sup> The use of heavy artillery was prohibited because that could uncover the troop deployment<sup>515</sup> which could become easy targets for NATO forces. Along with that, the terrain configuration itself was complicated since these places were located at above 1,000 meters and the snow was still on the ground. Village roads in that area are so narrow that combat vehicles cannot pass through.<sup>516</sup> The Army responded to direct attacks on its forces<sup>517</sup> as it gave support to MUP, and there was no necessity to open fire on the village itself.<sup>518</sup>

283. As far as the alleged destruction of the mosque in Ivaja<sup>519</sup> witness Jelić once more repeated that the Army did not enter into the villages of Kotlina and Ivaja and that it did not destroy himself religious or other objects in those villages.<sup>520</sup>

284. Statement of witness Loku that the civilians were taken on 24. March by military trucks from Kotlina to Kačanik<sup>521</sup> was contested by General Jelić who said that all military trucks that day were loaded with military equipment and ammunition, because the units were deployed outside the garrisons and that they did not have any motor vehicles for transport or capacity to carry that out.<sup>522</sup>

285. As far as suffering of 20 « civilians » that day<sup>523</sup>, general Jelić has no direct knowledge, but presumes that it was most probably fighters who were killed in action since there were some

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<sup>512</sup> P2296 p.4, para.4.

<sup>513</sup> T.3211;T.3212.

<sup>514</sup> T.18907.

<sup>515</sup> Ibid.

<sup>516</sup> Ibid.

<sup>517</sup> T.19117.

<sup>518</sup> T.18907.

<sup>519</sup> T.3152.

<sup>520</sup> T.18908-18909.

<sup>521</sup> T.3156.

<sup>522</sup> T.18909.

<sup>523</sup> T.3159-3160.

600-700 terrorists there.<sup>524</sup> Witness Jelić explained that it was the MUP who led the actions in that area and that it brought an investigative judge and a forensic team so that an investigation can be carried out.<sup>525</sup> Clear confirmation that it was not civilians but KLA combatants that were killed is in the exhibits.<sup>526</sup>

286. Concerning the Order to crush ŠTS in the wider area of the village Kotlina signed by witness Jelić,<sup>527</sup> he himself explained that it was not implemented and that the reasons for that are clear. The Order was not implemented because the situation changed and the NATO aggression was certain, so the priority task was to prepare for the defense of the country on the eve of the aggression.<sup>528</sup> There is no confirmation in the Order itself that it was forwarded to MUP,<sup>529</sup> while the readiness date was set for 23 March 1999. But it is undeniable that the action was not taken on 23. March, but on 24. March 1999. Imminent threat of war was proclaimed that day and air attacks began that night. VJ forces had the priority task to re-deploy their forces outside the garrisons so that they wouldn't become easy targets.<sup>530</sup>

287. From the Report of the 243. brigade,<sup>531</sup> point. 1, for 24 March 1999. it can be seen that constant attacks on VJ forces were carried out in all areas of the defense of the State. Point 2 clearly shows that VJ forces carried out a blockade of the wider area, and minefields were found in the wider area. (village Gajre, main road to Dj. Janković.).

288. General Jelić explained that VJ forces in that region had their areas of defense for a longer period of time and he precisely marked those areas.<sup>532</sup> General Jelić explained that the information on killed terrorists and seized equipment was acquired in exchange of information with the MUP<sup>533</sup>.

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<sup>524</sup> T.19115.

<sup>525</sup> T.19117.

<sup>526</sup> 3D72, 6D647

<sup>527</sup> 6D1465.

<sup>528</sup> T.19117.

<sup>529</sup> 6D1465.

<sup>530</sup> See also T.18948.

<sup>531</sup> IC143.

<sup>532</sup> T.19033; IC144.

<sup>533</sup> T.19017.

289. General Jelić further stated the the Order on Kotlina was also not implemented because MUP units did not re-subordinate to VJ forces. Even if he would give the task to the MUP, it would not have been valid.<sup>534</sup>
290. The witness further explained that in the case of an incident with VJ troops, if the VJ troops were leading the action, then military investigative organs were obliged to get to the crime scene. In that case, VJ members would be responsible for their safety.<sup>535</sup>
291. (REDACTED) defense witness (REDACTED) clearly explained that the police informed her in her capacity as the investigative judge about the incident in Kotlina,<sup>536</sup> They went to the crime scene in police armored vehicle.<sup>537</sup> She saw military forces and general Jelić on the main road and he informed her that action is over.<sup>538</sup> The place she met general Jelić is half an hour away for the village of Kotlina.<sup>539</sup> Witness (REDACTED) went afterwards with the police car to the village where she was met by the commander of the PJP forces, Lečić, who wore a green camouflage uniform and a helmet<sup>540</sup> MUP members took the investigation team to the crime scene so that the investigation could be performed.<sup>541</sup>
292. All what witness (REDACTED) stated indicates that primary action in the village of Kotlina was carried out by the MUP, that Army forces were in support and that it was perfectly logical that general Jelić was informed that the action was over. The fact that witness (REDACTED) met the army on the main road half an hour away from the village says that the army was, either holding a blockade of the main road or was on its way to re-deploy before the bombardment began. This is supported by what is stated in the report of the 243. brigade of 24.03.1999<sup>542</sup> where it says in pt. 2 para 2. that minefields were encountered along the main road into Dj. Janković.

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<sup>534</sup> T.19143.

<sup>535</sup> T.19143.

<sup>536</sup> T.25675.

<sup>537</sup> T.25676.

<sup>538</sup> T.25677.

<sup>539</sup> T.25705.

<sup>540</sup> T.25680.

<sup>541</sup> T.25675,25679.

<sup>542</sup> IC143.

293. Making of the document 6D502 four years later in which it is stated that the action was carried out based upon «the plan of the VJ group for second ring security» is completely illogical. Lukic`s defense witness Debeljkovic could not clearly support upon which sources he is relying on for such a statement. That is, witness Debeljkovic was not on the scene,<sup>543</sup> he did not take any statements about that,<sup>544</sup> nor does he know who was informed about this incident.<sup>545</sup> Nowhere and no time was a VJ plan seen which was passed on to MUP. All this brings into doubt the real intentions of the author of that document who made it four years after the event and without a clear explanation of the reasons for something like that and without a clear foundation for such claims. The esteemed presiding judge of the Trial Chamber also posed a question concerning vagueness stressed in relation to the purpose of this document.<sup>546</sup>

294. From the scene of the crime dossier on the incident in Kotlina on 24 March 1999 prepared by the Republic of Serbia MUP– SUP Uroševac,<sup>547</sup> it can be clearly seen that all necessary steps have been taken to bring into light the whole event, which clearly shows that this was a legitimate action. How hard it was to undertake the investigation at the crime scene has been explained by witness (REDACTED).<sup>548</sup>

295. The mentioned document states that seized equipment and arms were taken to SUP Uroševac where they were photographed.<sup>549</sup> Witness (REDACTED) confirmed that she was passed on the case from SUP Uroševac for further steps.<sup>550</sup> This is confirmed by the receipt of the dossier signed by this witness.<sup>551</sup> Investigations in the region of Uroševac were undertaken by the investigative judge of the Municipal court of Uroševac, while the military investigative organs undertook the investigation on that territory when this was under their jurisdiction.<sup>552</sup>

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<sup>543</sup> T.24269.

<sup>544</sup> T.24270.

<sup>545</sup> T.24272.

<sup>546</sup> T.24276.

<sup>547</sup> 6D501.

<sup>548</sup> T. 25682-25683.

<sup>549</sup> 6D501, p. 4, counts 21-26.

<sup>550</sup> T.25706.

<sup>551</sup> 6D500.

<sup>552</sup> T.25705.

296. All this is clearly confirmed by statement of general Jelić<sup>553</sup> that main action was not taken by the army. As general Jelić stresses, if the army was the main actor, its organs would conduct the seizure of arms and would carry out the investigation, particularly having in mind that this was a border region. Confirmation of this could be seen with the events on Mt. Paštrik on 14 December 1998, when the Army was carrying the action.

297. As far as the incident in the village of Kotlina is concerned, the complete available documentation and an opinion was given by the defense expert witness dr. Stanković that many things Hazbi Loku stated about the death of the victims is untrue and does not correspond with the forensic analysis<sup>554</sup>, SUP Uroševac documentation nor does it correspond with the manner by which the persons that were found in the well were killed.<sup>555</sup>

298. Having the above in mind, we contend that the testimony of witness Hazbi Loku should not be admitted in its entirety since it is not credible and is biased.

## **2. Kačanik city**

### **Count 1, Para 72 (k)(ii)**

#### **Count 2**

299. The Prosecution witness for the alleged attack on Kačanik on 27 and 28 March 1999. was Isa Raka.

300. In his testimony, this witness as the alleged attackers describes members of the police, as well as two persons in green camouflage uniforms who were with them who he first thought were army members.<sup>556</sup> But, during testimony he clearly denied that these were Army members.<sup>557</sup>

301. General Krsman Jelić also denied allegations that army units attacked Kačanik, stating that this was illogical since there was no reason for that since all institutions in the city were operational, including MUP, judiciary and municipal authorities.<sup>558</sup>

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<sup>553</sup> 5D116

<sup>554</sup> P361.

<sup>555</sup> T.26151.

<sup>556</sup> P2301 para 12.

<sup>557</sup> T.3546-3547.

### 3. Slatina and Vata

#### Count 1, Para 72 (k)(iii)

#### Count 2

#### Counts 3-4, 75(k)(ii)

#### Count 5

302. Prosecution witness Sejdi Lami testified about alleged crimes committed on 13 April 1999. in the villages of Slatina and Vata.

303. The witness stated that the inhabitants were leaving the village as far back as January 1999.<sup>559</sup> He did not state precise reasons why that was done in the previous period. In the OSCE report from February and March 1999 it is stated that. The same document on page 4, the last paragraph in the photo caption, KLA told the villagers to move out. Almost all of them have left their homes by February 27, so that the IDP report was filed on February 28.<sup>560</sup>

304. Witness Lami stated that a day before the alleged attack the village was visited by Avni Bajgora deputy police commander.<sup>561</sup>

305. Witness allegations that that morning the village was surrounded by army forces<sup>562</sup> were refuted by general Jelić who stated that his units did not surround or enter into those villages.<sup>563</sup>

306. The witness does not allege that the village was bombarded, but says that military forces came in that morning on “Pragas” and trucks.<sup>564</sup> He described those soldiers as wearing red and black bandanas.<sup>565</sup> Krsman Jelić clearly explains that members of his brigade wore identical

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<sup>558</sup> T.18910.

<sup>559</sup> P2271, p.3, para.1.

<sup>560</sup> P680 page 4

<sup>561</sup> P2271, p.4, para.3.

<sup>562</sup> P02271, p.3, para.6.

<sup>563</sup> T.18913.

<sup>564</sup> P2271, p.3, para.6.

<sup>565</sup> P02271, p.5, para5;

uniforms, without any specific insignia or bandanas, since there are regulations on military uniforms.<sup>566</sup>

307. During his testimony this witness stated that the forces came in automobiles (he first said that they came in “Pragas” and trucks) and that he was not able to see anyone, nor to recognize the insignia on the cars.<sup>567</sup>

308. The witness denied that those killed that day in the village were KLA members, but said that they were buried at the martyr cemetery,<sup>568</sup> which clearly indicates that they were killed in combat as KLA members. Defense exhibit shows part of the monument erected in memory of these fighters.<sup>569</sup>

309. For the above reasons, we submit that the testimony of witness Sejdi Lami cannot be accepted as credible and reliable.

310. Defense witness general Jelić explained the presence of KLA<sup>570</sup> and frequent attacks by the terrorist in that direction.<sup>571</sup> He further stated that an anti-terrorist action was undertaken to protect road and it was undertaken by the MUP.<sup>572</sup> Army forces gave support to MUP and were not authorized to enter the villages themselves.<sup>573</sup> The information on killed terrorists were obtained thorough the exchange of information with MUP<sup>574</sup> as well as based on retrieved arms.<sup>575</sup>

311. Witness Jelić explained that each structure, meaning VJ and MUP, took its own particular decisions<sup>576</sup>, that the chains of command were completely separated and that the Army did not conduct any investigation.<sup>577</sup> In that situation, that was not its job.

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<sup>566</sup> T.18915.

<sup>567</sup> T.3267.

<sup>568</sup> T.3285.

<sup>569</sup> 3D95.

<sup>570</sup> T.18915.

<sup>571</sup> T.18914.

<sup>572</sup> T.18916.

<sup>573</sup> T.18917.

<sup>574</sup> T.19011.

<sup>575</sup> T.18918.

<sup>576</sup> T.19007.

<sup>577</sup> T.19011 .

312. He further explained the report of the 243. brigade of 13 April 1999, stating that it shows that the VJ units in that area were carrying out a blockade. The fact that VJ forces were in a blockade is shown by the use of the ammunition. Point 3.1 of the aforementioned report reports on the use of the ammunition for the whole brigade for that day, including the use of anti-aircraft ammunition.<sup>578</sup> This clearly says that the VJ forces did not undertake an active operation.

#### **4.Stagovo**

#### **Counts 3-4, Para 75 (k)(iii)**

#### **Count 5**

313. The Prosecution witness for the alleged crimes in the village of Stagovo on 21 May 1999 was Muharrem Dashi.

314. This witness stated that the action in the village on 21 May 1999, was conducted by the police, while the army was stationed outside the village.<sup>579</sup>

315. This witness admitted that he was a KLA member and that on the day in question he was in civilian clothes, carrying a Kalashnikov rifle.<sup>580</sup> He further explained that villagers have previously departed from the village and that only 150 villagers were present, of which 10 % were KLA members.<sup>581</sup>

316. The Prosecution presented a testimony by a witness who admits that on the day in question he was a KLA member and that he was armed. This clearly indicates that there were no civilians in that village and that it represented a KLA base.

317. We submit that the Trial Chamber cannot accept the testimony of this witness since it is prejudicial and not credible.

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<sup>578</sup> 6D736 count 3.1.

<sup>579</sup> T.4605-4606.

<sup>580</sup> T.4642-4643.

<sup>581</sup> T.4633.

318. General Jelić explained that they had deployments in that area close to the river Nerodimka, and that they were constantly attacked from the villages of Runjevo and Stagovo.<sup>582</sup>

319. From the PrK report of 22.May 1999, pt. 1.1 it can be seen that there was fire at the VJ positions from small arms and hand-held grenade launchers in the areas of villages of Runjevo i Stagovo as well as the area of Hajdučka Česma.<sup>583</sup> On that occasion, these terrorist attacks resulted in killing of one army soldier.<sup>584</sup>

320. Witness Jelić explained that previously an attack by a hand-held grenade launcher took place on the MUP forces in Kačanik, which resulted in a number of casualties so the MUP forces pushed the terrorists towards Runjevo and Stagovo.<sup>585</sup> VJ forces did not enter Stagovo<sup>586</sup> but were engaged in the areas of these villages where they have had previous deployments, holding a blockade while MUP was conducting a search.<sup>587</sup>

321. Prosecution witness Fadil Vishi confirmed that on 21 May 1999 there was combat in Stagovo between KLA and the police.<sup>588</sup>

## **5.Dubrava**

### **Count 1, Para 72 (k)(iv)**

### **Count 2,**

### **Counts 3-4, Para 75 (k)(iv)**

### **Count 5**

322. The Prosecution witnesses concerning the alleged crimes in the area of the village of Dubrava on 25 May 1999 were Fadil Vishi and witness (REDACTED)

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<sup>582</sup> T.19020.

<sup>583</sup> 6D1313 count 1.1 under 9.

<sup>584</sup> T.19021.

<sup>585</sup> T.19020.

<sup>586</sup> T18931.

<sup>587</sup> T.19024.

<sup>588</sup> T.3562.

323. General Jelić denied the allegations of witness (REDACTED) that army troops conducted arrests stating that they did not have the authority for something like that. That could only have been done in the border zone or possibly in the area of combat deployment of the units.<sup>589</sup>
324. Something more has been stated about the reliability of the witness (REDACTED) in the chapter about the Prishtina municipality. The fact that the testimony of this witness is unreliable, particularly concerning the identification of forces, is seen through considerable difference in statements, since in the first statement as perpetrators of the alleged crime he identifies local soldiers<sup>590</sup> while in the second statement he identifies the policemen.<sup>591</sup> Due to this, we submit that the testimony of witness (REDACTED) cannot be accepted as reliable.
325. Witness Vishi stated that at the distance of 1 km he recognized that the soldiers are stopping a civilian convoy, since he clearly saw their uniforms.<sup>592</sup> General Jelić clearly refuted this allegation, stating as an experienced officer that a person can be recognized only at a distance of 300 to 400 m at most.<sup>593</sup> General Jelić stated that the army was not authorized, nor did it check civilian documents.<sup>594</sup>
326. Based on the above, we submit that the statement of this witness cannot be admitted since the witness is biased.
327. General Jelić points out that the army had its position on the south side, close to the village and it held that position all the time during the air attacks.<sup>595</sup> The village was not shot at with artillery because that could have caused friendly fire.<sup>596</sup>
328. Witness Jelić confirmed on the map as part of the exhibit P 370 that his troops were in that area during a prolonged period.<sup>597</sup> That unit was located South, outside of the inhabited area,

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<sup>589</sup> T.18925.

<sup>590</sup> P2595,p.5 and 6.

<sup>591</sup> P2596,2-3.

<sup>592</sup> T.3563.

<sup>593</sup> T.18928.

<sup>594</sup> T.18926.

<sup>595</sup> T.18919.

<sup>596</sup> T.18920.

<sup>597</sup> T.19146,P370, p.6.

and it was there from 23. or 24. March until the end of the war and did not move from that position.<sup>598</sup>

329. It says in the PrK report for 26 05 1999<sup>599</sup> that ŠTS took action against VJ forces in the area of a number of villages. General Jelić explained that on that day MUP was leading an anti-terrorist action from a northern direction of Hranice.<sup>600</sup> During the action a lot of arms were confiscated, MUP confiscated most of it and VJ confiscated some.<sup>601</sup> The VJ troops did not participate in the clean up operation since they could not leave their positions.<sup>602</sup> Anti armor artillery was deployed on those positions.<sup>603</sup> General Jelić explained that specific numbers on terrorist casualties were obtained through information exchange with the MUP<sup>604</sup>

### Summary submission for Kačanik municipality

330. The Prosecution witnesses themselves confirm the KLA presence as is stated above. Along with that ,the exhibits<sup>605</sup>, and even the Prosecution witnesses<sup>606</sup> indicate that the area was under KLA control.

331. The strategic importance of that area is cited in the confidential document of the US Embassy of 11 April 1999, where count 10 confirms that “The KLA lost control of the strategic town of Kačanik.....The KLA has again withdrawn to the hills.”<sup>607</sup>

332. General Jelić explained why that area had strategic importance, stating that all the abovementioned places are in the perimeter of 10 km<sup>608</sup> and that there was the greatest concentration of terrorists<sup>609</sup>. The configuration of the terrain is mountainous so that those places are the only throughways by which a NATO ground invasion<sup>610</sup> with tanks and equipment could

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<sup>598</sup> T.18919.

<sup>599</sup> 6D1314 u Ct.1.1,para4.

<sup>600</sup> T.18921.

<sup>601</sup> T.18920.

<sup>602</sup> T.18922.

<sup>603</sup> T.19015.

<sup>604</sup> T.19017.

<sup>605</sup> 5D1334.

<sup>606</sup> Lami, T. 3281; Dashi, T. 4523.

<sup>607</sup> 6D1638 page4 count10.

<sup>608</sup> T.18933.

<sup>609</sup> T.18933,T.18934

<sup>610</sup> T.18936

be carried through and continue the invasion towards Priština.<sup>611</sup>To make the picture clearer, general Jelić marked these areas and throughways on the map.<sup>612</sup>

333. The fact that the inhabitants were returning during the war is mentioned by general Jelić and he backs this with his document of 16 April 1999,<sup>613</sup> and that these villages were the target of NATO bombings exactly at the moment when these civilians were returning.<sup>614</sup> Having in mind the previous report of the American embassy<sup>615</sup> that 3-4 days before this VJ report the KLA forces withdrew into the hills, it can be concluded that the inhabitants felt it was safer to return.

334. General Jelić stressed that pressure was exerted on civilians in the form of forced KLA mobilization.<sup>616</sup> Along with that, there were other reasons which threatened the security of living in that area. Besides constant bombardment, general Jelić explained through documents<sup>617</sup> that in that area there were a lot of cluster bombs and depleted uranium<sup>618</sup>.

335. An OSCE document confirms that the KLA forces crossed the Macedonian border into Kosovo and displaced the civilians and pressured them.<sup>619</sup>

336. General Jelić explained that MUP planned its activities on its own, since among other things it had all the necessary elements for planning, size, composition, unit commanders, security and other, and only the chief of SUP was competent to carry out that task.<sup>620</sup> General Jelić also stated that he has seen MUP plans on many occasions, including the MUP plan for the action in the village of Račak.<sup>621</sup>

337. Due to this, the Trial Chamber has to find that the Prosecution did not prove beyond any reasonable doubt that the VJ troops under the command and control of general Lazarević did participate or did have any knowledge of any crime in the area of the municipality Kačanik.

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<sup>611</sup> T.18935-18936.

<sup>612</sup> IC 147.

<sup>613</sup> 5D1286.

<sup>614</sup> T.1895-1896.

<sup>615</sup> 6D1638 page 4 count 10.

<sup>616</sup> T.18934.

<sup>617</sup> 5D660, 5D675, 5D676.

<sup>618</sup> T.18896.

<sup>619</sup> P680 page 1.

<sup>620</sup> T.18959.

<sup>621</sup> T.18960.

## VUČITRN MUNICIPALITY

### Count 1, Paragraph 72 (m)

### Count 2

### Count 3 – 4, paragraph 75 (i)

### Count 5

#### Skrovna, Slakovce, Cecelija and Gornja Sudimlja

338. As prosecution witnesses for alleged crimes, committed on 2 May 1999 in the area of villages of; Skrovna, Slakovce, Cecelija and Gornja Sudimlja, testified Ms Fedrije XHAFA, Mr Shukri GERXHALIU and Mr Sabit KADRIU.

339. Witness GERXHALIU describes that the 80% of the Vučitrn territory fell under the control of KLA, including the aforementioned villages.<sup>622</sup> He also states that he worked as a doctor for KLA and that they (KLA) had several hospitals in the area. Furthermore, he states that daily conflicts took place between the KLA and the Serbian forces.<sup>623</sup> In relation to the events of 2 May 1999, this witness claims that: “On 2 May 1999, the order came for the KLA to move because the Serbs had broken through the front line in Llap and Meljanica, Mitrovica Municipality. The civilians, therefore, had to leave. We decided to return to Vushtri. The planned route was to go from Sllakoc to Ceceli and then on the Studime e Eperme and down to Studime c Poshteme.”<sup>624</sup>

340. The witness expresses his bias, especially in relation to the exhibit P0004, which shows a video recording regarding the alleged crimes. On this video footage one can clearly see armed members of the KLA, dressed mainly in civilian clothing. However, the witness has avoided confirming whether those were members of the KLA, so that at one moment even the honourable Presiding Judge of the Trial Chamber reminded him that he is testifying under oath.<sup>625</sup>

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<sup>622</sup> P2275 paragraph 6

<sup>623</sup> P2275 paragraph 11

<sup>624</sup> P2275 paragraph 11

<sup>625</sup> T.2576-2577

341. Witness Ms Fedrije XHAFa confirms that there were conflicts between the KLA and the Serbian forces. Further, she claims that the KLA forces informed them that their resistance was crushed in the village of Melenica and that they should try and break through to Vučitrn.<sup>626</sup>
342. This witness also clearly indicates that the expulsion of the civilians was carried out following the KLA orders.
343. This witness alleges that the police conducted a selection and singled out men which were later taken to the prison in Smrekovnica.<sup>627</sup>
344. The prosecution witness, Sabit KADRIJU especially demonstrates how passionate and biased he feels on the matter when he failed to provide an answer to the question which political party he belonged to.<sup>628</sup> Further, he claims that the Yugoslav Army aeroplanes flew in the midst of the NATO campaign and bombed the KLA head quarters on Bajgora.<sup>629</sup> It is widely known that the VJ aeroplanes did not fly during the NATO campaign, whereby his admission about the KLA HQ being on Bajgora speaks about the strong build up of terrorist forces in this area.
345. All of the above clearly demonstrates that the witnesses GERXHALIU and KADRIU are a biased witness, therefore we are of the opinion that the Trial Chamber cannot accept their testimony in full.
346. The witness allegations about the alleged involvement of the Army in these crimes have been clearly denied by the defence witnesses.
347. Based on the decision on the map, made by the Colonel GERGAR<sup>630</sup> it is evident that the members of his brigade did not engage in any combat activities, but held the line of blockade, whilst the MUP forces, marked by a green colour, played an active field role in destroying the ŠTS. From the above mentioned map it is visible that no orders were given to the MUP units, as there are no clear signs stating which MUP unit it was.

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626 P0004  
627 P2274 paragraph 11  
628 T.5137-5138  
629 T.5152  
630 5D1329

348. From the map of the Colonel GERGAR it is evident that the 15th brigade was partially assigned to the blockade of the southern side. Defence witness Lieutenant Colonel MARINKOVIĆ, member of the 15th armoured brigade of VJ explained that at the beginning of May in 1999 he saw a line of refugees walking along the path, however, it was relatively far from the location where their brigade was assigned.<sup>631</sup> That the members of the 15th brigade did not use their weapons and equipment that day is also confirmed by the data in the field combat reports, stating no consumption cost of the ammunition.<sup>632</sup>
349. Defence witness Colonel Ljubomir SAVIĆ, commander of the 58th brigade of VJ served with his unit in the wider area as a support to the MUP forces on the route of Mitrovica to the villages of Bare-Bajgora. In this operation, as throughout the whole war, the chain of command was divided.<sup>633</sup>
350. From the report of the 58th brigade of 1 May 1999<sup>634</sup> it is evident exactly on which lines were the troops of the 58th brigade in this operation, which is over 15 kilometres distance from villages of Cecelija, Samodreža, Gornja and Donja Sudimlja. The troops of the 58th brigade were not even in the vicinity of these villages throughout the war.<sup>635</sup>
351. Witness SAVIĆ described the situation when they encountered some displaced civilians on 2 May 1999 near the village of Kičići, which he then reported to the commander of the PJP detachment and the chief of SUP in Kosovska Mitrovica. Moreover, he suggested putting up the civilians (refugees) in the village area, which was consequently done. There were some two to three thousand people.<sup>636</sup> Even the prosecution witness Ms Fedrije XHAFI confirmed that for four days she was put up in the village of Kičić.<sup>637</sup>

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631 T.20325-20326  
632 5D1437 count 7.3 and 5D1438 count 7.3  
633 5D1392 paragraph 15-18  
634 5D1399 count 2  
635 5D1392 paragraph 18  
636 5D1392 paragraph 33  
637 P2274 paragraph 11

352. In that same area a few days later, on 8 May 1999, the members of SAVIĆ' brigade came across displaced civilians near the village of Vlahinje, mainly women and children who were given food and shelter.<sup>638 639 640</sup>

353. The manner in which they treated the arrested terrorists is confirmed by the report of the 58th brigade of 12 May 1999.<sup>641</sup>The witness, colonel SAVIĆ explained that medical treatment was given to the wounded terrorists.From the above mentioned report it is evident that a wounded terrorist was given medical care at the hospital in Kosovska Mitrovica.

354. Witness GERXHALIU describes in his statement the killing of members of his extended family<sup>642</sup>, and that they buried the bodies in the local cemetery, but also that the investigation teams arrived on site.

355. Witness MARINKOVIĆ explained that as an army security officer he joined the investigation team in order to establish whether or not the army happened to be involved in this incident.<sup>643</sup>Shell casings found on the scene clearly show that perpetrators of this crime were not members of the VJ or the police. The reported investigation is filed in the evidence<sup>644</sup>

#### **Summary submission for Vučitrn municipality**

356. The fact that the area of Vučitrn municipality was dominantly under the control of the KLA is even attested by the prosecution witnesses.<sup>645</sup>Besides, it is also confirmed by the defence evidence.<sup>646</sup>From the statement of the prosecution witness one can plainly conclude that the expulsion of the civilians was conducted under the orders of the KLA.<sup>647</sup>

357. Defence witnesses of General LAZAREVIĆ have clearly detailed and explained the role of each Army unit in the area.

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638 5D1392 paragraph 32  
 639 5D1131 count 2.1  
 640 5D1132 count 4  
 641 5D1133 count 5  
 642 P2275 paragraph 31-35  
 643 T.20280  
<sup>644</sup> P954 page16  
 645 See Gerxhaliu,Xhafa,Kadriju  
 646 5D1334  
 647 Gerxhaliu P 2275paragraph11,XhafaP2274paragraph 4

358. Therefore, the Trial Chamber must establish that the Prosecution did not prove beyond reasonable doubt Army involvement in the alleged crimes in the area of Vučitrn municipality.

## **DJAKOVICA MUNICIPALITY**

### **Count 1 para. 72 (h) (i) (ii)**

### **Count 2**

### **Counts 3 and 4 , para. 75 (g) (h)**

### **Count 5 para. 77 (d)**

359. The Indictment charges that from on or about 24 March 1999 through 11 May 1999, forces of the FRY and Serbia began forcing residents of the town of Djakovica to leave by ordering Kosovo Albanians to vacate their homes. The Indictments further alleges that on 24 March 1999 the old mosque in Rogovo and the old historic quarter of Djakovica which included the bazaar, the Hadum Mosque and adjoining Islamic Library were among several cultural sites substantially and/or totally destroyed. Finally, the Indictment charges that during late March and April 1999, forces of the FRY and Serbia forcibly expelled the Kosovo Albanian resident of many villages in the Djakovica Municipality, including the villages of Dobroš, Korenica and Meja.

360. The Prosecution called expert witness Andreas Riedlmayer to prove paragraph 72 (h) (i) of the Indictment.

### **Andreas Riedlmayer**

#### **- Hadum Mosque<sup>648</sup>**

361. In the part of the report referring to the location it is stated that a “citizen” (Hxhavit Bashe) heard the cars and the Serbs setting the old bazaar and the mosque on fire. In addition, in an excerpt referring to that location, it is alleged that the “residents” saw about 50 Serbs wearing military uniforms, each of them carrying a 5-liter canister full of gasoline, going toward the Old Town, a district surrounding the city mosque”.

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<sup>648</sup> P1782

362. The Defence, first of all points to the fact that this “citizen” informant, did not see but only heard cars and the Serbs and he fails to explain the exact category the persons he only heard belonged to. Further to the point, residents are mentioned without providing any explicit details such as names and surnames thereof, i.e., they are referred to only in vague, general terms. This, certainly, may not constitute even a remotely reliable source of information on perpetrators, particularly in view of the fact that nobody actually saw the very act of torching the mosque; instead, some nameless residents allegedly only saw Serbs going toward the Old Town.

363. The report also alleges that ‘an inflammable device was thrown at the mosque door’. There are no eyewitnesses to support that allegation and Riedlmayer himself lacks expert knowledge to draw such a conclusion.

364. Finally, it is also essential to point out that in his report, the expert witness alleges that “most of the rubble from the fallen minaret **seems to have fallen** onto the top of the adjoining library building”. This clearly shows his uncertainty in establishing the exact cause of the fall of the rear wall and roof of the adjoining library.

365. In his testimony given before the Trial Chamber, Andreas Riedlmayer is completely vague with respect to stating his own sources of information, existence of eyewitnesses of the actual incident, (alleged torching of the mosque) and categorization of persons who allegedly took part in the incident.<sup>649</sup>

### Old Bazaar<sup>650</sup>

366. The part of the report referring to the location, invokes the same informant as in the case of the Hadum Mosque, namely, Hxhavit Bashe, who happens to be the Imam of the Islamic Community of Djakovica<sup>651</sup>. Discrepancy with the finding on the Hadum Mosque is reflected in the fact that in case of this location, including again the Hadum Mosque, the perpetrators are now defined as the Serb civilians and the Police.

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<sup>649</sup> A.Riedlmayer T.5497

<sup>650</sup> P1781

<sup>651</sup> T.5498,5499

367. Based on yet another source, it is stated that “informants” said that the Bazaar had been set on fire by the Serb police and military during the night of 24-25 March 1999. Here, also, it is important to point to the fact that the true identity of this second source has not been even remotely established.

368. In his testimony, witness Riedlmayer, confronted with the above discrepancies, says that it is exactly because he could not account for the discrepancies that he decided to cite the contents of the informants’ allegations in their original form.<sup>652</sup>

369. That the findings are not credible and impartial is also obvious from Riedlmayer’s statement in connection with a disclosed source of information and a picture of the allegedly torched bazaar. Namely, in his report he discloses the name of Petrit Domi, (who was a member of the OVK as established in the Milosevic case), only to change his statement in his testimony saying that his source was actually the news agency that distributed the statement in 1999, the Reuters, to be more precise.<sup>653</sup>

#### **Hadum Library**<sup>654</sup>

370. In the part of the expert report referring to this location, it is stated that the information was received from the same informant (Hxhavit Bashe). Although the Hadum Library is adjacent to the Hadum Mosque and located in the Old Town, the same informant speaking about the incident that took place on the same night of 24 March 1999 now identifies the perpetrators only as “Serbs”. In the same context he alleges that the building was burnt down along with all the books in it. However, this same informant says that on 8 May 1999 Serb soldiers destroyed the minaret of the Hadum Mosque which fell onto the library building bringing down the rear wall. This additionally amplifies confusion about the exact date the Hadum Mosque and Hadum Library were damaged or destroyed and the category of persons responsible for that..

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<sup>652</sup> A.RiedlmayerT.5615

<sup>653</sup> A.RiedlmayerT.5604,5605

<sup>654</sup> P1873

**Kel Hasan Aga Mosque<sup>655</sup>**

371. Here, the Prosecution expert, who is a historian by profession, again gives his assessment with respect to causes of damage which is absolutely beyond his scope of expertise. Furthermore, no identity of persons who gave the statement in connection to this location and who allegedly saw the incident is disclosed in the finding. Symptomatically, the expert witness knows that the informant is a storekeeper, but no particulars regarding his identity and identity of an alleged eye witness are disclosed to enable verification of reliability and accuracy of the information.

372. When asked about his expert knowledge and that of his team that qualifies them to assess causes of damages inflicted upon the edifices, this expert witness says:

3 *Q. Did you have someone in your team who understands ballistics or*  
 4 *military matters? Did you have any military experts with you?*

5 *A. No, we did not.*

6 *Q. Do you have any knowledge of ballistics or military knowledge?*

7 *A. I am not a military expert, no.<sup>656</sup>*

*as well as,*

17 *Q. Okay. Now, would you agree with me that, in order to*

18 *definitively, as an expert, give descriptions of and make conclusions of*

19 *exactly in what manner these buildings and mosques were damaged, you would*

20 *need to have had the assistance of such an expert, that is to say, a*

21 *bomb-scene or fire-scene investigations expert and a forensic structural*

22 *engineer, as the literature indicates?*

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<sup>655</sup> P1784

<sup>656</sup> A.RiedlmayerT.5535

23 A. Well, in the best of all circumstances, that's what you would hope  
 24 to have; however, in our field survey, we had much more modest goals and  
 25 those were, I think, achievable through simple visual observation and  
 application of certain basic criteria.<sup>657</sup>

373. Remarks the Defence has stated with respect to the above locations in the Djakovica Municipality are fully in compliance with the remark of Judge Bonomy, given in the course of cross examination of the witness with respect to the probative force of the expert report in relation to accurate reflection of who carried out this attacks or, indeed, what necessarily happened on the occasion.<sup>658</sup>

374. The Defence wishes to draw attention of the Trial Chamber to the exhibit 5D2 presenting a criminal charge dated 30 March 1999 filed by the criminal police department of the SUP Djakovica. Namely, it is obvious from the document that on the night of 24/25 March 1999, in the period between 20.30 and 03.30 hundred hours, NATO warplanes conducted a series of air raids on military installations in Djakovica on which occasion a missile missed its target and hit the Old Town killing several civilians of Albanian ethnicity and burning down numerous commercial and residential buildings in the hearth of the town. In addition, the document shows that the Investigating judge of the Municipal Court in Djakovica, Kemal Čindrak, visited the scene and performed an investigation together with forensic specialists of the SUP Djakovica. The onsite investigation established that explosion and impact of the missile sparked a chain of fires engulfing about 220 buildings which were consequently burnt to the ground and entirely destroyed and that the corpses found were those of victims of the explosion and fire caused by the missile. Following the orders issued by the Investigating judge, all the dead bodies were handed over to their respective family members for burial.<sup>659</sup>

375. Further to the point, the Prosecution alleges in the Indictment that forces of the FRY and Serbia begin forcing residents of the town of Djakovica and its surrounding to leave. The

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<sup>657</sup> A.RiedlmayerT.5602,5603

<sup>658</sup> A.RiedlmayerT.5557

<sup>659</sup> 5D2

Prosecution summoned to the stand numerous witnesses in an effort to prove the allegations disclosed in the Indictment in connection to the Djakovica Municipality:

Hani Hoxha<sup>660</sup>,

Lulzim Vejsa<sup>661</sup>,

Fuat Haxhibeqiri<sup>662</sup>,

Lizane Malaj<sup>663</sup>,

K 74<sup>664</sup>

376. The Defence notices that the above witnesses summoned by the Prosecution have failed to prove beyond a reasonable doubt that members of the VJ under command and control of General Lazarević had taken part in expulsion of persons of Albanian ethnicity from the municipality or that they, even when mentioned in connection with migration of civilians to Albania, had exercised force, i.e., duress as an element sine qua non of existence of criminal offence of deportation and forcible transfer.

377. Position of the Defence that the Prosecution has failed to prove the above allegations is corroborated by numerous other witnesses giving testimony in connection with the events in the Djakovica Municipality.

378. First of all, even Prosecution's own witness (REDACTED), when explicitly asked by the Prosecutor to explain discrepancies in his statement, decidedly says (REDACTED). He also says that civilians did not leave their homes until cluster bombs started falling.<sup>665</sup>

379. Defence witness, Colonel Goran Jevtović who was stationed at the IKM of the PRK (commanding outpost of the Pristina corps) in Djakovica, in 1998 and 1999, in his statement says that he never heard of any plan for forcible deportation of civilian population of Albanian

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<sup>660</sup> P2230, p.5, para.16

<sup>661</sup> P2350, p.2, para.3; P2350, p.3, para 14; L.Vejsa T. 4082

<sup>662</sup> P2235, p.6, para. 42

<sup>663</sup> L.Malaj T.1323; P2232, p.5

<sup>664</sup> P2517, p.6, para.30.

<sup>665</sup> (REDACTED), T. 9272,9273

ethnicity and neither did he receive any order, whether verbal or written, to the effect of deportation of Kosovo Albanian civilians to Albania or any other country from his superiors. He also says that any such plan would have been disastrous, both politically and militarily for the VJ and the FRY in general, since the Army would have been exposed to even more intense bombing and shelling causing enormous losses and the state to a growing pressure of international community.<sup>666</sup>

380. This witness gives his comments on the Prosecution exhibit P2930 explaining that he himself composed it and that, under item 4, “situation across the territory” he addressed the most important problem at the moment, that is, the massive movement of civilians of Albanian ethnicity toward Albania. He points to the fact that the area is inside the borderline zone and therefore was exposed to massive bombing. Due to the bombing raids in combination with pressure exercised by the OVK, civilians, in large numbers started migrating toward Albania and the Army had no legal grounds to stop them by force. In addition, parts of the area inside the borderline zone were legitimately obstructed by mine fields and defence units were already deployed along the combat positions in preparation of defence against ground invasion from Albania. The witness explains that for the above reasons, and for the sake of ensuring safety of civilians (in order to prevent them from entering the mine fields or crossing combat lines of deployed units), it was necessary to direct them toward safe passages so that nobody would get hurt.. That is the reason why under item 4 he stated that the MUP and the VTJ conducted control of the territory and channelling of refugees on their way to Albania.<sup>667</sup>

381. Among other issues, the Prosecution asked witness (REDACTED) questions in connection with the above circumstances and he remembered that, on the very first day of the (REDACTED), on (REDACTED). (REDACTED).<sup>668</sup> However (REDACTED) did not see any of these people being killed and he has no personal knowledge of who carried out these actions.<sup>669</sup> On cross examination he states that they never received an order to torch houses. He

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<sup>666</sup> 5D1385, para. 23

<sup>667</sup> 5D1385, para. 21, 22

<sup>668</sup> (REDACTED)

<sup>669</sup> (REDACTED)

then states that only once did they receive an order to torch a village between Dobros and Korenica where one of their soldiers got killed.<sup>670</sup>

382. The Defence has presented its evidence by hearing the witness Saša Antić, (REDACTED), (REDACTED), who clearly and unambiguously, categorically confuted that the objective of the action was to “cleanse” Albanian villages and expel civilian population from the area. He categorically denies that he received any task to that effect from either the battalion commander or, indeed, from any other superior officer.<sup>671</sup> In his statement, he also points out that not only that none of his superiors issued to him any order to expel civilians but also that he himself would have never issued an order to that effect to his subordinates.<sup>672</sup>

383. Finally, this witness categorically denies that, in addition to expulsion of civilians their houses were torched for the purpose of “marking achieved lines”, “retaliation” or, indeed, for any other reason. He explains that, save for a haystack, a barn and part of a residential house, that got engulfed in flame during the fight with the OVK in the village of Ramoc, no structure was torched and therefore the allegation of witness (REDACTED) to that effect is absolutely untrue. This witness points to illogicality and contradictoriness of (REDACTED) statement, who claims at first that house torching was a routine custom and then he says that he actually never received any order to torch houses and that such a torching happened only once, and out of “retaliation” when a fellow soldier was killed.<sup>673</sup>

384. At this point, one should be well advised to notice that even the Prosecution’s own witness, Merita Deda, who gave her statement in connection with an incident in Korenica of 27 and 28 April 1999, in her written statement says that, when the convoy of civilians arrived at the hill of Gradish, the VJ soldiers told to the priest that all those who travelled on foot had to turn and go back to the village and only those villagers who managed to secure a ride aboard a motor vehicle were PERMITTED to proceed toward the borderline crossing.<sup>674</sup> This witness returned to Bistrazin where she and 50 other members of her family remained until arrival of the

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<sup>670</sup> (REDACTED)

<sup>671</sup> 5D1398,para. 28, 29

<sup>672</sup> 5D1398,para. 34

<sup>673</sup> 5D1398,para. 31

<sup>674</sup> P2233, p.4, para. 15

NATO forces in Kosovo.<sup>675</sup> This clearly shows, first, that no plan for expulsion existed and that the army did not take part in any such activity and that, on the contrary, the army actually sent people back to their villages. In addition, the witness says that those who rode in vehicles were PERMITTED by the VJ to continue their ride. This means the army did not order them to move toward Albania but rather that it permitted them to leave since there were no legal grounds to hold them back.

385. At this point the Defence would like to emphasize the statement given by witness Vintar Zdravko, an army officer from the Djakovica garrison, who points out in his testimony that due to activities of the NATO aviation, the town residents frequently rushed from one part of the town to another to find shelter, and that, for the same reason, a large number of civilians fled to the neighbouring Albania using the shortest possible routes. He also says that he also knows that the KLA kept pressuring civilians of Albanian ethnicity to leave KiM.<sup>676</sup>

386. To illustrate absence of any plan for expulsion of Albanian civilians this witness refers to numerous documents he personally prepared and which show how much members of the PRK actually cared for civilians without any intention of expelling them. In addition to exhibits 5D 1144, 5D1145 and 5D1151, warning the unit not to commit any crimes and threatening to punish perpetrators vigorously<sup>677</sup>, this witness also comments exhibits 5D1147 and 5D1155, he also personally prepared and from which one can clearly and unequivocally draw only one conclusion that the Djakovica garrison, based on respective orders issued by the corps commander, General Lazarevic, took numerous measures to protect and shelter civilians, provide them with food and other necessities and health care. Command of the Pristina Corps was informed that acting upon its orders, measures of protection of and assistance to civilian population had been taken and the unit was ready to shelter more people threatened by combat activities and NATO air raids, if there need be.<sup>678</sup>

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<sup>675</sup> P2233,p.4,para.16

<sup>676</sup> 5D1394,para15

<sup>677</sup> 5D1394,para.7,8,9

<sup>678</sup> 5D1394,para.11,12,13,14

**Count 3 and Count 4, para. 75 (g)**

387. The Indictment alleges that on or about the late evening of 1 April 1999 and continuing through the early morning hours of 2 April 1999, in a part of Djakovica known as Querim district, over a period of several hours, forces of the FRY and Serbia forcibly entered houses of Kosovo Albanians killed the occupants and then set fire to the buildings. The Prosecution offers an example of a house located at 157 Miloš Gilić Street, alleging that forces of the FRY and Serbia opened fire on the occupants and then torched the house which resulted in the death of 20 Kosovo Albanians.

388. The Prosecution called: Lulzim Vejsa; Hani Hoxha; Dren Caka; K74 to prove paragraph 75 (g) of the indictment.

389. In his testimony, Prosecution witness Lulzim Vejsa says that on 2 April 1999, at 00:15, Serb police and paramilitary troops knocked on the door of the house at Miloš Gilić Street.<sup>679</sup> The witness further says that he decided to escape through a small window at the rear of the house.<sup>680</sup> In his testimony before the Tribunal he states that he actually did not see the persons knocking on the door,<sup>681</sup> and that in the morning, when he got to his house he saw three police officers guarding the house<sup>682</sup>. He says that those three policemen were his neighbours mobilized as members of the Police reserve forces in 1998-1999.<sup>683</sup>

390. The second Prosecution witness called to the stand to give his testimony in connection with the incident was Hani Hoxha. In his testimony, this witness says that the attackers were wearing uniforms but he cannot be more specific about the type of their uniforms.<sup>684</sup>

391. In his testimony regarding the incident, Dren Caka says that that there were six Serb policemen at the door who ordered them to come out.<sup>685</sup> He also says that the persons were wearing dark blue police uniforms<sup>686</sup> and that the group of persons who had found refuge in the

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<sup>679</sup> P2350, pages 2-3

<sup>680</sup> P2350, page 3.

<sup>681</sup> L.Vejsa T.4090

<sup>682</sup> L.Vejsa T.4083

<sup>683</sup> L.Vejsa T.4087

<sup>684</sup> P2230,page4

<sup>685</sup> D.Caka T2637

<sup>686</sup> D.Caka T.2638

house was taken to the basement by three policemen. The witness also describes the murder of a woman named Dushi and her mother who were, according to this witness, killed by the local policemen.<sup>687</sup>

392. The Prosecution also heard witness (REDACTED) in connection with the incident. The witness points out that the persons involved in the attacks were the Serbs he grew up with in Djakovica.<sup>688</sup>

393. It is absolutely clear from all the presented evidence that none of the above listed witnesses testifying in connection with this particular incident identified members of the VJ as either direct perpetrators or, indeed, as persons in any way involved in the incident. Here to, the Prosecution has obviously failed to prove beyond a reasonable doubt that any unit under command or control of General Lazarevic had been involved.

#### **Count 3 and Count 4, para. 75 (h)**

394. In its Indictment, the Prosecution charges that 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 Carragojs, Erenik and Trava Valleys in order to drive the population out of the area. Furthermore, the Prosecution alleges that in Meja, Korenica and Meja Orize, a large and as yet undetermined number of Kosovo Albanian civilian males were separated from the mass of fleeing villagers and abducted.

395. In support of the above allegations, the Prosecution presented evidence by hearing several witnesses: Merita Deda; K73; Nik Peraj; Martin Pnishi; K72; K90; Lizane Malaj.

396. It is undoubtedly clear from the testimony given by Merita Deda that she is unsure about categorizing persons who allegedly took part in the crimes. Namely, in her written statement in connection with the events of 27 April 1999, the witness states that "Serb army forces" ordered her and her family to leave Markaj's house.<sup>689</sup> In the course of cross examination, however, this same witness says that those persons were not wearing regular military uniforms but they had

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<sup>687</sup> D.Caka T.2644

<sup>688</sup> (REDACTED)

<sup>689</sup> P2233, page 3.

caps, masks and cowboy hats and headbands on their heads<sup>690</sup>. Just how unreliable her testimony is becomes clear from the fact that, when shown her own *statement to the ICG (3D 2)*, she admits that she actually said to the officials of the ICG that the attackers had been Serb policemen and masked paramilitary members.<sup>691</sup> Confusion with respect to this important issue has been additionally worsened by the statement given by this same witness in the Milosevic case. Namely, she then said that on the said day, masked policemen had been there and they were thrown out from the house by members of paramilitary groups<sup>692</sup>. This witness's confusion and unreliability becomes even more obvious from her allegation that there were both police and army on the road but that only army soldiers were in the front yard of the house.

397. In his statement, Prosecution witness Martin Pnishi says that various police, VJ and paramilitary units were engaged in activities in the wider Meja area.<sup>693</sup> He also says that on 27 April 1999, he saw the policemen killing seven males on the Ura e Traves Bridge in Jahoc, some 100 meters far from his house. In addition, he says that he saw, in the wider Meja area, members of the army with their rank insignia on their shoulders.<sup>694</sup> Defence Witness Colonel Vlatko Vukovic testified that VJ officers have no ranks displayed on their shoulder straps, on the shoulder straps of their combat uniforms.<sup>695</sup>

398. Prosecution witness Lizane Malaj, in her statement in connection with events of 27 April 1999 says that people who surrounded her house in Korenica wore army, police and paramilitary uniforms, they wore masks and ribbons on their arms.<sup>696</sup> She further says that the soldiers wore brown to green uniforms, police officers blue uniforms and others were wearing arm bands and bandanas. Some of the soldiers had insignia on their arms, others had ribbon ties on their arms. We have already mentioned that witness Vlatko Vuković stated that VJ officers have no ranks displayed on their shoulder straps, on the shoulder straps of their combat uniforms. The Defence further notes that members of the Pristina Corps did not wear brown to green uniforms, but olive-green ones, the fact that is corroborated by numerous pieces of evidence in the case. Numerous

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<sup>690</sup> M.Deda T.1403

<sup>691</sup> M.Deda T.1411

<sup>692</sup> P2234, Prosecutor v. Milosevic T.8081

<sup>693</sup> P2236

<sup>694</sup> P2236

<sup>695</sup> V.Vukovic T.21333

<sup>696</sup> L.Malaj T.1310

are also pieces of evidence proving that members of the PJP wore green camouflage uniforms while engaged in antiterrorist activities.<sup>697</sup> Further to the point, even Prosecution's own witness K73, in his verbal testimony points out that in the course of combat actions conducted in 1999, his unit did not wear these ribbons at all throughout the actions. He states that almost all MUP members wore the ribbons during 1999.<sup>698</sup> Finally, in favour of the fact that members of the corps did not wear any ribbons, speaks a document issued by chief of staff of the MUP for KiM dated 13 April 1999 where, in the last paragraph, he notes that members of the VJ wear no identification ribbons.<sup>699</sup> This witness also states that it was the police who told them they were permitted to go only to Albania.<sup>700</sup> It was police all the time who were telling the people where to go.<sup>701</sup> She herself states that she believes the police were in charge and control of what was going on.<sup>702</sup>

399. Although she denies presence of the KLA in her village of Korenica, she still lists numerous other villages where the KLA positions were located-Nec, Smonica, Pacaj, Ramoc and other villages of the Carragojs C Valley. The Defence hereby draws attention of the Trial Chamber to exhibits presenting documents of the State Department of the USA based on a source from the KLA which convincingly speak about a huge number of members of the KLA stationed across the Carragojs c Valley, i.e., western Kosovo region, and major fights in April around Junik, the place the Carragojs C Valley begins from for the purpose of establishing a corridor toward Albania.<sup>703</sup> Numerous Defence witnesses testified to that effect.

400. Prosecution witness (REDACTED), whose statement the Defence has already analyzed in part says that when his (REDACTED) he did not see any civilians there at all but the place was crowded with members of the PJP.<sup>704</sup> Defence witness, Saša Antić, (REDACTED), denies that

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<sup>697</sup> P1996, last paragraph; P 1993, last paragraph;

<sup>698</sup> (REDACTED)

<sup>699</sup> 6D237

<sup>700</sup> L.Malaj T.1323

<sup>701</sup> P2232, p.4

<sup>702</sup> P2232, p.5

<sup>703</sup> 6D1637 (military activity, page 4); 6D 1638 page.2 item. 6; 6D 1639, page 2. item.1; 6D 1640 page 2, items 2 and 3.

<sup>704</sup> (REDACTED)

his unit entered Korenica, stating that they came to a halt some 200 to 300 meters north of Korenica thus fully accomplishing their mission.<sup>705</sup>

401. At this point, the Defence wishes to draw the Trial Chamber's attention to the viva voce testimony given by this witness in which he practically denied all allegations from his own written statement describing members of his unit and his commander as honourable and honest fighters who fought against the KLA and not against civilian population.

[REDACTED]

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<sup>705</sup> 5D1398, para.27

<sup>706</sup> (REDACTED)

[REDACTED]

402. In addition to his own unit, he also highly praises the 63<sup>rd</sup> Parachute Brigade.

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

403. In connection with involvement in action of 27 and 28 April, this witness explains:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

404. Although statement given by (REDACTED) given during his oral testimony speaks for itself, the Defence also [REDACTED]. He testified that the

[REDACTED]

KLA carried daily attacks from the Carragojs Valley on the MUP and VJ and they posed a serious danger to forces on the first line of defence of the state border.<sup>710</sup> On the 26th April 1999 Sasa Antic received the task from the Chief of Staff of the Corps to prevent the flow of terrorist toward the border by carrying out a manoeuvre of part of his company because MUP forces were supposed to search terrain in the Reka area.<sup>711</sup> His company's task was to move along the Dobros village – Korenica village road and thus prevent the flow of terrorists.<sup>712</sup> He testified that this task started on the morning of the 27 April. To the left of his formation on the Dobros village – Ramoc village axis was the 63rd Parachute brigade and on his right were the PJP companies from Djakovica and Prizren. On the 27 April he did not establish visual contact with the PJP companies. He had visual contact with the 63rd Parachute Brigade in the beginning but later it was only via radio.<sup>713</sup> For this task two platoons from his unit were engaged, around 40 -50 soldiers, and part of 63rd Parachute Brigade with approximately same number of soldiers.<sup>714</sup> During the night of the 27th of April 1999 his unit was attacked by KLA forces and one soldier Private Zeljko Tosic was killed.<sup>715</sup> The KLA used hand-held launchers in the exchange of fire, setting a haystacks on fire which spread to a nearby building and than to a house. In the morning of 28th of April a body of KLA member was found and on the spot from which the terrorists fired at them, they found some bloodstains or pools of blood or -- and parts of discarded military equipment, the military vest they used, some ammunition, some parts of military equipment.<sup>716</sup> The weapons and combat equipment were confiscated and he was marked with a groundsheet.<sup>717</sup>

405. On the 28th of April 1999, at the approximately 15h they reached 200/300 metres north of Korenica, thereby reaching the line at which their task ended. From there they returned to the deployment area toward the border with Albania. They did not engage in any combat action, except from above described action from the night 27th-28th of April in Ramoc. But they could

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<sup>710</sup> 5D1398

<sup>711</sup> S. Antic T. 21 144-21 145; 5D1398

<sup>712</sup> 5D1398

<sup>713</sup> 5D1398

<sup>714</sup> 5D1398

<sup>715</sup> P2297, entry for 28 April 1999

<sup>716</sup> S. Antic T. 21146

<sup>717</sup> 5D1398

hear combat actions from the direction of Junik-Korenica-Djakovica main road on the right side of his unit.<sup>718</sup>

406. Abovementioned Prosecution witness(REDACTED), stated in his statement, for which he claimed that has many inaccuracies, that REDACTED ordered him to go and see what was happening at the crossroads.<sup>719</sup> He returned and told REDACTED what was happening and he states that REDACTED was clearly angry that this happening.<sup>720</sup> When he reported this back to REDACTED he was ordered to go to Meja and escort the civilians through to Djakovica so that the police do not kill them.<sup>721</sup> He states in his live evidence that he did not know whether his commander reported what happened up the chain of command nor did(REDACTED) report what happened to his lieutenant.<sup>722</sup>

407. Defence witness Vlatko Vukovic denies ever telling(REDACTED), (REDACTED), , to go down to the crossroads, to see what is happening because the police were killing people because Vukovic did not have any information that something like was taking place.<sup>723</sup> Witness Vukovic added that the first time heard about the alleged crimes in the areas around Korenica and Meja at the end of 2001. After finding out about the alleged crimes he spoke with the officers who participated in action and he maintains that no member of the unit which he had command of in this action, committed any crime in those areas. He never got any information that any other unit had done so.<sup>724</sup>

408. Vlatko Vukovic gave evidence that on 26 April 1999, in the presence of the Chief of Staff of the 549 mtbr. he received a task from the Chief of Staff of PrK, Colonel Veroljub Zivkovic, to block the part of the Korenica region with the purpose of preventing the withdrawal of the STS towards Djakovica, over the rivers Erenik towards Albania. The frisk of the terrain, the discovery and destruction of ŠTS was performed by the MUP units from the road Djakovica-Pec<sup>725</sup>. Colonel Vukovic did not draft any combat documents for the contemplation of this task, because

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<sup>718</sup> 5D1398

<sup>719</sup> (REDACTED)

<sup>720</sup> P2391, page 10, para 61

<sup>721</sup> P2391, page 10, para.64

<sup>723</sup> V.Vukovic, T. 21347

<sup>724</sup> 5D1401

<sup>725</sup> 5D1401; P2019 entry 26 April 1999

the battalion was still located in the earlier region and had executed defence in accordance with hitherto rendered order, and only small forces were engaged for this task. Therefore, there was no written order, because these tasks were platoon level, and they were in accordance with the execution of the tasks of the State border defence.<sup>726</sup> Colonel Vukovic's Command post for this action was in an abandoned house between the villages Meja and Korenica, on the road Djakovica-Ponosevac. The unit had its first conflict with terrorist forces on 27 April 1999 at 8:30 in the region of the cemetery near Korenica village. From the report of the platoon commander sub-lieutenant Dragan Mitic, he learned the following: Around 8:30h, in the region of the cemetery at the entrance in to the Korenica village, Dragan Mitic had noticed, a group of around 50 civilians. He had sent a patrol to check where they were from and to tell them to return to their houses. When the patrol approached this group, fire was opened and a grenade was thrown, which resulted in the heavy wounding of soldier Dobrica Vuckovic, while soldier Miroslav Lapadatovic was lightly wounded. When the Commander had arrived with reinforcements, the terrorist ran off into the nearby houses, while the civilians were allowed to pass towards Djakovica, outside the area of combat.<sup>727</sup>

409. During that afternoon, civilians, mainly women with children, passed down the road from Korenica to Djakovica, in groups of 20-50. They did not have any contact with them, except that individual soldiers gave them food and water. Colonel Vukovic maintains that his unit opened fire only on armed terrorist, and that they in no way whatsoever forced the civilians to leave their houses.<sup>728</sup>

410. He testified that at approximately 02h on 28th of April 1999 terrorist forces attempted to pull out toward Djakovica through a military police platoon's position in the area around Kodra e Kikes, but prevented in doing so. MUP units completed their search of the terrain at about 16h, and Colonel Vukovic received the task from the Pristina Corps Forward Command Post to bring back the unit to the Battalion's Area of Defence. He left a single reinforce platoon in the terrain

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<sup>726</sup> 5D1401

<sup>727</sup> 5D1401

<sup>728</sup> 5D1401

that had been searched so they could control the territory along the Ramoc-Racaj axis, but no more terrorist were seen.<sup>729</sup>

411. Lukić Defence team called witness Radovan Zlatković, head of criminal police squad of the Police Station(SUP) in Djakovica in 1999 to the stand. When asked if he saw any dead bodies at the checkpoint after the “Reka” operation, he says it was he who conducted the field investigation.<sup>730</sup> So, it is clear that investigation after the “Reka” operation, was carried out by the MUP and civil authorities and not the military ones.

412. Lazarevic Defence would like to add that the OTP called witness K72. He states that the VJ never employed him to do any work involving the digging up of bodies, only the police employed him to do this.<sup>731</sup>

413. Prosecution witness Nike Peraj says that after the murder of MUP officer Prašćević, he attended a meeting held in a house in Djakovica in presence of Momir Stojanović, head of SUP Djakovica, Kovačević, head of SDB Djakovica, Camović and Major Mićunović. The witness alleges that at the meeting, Stojanović ordered Mićunović and Kovačević "to carry out an operation in the Carragojs Valley, where, in retaliation for the murder of Prašćević, at least 100 "heads" were to be eliminated and "all houses burnt to the ground".<sup>732</sup>

414. Defence witness Momir Stojanović, dismisses the above allegation as a complete lie and in his response he states that he never attended any such meeting and that he even does not know some of the listed persons, for instance Mr.Kovačević, and that he never did anything to that effect. In addition, he states that he did not attend Prašćević's funeral, but instead, he went to express his condolences to the family a day before the funeral when he saw Nike Peraj, who was Prašćević's friend. Stojanović points out that even on that occasion he said nothing of the above-alleged and that condolences were expressed in the family house backyard where Nike Peraj was sitting on a bench with some other people. Stojanović came to him and Nik Peraj expressed

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<sup>729</sup> 5D1401

<sup>730</sup> R.Zlatkovic T.25284

<sup>731</sup> P2390, page 6,para 27

<sup>732</sup> P02253, para.59;

condolences to him, and, without exchanging any other words, they had a glass of cognac each whereupon Stojanović left to attend to some errands.<sup>733</sup>

415. Elsewhere in his statement, Nike Peraj alleges that head of military intelligence of the PRK told him about a plan of ethnic cleansing the Serb forces were about to put into action against Kosovo Albanians in the Djakovica Municipality.<sup>734</sup>

416. Defence witness Momir Stojanović, however, in his oral testimony unequivocally dismisses such allegations stating that he as a staff member of the Corps and as an officer of the military security/intelligence of the Corps never got in touch with any piece of information that would indicate in any way that somebody was planning and ordering mass expulsion of ethnic Albanians from Kosovo and Metohija.<sup>735</sup> He also says that, from a military point of view, mass evacuation of Albanian population would be neither useful nor justified in view of the fact that the Army felt more safe while surrounded by civilians. Without them, the witness says, the Army would have been an easy target for the NATO.<sup>736</sup>

417. Finally, this witness offered a concrete example to the Court pointing to the fact that the newspapers in Albanian language “Bujko” and “Koha Ditore”, distributed across KiM, refused to publish an appeal of the Serbian Government to Albanian population to stay home.<sup>737</sup>

418. Witness Peraj, in his first statement given on 18 April 2000 says that Nikola Mićunović aka Dragan, Milan Kotur and Kovačević bear the main responsibility for the massacre in Meja and Korenica. He says that it was them who planned and carried out the whole operation.<sup>738</sup> In his second statement of 8 and 9 August 2006, he alleges that the above three persons were involved since they were in charge of all military operations in the area.<sup>739</sup>

419. Allegations of witness Nik Peraj to the effect that the abovementioned persons planned the action are refuted by Defence witness Milan Kotur who states that it is not true. Milan Kotur states that the action was carried out in the «Reka» area and that it was an antiterrorist action

<sup>733</sup> M.Stojanović,07/12/2007,T.19788;

<sup>734</sup> P2253,para57

<sup>735</sup> M.Stojanovic T19732

<sup>736</sup> M.Stojanovic T19732

<sup>737</sup> M.Stojanovic T.19733

<sup>738</sup> P2248,

<sup>739</sup> P2253, para 103

conducted by the MUP with engagement of only minor forces of the VJ, for the purpose of prevention of the ŠTS forces spreading toward the state border and the town of Djakovica, and that it was a coordinated action lasting two days, i.e., on 27 and 28 April 1999.<sup>740</sup> He also says that a PJP company from Djakovica and a PJP company from Prizren were involved in the terrain search and, since a PJP unit from Peć which was supposed to participate as well did not arrive, the Army offered some units of its own to assist in the terrain search, namely a military police company of the 52<sup>nd</sup> bvp and a small unit of the 63<sup>rd</sup> Parachute Brigade.<sup>741</sup>

420. In this coordinated action all the troops stationed near “Reka” received the order that with part of their forces they should secure the axis from “Reka” and not permit infiltration of terrorist forces into their area of battle.<sup>742</sup> Colonel Veroljub Zivkovic issued this task to the units to take up or to secure the “Reka” axis. This was not a written order as units at platoon and company level are not issued a written order.<sup>743</sup> Colonel Kotur dismissed as incorrect the claims made by Nike Peraj that he, Colonel Kotur, Micunovic, Kovacevic, were responsible for Meja and Korenica and had planned and performed the whole action.<sup>744</sup>

421. In his statement, Nike Peraj alleges that he attended a meeting the massacre in Meja was planned at since the meeting was held in the same house he was stationed in with his unit in charge of security.<sup>745</sup> In connection with this, Defence witness Zdravko Vintar, in his written statement states that at the time Peraj testifies about and when, according to witness Peraj, “a massacre in Meja” was allegedly planned, part of the brigade command, including witness Vintar and Nik Peraj, was stationed in the Djakovica Cultural Center and not in a house belonging to some Albanian civilian as Peraj alleges.<sup>746</sup> This witness further notes that even Nik Peraj himself, in his statement says that on 27 April 1999, returning from the task of transporting dead bodies of the VJ members, he came to the Cultural Center, part of the brigade command headquarters was stationed in.<sup>747</sup>

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<sup>740</sup> M.Kotur, 21/01/2008, T. 20679;

<sup>741</sup> M.Kotur, T.20679;

<sup>742</sup> M.Kotur T.20681

<sup>743</sup> M.Kotur T.20682

<sup>744</sup> M.Kotur T20687

<sup>745</sup> P02253, pasus 62.

<sup>746</sup> 5D1394 para 20

<sup>747</sup> 5D1394, para 21

422. The above allegations of witness Nik Peraj are also refuted by witness Sergej Perović, who, in his statement, categorically dismisses Peraj's allegations as untrue, stating that Peraj could not have attended any such meeting held in the presence of commanding cadre. In addition, he could not have attended such a meeting held, according to his own words, in a private house belonging to an ethnic Albanian he was stationed in together with his unit since witness Perović is categorical in his statement that Peraj with his unit was stationed in the "Vuk Karadžić" Cultural Center and not in some private house.<sup>748</sup>
423. Witness Nik Peraj further alleges that Sergej Perović told him nothing was going to happen to his (witness's) family during the operation in Carragojs Valley.<sup>749</sup> Defence witness Sergej Perović refutes the allegation as untrue stating that he never had any conversation with Nik Peraj on that issue.<sup>750</sup>
424. Nike Peraj alleges that the following persons attended regular daily meetings held at 8:00h in the morning and 6.00h in the evening: Mayor Stanojević, Head of military department Mićunović, Head of DB Camović, Head of the MUP Adamović, commander of 52. arbr PVO Djošan and a representative of the Priština Corps (occasionally Lazarević, Jevtović, Kotur)<sup>751</sup>
425. Milan Kotur points out that meetings with the above-listed persons were never held and that people from the VJ would only come to the MUP when invited and they may have only been called from the MUP if certain issues needed to be discussed but no regular meetings were ever held.<sup>752</sup>
426. These statements given by Milan Kotur are confirmed by witness Goran Jevtović, who points out that Milan Kotur had certain contacts with representatives of the MUP in connection with coordination and cooperation between the VJ and the MUP but not on a daily basis and only on several occasions and not with the listed group of people. In addition, this witness points out

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<sup>748</sup> 5D1396, para. 20

<sup>749</sup> P02253, pasus 60;

<sup>750</sup> S.Perovic T.21080.

<sup>751</sup> P02253, para. 49;

<sup>752</sup> M.Kotur, T.20688;

that he personally never attended any regular daily meetings and never even heard of any such meetings being held in Djakovica.<sup>753</sup>

427. Regarding General Lazarević, Jevtović states that it is absolutely incorrect that he attended any such meetings since he came to Djakovica on 10 April 1999 at the beginning of the ground aggression (more precisely to the village of Brovina near Junik) and prior to that, he had been in the area only once, some time in March, 1999 on the occasion of inspection of the DG conducted by NGŠ VJ,(Chief of Staff) General Ojdanić and his entourage.<sup>754</sup>

428. Nike Peraj alleges that on 27 April 1999, together with Sergej Perović he went to Meja and that they noticed four dead bodies next to a police checkpoint in front of Kristo Sokoli's shop.<sup>755</sup> The Defence notes that all the time prior to his oral testimony he kept saying that it was Major Živković he went with to the checkpoint<sup>756</sup>,allegedly to protect Sergej Perović. Such an explanation is seriously questionable since in his statement witness Peraj says that in Meja people had been sprayed with a gas and that Major Živković was the one who noticed it as a chemical weapons expert.<sup>757</sup> In view of the fact that Major Živković was head of AbHO(nuclear, biological and chemical defence) in the brigade and Sergej Perović head of intelligence/security, the question is which of the two allegations is true since Perović could not have given any suggestions on the alleged gas Peraj testifies about since he is not an expert for that.

429. Sergej Perović adamantly denies that he saw what witness Peraj alleges in his testimony.<sup>758</sup> Nik Peraj further alleges that, when he and Sergej Perović arrived at the Hasanaj family house, in front of which the police checkpoint was stationed, they saw bodies of some twenty males laying in the field.<sup>759</sup>

430. Sergej Perović decidedly denies Nik Peraj's allegations pointing out that he did not see bodies of twenty men in the field as alleged by witness Peraj.<sup>760</sup>

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<sup>753</sup> 5D01385,para.30.

<sup>754</sup> 5D01385,para. 30 i para.20.

<sup>755</sup> N.Peraj T.1685

<sup>756</sup> P02253, para.68-69;

<sup>757</sup> P02253, para85

<sup>758</sup> S.Perovic T.21091.

<sup>759</sup> P02253, para.73.

<sup>760</sup> S.Perovic T.21091,21092,21093.

431. Nike Peraj also says that Sergej Perović had in his pocket a miniature map of the action carried out on 27 and 28 April in the “Reka” Valley.”<sup>761</sup> Witness Sergej Perović dismisses this allegation stating that he never had any such map displaying the action in the “Reka” valley.”<sup>762</sup>
432. Nike Peraj further alleges that in the morning of 28 April 1999, Sergej Perović went with him to the command outpost of the Priština Corps to request permission to enter the area the action was conducted in, to visit his village. On cross examination, witness Peraj admits, that on 27 April he asked for no permission to go to the villages of Meja and Meja Orize.<sup>763</sup> He further says that it was Sergej Perović who told him he needed permission to enter the area the action was being conducted in.<sup>764</sup>
433. Statement of witness Sergej Perović however, entirely opposes the above allegation. In contradiction with Nik Peraj’s allegations, he states that on that particular morning he met with Nik Peraj in the center of Djakovica and that Peraj asked him to go together to a point used for observation of Osek Hilja (where part of their unit, i.e., 52<sup>nd</sup> arbr PVO which with a minor portion of its forces kept a blockade on Osek Hilja Hill) so that Nik Peraj could see what was going on around his house in the village of Dužanj which could be seen from the hill.<sup>765</sup>
434. Sergej Perović rejects witness Peraj’s allegations to the effect that he went with him to the IKM of the PrK in Djakovica in the morning on 28 April 1999 in order to get permission to visit his village and house as absolutely made up and incorrect. Sergej Perović also states that Nik Peraj did not even mention his intention to ask permission to go to the above area let alone that he had actually gone to ask for such a permission that morning before the two met.<sup>766</sup>
435. Finally, Nik Peraj’s allegation that he was at the command outpost for the purpose of asking permission is unsustainable, according to this witness. Sergej Perović, who was head of military intelligence/security of the 52<sup>nd</sup> arbr PVO explains that the security of a command outpost, particularly of the one located in Djakovica would not grant access to anyone who would come uninvited and without control. A person would have to announce his intent to the

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<sup>761</sup> N.Peraj T.1619.

<sup>762</sup> S.Perovic T.21080.

<sup>763</sup> N.Peraj T.1617

<sup>764</sup> N.Peraj T.1580.,1617

<sup>765</sup> S.Perovic T.21081;5D1396, para 25

<sup>766</sup> 5D1396,para.26, S.Perovic T.21081

outer circle of security whereupon he would be announced to the security at the reception and only after approval of the person receiving the guest he would be allowed to enter the premises the command outpost was located in.<sup>767</sup>

436. Nik Peraj's allegations are also refuted by the statement given by Colonel Goran Jevtović who points out that in light of his duties at the time, Nik Peraj never, and therefore not even on 27, 28 and 29 April came and neither could he come to the command outpost.<sup>768</sup> The witness adds that in 1999 he met Peraj in Djakovica once or twice but never at the IKM of the PrK-a.<sup>769</sup>

437. Witness Nike Peraj also alleges that on 28 April 1999, when he went to ask for permission, in a basement of a building near 'Lajić' Café, he saw General Lazarevic and Jevtovic who was following the "Reka" operation which was still on, on 28 April.<sup>770</sup>

438. Witness Goran Jevtović however proves the above allegation to be an ordinary lie since, firstly, General Lazarevic was not in Djakovica on these days at all and secondly, he most certainly was not in that basement and in fact he never even set foot in there. The witness thinks that he did not even know there was a basement there.<sup>771</sup>

439. And Nik Peraj's allegation seems even more unbelievable and, as Goran Jevtovic calls it "utterly preposterous" in light of the fact that the command outpost is after all a command post and well-secured by procedures, outer security belt, internal security system and reception procedure involving tight security measures, particularly in time of war.<sup>772</sup> If a commander came to the command post, the situation would be even more specific since, in wartime situations, he would have his own security personnel accompanying him.<sup>773</sup> Particularly if General Lazarevic, the Corps Commander, came, there would be additional forces deployed all over the place. Not Nik Peraj, not even a brigade commander could come to the command outpost unannounced.<sup>774</sup> The only person who could enter the command outpost without prior formalities was the

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<sup>767</sup> S.Perovic T.21082.

<sup>768</sup> G.Jevtovic T.20365.

<sup>769</sup> 5D1385, para 29

<sup>770</sup> N.Peraj T.1580.

<sup>771</sup> G.Jevtovic T.20366.

<sup>772</sup> G.Jevtovic T.20366-20367.

<sup>773</sup> G.Jevtovic T.20367

<sup>774</sup> G.Jevtovic T.20367

Garrison Commander, General Djošan, and everybody else had to follow a procedure including making contact from the reception with Jevtovic (in charge of operations) whereupon he or someone else would go to meet the person and usually a conversation would be held and concluded outside the building.<sup>775</sup>

440. At this point, the Defence would like to draw the Trial Chamber's attention to the fact that Nik Peraj himself confutes his own allegations with respect to going to the IKM in his written statement. Namely, in his written statement this witness, speaking about specific persons, says that he was engaged in preparation of General Pavkovic's visits to Djakovica and that such visits required additional security measures.<sup>776</sup> This actually confirms the above statements given by Goran Jevtović and Sergej Perović.

441. Nik Peraj's allegation that the command post of the said operations was located on a hill above Osek Hilja and that it was the spot from which the operations commander Colonel Milan Kotur together with the chief of staff of the Djakovica Brigade Colonel Novica Stankovic issued their orders,<sup>777</sup> was rejected by Colonel Milan Kotur himself.

442. Defence witness Milan Kotur in fact dismisses the above allegation as totally incorrect and untrue.<sup>778</sup> He states that no command post was located on Osek Hilja. When he came he found there chief of staff of the 52<sup>nd</sup> arbr PVO, Lt.Colonel Stankovic who was visiting his troops setting a blockade in the sector above the "Reka" Valley. He additionally explains that for a command post to be positioned on a certain location there had to be observation points prepared, trenches dug, access roads constructed, in order to prepare conditions for personnel with observation and communications equipment. This in turn would mean that there would be a large group of people there and that it would be impossible for anyone to just walk up there freely as alleged by Peraj.<sup>779</sup>

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<sup>775</sup> G.Jevtovic T.20367

<sup>776</sup> P2253, para.98

<sup>777</sup> N.Peraj T1616

<sup>778</sup> M.Kotur,T.20686;

<sup>779</sup> M.Kotur,T.20687;

443. Defence witness Sergej Perović, too, denies that there ever was a command post there, pointing out that Peraj's village and family house could be seen from the spot and that they did not see anything burning or damaged down there in the valley.<sup>780</sup>

444. In his written statement, witness Nik Peraj also says that that after the "Reka" operation, he saw Major Zdravko Vinter in the brigade headquarters in the Djakovica Cultural Center preparing report to the Third Army Headquarters in Niš, and that in this report of his he stated that 74 terrorists had been killed in Korenica and another 68 in Meja.<sup>781</sup>

445. The Defence called witness Vintar Zdravko who decidedly rejected these Nik Peraj's allegations pointing to the fact that it would be highly illogical that he, as the officer in charge of morale and information of the 52<sup>nd</sup> arbr PVO, should prepare a report of such kind (normally done by operations officers) and even more illogical to prepare such a report for the Third Army thus breaking the rules of chain of reporting<sup>782</sup>. He additionally explains that some time during that period he did prepare a report on activities of NATO aviation in the areas of Meja and refugee camp "Maja", since that was part of his duties as the morale and information officer<sup>783</sup>. He was not competent to prepare reports on combat activities as such reports were within the competences of operations officers.

446. In addition to the fact that all the witnesses Nik Peraj listed as persons who could confirm that he was at the IKM in Djakovica early in the morning of 28 April, and that he saw General Lazarevic there, decidedly dismissed his allegations while pointing to illogicalities in Peraj's statement, the Defence shall also point to inconsistencies in statements and oral testimonies of the witness with respect to this important fact.

447. First of all, the Defence wishes to stress that in his first statement given to Tribunal's investigators, i.e., at the time the events were still fresh in his memory, this witness does not even mention seeing General Lazarevic let alone that he was in charge of the "Reka" operation.<sup>784</sup> On cross-examination, when asked why he never mentioned such an important detail to the

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<sup>780</sup> 5D1396,para 25

<sup>781</sup> P2253,para 83

<sup>782</sup> 5D1394,para 22

<sup>783</sup> 5D1394,para 23, 24, 25; 5D1158,5D1159,5D1168

<sup>784</sup> P2248

investigators, the witness replied: "Because nobody asked me."<sup>785</sup> Further on, when asked if his testimony was that nobody had asked him about direct command over the operation, after an obvious attempt to avoid giving an answer to the question and upon intervention of Judge Bonomy, the witness confirmed that in his first statement he said that the operation had been planned and carried out by Nikola Mićunović aka "Dragan", Milan Kotur and Kovačević.<sup>786</sup> Immediately after that, he displays another inconsistency by stating that he had previously said that on Osek Hilja he saw Milan Kotur and Novica Stankovic whom he had actually never mentioned in his statement.<sup>787</sup> We have already noted above that in his statement, this witness listed, in addition to Milan Kotur, Mićunović and Kovačević, and not Novica Stanković.

448. Finally the Defence showed him Judge Kwon's questions asked during the trial in the Milosevic case: "

7 *A. I don't remember saying whether he was in Pristina or Gjakova. I*

8 *don't think I was asked about that. To be -- briefly, I don't remember.*

9 *Q. Mr. Peraj, perhaps I can refresh your memory. In the transcript*

10 *page 4744, lines 17 through 25, and page 4745, lines 1 through 6, Judge*

11 *Kwon's question:*

12 *"Q. To go back to that report for the moment, the report prepared*

13 *by Major Vinter after the operation in Meja. You said that that report*

14 *was sent to the corps command in Pristina; is that correct?*

15 *"A. Yes."*

16 *Question by Judge Kwon: "I am interested in the commander in*

17 *Pristina who would receive such reports from the field. Did he know*

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<sup>785</sup> N.Peraj T.1625

<sup>786</sup> N.Peraj T.1626-1628,

<sup>787</sup> N.Peraj T.1629,1630

18 *exactly what had happened? Did he know that civilians were killed instead*  
19 *of KLA members and on the basis of what do you form such a view, if you*  
20 *intend to state that he indeed knew?"*

21 *I apologise for reading very quickly. Do I need to repeat?*

22 *"A. He knew very well who was killed, and he couldn't put it*  
23 *any other way. He couldn't call these innocent people who had been*  
24 *killed, and by any other name other than terrorists. He did receive such*  
25 *a report by way of radio communication, but such reports were indeed put*

*1 in that manner.*

2 *"Q. How did he come to learn about that?"*

3 *I apologise. To correct the transcript, he received the news via*  
4 *radio but such reports were put in that manner or put together in that*  
5 *manner.*

6 *"Judge Kwon: How did he come to know about that?"*

7 *"A. I don't know what you mean, the commander or someone else*

8 *"Judge Kwon: The commander. The commander who was in Pristina.*

9 *"A. He learned it first from those authorised to provide direct*  
10 *information to him in writing, in two different ways, and he also had a*

*11 direct link with -- with his personnel who were there.*"<sup>788</sup>

449. Although the Prosecutor Mr. Stamp prevented witness Peraj with his intervention from being specific regarding the facts that have been presented to him, it is clear and unambiguous from the questions of Judge Kwon and answers of witness Peraj cited above that he did not object to the Judge Kwon's statement that the commander had been in Priština and not in Djakovica.<sup>789</sup> The Defence notices that it is illogical, in any case, that Zdravko Vintar allegedly sends a report to the commander in Priština, who is allegedly in the field leading the operation.
450. Although the testimony of Nik Peraj regarding the presence of General Lazarević in Djakovica on the specified day is illogical, inconsistent and unreliable, the Defence has produced other evidence which prove that General Lazarević was not in Djakovica either on 27, or 28, or 29 April 1999.
451. Accused Vladimir Lazarević has been questioned regarding all these circumstances and denied his presence in Djakovica at the IKM on 27, 28 and 29 April 1999, describing in detail his whereabouts these days. He points out that he was in Priština on 27 April and that he knows that for a fact since a modest Statehood Day celebration was held that day in the presence of the commander of the Third Army and commanders of subordinate units. Accused Lazarević claims that early in the morning on 28 April he was moving with his headquarters from the Kišnica area and Gračanica Lake towards the urban part of the city of Priština, whereupon, also in the morning, he visited in Priština a group under command of Colonel Filipović and greeted the humanitarian organization "Kolo srpskih sestara" and spent that entire day in Priština. He further states that on 29 April he headed in the morning in the direction of Peć for the purpose of visiting the 125<sup>th</sup> mtbr(motorized brigade) and the 37<sup>th</sup> brigade and spent that day with these units.<sup>790</sup>
452. Numerous documents and other witnesses confirm the testimony of accused Lazarević.
453. The Defence witness Milutin Filipović confirms the statements of General Lazarević that on 27 April 1999 the Statehood Day celebration was held in Priština, attended by a large number

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<sup>788</sup> N.Peraj-T.1649,1650,

<sup>789</sup> N.Peraj-T.1651,1652

<sup>790</sup> V.Lazarevic-T.18105-18109

of corps members and also by General Lazarević and General Pavković.<sup>791</sup> The same witness further testifies that on the next day, 28 April in the morning, General Lazarević visited his commanding outpost, whereupon they went to the “Grand” hotel, where they greeted the humanitarian organization “Kolo srpskih sestara” that was, as the witness clearly remembers, represented by Zaga Pavlović.<sup>792</sup>

454. The Prosecution’s exhibit, the war log of 52<sup>nd</sup> BVP, the entry made on 28 April, back the statement of General Lazarević that the PRK command moved from Kišnica to the Priština city area.<sup>793</sup>

455. From the exhibit 5D218, presenting a combat report of PRK to the Third Army and the ŠVK sent on 28 April 1999 from the PRK command in Priština in form of a telegram, it is unambiguous that it was signed by General Lazarević and in Priština at that.<sup>794</sup> This exhibit has also been analyzed by the Defence witness General Radojko Stefanović, who confirms on the basis of the seal and the signature on the back of it, that it was sent from Priština sector, from the PRK commanding outpost, that it was signed personally by General Lazarević, the PRK commander, and that it had to be signed before 16.40 to 16.45 hundred hours, when it was sent. He explains that it could not have been sent before General Lazarević had signed it.<sup>795</sup>

456. Exhibit 5D 218, a combat report of the PrK to the Third Army and the ŠVK sent on 28 April 1999 from the Command of the PrK in Pristina as a telegram, unequivocally shows that it was signed by General Lazarevic in Pristina. This particular exhibit was analyzed by Defence witness General Radokoi Stefanovic who confirmed, based on the seal on the last page and the signature that it had been sent from the Pristina sector from the command post of the PrK and that it was signed by General Lazarevic, commander of the PrK personally and that it must have been signed before 16:40 to 16:45 h the time of dispatch. He explains that it could not be sent unless previously signed by General Lazarevic.

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<sup>791</sup> M.Filipovic T.19163

<sup>792</sup> M.Filipović T.19164

<sup>793</sup> P2297, entry for 28 April 1999

<sup>794</sup> 5D218, page 3

<sup>795</sup> R.Stefanović T.21710-21711

457. The exhibits P1086 and 5D159, which are the war logs of the 52<sup>nd</sup> arbr of the PVO, also back the testimony of General Lazarević. Namely, the entry for 10 April 1999, item 7, shows that PRK commander Lazarević stayed shortly at the commanding outpost of the brigade in Djakovica and was briefed on the situation along the state borderline in the area of Košare and Morina. (numerous evidence prove that on 10 April 1999 General Lazarević stayed in Djakovica due to a ground aggression – witnesses Lazarević, Kotur, Jevtović, Perović, etc.)<sup>796</sup> In addition, the exhibits P1086 and 5D170, and the entry for 26 May 1999, item 6, show that the garrison in Djakovica was visited by the commanders of the Third Army and the PRK.<sup>797</sup>

458. It is therefore obvious that each arrival of General Lazarević in Djakovica was recorded into the war log. Upon checking the entries for 27, 28 and 29 April 1999, an unambiguous conclusion can be drawn that General Lazarević did not stay in Djakovica.<sup>798</sup> In addition, the entry for 27 April 1999, item 4, states that the commander of that brigade (Djošan), at the PRK commanding outpost, attended the presentation of the Order of Bravery on the occasion of the Statehood Day celebration.<sup>799</sup>

459. The same exhibit, but under the entry for 26 April 1999, item 10, states that the decision to use a part of the brigade in the “Reka” action came from the IKM of the PRK.<sup>800</sup> Witness Goran Jevtović explains that it was a verbal decision, since it is written in small letters, without the decision number, the entry number, the decision date, which are all recorded into a log when a written decision is in question.<sup>801</sup>

460. Finally, from the war log of the 2<sup>nd</sup> mtb/549<sup>th</sup> mtbr, which is the Prosecution’s exhibit, the entry for 26 April 1999, it is clear from the first and second paragraph that the meeting was held with the PRK head of command (Veroljub Živković), when the task was received on the

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<sup>796</sup> P1086, entry for 10 April 1999, 5D159

<sup>797</sup> P1086, entry for 26 May 1999, 5D170

<sup>798</sup> P1086, entry for 27, 28, 29 April 1999, 5D164

<sup>799</sup> P1086, entry for 27 April 1999, 5D164

<sup>800</sup> P1086, entry for 26 April 1999

<sup>801</sup> G.JevtovicT.20415,20416

blockade of wider area of the village of Korenica.<sup>802</sup> Witness Vlatko Vuković has also testified about all this in detail.<sup>803</sup>

461. Regarding 20 April 1999, the statements of General Lazarević confirms the commander of the 125th mtbr General Dragan Živanović, as well as the combat report for 29 March 1999, which mentions the stay of the PRK commander in this brigade,<sup>804</sup> as well as the document of the PRK command dated 20 April 1999, which shows that on 29 April 1999 General Lazarević personally came across a part of a unit of the 37th mtbr near the village of Lozice.<sup>805</sup>

462. The allegations of Nik Peraj that Lazarević, Jevtović and Novica Stanković were commended a week after the “Reka” action,<sup>806</sup> categorically confutes witness Goran Jevtović, who says that it is an absolute untruth invented by witness Peraj.<sup>807</sup> After all, there exists a material proof which shows that these allegations of witness Peraj are untrue, that is, a personal file of General Lazarević from which, on page 9, under item 15, COMMENDATIONS-REWARDS, where commendations are noted, it is obvious that General Lazarević was not commended for the “Reka” action, not even seven days after this action was finished.<sup>808</sup>

463. Finally, although witness Nik Peraj in his written statement at first denies the existence of the OVK in the Carragojs Valley, at the end of his statement he admits that the 137th brigade of the OVK was stationed in Ramoč and that he assisted them.<sup>809</sup>

464. Witness Nik Peraj was a member of the VJ until the last day of the retreat of the VJ from KIM, and after the retreat he remained in Djakovica. In spite of numerous evidence that the OVK members during the war, and especially after the retreat of the VJ, brutally settled scores with Albanians loyal to the state of Serbia, it is indicative that Nik Peraj, as an Army member, did not suffer any sanctions from the OVK after the retreat of the VJ.

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<sup>802</sup> P2019,entry for 26 April 1999

<sup>803</sup> 5D1401

<sup>804</sup> P2026,item 2.

<sup>805</sup> 5D384

<sup>806</sup> P2253,para.95

<sup>807</sup> 5D1385,para31

<sup>808</sup> 5D1326

<sup>809</sup> P2253,para105

465. However, under pressure of cross examination, Nike Peraj, a Prosecution witness testified that he did not believe that crimes in Meja happened under the control of the VJ.<sup>810</sup> He stated that no army members participated in the killings or were in the vicinity of where the bodies were found.<sup>811</sup> He stated “concretely about the Meja case, I can say that I don’t think that was the army’s purpose for so many people to be killed.”<sup>812</sup>

#### **Summary submission for Djakovica municipality**

466. The Prosecution has failed to prove beyond a reasonable doubt that any VJ units under the command or control of General Vladimir Lazarevic were involved in any of the crimes alleged in the Indictment for the Municipality of Djakovica.

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<sup>810</sup> N.Peraj T.1665

<sup>811</sup> N.Peraj T.1688

<sup>812</sup> N.Peraj T.1730;3D60;T.1665-1668

**VI THE PROSECUTION HAS FAILED TO PROVE BEYOND REASONABLE DOUBT THAT THE VJ, OR ANY UNITS, UNDER THE COMMAND OR CONTROL OF GENERAL LAZAREVIC WERE INVOLVED IN ANY OF THE INCIDENT ALLEGED IN THE INDICTMENT**

467. The defence has, by analyzing the incidents from the Crime base, showed that the prosecution, did not prove beyond reasonable doubt, that the units under command or control of the Accused Lazarević participated in the aforementioned incidents.

468. The prosecution did not present any evidence by which it would convince the Trial Chamber, beyond reasonable doubt, that the Accused had any participation in some crime and especially a direct participation that would significantly influence the perpetration of some of the offenses, which he is charged with by the indictment. Having that in mind, the prosecution also failed to prove the existence of mens rea by the Accused, according to article 7 (1) of the Statute.

469. Also, the aforementioned analysis unambiguously shows that the prosecution, failed to prove beyond reasonable doubt, by the Accused the existence of necessary mens rea for the responsibility pursuant to article 7 (3) of the Statute, and did not prove beyond reasonable doubt that the Accused failed to take indispensable and reasonable measures to prevent the perpetration of criminal offenses and to punish the perpetrators.

**(i) deportation**

470. The prosecution did not present any single evidence by which it would elevate, from the level of speculations and suppositions, its thesis that the VJ or any unit, under command or control of General Lazarević, acted according to his instruction, instigation or with his support, having the aim of forcible deportation of approximately 800 000 civilians, Kosovo Albanians.

471. Nevertheless, having in mind the aforementioned apostrophized witness statements, like written, like oral, as well as the numerous material evidences, it can be unambiguously concluded that the prosecutor did not prove, beyond reasonable doubt, that the VJ or any other unit, under command or control of General Lazarević, exiled or, by any other forms of force, displaced civilians, Kosovo Albanians from the areas, in which they legally reside, over de iure or de facto state border.

**(ii) forcible transfer**

472. The prosecutor did not either prove, beyond reasonable doubt, his thesis in relation to those Kosovo Albanians that are, allegedly, internally displaced within the Kosovo territory. Nevertheless, the aforementioned given comparative analysis of the most relevant listed written statements, material evidences and oral testimonies, unambiguously instructs conclusion that General Lazarević did not commit any act or omission by which he would plan or instigate, order, commit or in some other way, aid and abet planning, preparation or execution of forcible transfer of Kosovo Albanians inside of Kosovo, neither in that sense, the VJ or any unit, under command or control of General Lazarević had participated.

**(iii) murder**

473. The prosecution hadn't, nevertheless, presented any single evidence, on which the assertion would be based beyond reasonable doubt that the Accused Lazarević committed an act or a omission, with aim to plan or instigate, order, commit or in other way, aid and abet planning, preparation or committing murder of civilians, Kosovo Albanians and other persons who did not actively participated in hostilities. There isn't a single evidence that would represent a ground to bring a conclusion that death of any person occurred, as the consequence of acting or omission of the Accused Lazarević, of one or several persons, for which the Accused is responsible. Further on, the prosecutor did not, by any single evidence, prove beyond reasonable doubt the intention of the Accused Lazarević, or person or persons for which he is criminally responsible, to kill a victim or to willingly cause serious injuries, which they should have been aware of, that they cause death.

**(iv) persecution**

474. All evidences, analyzed above by the defence, show, that the prosecution thesis that the forces of FRY and Serbia, starting from 1st of January 1999, or approximately on that date, till 20th of June 1999, implemented campaign of persecution of the Albanian population from Kosovo, including the civilians, Kosovo Albanians, on the political, race or religious ground, acting by it according to instruction, at instigation or with a support of the Accused Lazarević, is not correct.

475. Under burden of the presented evidences, such thesis of the prosecution cannot subsist. There isn't a single evidence that, by the Accused Lazarević, proves beyond reasonable doubt his acting or omission, and whose essence is discrimination, denial or breach of the basic rule, prescribed in international custom law or contract law. Also, from the presented evidence, accentuated above by the defence, it can be unambiguously concluded that the prosecution by the Accused Lazarević, did not prove beyond reasonable doubt, the existence of intention to discriminate any person or persons on the race, religious or political ground. The prosecution even failed to prove its allegations that there was awareness on significant probability by the Accused Lazarević that the forces of FRY and Serbia would commit crimes over the Albanian civilians from Kosovo on political, race or religious ground.

476. Furthermore, the defence at this spot wishes to turn attention to the Trial Chamber to some inconsistencies in the indictment that, according to the defence opinion, create procedural and material consequences in view of certain indictment paragraphs. Nevertheless, the indictment in this case is conceived in the way that the act of persecution embraces the widest allegations, contained in paragraphs 16 to 69, as well as the act of murder from counts 3 and 4. The defence finds, and that is recognized by the practice of the Tribunal, that, although the criminal offence of persecution bears the wide character, that fact does not liberate the prosecutor of obligation that he, in the indictment, namely indicates material aspects of his thesis, in the same detailed manner as with other acts<sup>813</sup>. The prosecutor, hence, must, like in any other part of the Statute, indicate in details the material facts of the cited punishable conduct of the Accused. In our case, when it comes to the act of persecution, the prosecutor did not meet this request, especially in paragraph 77 (a) and (d) of the indictment, where, in principle, as instruments of persecution, he indicates forcible transfer and deportations(77(a)), wanton destruction or damage of Kosovo Albanian religious sites(77(d)).

477. The defence at this spot points at the statement of the honourable Trial Chamber, presented during the oral presentation of decision pursuant to 98 bis rule; that the act of persecution, regarding the oversight of the prosecution to incorporate into this item the

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<sup>813</sup> Kupreškić Appeal Judgment, para 98

paragraphs in which the specific accusations for deportations and forcible transfer are contained, does not embrace acts of execution, described in paragraph 72.<sup>814</sup>

478. Hence, as far as the act of persecution is concerned, the prosecutor in the count 5 of the indictment, paragraph 77 (a) and (d) did not support the allegations on the responsibility of the Accused by legally relevant facts, either pursuant to article 7 (1) or pursuant to article 7 (3) of the Statute, neither he incorporated paragraphs in which the specific accusations for deportations and forcible transfer are contained. Therefore, it is clear that these parts of the indictment do not afford a minimum of necessary information in order to understand what the alleged omission or act of the Accused is consisted of, and which are a discrimination de facto and deprive or disturb some basic right, defined by international custom law or contract law (actus reus); that is, which of them are executed intentionally, with a intent of discrimination by one of the cited grounds, to be precise, on the ground of race, religious or political affiliation (mens rea).

479. When it is indicated that the Accused personally executed acts in the base of the criminal offences in question, the prosecutor must indicate the name of the victim, place and approximate date of the alleged criminal offences, as well as instruments that with help of which they were executed, following the highest preciseness of indicating those parameters. However, when it is indicated that the Accused planned, instigated, ordered, aided and abetted or supported planning, preparation or perpetration of the alleged criminal offences, than it is from the prosecutor requested, to indicate “concrete acts” or “concrete conduct” of the Accused on which the accusation in question are based. Such position of the defence completely corresponds with the existent practice of the Tribunal.<sup>815</sup>

480. Regarding that the prosecutor did not fulfil the aforementioned requests the defence’s position is that the Trial Chamber should, based on the merits, analyze only the presented evidence about the circumstances of the alleged incidents from the count 5, paragraph 77 (b) and (c) and not those which concern the alleged deportations and forcible transfer as the form of persecution. Those paragraphs should be rejected.

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<sup>814</sup> Judge Bonomy T.12778,12779

<sup>815</sup> 24<sup>th</sup> February 1999 decision, in the case Krnojelac, par 13; decision from 11<sup>th</sup> of February 2000 in the case Krnojelac, par 18; decision from 20<sup>th</sup> of February 2001, in the case Brđanin and Talić, par 20

481. As far as the acts of deportation and forcible transfer are concerned, from the counts 1 and 2 of the indictment, the defence has, for the reason of caution, in its Final Brief, analyzed relevant evidences, presented on the circumstances of the alleged incidents, caused by alleged wanton destruction or damage of Kosovo Albanian religious sites, which are indicated in paragraph 72. However, the defence is convinced that those acts of execution, incorporated in frames of acts of deportations and forcible transfer, cannot create responsibility of the Accused in any way, either pursuant to article 7 (1) or pursuant to 7 (3) of the Statute for these acts, regarding the objective and subjective elements that are proscribed for them by the Tribunal's practice.

482. Even if the prosecution had proved, beyond reasonable doubt, the responsibility of the Accused for acts of executions, described in paragraph 72 of the indictment, and which refer to alleged wanton destruction or damage of Kosovo Albanian religious sites, those acts cannot in any way support the qualification of deportations and forcible transfer. Regarding that these acts are incorporated in counts 1 and 2 of the indictment, the presented evidences on the circumstances of these incidents, that is, these parts of the indictment, cannot survive and should not be the object of the Trial Chamber analysis.

## VII JOINT CRIMINAL ENTERPRISE

### 1. Alleged Objective of the Enterprise

483. The accuseds are charged in the Indictment for participation in the joint criminal enterprise the purpose of which was to change ethnic balance of Kosovo by use of criminal means in order to secure further Serb control over the province.

484. The Defence would like, first of all, to show to the Trial Chamber that the Prosecution in its case has failed to prove existence of any plan for changing ethnic balance of Kosovo using unlawful means which, according to the Prosecution, was in existence since October 1998 at the latest, and neither has the Prosecution proved existence of any plan whatsoever aimed against the Kosovo Albanian civilian population.

485. When it states that the Prosecution has failed to prove beyond a reasonable doubt existence of the plan, the Defence leans on testimonies of numerous Prosecution witnesses who, to say the least, cast doubt on such allegations of the Prosecutor.

486. Thus, for instance, the first Prosecution witness to appear on the stand, a high-ranking official of the OESC, Sandra Mitchell in her testimony states that she performed duties of an OESC mission member in Kosovo until March 20, 1999, that the plan of taking care of refugees was made as late as 22 March 1999 since they had had no refugee problem prior to that date.<sup>816</sup> Obviously, departure of the OESC and Kosovo Verification mission from Kosovo on 20 March 1999 and the open announcement of the NATO alliance that it would commence intensive bombing of the FRY in a matter of hours inevitably led to a massive exodus of civilian population. In light of the fact that until that moment, no significant exodus from the FRY had occurred or, at least, no such exodus has been proved by any evidence at all presented by the Prosecution, any reasonable trier of facts would recognize the causal relation between the looming NATO bombardment in combination with possible ground offensive and desertion of territory of Kosovo by civilian population. In fact, at that moment, a major exodus of civilian population was ignited across the entire territory of the Republic of Serbia.

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<sup>816</sup> S.MitchellT.588

487. The Defence does not dispute the fact that internal relocations of civilian population did occur within the province of Kosovo but it certainly denies that such relocations were caused by force, i.e., by expulsion or any other form of coercion used by forces of the FRY and Serbia.

488. Thus, the Prosecution has failed to prove that internal relocations of Albanian civilians within the province of Kosovo was a result of coercive activities of forces of the FRY and Serbia aimed against civilian population, for the purpose of implementation of the above-alleged plan. As a matter of fact, internal relocations do not change ethnic balance, i.e., such relocations are, as proven by abundant evidence, only temporary activities taken while armed conflicts last.

489. In fact, numerous cases of legitimate relocations caused by armed activities aside, there are numerous pieces of evidence that point to existence of an KLM plan to assign such relocations to alleged coercive activities of the FRY and Serbia some of which will be discussed hereinafter.

490. Thus, one of the Prosecution's key witnesses, chief of staff of the KLM Bislim Zirapi, in his testimony unequivocally states that Albanian population withdrew together with the KLM, this being the usual practice, allegedly implemented for security reasons, because of the risk of getting caught in the midst of armed conflict between the KLM and Serb forces.<sup>817</sup> The Defence's position is that obviously, civilians would be exposed to far greater risks while moving together with the KLM members, as also correctly noted by the Trial Chamber,<sup>818</sup> from which it would be safe to conclude that the underlying motives were different than alleged. In addition, in the case file there is a concrete order of Bislim Zirapij, chief of staff of the KLM, dated 1 April 1999 to his units to dislocate Albanian civilian population from the village of Belanica<sup>819</sup>.

491. Witness Ian Kickert who at the relevant time was a secretary of the Austrian Embassy in Belgrade, gives his testimony to that effect as well, directly connecting the OVK with internal displacing of people.<sup>820</sup>

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<sup>817</sup> B.ZyrapiT.5991-5992;5997-5998.

<sup>818</sup> Judge BonomyT.6003

<sup>819</sup> P2457

<sup>820</sup> I.KickertT.11222

492. Also, an important witness called by the Prosecution, deputy chief of the KVM Mission General Drewienkiewicz, when asked to give his opinion about Prosecution exhibit P680 a document ordering civilians in the region of Djeneral Jankovic to vacate their homes, which they did until 27 February 1999, says that he finds it credible and accurate.<sup>821</sup>

493. Finally, the Prosecution called witness Richard Ciaglinski who stated that Colonel Milan Kotur, several days before the OESC Mission left Kosovo had shown to him on the map how the military was going to “get rid of the KLA”, thus removing the Albanians from Kosovo for good<sup>822</sup>

494. The Defence called witness Milan Kotur who strongly denied allegations of witness Ciaglinski by stating that he had never shown anything like that on any map to the witness since such a plan never existed and neither did he know about any plan to that effect so there simply was nothing to show to the witness.<sup>823</sup> The witness proceeded by pointing to numerous illogicalities in allegations volunteered by witness Ciaglinski.

495. The abovementioned, physical evidence and oral testimonies of important Prosecution witnesses if nothing else, create a strong reasonable doubt with respect to existence of a plan calling for use of coercive and criminal means to deport or internally displace civilian population of Albanian ethnicity.

496. Nevertheless, all six Defence teams called witnesses who decidedly denied existence of the plan for expulsion of civilian population of Albanian ethnicity or, indeed, of any other criminal plan against Albanian civilian population.

497. Thus, for instance, Šainović defence witness, Momir Bulatović who at the time relevant for the Indictment was President of the Federal Government, denies existence of such plan stating that cooperation with the OESC Mission was established particularly for the purpose of

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<sup>821</sup> K.DrewienkiewiczT.7932

<sup>822</sup> R.CiaglinskiT.6831-6834

<sup>823</sup> M.Kotur T.20662

getting relevant international political factors acquainted with the true situation in the field which was quite different from the picture various international media were trying to create.<sup>824</sup>

498. Ojdanić defence witness, General Miodrag Simić who at the time relevant for the Indictment held the position of deputy chief of general staff in charge of the army, in his oral testimony categorically confirms his previous statement by saying that there never existed any plan for ethnic cleansing of the Kosovo Albanians, either in the VJ or in any other body of the FRY and the Republic of Serbia.<sup>825</sup>

499. Testimony of General Geza Farkas, Ojdanic defence witness, who at the time relevant for the Indictment was head of security of the general staff of the VJ was along the same line. Namely, the witness decidedly states that he never heard of any plan designed for the purpose of expulsion of Albanians across the state border.<sup>826</sup>

500. Another Ojdanic defence witness, General Branko Gajic, who at the time relevant for the Indictment was deputy head of security of the general staff of the VJ also categorically denied existence of any plan for expulsion of Albanians from Kosovo.<sup>827</sup>

501. That no such plan to that effect ever existed is also obvious from the testimony of witness General Milorad Obradovic member of the general staff of the VJ.<sup>828</sup>

502. Accused General Vladimir Lazarević, commander of the Priština Corps in his viva voce testimony categorically states that no plan for deportation or forcible displacement of Albanian civilians from KiM ever existed and neither did anyone in the command of the PrK and units under its command ever hear about or receive any such plan from superiors.<sup>829</sup> He also states that no activities against Albanian civilian population were ever planned at staff meetings the Corps command held with commanders of its subordinate units.<sup>830</sup>

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<sup>824</sup> M.BulatovicT.13814-13815

<sup>825</sup> M.SimicT.15581

<sup>826</sup> G.FarkasT.16312

<sup>827</sup> B.GajicT.15318

<sup>828</sup> M.ObradovicT.15024

<sup>829</sup> V.LazarevićT.18129

<sup>830</sup> V.LazarevicT.17942

503. Witness Colonel Milutin Filipovic testifies about pressures, intimidation and influence of Albanian propaganda upon displacement and dislocation of Albanian population. Namely, in his oral testimony, this witness says that during the NATO bombardment, leaflets in Albanian language were distributed across the territory of the grater Pristina area and were also dropped by airplanes in which the KLA called Albanian population to leave KiM toward Macedonia and Albania since the KLA could not protect them from alleged offensive of Serb forces.<sup>831</sup>

504. Defence witness, Colonel Goran Jevtović who was stationed at the IKM (command outpost) of the PRK in Djakovica in 1998 and 1999, in his statement says that he never heard about existence of any plan for forcible displacement of Albanian civilians and that he never received from his superiors any order, whether oral or written, to expel civilians of Albanian ethnicity to Albania or, indeed, to any other place. He also says that such a plan would have been disastrous, both politically and militarily for the VJ and the FRY in general, since the Army would have been exposed to even more intense bombing and shelling causing enormous losses and the state to a growing pressure of international community.<sup>832</sup>

505. In addition, Defence witness Momir Stojanovic says that he as member of staff of the Corps staff and as an officer of the Corps security never came across any piece of information implying that someone was planning or ordering mass expulsion of ethnic Albanians from Kosovo and Metohija.<sup>833</sup> He also says that, from a military point of view, mass evacuation of Albanian population would be neither useful nor justified in view of the fact that the Army felt more safe while surrounded by civilians. Without them, the witness says, the Army would have been an easy target for the NATO.<sup>834</sup>

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<sup>831</sup> M.FilipovicT.19184

<sup>832</sup> 5D1385,para.23

<sup>833</sup> M.StojanovicT19732

<sup>834</sup> M.StojanovicT19732

## 2. Alleged commencement of the Enterprise

### a. alleged statements that Serbs were ready to commit crimes in Kosovo

506. In its Indictment, and particularly in its Pre-trial brief, the Prosecution suggests that existence of the JCE is proved by numerous statements to the effect that the Serbs were ready to commit crimes in Kosovo if necessary, in order to change the demographic balance.<sup>835</sup>

507. The Prosecution, however, has never actually presented many of the announced evidence and neither has it proved by the accepted evidence beyond reasonable doubt that political, police and military officials in their public statements disclosed existence of any such plan.

508. The Prosecution alleges that as early as the end of 1997, a witness was informed on existence of a plan for destruction of ethnic Albanian villages, the plan known as the “scorched earth” allegedly created by higher ranking officials of the State Security Department (RDB).<sup>836</sup> The Defence notices that the Prosecution, although it called two witnesses, Veton Surroi and Baton Haxhiu, to confirm the above allegations has failed to prove the allegations in a reliable way. Further to the point, in 1997 General Lazarevic was stationed in Niš and had no connections whatsoever with either Kosovo or higher ranking officials of the RDB.

509. The Prosecution elsewhere suggests that the speech given by Milomir Minić at the 16<sup>th</sup> session of the executive board of SPS held on 10 June 1998, in which he said “that the number of Serbs and Montenegrins living in KiM must remain the same today and must increase tomorrow” also shows existence of the above plan. The Trial Chamber has heard the witness Milomir Minić and the Defence is of the opinion that the Prosecution neither tried nor managed to confirm the above allegation. In fact, any analysis of the speech the witness gave at the said meeting, being Prosecution’s own exhibit, would clearly show that the content of the speech was entirely different and aimed at peaceful political solution of the problem with full respect of Albanian population and their rights. The speech calls for prevention of manipulation of Kosovo Albanians, prevention of their emigration and guaranteeing basic human rights for all citizens.

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<sup>835</sup> Pre-Trial Brief para 72-79

<sup>836</sup> Pre-Trial Brief para 72

<sup>837</sup> Finally, the Lazarevic Defence notes that General Lazarevic was never a member of SPS nor did he attend the said meeting.

510. Further on, the Prosecution states that a meeting was held at the beginning of June in Beli Dvor, Belgrade in presence of entire political, military and state security/intelligence elite of the FRY and Serbia. The Prosecution alleges that in the course of the meeting the participants divided into two opposing groups, one being for political solution and the other for military solution of the problem. At the meeting, Police Minister Stojiljković allegedly said that Kosovo Albanians who caused troubles around the village of Ponoševac should be killed.<sup>838</sup> The Defence notes that the Prosecution never heard the witness on the issue (Zoran Lilić) and neither did it present any other evidence to confirm the above allegation. Obviously, General Lazarevic did not attend this meeting and neither did he attend any other meeting held in Belgrade.

511. Witness Claus Naumann was heard in connection with a meeting held in October, 1998 at which Milosevic allegedly told the NATO representatives that Final Solution for Kosovo would be found in the spring of 1999. His testimony with respect to that circumstance is obviously inconsistent with his previous statements as noted by the Trial Chamber as well, and the uncertainty reflected in his replies does not give any probative strength to such allegations.<sup>839</sup> Obviously, General Lazarevic did not attend this meeting either.

512. The Defence points out that the Prosecution has included certain evidence relating to meetings of political, military and security leaders in Belgrade. A simple analysis of all the evidence proves beyond any doubt that General Lazarevic was not present at any of the meetings. In his testimony before the Tribunal, accused Lazarevic clearly states that in 1998 and 1999 he did not even visit Belgrade let alone attended any meeting there:

16 *Q. I'm coming to the end of my examination. Tell me, in 1998, as we*  
 17 *saw, you were the Chief of Staff of the Pristina Corps and spent most of*  
 18 *your time at the forward command post in Djakovica. **Did you ever attend***  
 19 ***any meetings in Belgrade in 1998? Did you go to Belgrade at all?***  
 20 ***A. I didn't even see Belgrade in 1998, nor did I attend any meeting***  
 21 ***of any organs or institutions in the capital.***

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<sup>837</sup> P1012 pages 13-25

<sup>838</sup> Pre-Trial Brief para 74

<sup>839</sup> K.NaumannT.8261,8262

22 *Q. And in 1999?*  
 23 *A. I didn't go there in 1999 either. When the war's practically*  
 24 *finished on the 16th of June, the day -- the Army Day of Yugoslavia, even*  
 25 *then I did not attend the central celebrations in Belgrade.*<sup>840</sup>

513. This statement of the accused Lazarevic is confirmed by witness Momir Stojanović who at the relevant time was head of security sector of the PrK and who confirms that the Corps Commander, General Lazarevic never went to Belgrade to attend any meeting there. He explains that he knows it for a fact since he would have had to provide additional security measures if otherwise had been the case.<sup>841</sup>

514. Finally, the Prosecution heard witness K73, among other issues, in connection with the alleged event when, prior to commencement of the NATO campaign, General Pavkovic, in the presence of General Lazarevic, in a speech at the “Kosovski junaci” barracks said that as soon as the first NATO bombs dropped on Kosovo, they would have to “clean their back from Albanians”. The Defence has obtained a video recording of the speech given by General Pavkovic on the said occasion at the “Kosovski junaci” barracks. A transcript of the recorded speech was made from which it is clearly obvious that General Pavkovic never said as alleged above and neither can one detect from his speech that there was any plan aimed against Albanian civilian population.<sup>842</sup>

#### **b. Arming ethnic Serbs**

515. Article 20 of the SFRY Law on defense regulates the right and obligation of citizens to participate in civil defense and civil protection.<sup>843</sup> The implementation of this right and obligation is stipulated by article 22 of the aforementioned Law which regulates that citizens who are not members of VJ and MUP aged between 15 and 60(for men) and to 55(for women) have the obligation to participate in the defense of the country.<sup>844</sup>

516. There is numerous evidence that the Albanian population did not recognize the institutions of the Republic of Serbia and FRY, so they did not show intent to participate in civil

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<sup>840</sup> V.LazarevicT.18134

<sup>841</sup> M.StojanovicT.19768,19769

<sup>842</sup> 4D18

<sup>843</sup> P 985 Article 20

<sup>844</sup> P985 Article 22

defense and civil protection units, particularly having in mind that KLA acted brutally towards the people who would accept state institutions.

517. During the period relevant to this Indictment and before that, FRY Ministry of Defense was responsible for the arming of civil defense and civil protection units.

518. So the Prishtina Corps did not in 1998 conduct arming of a civilian structure, particularly not the ethnic Serbs. PrC command order of 26 June 1998, pt.2 clearly shows that the distribution was done solely to military conscripts, based on the decision of the unit commanders.<sup>845</sup>

519. This was confirmed by the Defense witness, colonel Mitić, who testified that the distribution was done to military conscripts in accordance with the PRAMVJ rule.<sup>846</sup>

520. Concerning the distribution of arms to military conscripts during 1998, General Lazarević did not have any involvement or authority in that sense, since at that time he was chief of staff of the Corps at the forward command post in Djakovica.

521. There is numerous evidence that during 1999 the arming of the members of civil defense and civil protection was the responsibility of the Ministry of Defense and the Defense will discuss this in detail in chapter VIII c.

### **c. Alleged Creation of ZK (Joint Command) in 1998**

522. The Prosecution has presented a thesis that a so called "Joint Command" was established by Slobodan Milosevic, on ad hoc basis, at the SPS meeting of 10 June 1998, thereby effectively introducing an instrument necessary for a total control over all military, police and civil aspects of life in Kosovo by members of the JCE.

523. However, the Prosecution has failed to prove the above thesis beyond a reasonable doubt even in the course of presenting its own case let alone after presentation of defence evidence and viva voce testimony of witnesses heard by the Trial Chamber. Namely, numerous are pieces of evidence showing that cooperation and coordination of actions between the VJ and the MUP existed even before political representatives of Serbia and the FRY ever arrived in Kosovo and

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<sup>845</sup> P1415 count 2

<sup>846</sup> 5D1390 para. 7

started to attend the meetings. The evidence has also unequivocally proved that the so called Joint Command was not a decision making body but rather a place to exchange information on current security situation and the circumstances regarding the reason why such meetings were called meetings of the Joint Command have been clearly explained.

524. Thus, for instance, Trial Chamber's witness, General Djakovic under direct questioning from Judge Bonomy decidedly states that they used to call such meetings "the meetings of the Joint Command for Kosovo and Metohija", long before the political authorities arrived in Kosovo and started attending the meetings and that there are documents which confirm that<sup>847</sup>

525. The witness further explains that the basic purpose of such meetings between representatives of the MUP and the VJ was to exchange information and that the meetings mostly addressed security situation.<sup>848</sup>

526. General Djaković points out that as early as July 1998, after they returned from a meeting with representatives of the MUP, and he had to prepare a document General Pavkovic suggested to call it a Joint Command. Namely, after the meeting with representatives of the MUP there was a document to be prepared, dated 6 July 1998 and Djaković suggested to put in the document "Staff of the MUP and The Command of the Pristina Corps", and General Pavković replied that it was too long and that it would be better to put "Joint Command" and they both agreed that it was the best solution.<sup>849</sup> Also, the witness explains that to his question "...what should I do about those meetings; how should I make records of them..." General Pavkovic replied that he should do the same as before and from that day on all such meetings were referred to as "Sessions of the Joint Command"<sup>850</sup>

527. Further on, when asked directly by Judge Bonomy if the Joint Command was a body running the activities, witness Djakovic replied that he did not think the body controlled anything

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<sup>847</sup> M.DjakovicT.26378

<sup>848</sup> M.DjakovicT.26380

<sup>849</sup> M.DjakovicT26381,26382

<sup>850</sup> M.DjakovicT.26379,

since no decisions were brought at such meetings and the chain of command remained intact and functioning in both the VJ and the MUP.<sup>851</sup>

528. General Djaković points out that the decisions mentioned at the Joint Command meetings refer to decisions already brought by Pavković or Lukić, i.e., their superiors, and that no decisions on the use of these units were brought at the Joint Command meetings.<sup>852</sup>

529. The Defence would like to draw the Trial Chamber's attention to the fact that prior to General Djakovic, witness Milan Kotur was called to testify before the Tribunal and that in his oral testimony he stated that he had heard the phrase Joint Command for the first time in June or July of 1998 from General Djakovic on which occasion General Djakovic explained to him that, after a meeting held at the MUP where Djakovic had been taking notes, General Pavkovic told him "Well, put Joint Command".<sup>853</sup>

530. In its Pre-trial Brief, the Prosecution suggests that General Lazarevic contributed to implementation of the plan through his role in the Joint Command. Although the Prosecution has failed to prove its thesis on the so called Joint Command, the Defence asserts that General Lazarevic was not a member of the so called Joint Command and neither did he have any role in it. This assertion is drawn from the very evidence the Prosecution has offered in its case as well as from the evidence presented to the Trial Chamber by the Defence.

531. Namely, exhibit P1468 is composed of notes from the meetings of the Joint Command from 22 July 1998 to 30 October 1998. The document includes notes from 70 meetings. Analysis of the notes shows that General Lazarevic attended only 5 of those meetings and any realistic semantic logical interpretation of the notes dated 23 August 1998 and 21 September 1998 would undoubtedly prove that General Lazarevic was not a member of the so called Joint Command although the Defence strongly believes that it presented no body or command authority disrupting the established chains of command. This standing is backed by Tribunal's own witness, General Djakovic whose testimony has been analyzed previously in this Brief.

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<sup>851</sup> M.DjakovicT.26379

<sup>852</sup> M.DjakovicT.26397,26380

<sup>853</sup> M.KoturT.20714

532. Namely, in the preamble of the session dated 23 August 1998, it is stated that “absent are Messrs Minić, Matković, Andjelković, and present are Gen. Stevanović Obrad and Colonel Lazarević V.” In the notes on the meeting of 21 September 1998, in addition to the usual preamble “absent are”, there is a note “all present and Lazarevic”.
533. A proper analysis of the note would show that the two sessions were attended by other persons as well, not listed as present. The only conclusion that can be drawn based on a semantic and logical interpretation of the notes is that Lazarevic was not a member, i.e., he was not normally present and that he attended the meetings only additionally.
534. Until January 1999, General Lazarević was chief of staff of the PRK during which time he was stationed at the IKM in Djakovica and he did not attend any meetings, either in 1998 or in 1999 when he became commander of the PRK, of high political, military and security officials held in Belgrade, where, allegedly the ZZP (Joint Criminal Enterprise) was formed only to be implemented through the Joint Command for the KiM. This can be concluded clearly and unequivocally based on Prosecution exhibit P2166. The Prosecution simply cannot prove otherwise since there is not a shred of evidence to back their allegations.
535. Regarding his trips to Pristina in 1998, General Lazarevic spent almost the entire period relevant to the Indictment at the Command outpost in Djakovica making only several trips to Prisitna to the corps command. On those few occasions, the corps commander would take him to sessions of the so called Joint Command to provide information on security situation along the state border. An analysis of all the notes shows that accused Lazarevic would present current security situation along the state border and within the borderline zone and that would conclude his “participation and role”.<sup>854</sup>
536. The exhibit also shows that General Lazarevic came to Pristina only three times – namely he attended a session in August, and then again in September when the session lasted for three consecutive days, due to escalation of terrorism at the state border and within the borderline zone as clearly evident from the notes.<sup>855</sup>

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<sup>854</sup> P1468

<sup>855</sup> P1468

537. In addition, the accused Lazarevic himself, in his viva voce testimony before the Tribunal explains when and under which circumstances he made trips to Pristina and attended those sessions, to the best of his recollection, after nine years.<sup>856</sup>

538. At this point the Defence would like to point out that none of the Prosecution's witnesses, when asked to list alleged members of the so called Joint Command mentioned General Lazarevic.

539. Presence at five (out of 70 held) sessions of the so called Joint Command cannot be taken as proof of General Lazarevic's involvement in some plan since the analysis of the notes unequivocally leads to the conclusion that there never was a criminal plan aimed against Albanian population and neither was there any discussion on any issue even remotely resembling implementation of such a plan.

540. The Defence asserts that the so called Joint Command, regardless of its name, had no command function at all and neither did it disrupt any regular and legally stipulated lines of command in either the MUP or the VJ. In addition to the Tribunal witness Djakovic, Prosecution's own witness Ljubinko Cvetkovic when asked directly by Presiding Judge "Now, the Joint Command you've told us earlier had been established by July 1998. Are you saying that with it in place, the normal chains of command continued to operate(in the VJ and the MUP)", said clearly and in so many words – Yes.<sup>857</sup>

541. The fact that there was no hierarchy established in the so called Joint Command, no commander, chief of staff or any other body necessary for existence of any commanding authority speaks in favor of the above Defence assertion. The so called Joint Command has no command post and neither is there a regular information system established through submission of operational and combat reports. The above facts not only weaken the Prosecution's thesis on existence of a joint command but also reasonably contribute to the standpoint presented by the Defence that the said command had no commanding function and that it does not constitute a body of authority overlapping competences of military, police and political structures.

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<sup>856</sup> V.LazarevićT.17815-17820

<sup>857</sup> Lj.CvetićT.8123

**d. operations of the VJ and MUP and alleged indiscriminate and excessive use of force**

542. The Prosecution suggests that the VJ and MUP, ever since March 1998 conducted antiterrorist operations characterized by indiscriminate and excessive use of force against the population, regardless of whether they dealt with soldiers or civilians, and vandal destruction of Kosovo Albanians' homes.

543. The Defence is of the opinion that this Prosecution thesis has also not been proved beyond a reasonable doubt, not even by Prosecution's own case and especially not in light of evidence presented by the Defence.

544. When we say that the Prosecution has failed to prove its charges beyond a reasonable doubt even while stating its own case, we have in mind, among other things, the numerous witnesses, high-ranking officials of the OSCE, and KDOM who testified before the Tribunal.

545. They firstly state that coordination and cooperation between legitimate bodies of a state, the MUP and the VJ in this case, in antiterrorist actions and operations are not only legitimate and normal but also necessary, particularly in a situation where arms and force are used in an attempt to separate a part of the territory of an internationally recognized country. The MUP and the VJ had a Constitutional obligation to protect the territorial integrity and sovereignty<sup>858</sup>.

546. At this point the Defence would like to remind the Tribunal that Prosecution witness Maisonneuve decidedly states that coordination of the VJ and the MUP was more than necessary and that he assessed it as highly professional. He also states that that any operation implying participation of both the VJ and MUP had to be done in close cooperation so that each of the formations was aware of the plans of the other for the purpose of avoiding incidents of friendly fire. He also stresses a necessity of prior coordination to be carried out for the purpose of establishing a clear assignment of responsibility between the formations in the course of such operations<sup>859</sup>

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<sup>858</sup> 1D134, Articles 51,72;1D 139, Article 63, 77, item 7.

<sup>859</sup> J.O.M.MaisonneuveT. 11183

547. Prosecution witness Colonel Crosland confirms that based on his personal experience he gathered in service all over the world, it was entirely expected to have coordination and cooperation in various elements between forces of the MUP and the the VJ in Kosovo for the purpose of avoiding friendly fire, among other things.<sup>860</sup>
548. Finally, Prosecution witness Dušan Lončar singles out importance of coordination, co-activity and exchange of information among the MUP and the VJ even the SMIP (Federal Ministry of Foreign Affairs)and states that, particularly in view of the OVK activities, a full cooperation between the two armed forces of the state, the VJ and the MUP was necessary for successful conduct of combat operations.<sup>861</sup>
549. Engagement of units of the VJ in joint operations with units of the MUP against renegade terrorist groups was completely legitimate and legal. The Defence would like to draw Trial Chamber's attention to Prosecution exhibit titled "Rules of Service in the Yugoslav Army" which, in item447 allows the peacetime use of units and institutions of the army in actions against renegade, sabotage, terrorist and other armed enemy groups.<sup>862</sup> Army units may also guard/secure public communications and structures of special importance for defense of the state during the state of alert when attacks or sabotage activities are expected.<sup>863</sup> Finally, at this point the Defence points to the fact that according to the said Rules, orders on engagement of army units against terrorist and other armed enemy groups are issued by chief of general staff. In addition, in case of an attack of such groups the commander of the attacked unit, institution or military base, or the officer on duty immediately takes appropriate measures for defense and repel of the attack and reports to his superior officer.<sup>864</sup>
550. The Defence presented the evidence clearly showing that on 28 July 1998, chief of general staff of the VJ, Momčilo Perišić, issued the "Grom98" directive effectively allowing

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<sup>860</sup> J.CroslandT.9815

<sup>861</sup> D.LoncarT.7612,7613

<sup>862</sup> P1085,item.447

<sup>863</sup> P1085,item.448

<sup>864</sup> P1085,item.450

engagement of the VJ in destruction and elimination of sabotage-terrorist forces in KiM in cooperation with the MUP forces of the Republic of Serbia.<sup>865</sup>

551. Another Defence exhibit clearly shows that immediately upon issuance of the directive, chief of general staff, General Perisic issued an order in which, under Item 3 he states that the plan of engagement of the forces is to be effective as of 11.00h on 3 August 1998.<sup>866</sup>

552. The Prosecution suggested to the Trial Chamber that General Lazarevic as chief of staff of the PrK had personally signed a decision on destruction of forces of DTS(sabotage terrorist forces)dated 14 July 1998 envisaging support to the MUP forces in destruction of the DTS.<sup>867</sup>

553. In addition to the fact that, based on the above evidence, it has been established that engagement of the VJ in this particular case was allowed by chief of general staff Perisic, the Defence states that the chief of general staff was in the field at the time of execution of the action and was informed on the action by the Third Army commander Samardžić.<sup>868</sup> Also, Witness A.Dimitrijevic testified that the Accused Lazarevic at that time was in Djakovica and that he exercised command and control over activities related to the protection of the state border.<sup>869</sup> It is clear that the protection of the state border is uncontested Constitutional obligation of the Army.

554. The action itself was approved by the Third Army commander Samardžić who signed his approval on the map and the very idea behind the decision to initiate this action, conceived by General Pavkovic was orally explained to the Third Army commander by then Colonel Djakovic.<sup>870</sup>

555. Accused Lazarević signed a written decision previously approved by both Samardžić and Perišić, for a simple reason that commander of the PrK, Pavkovic was away at the time, inspecting the borderline zone together with NGŠ VJ Perišić, and in case of physical absence of a commander, his chief of staff is authorized to sign decisions.<sup>871</sup>

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<sup>865</sup> 4D137,para III

<sup>866</sup> 4D456,item.3

<sup>867</sup> P1428

<sup>868</sup> V.LazarevićT.17796,17797;5D1173, item3;

<sup>869</sup> A.Dimitrijevic-T.26744,26745

<sup>870</sup> M.DjakovicT.26454-26458;5D1175;5D1174

<sup>871</sup> V.LazarevicT.17797; 5D 1385,para 12;

556. In connection with the decision, Defence witnesses Goran Jevtović and Miodrag Simić gave their comments on the clause of Item 6 of the decision according to which command over combat activities was to be executed by the Joint Command for KiM from the IKM of the PrK in Djakovica, and both of the witnesses agree that this refers to Combined Command Post/Joint Command Post, from where the MUP forces received orders from their commander and forces of the VJ from the commander of the VJ<sup>872</sup>
557. All the foregoing evidence clearly shows that accused Lazarevic did not carry out any alleged decisions of a so called Joint Command for the purpose of implementation of the JCE as the Prosecution has tried to convince the Trial Chamber by presenting the evidence.
558. Taking into account the undisputed fact that during antiterrorist activities in Kosovo in 1998, the number of terrorists reached and crossed the line of 20 thousand, that 50% of the KiM territory was under blockade and that the centers of armed rebellion were Drenica, Mališevo, Jablanica, Junik and Djakovica, it becomes evident that engagement of the army in coactivity with the MUP was not only legitimate as already proven but also necessary and aimed exclusively at armed enemy groups and most certainly not against civilian population.
559. Numerous pieces of evidence presented in this case point to the fact that the concentration of enemy groups reached some 20 thousand troops at the time of the antiterrorist activities.<sup>873</sup>
560. The Prosecution's thesis that joint operations of the VJ and the MUP were targeting residents regardless of whether they were armed soldiers or civilians whose homes were being destroyed, is entirely confuted even by the very evidence the Prosecution has presented and witnesses it has called to testify.
561. Namely, from the testimony given by Prosecution witness Byslim Zyrapi it has been established beyond any doubt that the OVK used villages as its terrorist bases as well as that a

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<sup>872</sup> M.SimicT.15569-15573;5D1385,paras 11, 15

<sup>873</sup> B.ZyrapiT.5959; 5D1307

large number of members of the OVK, both male and female wore civilian clothes, mixed and moved around with civilians<sup>874</sup>

562. When asked where the OVK fighters were stationed the witness says that they were mostly stationed in school buildings, public gathering places and houses, depending on situation in the region.<sup>875</sup>

563. Elsewhere in his testimony, this witness says that local headquarters, consisting of local residents were supplied and armed by the OVK. He also points out that they wore civilian uniforms since they did not have any military uniforms in their possession.<sup>876</sup>

564. Prosecution witness General Maisonneuve in his testimony before the Tribunal, speaking about a strong presence of the OVK in Kosovo<sup>877</sup> says that it would be safe to conclude that the OVK used villages as their bases.<sup>878</sup>

565. Prosecution witness General Klaus Naumann also confirms that implementation of protection of the civilian population was made exceptionally difficult, due to the fact that the rebels also wore civilian clothes and mixed with civilian population.<sup>879</sup>

566. In his testimony, Colonel Crosland confirms that in the field, the OVK realized the strategy from a book written by Mao Ce Tung and that the OVK firstly formed its bases in the villages expecting the NATO to intervene.<sup>880</sup>

567. In addition to numerous witnesses who additionally strengthen the Defence standing, the Defence points to the map of Albanian villages the OVK used as its bases from which it is clear how widespread OVK bases were all over Kosovo and particularly in the regions the Prosecution singles out as targets of attacks launched by the Serb forces in operations carried out in 1998.<sup>881</sup>

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<sup>874</sup> B.ZyrapiT.5991,5992,5997-5998, 6180,P2457

<sup>875</sup> B.ZyrapiT.6181,6182

<sup>876</sup> B.ZyrapiT.6232

<sup>877</sup> J.O.M.MaisonneuveT.11111

<sup>878</sup> J.O.M.MaisonneuveT.11135

<sup>879</sup> K.NaumannT.8319,8320

<sup>880</sup> J.CroslandT.9899,9900

<sup>881</sup> 5D1334

568. Finally, the Prosecution thesis that the VJ used indiscriminate and excessive force in those actions is also refuted even by Prosecution's own witnesses and evidence.

569. Thus, prosecution witness, General Maisonneuve, head of the Regional Center 1 of the KVM which covered the regions of municipalities of Prizren, Suva Reka and Orahovac, speaking about an isolated incident at the Mt. Paštrik on 14 December 1998, and again speaking in general about conduct of members of the VJ and members of the 549th mtbr which was active in the zone covered by his center in particular, points out a human and professional conduct of the VJ which carried its tasks professionally and stayed away from the villages in the course of its operations.<sup>882</sup>

570. Prosecution witness, Colonel Richard Ciagliniski, member of the KVM also speaks about conduct of the VJ in general and in concrete incidents in particular. In connection with an isolated incident on the Podujevo - Pristina highway when a VJ Colonel was killed in an ambush, this witness, answering questions pertaining to the incident in direct, cross as well as in additional examination, decidedly states that that he witnessed the entire operation from the beginning to the end, and that the VJ carried out the whole action completely professionally, that he noticed no irregularities and that there were no actions of retaliation, destruction or killing.<sup>883</sup>

571. With respect to assessment of conduct of the VJ in general, this witness says that he had a chance to read numerous reports made by members of his Mission and that he found no complaints with respect to conduct of the VJ in those reports.<sup>884</sup>

572. Further to the point, Prosecution witness Ciagliniski, speaking about actions of the VJ in the borderline zone says that those actions were carried out correctly.<sup>885</sup>

573. REDACTED

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<sup>882</sup> J.O.M.MaisonneuveT.11131,11132, 11133

<sup>883</sup> R.CiagliniskiT.6847, 6848, 6908, 6927, 6928, P 2488 para.4

<sup>884</sup> R.CiagliniskiT.6894,6895

<sup>885</sup> R.CiagliniskiT.6910

**REDACTED** and further on in his testimony he confirms that members of the VJ in his territory conducted professionally in all respects<sup>887</sup>.

574. The Defence points out that Prosecution witness Shaun Byrnes in his testimony, speaking about the August-September 1998 period, draws a clear conclusion that the VJ was not involved in torching villages, destruction of crops, killing farm animals, and other crimes.<sup>888</sup>

575. Finally, Prosecution witness Ciagliniski points out that the VJ until the moment of their evacuation from the territory of Kosovo conducted correctly without using excessive force.<sup>889</sup>

**e. alleged violation of the Agreement signed in 1998**

576. The Prosecution has failed to prove beyond a reasonable doubt that members of the VJ in Kosovo violated the Agreement signed in October 1998 and that General Lazarevic, firstly as chief of staff and then as corps commander, and units under his command were involved in violation of the Agreement.

577. Numerous pieces of evidence presented by the Prosecution whether in the form of testimonies given by high representatives of both the OSCE and KDO, or in the form of written documents generate a reasonable doubt that members of the VJ under command and control of General Lazarevic were involved in violation of the said Agreement.

578. Prosecution witness, Colonel Crosland, representative of the UK KDOM in his testimony before the Tribunal, speaking about his personal experience during inspection of army barracks of the VJ across Kosovo, says that the VJ performed its regular duties and tasks and that the Mission had no objections at all<sup>890</sup>

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<sup>887</sup> K79 T.9728

<sup>888</sup> S.ByrnesT.12150

<sup>889</sup> R.Ciagliniski T.6929,6930

<sup>890</sup> J.CroslandT.9955

579. General Maisonneuve in his testimony before the Trial Chamber points out that the combat troops of the VJ in Kosovo were deployed in compliance with the October Agreement and that he was free to inspect all those units.<sup>891</sup>
580. Witness General Klaus Naumann, representative of the military committee of the NATO also singles out the professional conduct of the VJ in activities outside of the barracks as well as its correct cooperation with the OSCE Mission in the period January – February 1999.<sup>892</sup>
581. Witness Colonel Richard Ciaglinski, speaks about the good cooperation with the VJ and his visit to the units of the VJ stationed at Junik on 24 January 1999 on which occasion he had a chance to speak with local ethnic Albanians who told him they had no problems whatsoever with members of the VJ.<sup>893</sup>
582. On that occasion witness Ciaglinski was escorted by witness Colonel Kotur who was wearing civilian clothes and witness Kotur confirms this part of Ciaglinski's testimony.<sup>894</sup>
583. At this point it should be noted that the testimony of this witness in connection with his visit to Junik also proves that Junik was not destroyed by the Serb forces and that Albanian population was not forcibly expelled. This is also backed by a video clip recorded in Junik and by a statement given by witness Veljko Odalović.<sup>895</sup>
584. Regarding assessment of conduct of the VJ in general, this witness adds that he had a chance to see numerous reports made by members of his Mission and that those reports contained no complaints about conduct of the VJ.<sup>896</sup>
585. The Defence cannot help but analyze the testimony of Shaun Byrnes , chief of the US KDOM who, speaking about cooperation between the VJ and the KDOM Mission, praises it as exceptionally professional and positive.<sup>897</sup>

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<sup>891</sup> J.O.M.MaisonneuveT.11152

<sup>892</sup> K.NaumannT.8357

<sup>893</sup> R.CiaglinskiT.6896

<sup>894</sup> M.KoturT.20652;5D648;P2506

<sup>895</sup> 5D1239;V.OdalovicT.14431,14432

<sup>896</sup> R.CiaglinskiT.6894,6895

<sup>897</sup> S.ByrnesT.12144

586. Elsewhere in his testimony, witness Shaun Byrnes, speaking about the August-September 1998 period, finds that the VJ was not involved in torching villages, destruction of crops, killing farm animals and similar crimes. In his overview of the ensuing period, i.e., a period of 1999, he also points out that he never saw that the VJ was involved in any of the above crimes and neither did any of his teams reported involvement of the VJ in any such crimes.<sup>898</sup>

587. This witness further states that he later learnt from the Kosovo Albanians who belonged to Kosovo's political elite and who had escaped from Kosovo that the VJ, even upon commencement of NATO bombardment kept treating them with respect. He mentions a concrete case in which the VJ intervened to save two Kosovo Albanians working for the US KDOM Mission and whom paramilitary troops wanted to eliminate.<sup>899</sup>

588. Witness Milan Kotur discloses in his testimony that since the moment of arrival of the Verification Mission in Kosovo in October, 1998 until 25 February 1999, only 19 incidents were recorded during the entire period and that there were as many as 1380 verifiers<sup>900</sup>. He further states that among the recorded incidents are those referring to individual misdemeanors of some members of the army such as verbal threats, pointing guns at vehicles belonging to the Mission, preventing verifiers from passing through areas of deployment of army units, search and seizure of items.<sup>901</sup> The witness points out that whenever they were able to identify a soldier who had threatened verifiers or pointed his gun at them, the army would take appropriate measures against the soldier.<sup>902</sup>

589. This witness also points out that among the violations were situations which perhaps may not be called violations at all since those refer to soldiers' responses to aggressive conduct of verifiers who wanted to pass through combat deployments of the units unannounced and the soldiers would not let them.<sup>903</sup>

590. The Defence notes that verifiers, throughout their mandate recorded only one case of "Unnecessary use of force" committed by the 243rd mtbr on 8 January 1999 in the village of

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<sup>898</sup> S.ByrnesT.12150

<sup>899</sup> S.ByrnesT.12199

<sup>900</sup> M.KoturT.20667

<sup>901</sup> M.KoturT.20667, 20668; 5D651

<sup>902</sup> M.KoturT.20668

<sup>903</sup> M.KoturT.20669

Donje Slapuzane.<sup>904</sup> Witness Kotur, however, explains that verifiers conducted a field investigation and found that the incident actually never happened at all and that a shell of that size allegedly fired by members of the unit “could not leave no trace”.<sup>905</sup> Defence witness Krsman Jelic also testified in connection with the alleged incident.<sup>906</sup>

591. This witness states that the accused Lazarevic immediately upon taking over command over the corps staged a meeting with all the liaison officers of the PrK on 25 February 1999 which he attended as well, the purpose of the meeting being to give a chance to Lazarevic to explain, once again how important their work was and to offer his personal assistance in improving the cooperation.<sup>907</sup>

592. Witness Marinković Dragiša also confirms that accused Lazarević gave his personal contribution to an improved cooperation and he points out that after the above meeting cooperation with the OSCE Mission was evidently better.<sup>908</sup> He also says that there is a piece of evidence to back his statement and that is a report of command of 57th border battalion to the PrK command – liaison team, in which it is noted that on 2 March 1999, representatives of the OSCE expressed their satisfaction with cooperation and changes in attitude toward the Mission on the part of the bodies and units of the VJ.<sup>909</sup>

593. Finally, Colonel Kotur testifies before the Trial Chamber that an order was received from general staff of the Yugoslav Army to the effect that inspection of units of the VJ in barracks, border posts, depots (except reported systems of the PVO) were not to be accepted without a specific approval of the chief of general staff of the VJ.<sup>910</sup> He commented on the meaning of the order.<sup>911</sup>

594. Colonel Kotur also gives his comments on the report of the work group of the GŠVJ in charge of cooperation with the OSCE and NATO missions in which it is stated that the work group conducted an inspection of liaison teams in charge of cooperation of the PrK with the

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<sup>904</sup> 5D651

<sup>905</sup> M.Kotur T.20669,20670

<sup>906</sup> K.JelicT.18842-18845; 5D646

<sup>907</sup> M.KoturT.20666, M.DragisaT. 20140;5D 651,page 6.

<sup>908</sup> D.MarinkovicT.20140

<sup>909</sup> D.MarinkovicT.20140,20141;5D1226

<sup>910</sup> M.KoturT.20656,20657

<sup>911</sup> 3D407

OSCE mission and found that the teams were completely ready to successfully carry out all their tasks. Further on, in his comments on the document, witness Kotur states that the work group clarified standings of the Government Commission according to which only mixed verification teams were allowed to conduct inspection of army units.<sup>912</sup> In addition, accused Vladimir Lazarević in his testimony also states that liaison teams of the PrK in charge of cooperation with the OSCE were controlled by the GŠVJ, and that there were no objections with respect to their activities.<sup>913</sup>

595. For all the foregoing reasons, it is clear that the few sporadic incidents and misunderstandings during the mission's mandate, do not constitute violation of the Agreement signed in October 1998.

**f. replacement and re-assignment of higher-ranked officers**

596. The Prosecution alleges that numerous disobedient officers were removed from their posts by Milosevic and systematically replaced by persons willing to cooperate in implementation of the JCE. The Prosecution further alleges that the accuseds were appointed by Milosevic to the leading positions within the VJ and MUP and became members of executive coordination bodies such as the Joint Command. Ojdanić, Lazarević, Pavković and Lukić were promoted to key positions in the VJ MUP and subsequently became members of the Joint Command.<sup>914</sup>

597. The Prosecution also alleges that there was a strong resistance at higher levels of the VJ with respect to the use of the VJ in Kosovo, outside the usual chain of command. The leading figure of the resistance was NG ŠV (Chief of General Staff) General Perišić.<sup>915</sup>

598. The above allegations of the Prosecution are absolutely incorrect and unacceptable, particularly regarding the accused Lazarevic. Unfounded and totally inconsistent with presented evidence is also the Prosecution's thesis that Lazarevic was "Milosevic's choice". Numerous evidence shows that it was actually General Perisic, "the leader of the resistance" according to

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<sup>912</sup> M.KoturT. 20655,20656; 3D 787

<sup>913</sup> V.LazarevićT.17837

<sup>914</sup> Pre-Trial Brief para 109

<sup>915</sup> Pre-Trial Brief, para 110

the Prosecution, who sent General Lazarevic, then Colonel Lazarevic, from the Niš Corps to the PrK and appointed him chief of staff of the PrK, by the end of 1997 and the beginning of 1998. Accused Lazarevic himself gave his testimony to that effect<sup>916</sup>, and in addition, we have orders issued by General Perisic<sup>917</sup> as well as a report on acceptance of duty dated 9 January 1998.<sup>918</sup>

599. Further to the point, it was also General Perisic who, at the session of the Supreme Defence Council of 9 June 1998 suggested to President Milosevic to promote General Lazarevic explaining that he was an exceptionally able officer who proved himself as a highly valuable commander.<sup>919</sup>

600. Thus General Perisic asks President Milosevic to issue a decree on promotion of General Lazarevic since appointments of officers to positions reserved for generals according to the law is done by a decree issued by President of the FRY<sup>920</sup> Witness A. Dimitrijevic upholds:

*22 A. Yes. General Lazarevic, based on all the evaluations of all of  
23 us in the General Staff at the collegium, was an excellent officer, and  
24 it was a unanimous decision at the collegium to recommend him for  
25 promotion.*<sup>921</sup>

601. When General Pavkovic took over position of commander of the Third Army, General Lazarevic, as then chief of staff of the PrK was appointed commander of the PrK. The Defence notes that it has been proved that it was a usual practice within the VJ to always promote chief of staff to commanding post once the position was vacated.

602. Prosecution's exhibit which is actually the minutes of meeting from the Eight Session of the Supreme Defence Council held on 25 December 1998 clearly shows that cadre solutions were proposed to President Milosevic by the General Staff of the VJ and the solutions were then discussed and possible objections made. The exhibit also clearly shows that it was the General Staff of the VJ that proposed to the Supreme Defence Council that general Lazarevic be appointed commander of the PrK. According to the law the appointment was carried out by

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<sup>916</sup> V.Lazarević T17736

<sup>917</sup> 5D1323; 5D1324

<sup>918</sup> 5D1322

<sup>919</sup> 1D760, pages 15, 16

<sup>920</sup> 5D1325

<sup>921</sup> A.Dimitrijevic-T.26743

President of the FRY upon proposal of the General Staff of the FRY. The Defence at this point notes that the Supreme Defence Council meeting was attended by president of Montenegro Djukanovic who had no objections to appointment of General Lazarevic as commander of the PrK<sup>922</sup>.

603. From all the above evidence presented before the Trial Chamber it is clear that it was General Perisic who brought General Lazarevic from Niš to the Priština Corps and appointed him chief of staff. General Perišić was also the person who proposed General Lazarevic be promoted to a higher rank since he, as an able officer (according to Perisic, again), spent a long time at the position formationally reserved for a general (corps chief of staff). Finally, he was appointed as commander of the PrK without any objections from President Djukanovic upon proposal of General Staff of the VJ.

604. For all the above reasons, it is absolutely clear that the Prosecution has failed to prove beyond a reasonable doubt that the accused Lazarevic was an officer appointed by Milosevic for the purpose of cooperation or participation in implementation of the JCE.

### **3. Alleged implementation and carrying out of JCE in 1999**

#### **a. Who is preparing for spring offensive**

605. The Prosecution stated in the Indictment and the Pre-trial brief that the Serbs were preparing, as far back as November of 1998, under the guise that the KLA is preparing a spring offensive, to start its own offensive against the KLA, which would be a perfect cover for the achievement of the JCE goals. The Prosecution further suggests that allegedly, plans were carefully being set up, both within the MUP and within the VJ, of supposedly legitimate operations against the KLA, within which allegedly crimes were being committed against the Albanian civilians.<sup>923</sup>

606. The Defense therefore submits that this Prosecution contention remains on the level of speculation, that even no leads exist for such a submission, and particularly there is no evidence

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<sup>922</sup> P1000

<sup>923</sup> Pre-Trial Brief paras.124-128

which could, beyond any reasonable doubt, bring this allegation of the Prosecution to the level of a proven fact.

607. In his oral testimony, general Dušan Lončar confirms that KLA used the presence of the KVM to reorganize, consolidate, arm and prepare for combat against Serb forces.<sup>924</sup> This Prosecution witness added that KLA often used civilians as human shields, woman and children foremost.<sup>925</sup>

608. He also testified that during the period that he had contacts with KVM, particularly with general Drewenkiewitz, the forthcoming KLA spring offensive was mentioned.<sup>926</sup>

609. The statements of witness Lončar about the arming of KLA and preparations for combat against the Serb forces are confirmed by witness Shaun Byrnes when he says that it was general knowledge among the observers in Kosovo that the Albanians were arming themselves before, during and after the October agreement.<sup>927</sup>

610. Witness, colonel Richard Ciaglinski, a member of the KVM mission confirms that during the tenure of the Mission in Kosovo, KLA conducted ethnic cleansing of the Serb villages and that the KLA intensified its attacks during the Paris conference.<sup>928</sup>

611. Prosecution witness, colonel Crosland during his testimony confirmed that the KLA achieved on the ground the Mao Tse Tung strategy, and KLA formed first its bases within villages that expected the NATO attack.<sup>929</sup>

612. Furthermore, material evidence in the form of reports of OESCE missions in Kosovo confirm the statements of the above mentioned witnesses. For example, supplement DZ-5 of 08 01 1999. shows that KLA terrorist attacks and truce breaches undermine the efforts of finding a political solution for the conflict.<sup>930</sup>

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<sup>924</sup> D.LoncarT.7617

<sup>925</sup> D.LoncarT.7617

<sup>926</sup> D.LoncarT.7618

<sup>927</sup> S.ByrnesT.12217,12218

<sup>928</sup> R.CiaglinskiT.6902

<sup>929</sup> J.CroslandT.9899,9900

<sup>930</sup> P638

613. Also, supplement DZ-16, which represents a report from a meeting of liaison officers with KLA representatives additionally confirms this. That is, OESCE liaison officer came to the CONCLUSION after the meeting that, no matter what will happen in the following round of peace talks, there is a clear readiness of the KLA to continue fighting.<sup>931</sup>

614. Finally, it can be clearly seen for the Prosecution exhibit which is a working document of an OESCE report for the period from 26. February to 4. March 1999 that many KLA members infiltrated from Macedonia, the KLA forced the inhabitants to leave the area simulating a Serb offensive, which the verifiers recorded as a false fact. Furthermore, the verifiers noticed that the VJ actions were minimal and represent a response to KLA provocations. The report further establishes that the KLA told the inhabitants in that area to move out, and that all of them left their homes on February 27, and that already on February 28 a report on internally displaced persons was filed.<sup>932</sup>

615. There is abundant evidence from the security organs of the PrC and 3. Army which indicate that KLA conducted forced mobilization of the Albanian population, that it conducted resettlement of civilians from Drenica and other regions, that it attacks more incessantly VJ and MUP units, as well as committed crimes against the civilians. It was clear and obvious to the security organs of the VJ that the KLA is mobilizing its forces and that it is preparing a spring offensive.<sup>933</sup> Accused Lazarević confirmed this during his testimony in Court.<sup>934</sup>

616. The Defense has offered proof in the form of a video clip prepared by BBC which clearly shows that it was the KLA which prepared for a spring offensive by conducting an inspection and a military exercise on 29-01-1999 with participation of fighters in civilian clothes and women with arms.<sup>935</sup> During his testimony, the accused Lazarević recognized that the exercise was conducted on Mt. Drenica, in the village of Klečka.<sup>936</sup> He also added that after October 1998, between 400-600 villages were turned into KLA bases.<sup>937</sup>

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<sup>931</sup> P649

<sup>932</sup> P680

<sup>933</sup> 3D1050;3D1052;3D1053

<sup>934</sup> V.LazarevićT.17767

<sup>935</sup> 5D1241

<sup>936</sup> V.LazarevićT.17771

<sup>937</sup> V.LazarevićT.17772

617. Along with that, the VJ General Staff had information that at the beginning of 1999 12,000 soldier were deployed in Macedonia (of which 10,000 were combat part), with around 100 tanks, 250 OT, 50 artillery pieces and 36 helicopters. It was estimated that NATO envisaged an aerial-ground operation.<sup>938</sup> Furthermore, influx of KLA and arms from the territory of the Republic of Macedonia was strengthened with a goal of creating a corridor.<sup>939</sup>
618. In such a military-political situation in which the operational position of the Prishtina Corps was threatened by the concentration of NATO in neighboring Macedonia and with strong terrorist forces in Kosovo and Metohija as well as in Macedonia and Albania<sup>940</sup>, VJ GS was forced to undertake measures to protect the State territory. During his testimony, the accused Lazarević stated that during March of 1999, Prishtina Corps, in a military sense was contained in a strategic trap, having in mind that it numbered only 10,000 troops, that it was located within garrisons and that, with the expected external aggression, it would have been destroyed within only a few days.<sup>941</sup>
619. On January 16 1999, VJ GS passed a directive for the use of VJ in countering a forceful introduction of a multinational NATO brigade in the region of Kosovo and Metohija. With this directive, VJ was given the task to undertake protective measures against aerial attacks and prevent the introduction of a NATO multinational brigade from the territory of the Republic of Macedonia to the territory of Kosovo and Metohija, as well as closing down the insurgency corridors of terrorist units form the territory of Albania. Also, that the task of the VJ was, in joint action with the MUP, to block shiptar terrorist forces in close landing sectors and corridors and prevent joint action with NATO forces.<sup>942</sup>
620. Finally, this directive envisages re-subordination to Third Army of BG-252, then BG-37, BG-3, as well as 63. paratroop brigade and 72. special brigade.<sup>943</sup>
621. Along with that, due to the complexity of the situation and with the goal of safekeeping combat readiness of the PrK, VJ GS ordered that the March rotation of recruits/soldiers remain

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<sup>938</sup> 5D105

<sup>939</sup> 3D1048,5D253

<sup>940</sup> V.LazarevicT.17870

<sup>941</sup> V.LazarevićT.17871

<sup>942</sup> 3D690

<sup>943</sup> 3D690, items: 3.3.; 3.4.; 3.5.

serving their military service.<sup>944</sup> Also, in accordance with article 19 of the Law on VJ, it ordered the mobilization of ear units of the Third army, according to specification<sup>945</sup>. It ordered re-subordination of certain units with the goal of reinforcing the PrC.<sup>946</sup>

622. Based on the Directive of the VJ GS which represented a plan of the defense of the country, on 27.01.1999, the Third army issued its Order „Grom 3“, which defined the task of the PrC with reinforcements ordered by VJ GS in preventing the introduction of a NATO brigade and its joining with the KLA in the airborne areas.<sup>947</sup>

623. Along with that, the 3rd Army Command ordered PrC to undertake measures for prevention of a surprise/attack/ and maintaining the ordered level of combat readiness. Even then the deepening of the complexity of the military-political and security situation and a possibility of NATO aggression on FRY was foreseen.<sup>948</sup> Along with measures for obstruction of communication lines toward Republic of Macedonia and Republic of Albania, the Corps Command was ordered to develop a plan of blocking and destroying STF /Shiptar Terrorist Forces/ in the areas of Drenica, Lab (Malo Kosovo) and Mališevo, and that the said plan secures joint action with the MUP units. This plan was to be completed by 15.02.1999.<sup>949</sup>

624. The PrC Command complied with this order of the 3rd Army Command, and on 16 02 1999, a day after the deadline that was ordered by the 3rd Army, it passed the Order for crushing and destruction of STF in the areas of Malo Kosovo (Lab), Drenica and Mališevo. This Order bears a strictly confidential number 455-1. Point 1 of the Order shows that the area of Malo Kosovo is also called Operative zone Lab. Point 5. para 1, (readiness) shows that it was not designated and that it was to be determined in three to four day by a separate order. Point 10.2.2. (provision of security) shows that the Corps commander forbid that Corps troops enter into inhabited areas, plunder of property of the local population and that he forbid any breach of the provisions of the international laws of war.<sup>950</sup>

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<sup>944</sup> 3D750

<sup>945</sup> 5D261; 3D683

<sup>946</sup> P1948; 3D679;3D680;3D756.

<sup>947</sup> 5D245

<sup>948</sup> 5D249

<sup>949</sup> 5D249, item 5.

<sup>950</sup> P2808



Kosovo. The Prosecution did not prove beyond a reasonable doubt that what is dealt with there is a well organized campaign in which the Serbian forces systematically attacked village by village, through majority of municipalities in Kosovo.

630. The Defense here calls upon the analysis presented so far concerning the adduced evidence and established facts in chapter V.-Crime Base with the conclusion what has been concluded beyond a reasonable doubt, and what has been not, for each municipality individually. Established facts indicate that there is no participation of the VJ or it is such that it cannot suggest a planned, systematic and widespread participation of units under the command or control of the accused Lazarevic in execution of crimes for which has been established that they were committed.

631. In the abovementioned sense, the Defense here recalls the analysis given so far concerning the existence of the alleged enterprise and its alleged conduct which has been presented so far in this chapter.

632. It is clear that all the facts and evidence on which we have called upon above, create a reasonable doubt that there existed a general plan of deportations and forcible expulsion, and particularly that there existed a plan of killings, sexual mistreatment or wanton destruction or willful damage to religious or other objects of Kosovo Albanians.

**c. Alleged continuation of tactics of excessive use of force and engagement of persons with criminal records**

633. In the Indictment and its Pre-trial brief the Prosecution contends that in spite of the knowledge that crimes have been committed against the Kosovo Albanians as a result of excessive use of force in Kosovo during 1998, none of the accused have undertaken effective measures to adjust the combat tactics, withdraw the units that have been involved in crimes and replace the commanders of those units.

634. The Defense notes, and that was already the subject of this Defense Final brief, that the Prosecution during its case, and particularly after the presentation of the Defense case, did not present evidence that the VJ units during 1998 used excessive force or have committed crimes.

635. Along with numerous evidence that we have analyzed above, the Defense would like to draw attention of the Trial Chamber to the evidence that additionally confirm this conclusion. For example The Parliament of the Republic of Serbia passed a Resolution that VJ has carried out its duties honorably, responsibly and professionally.<sup>954</sup>
636. Furthermore, it was general Perišić that in his statement of 29.09.1998 stated that VJ carried out its task in crushing sabotage-terrorist units thoroughly in a professional manner He added that VJ GS was primarily engaged in carrying out tasks that lay upon PrC, undertaking measures of complete quality personal and material replenishment of the Corps, Through regular and extraordinary control, the operation of the command was guided and necessary support was given to the PrC in implementing if given tasks.<sup>955</sup> So, general Perišić, »renegade« Milošević general, as the Prosecution states, gives such an assessment of the operation of the PrC in 1998. and explains its participation, as well as the participation of the VJ GS in giving support and control.
637. Finally, the FRY Parliament, where Montenegro representatives were present, during the joint session of 05.10.1998 also gives full recognition to VJ for a professional performance of its tasks.<sup>956</sup>
638. Out of caution, at this juncture the Defense notes that even if the allegations of the Prosecution were correct, during 1998 the accused Lazarević was the Corps chief of staff and had no authority to undertake any measures in that respect.
639. As far as the combat tactics and use of the forces during 1999 are concerned, when the accused Lazarević became the Corps commander, the Defense has already analyzed some evidence. That is, we have already seen that VJ GS issued a directive on 16.01.1999 for the defense of the country from a possible ground aggression and rising terrorism within Kosovo and Metohija. Based on this Directive, the 3.Army command issued an order to the PrK command with the same task and ordered the PrK to issue its own order.<sup>957</sup>

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<sup>954</sup> 1D202, item 3.

<sup>955</sup> 3D757

<sup>956</sup> 2D 67, item 4

<sup>957</sup> 3D690;5D245;5D249;P2808

640. So, the use of combat tactics was stipulated by the VJ GS Directive and the Order of the 3. Army and accused Lazarević, as the Corps commander had to follow them. These orders were fully legitimate, founded on the law and Rules of service in the VJ and did not order any breach of law or committing of crimes. In that sense, the accused Lazarević was bound to carry through those orders and had no prerogatives nor reasons to change the combat tactics.

641. Furthermore, as far as the use of troops is concerned, based on the analysis of evidence presented in this brief so far it can be concluded that accused Lazarević was not the one who made decisions on the use of the troops, but that the decision on the use of troops and eventual reinforcements through re-subordination of units from other corps, was being taken at the level of VJ GS and 3rd Army.<sup>958</sup>

642. Along with the fact that during 1999 the accused Lazarević did not make decisions on the use of the combat tactics or the use of the troops, he did not possess any knowledge that the units that were now under his command, have allegedly used excessive or committed crimes during 1998. He was not able to possess such knowledge because above presented evidence beyond reasonable doubt proved that during 1998, as well as in 1999, VJ did not use excessive force nor did it commit crimes. The evidence shows that according to the military doctrine, objectives and approval of the superior command, PrK was supposed to use around 20 combat sets, while it actually used only 0,4 combat sets<sup>959</sup>.

643. What the commander of the corps could do is replacement of commanders of subordinated units, as a reasonable response to concern that the discipline is degrading. We have seen that it is within the authority of the corps commander to undertake disciplinary measures against the members of the PrK for lighter disciplinary breaches, while criminal measures, based on criminal charges were undertaken by legal military organs. Prosecution witness Aleksandar Vasiljević testified to this.<sup>960</sup>

644. Numerous evidence shows that accused Lazarević replaced commanders and commanding officers, in accordance with his authority, in the units in which it was noticed that

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<sup>958</sup> P1948,3D679;3D680;3D683;3D756;5D261

<sup>959</sup> R.Stefanovic-T.21708

<sup>960</sup> A.VasiljevicT.8968,8969

the discipline was degraded. The accused himself testified to this<sup>961</sup>, and there is numerous written evidence to this.<sup>962</sup>

645. That these statements are true is confirmed by general Momir Stojanovic who stated during his testimony that the PrK commander undertook the measures of replacing commanders and that some 40 commanders has been relieved of their duties.<sup>963</sup> Some of these officers faced criminal prosecution, but criminal prosecution was not within the authority of the corps commander, which was confirmed by the abovementioned Prosecution witness, Aleksandar Vasiljević.

646. Finally witness Marinković Dragiša in his written statement also confirms that the Corps commander undertook measures that we have mentioned above.<sup>964</sup>

647. The Prosecution allegations that VJ consciously and intentionally used persons with criminal background have also not been proven. A lot of evidence was presented concerning the procedure of enlisting volunteers, as well as evidence that there were no paramilitary groups within the VJ. This will be discussed further on in a separate chapter of this Defense Final Brief

#### **d. Alleged omission to take measures to punish perpetrators of criminal offences**

648. General Lazarević defense witnesses have explained through specific examples which measures were undertaken so that those responsible for crimes would be punished.

649. General Jelić, the commander of the VJ 243. brigade explained that every perpetrator who had been found would have been processed immediately. Dozens of members of that brigade were processed, but there were no heaviest crimes.<sup>965</sup>

650. Witness (REDACTED) stated that at the end of March 1999. (REDACTED).<sup>966</sup>

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<sup>961</sup> V.LazarevicT.18111,18112

<sup>962</sup> 5D533;5D388;5D387;5D315; 5D554;5D550;5D798;5D1182.

<sup>963</sup> M. StojanovicT.19736-19739

<sup>964</sup> 5D1379,para.21,22,23

<sup>965</sup>

T.18955

<sup>966</sup> 5D1393 para 5,P955 page 6

651. General Živanović, commander of the 125. brigade said: “all those who committed crimes were prosecuted under a regular procedure.”<sup>967</sup>,
652. He further explained that there were two or three cases of murder in his unit, a number of robbery cases and around 30 thefts.<sup>968</sup>
653. The number of persons processed in the 549. brigade is clearly seen from General Delić’s document “The review of initiated criminal proceedings in the 549. brigade”<sup>969</sup> General Delić explained that a number of members of his unit was processed for heaviest crimes – murder and war crimes, and those were private Topalović<sup>970</sup>, captain I class Vujadin Šteković<sup>971</sup>, after the war major Mančić privates Tešić, Seregi and captain Radojević for the murder of two civilians.<sup>972</sup> From the review of the criminal indictments it can be seen that major Mančić was convicted and sentenced to a prison sentence of 14 years, one private to 5 and the other to 7 years, and captain Radojević 9 years in prison.<sup>973</sup> Witness Delić cited a rape case which was processed involving private Jokić Željko<sup>974</sup> and he explains that measures were undertaken within the unit to uncover this perpetrator.<sup>975</sup>
654. Document P962 shows that over 60 persons were processed for theft.<sup>976</sup>
655. Prosecution witness K79 cited a specific example that within the Army those members that would commit criminal offenses were immediately arrested, in this specific case, for theft in April 1999 near Koriša.<sup>977</sup> Forces of General Delić were in that area.
656. Colonel Vlatko Vuković, commander of the 2. Battalion of the 549. brigade explained that charges were brought against 20 members of his unit for the heaviest offenses and heavy offenses and he listed processed persons and acts for which the charges were brought.<sup>978</sup>

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<sup>967</sup> T.20490

<sup>968</sup> T.20490-20491, P955 page 9 counts 1, 2 and 3

<sup>969</sup> P962

<sup>970</sup> P962 count 60

<sup>971</sup> P962 count 84

<sup>972</sup> P962 counts, 103, 104, 105 and 106, T.19410-19411

<sup>973</sup> P962 counts, 103, 104, 105 and 106

<sup>974</sup> T962 count 44 T.19406

<sup>975</sup> T.19406-19409, 5D1351

<sup>976</sup> 5D892 and 5D 893

<sup>977</sup> T.9678-9679

657. Lieutenant - colonel Vladimir Marinković member of the VJ 15. Brigade explained that there were perpetrators in that unit too, mainly theft and car theft. Processed as perpetrators were NCO sergeant first class, Fuad Musinovic, warrant officer Stevan Radic, and warrant officer Kordic. There were no perpetrators of the heaviest criminal acts in this unit.<sup>979</sup>
658. Colonel Mihajlo Gergar, commander of the 211. Brigade stated that private Petrović Slobodan was arrested in his unit for the murder of a civilian while at a guard post, as well as captain I class Mitić Zoran for a motor vehicle theft.<sup>980</sup>
659. Witness Sergej Perović, chief of security of the 52. Arbr PVO, testified that some of the members of his brigade participated as individuals in criminal acts, mostly theft, and that they had one case of rape as well. All this acts were processed, and they had no knowledge that any member of that brigade participated in killings of civilians. For any case of unlawful acts that they were aware of they submitted criminal reports to the military prosecutor at the PrK Command.<sup>981</sup>
660. General Ljubiša Diković, commander of the 37. Brigade explained that during the war quite a number of soldiers were arrested for committing heaviest criminal acts – war crimes and murder.<sup>982</sup>
661. General Diković further stated that private Bulatović was processed for murder<sup>983</sup>, Dušan Mladenovski for particularly heavy crimes<sup>984</sup> Stevan Jokić for killing a number of civilians<sup>985</sup>, lieutenant-colonel Slobodan Stosic, his directly subordinated commander of the logistic battallion, Oto Palinkas, Igor Mijatovic, Miskic Miodrag, and Bozidar Sudarski<sup>986</sup> for the aggravated crime – killing of civilians; Marko Petrić, Milan Rakić, Dejan Djokić, Miodrag

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<sup>978</sup> 5D 1401 para .77

<sup>979</sup> T.20274, P 954 theft 4 and 30, P955, aggravated theft, 146 and 147,

<sup>980</sup> 5D1400 para 37

<sup>981</sup> 5D1396 para 8-14

<sup>982</sup> T.19891, T.19914

<sup>983</sup> T.19916, 5D1061, P955 page7

<sup>984</sup> T.19916, 5D726, P955 page 8

<sup>985</sup> T.19916, 5D726, P955 page5, count6

<sup>986</sup> T.19917-19918, 5D726, P955 pages 4-5

Stošić, Adzić for murders near the village of Tica<sup>987</sup>, Tomislav Milenković for rape<sup>988</sup>, as well as a number of individuals for criminal acts of theft and other property criminal acts.<sup>989</sup>

662. Documents of the 3rd Army confirm that military judiciary organs based on the war formation were established as soon as possible.<sup>990</sup>

663. Defense witness Djura Blagojević, military prosecutor at the Command of the military district of Priština explained that during the wartime, two military prosecution offices in the area of Kosovo worked on 2,832 criminal reports, of which 492 dealt with the breach of the International Humanitarian Law.

664. The admitted documents confirm that the military prosecutors offices had a voluminous job as far back as the early days of the war. The report of the PrK Command of 3 April 1999 sent to 3<sup>rd</sup> Army states in pt. 5 that the day before there were 32 criminal reports against perpetrators, of which 8 for murder, one for maltreatment, 3 for attempted murder, 2 for car theft 6 for theft and 12 for desertion.<sup>991</sup>

665. The report of the Legal organ of the Command of the 3<sup>rd</sup> Army for 17 April 1999 show that on that day, the military prosecutors offices received as much as 125 criminal reports which included those for heaviest criminal acts.<sup>992</sup>

666. The report of the Department of the Supreme military court at the Command of the 3<sup>rd</sup> Army for 2 April 1999<sup>993</sup> shows that even on the previous day, the Court of first instance at the PrK Command conducted 4 crime scene investigations, one person was detained, two were indicted, while the Court of first instance at the KVOK Command in Priština received two requests for crime scene investigations. The number of cases that were worked on every day can be seen from the reports which the Prosecution submitted.<sup>994</sup>

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<sup>987</sup> T.19918-19919, 5D726, P955 page 100 count 6, page11 counts 7,8 and 9

<sup>988</sup> T.19919, P955 page 16

<sup>989</sup> P954 under 119, 132, 137, 142, 144, P955 under 81

<sup>990</sup> 5D716 and 5D717

<sup>991</sup> 5D84 count 5

<sup>992</sup> 5D1350

<sup>993</sup> 5D1349 para 6

<sup>994</sup> P1939,P1949, P1941

667. Prosecution witness Aleksandar Vasiljević explained that General Lazarević fulfilled his duty by submitting a criminal report to the judiciary organs and by informing the higher command.<sup>995</sup>

668. The moment that the responsibility of an army officer ends was confirmed by witness Radomir Mladenović, president of the Military court at the PrK Command, who said:

4 *Q. If an officer of the army reports a crime, where does*  
 5 *his obligation stop in relation to further processing of that crime?*  
 6 *A. It ends with the act of reporting it. It would even be*  
 7 *inappropriate for him to try to inquire any further or to try to influence*  
 8 *the process any further because the matter is from that point on in the*  
 9 *hands of the competent authorities such as the military courts.*<sup>996</sup>

669. The fact that general Lazarević and the army officers fulfill their obligation the moment that they submit a criminal report and that they do not bear any responsibility for further steps within the case can be clearly surmised from the basic postulate – constitutional category concerning the independent operation of courts. Article 138 of the FRY Constitution states: “Military courts are independent and operate according to law”.<sup>997</sup> Based on this constitutional disposition, article 2 of the Law on military courts states: “In the performance of its judiciary function, military courts are independent and autonomous.”<sup>998</sup>

670. Witness Djura Blagojević explained that nobody could exert influence on the operation of the military courts. He stated that if that would be so, all legal measures would be undertaken against those who would attempt to do that.<sup>999</sup>

671. The articles of the Law on military courts clearly speak that the authority of the military courts is much narrower than that of the civil ones. The Law states that “Military courts: 1) Adjudicate upon criminal acts perpetrated by military personnel, and in the instances regulated

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<sup>995</sup> T.8969

<sup>996</sup> T.21247

<sup>997</sup> P986 article 138

<sup>998</sup> P1309 Article 2

<sup>999</sup> T.21564

by law – upon criminal acts perpetrated by other persons against the VJ”.<sup>1000</sup> Those instances are specifically listed in article 10 of this Law.<sup>1001</sup>

672. Defense witness, judge Mladenović repeated this, pointing out that the military courts are responsible only for military personnel, as well as other persons who commit a criminal act against the army.<sup>1002</sup> He further explained the authority of certain military courts, giving the example that members of the Air force and anti-aircraft defense were present in Kosovo, members of the PrK, and they were under the jurisdiction of the court at their command.<sup>1003</sup>

673. Witness Mladenović explained that MUP officers were under the jurisdiction of civil courts.<sup>1004</sup>

674. This can clearly be seen from the Law on military courts, which describes in detail which persons can be considered military personnel,<sup>1005</sup> as well as from article 10, which precisely specifies act for which civilians can be tried.<sup>1006</sup>

675. Mladenović further stated that all regular courts in Kosovo operated during the war, five district, and 19 municipal courts.<sup>1007</sup> This was also confirmed by general Lukić defense witnesses, Priština district court judge Danica Marinković and witness(REDACTED)

676. Witness Mladenović further explained that even if the MUP forces were re-subordinated to VJ forces, from the aspect of disciplinary measures this was not possible because disciplinary liability in the army is governed by the Rules of Service and the Rule of Military discipline. Members of the MUP and their disciplinary liability is regulated by the Law on Internal Affairs. And during the war there was a decree governing disciplinary liability. Second, as far as military personnel is concerned, a soldier can be punished by detention; an officer can be convicted to

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<sup>1000</sup> P2789 Article 9 para 1

<sup>1001</sup> P2789 Article 10

<sup>1002</sup> T.21241

<sup>1003</sup> T.21242

<sup>1004</sup> T.21242-21243

<sup>1005</sup> P1309 Article 6

<sup>1006</sup> P1309 Article 10

<sup>1007</sup> T21244

two months in military prison by a military disciplinary court, whereas these sanctions were not applicable to members of the MUP.<sup>1008</sup>

677. General Ojdanić defense witness, general Gojović, explained that the obligation to report criminal acts by the military commander concern only his subordinated personnel, while in other cases he has obligations as a citizen. This witness further stated that there was no occupational force, but legal organs of the interior who are responsible for security.<sup>1009</sup>

678. General Gojović further stated:

*“It's not the army that is tasked with internal security and internal law and order in a state. The army is there to secure the state borders. Internal security is taken care of by the organs of the interior, and these are two quite separate legal entities.”*<sup>1010</sup>

679. In respect to the qualifications of criminal acts made by the military prosecutors, Gojović explained that the larger part of the heaviest criminal acts was qualified as murder and not a war crime since a much larger sentence – death penalty could have been imposed.<sup>1011</sup>

680. The PrK report of 15 May 1999 on the state of crime among professional military personnel<sup>1012</sup>, which was forwarded to subordinated units clearly shows that in the period from 24.03.1999 up to 10 May 1999, there were 91 cases against professional military personnel instigated before War military courts. The last paragraph shows that this document was not mere information. There, it is said that committing these and similar criminal acts by officers and junior officers during the state of war represents particularly deviant behavior which threatens to seriously undermine the morale and combat readiness of the VJ units, suffice to say about its influence on the subordinated. Also committing of these and similar crimes by officers greatly diminishes the respect of VJ and respect it has among the people.“

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<sup>1008</sup> T.21245

<sup>1009</sup> T.16762-16763

<sup>1010</sup> T.16763

<sup>1011</sup> T.16688

<sup>1012</sup> P1182

**e. Alleged obstruction of investigations and concealing of crime**

681. Prosecution witness, general Aleksandar Vasiljević, testifying before this Tribunal, undoubtedly stated when these questions are concerned, that there was no intention on the side of the VJ to cover up crime cases, and stresses that after visiting all security organs of the PrK, general Farkaš gave a high mark to those, and stated that all the personnel of these formations should be promoted.<sup>1013</sup>

682. This witness explained that there existed a three tier line of reporting concerning potential crimes. One which relied on commander of the PrK reporting to the commander of the 3<sup>rd</sup> Army, the second one was the security organ of the Corps reporting to security organ of the 3<sup>rd</sup> Army and the third one that stretched within the military judicial organs.<sup>1014</sup> Furthermore, this witness decidedly stated that all the reports of the security organs concerning committed crimes were processed by the judiciary organs, except the case in Gornja Klina, which could not be processed because crime scene investigation could not be conducted since the area came under the Albanian control. According to the witness' knowledge this case was processed in the end before the military court in Niš.<sup>1015</sup>

683. Witness Vasiljević explained that on 8 and 9 May 1999 he met with the deputy head of the PrK security organ, colonel Djurović, who informed him about the crime rate in the area of Kosovo.<sup>1016</sup>

684. During his testimony, general Geza Farkaš stated:

*And the inspecting organs that I sent found out that over 90 per cent, 95  
18 per cent of these criminal acts were prosecuted. The perpetrators were  
19 under investigation or arrest and that some active-duty personnel were  
20 among the perpetrators.*<sup>1017</sup>

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<sup>1013</sup> T.8976-8977

<sup>1014</sup> T.8964

<sup>1015</sup> T.8789-8790

<sup>1016</sup> T.8761

<sup>1017</sup> T.16304

685. General Farkaš stated this also at the meeting with Supreme Command Chief of Staff on 08 June 1999: “*There are all sorts of things, how far they got in their investigation, and around 95% have been arrested and under investigation.*”<sup>1018</sup>

686. Prosecution witness on the subject of military judiciary organs was Lakić Djorović. During his testimony, this witness stated: “That's not true. There are no proceedings against me.”<sup>1019</sup> But, admitted documents clearly show that this person was convicted and that criminal proceedings were instigated and are still conducted against him.<sup>1020</sup>

687. The credibility of this witness was clearly undermined also during his testimony:

5 A. *That was after the physical conflict, after I had taken the police*  
6 *their pistol.*

7 Q. *You took a pistol off of a police officer?*

8 A. Yes.<sup>1021</sup>

688. Due to this, we submit that the statement of this witness cannot be accepted in its entirety, since the witness is not credible.

689. Allegations of the prosecution witness dr. Gordana Tomašević that she needed a written order to investigate on the location Staro Čikatovo, and not an oral order by general Pavković,<sup>1022</sup> was clearly refuted by general Ojdanić defense witness, general Gojović. He explained that for such an investigation, where the bodies were examined *in situ*, and which was conducted with military investigative organs, it was not necessary to have an order by the investigative judge and due to urgency, everything was done according to the Criminal code. Secondly, witness Tomašević was an expert from the Military medical academy and it was her official duty.<sup>1023</sup>

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<sup>1018</sup> 3D493 page 2

<sup>1019</sup> T.11681

<sup>1020</sup> 5D1406, 5D1407,3D1081,3D1082

<sup>1021</sup> T.11689

<sup>1022</sup> P2490 para17 and 18,T.7026

<sup>1023</sup> T.16701

690. Witness Tomašević stated that all the examinations that were done at the order of the military investigative judges, for locations Belo Polje and Malo Ribare, were in accordance to the law.<sup>1024</sup>

691. Dr. Tomašević conducted the expert analysis of the bodies from the Izbica location based on the order of a civilian court—District court in Kosovska Mitrovica.<sup>1025</sup> She performed this task along with the forensic lab of the SUP K. Mitrovica.<sup>1026</sup> The fact that she was not paid for those activities<sup>1027</sup> is not the responsibility of any military institution or military judiciary organs nor does it fall into the domain of breach of the International Humanitarian Law.

692. The Order of the commander of the PrK of 30.04.1999 orders that, after antiterrorist combat activities are concluded, asanation of the battlefield is carried out, which is to be performed by the unit designated for anti-terrorist combat activities. Para 2 orders that investigation is to be undertaken in cases where there are well founded grounds, that is, where there is an indication that a criminal act has been committed or when a certain important procedural fact needs to be resolved by direct observation of judicial investigative organs. Finally, pt.3 states that unit leading the antiterrorist action, undertakes the investigation, within his authority. Military judiciary organs undertake possible investigative steps only in the case when the leader of the anti-terrorist action was a unit of the Yugoslav Army, or in the case when there are well founded grounds that a member of VJ has committed a crime.<sup>1028</sup>

693. The fact that general Lazarević made maximum effort in uncovering criminal acts is clearly seen from his request of 26 April 1999.<sup>1029</sup> With that request, General Lazarević asked that experts be urgently sent – military forensic pathologist so that asanation could be conducted, since there are indications that perpetrators are Army members. There was already a response to his request on 27 April 1999, and VMA sent major Milosavljević, forensic pathologist.<sup>1030</sup>

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<sup>1024</sup> T.7048

<sup>1025</sup> P2490 para 43

<sup>1026</sup> P2490 para 47

<sup>1027</sup> P2490 para 55

<sup>1028</sup> P1268

<sup>1029</sup> 5D379

<sup>1030</sup> 5D383

General Lazarević sent a similar request on 08 May 1999, when he requested two more teams due to enlarged volume of exhumations a forensic investigation of bodies.<sup>1031</sup>

694. From the above mentioned it can be clearly seen that general Lazarević took the previously mentioned steps even 12 days before lieutenant-colonel Djurović informed general Vasiljevića.

695. Defense witness, General Gojović, clearly explained that military judiciary organs dealt with resolving deaths of 601 victims on 11 locations, but that there were difficulties in further processing due to the retreat from Kosovo, but all these cases are still worked on.<sup>1032</sup>

696. The defence witnesses of General Lazarević, Mladenović and Blagojević explained why the major number of cases is ceded to civil judicial organs. Blagojević emphasized the legal ground.<sup>1033</sup> His words are confirmed by the document of the Supreme Military prosecutor from 11th of August 1999, in which it is clearly précised that the military courts are authorized only if the executors are the military persons in the time of act execution and on day of indictment coming into legal force.<sup>1034</sup> The witness Mladenović emphasized that the cases were ceded in the situations when the military prosecutor, on the basis of all executed acts, established that there is no participation of the army members in the certain incident and the cases were ceded to the civil prosecutor for further procedures. He explained it through a concrete example of cases Mali Alaš and Slovinje<sup>1035</sup>

697. Judge Mladenovic confirmed that the investigations undertaken by military investigative organs later gave results. That is, among others, based on the Order of the Military court at the PrK Command of 27 April 1999, expert teams conducted exhumations in the village of Slovinje Lipljan municipality. Forensic expertise was conducted by experts from the Military medical

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<sup>1031</sup> 5D421

<sup>1032</sup> T.16687

<sup>1033</sup> T.21559-21562

<sup>1034</sup> 3D1003

<sup>1035</sup> T.21260-21261

academy – team lead by major dr.Ivica Milosavljević.<sup>1036</sup> Dr.Milosavljević testified to this before this esteemed Trial Chamber as the witness for general Lazarević defense.<sup>1037</sup>

698. A few years after the aforementioned activities, UMNİK judiciary in Kosovo instigated criminal proceedings against a number of local Serbs.<sup>1038</sup>This is confirmed by Exhibit 5D1366, which represents Decision to instigate criminal proceedings.

#### **f. Alleged rewards for those who supported JCE**

699. The Prosecution allegations that the participants in the JCE were awarded by Milošević, as well as that many commanders and higher ranked officers of the units which participated in the conduct of JCE were awarded for their roles in Kosovo, have absolutely not been proven nor supported by a single evidence.

700. When the accused Lazarević is in question, the Defense has just offered evidence which undoubtedly determines that the accused Lazarević was not awarded or promoted in any way beyond the regular promotion system within the VJ, and particularly not for some role that he allegedly had in the conduct of the JCE.

701. We have already analyzed above the appointment of the accused to the position chief of staff of PrK, and then the commander of the PrK, as well as his promotion to the rank of a general, so we also submit them here.<sup>1039</sup>

702. In the personal file of the accused Lazarević under point 15, where written commendations and awards are listed, it says that by the order of the VJ COS dated 21.04.2000, the accused has been awarded a CZ99 hand gun for extraordinary results in the execution of given tasks and command of units.<sup>1040</sup> This is the only commendation or award that has been registered and which has been given to the accused, and only a year after the war in Kosovo and Metohija.

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<sup>1036</sup> 5D1315

<sup>1037</sup> 5D1404 T.21633-21639

<sup>1038</sup> T.21257

<sup>1039</sup> Defense Final Brief - VII 2. (f)

<sup>1040</sup> 5D1326,item 15

703. General Branko Krga, who on 30.09.2003, during the period of the new democratic government served as the chief of staff of the VSCG, also testified in Court. During his testimony, he confirmed that on 30.09.2003 he gave general Lazarević the highest mark, 5, and that in the assessment of the mark he, among other things, stressed that general Lazarevic is highly respected within the society due to his great contribution to the defense of the country, impeccable military stature and care for the people and that he enjoys high esteem among our citizens.<sup>1041</sup>

704. The Prosecution further suggests that the accused has been promoted to the rank of general for his contribution in the conduct of the JCE and that he has been appointed to the post of assistant COS of the VJ GS for ground forces.

705. The Defense observes that there is indisputable evidence that the accused Lazarević has been promoted to the rank of a general by the decree issued by president Vojislav Koštunica, as well as that he was appointed to the post of deputy COS VJ GS for ground forces, at the time when democratic changes already occurred and at the time when the SCG president was Vojislav Koštunica, and the chief of staff of the VSCG was general Branko Krga.<sup>1042</sup>

706. Witness of the Lukic defense, former Serbian prime minister Zoran Živković testified before the Trial Chamber:

5 » ...When I was prime minister, I was  
 6 obviously abreast of all the developments in the state -- in the state,  
 7 and at that time I did not hear anything of General Lazarevic that would  
 8 be negative or bad. At one point he was the second or the third person  
 9 in the Serbian army which was a very high position, and I did not hear  
 10 anything negative or bad things about him.«<sup>1043</sup>

<sup>1041</sup> B.KrgaT.16848;5D1363

<sup>1042</sup> 5D1326, page 7

<sup>1043</sup> Z.ZivkovicT.24652,24653

707. During cross-examination, questioned by the Prosecution he responded that in March 2004,<sup>1044</sup> when he demitted office, accused Lazarević was still active in the Army at the time.

708. The Defense indicates to the Trial Chamber that it can be seen from the personal file of general Lazarević that his professional military service ended on 02.10.2004, at his personal request, so to benefit full retirement pension.<sup>1045</sup>

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<sup>1044</sup> Z.ZivkovicT.24670

<sup>1045</sup> 5D1326,item 6

## VIII RELATIONS OF VJ WITH OTHER STRUCTURES IN KiM

### a. VTJ (Military-Territorial Units)

709. The nature of Military-Territorial Units is a military one.
710. The fact that the Military-Territorial Units were not under General LAZAREVIC's command (up) until the 8 April 1999 is confirmed by the Order of the Pristina Corps Command /PrK/ of 8 April 1999.<sup>1046</sup> This order was issued pursuant to the order of the Third Army Command, strictly confidential number 3372-1 of 7 April 1999, whereby the Pristina Military District had been subordinated to the Command of the Pristina Corps.
711. The defence witness Colonel MITIĆ served at the time as the Commander of the Prizren Military Department, which was directly subordinated to the Pristina Military District.
712. This witness described that the main tasks of the VTOd /Military-Territorial Detachment/ had been the mobilization and filling of combat units.<sup>1047</sup> According to the planned Strategy upon completion of the mobilization, the VTJ/Military-Territorial Units/ were used for securing the territory and facilities of special significance, such as water sources, repeaters and some travel routes.<sup>1048</sup>
713. The emphasis of the VTJ operations was mainly outside the populated areas. The Commanders of the Military Department, Commanders of the VTJ, as well as the Commanders of the basic units had no authority for defending villages under their line of command. These were dealt with mainly by the Reserve Police Detachments/RPO/.<sup>1049</sup>
714. The subordination of the Military-Territorial Units to the Yugoslav Army brigades was done consecutively.<sup>1050</sup> Above mentioned statements of Colonel MITIĆ are in accordance with the testimony of the prosecution witness, Mr Zlatomir PEŠIĆ, who agreed that subordination did

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1046 5D180  
 1047 5D1390 paragraph 21  
 1048 5D1390 paragraph 26  
 1049 5D1390 paragraph 32  
 1050 5D1390 paragraph 41,42

not occur automatically, but was carried out consecutively, which meant that some of the VTJ were not subordinated.<sup>1051</sup>

#### **b. Paramilitary and volunteers**

715. On this spot the defence claims that, within the VJ, that is, the PrK, none of the para-military formations were active, or any volunteers as groups. The defence further claims that PrK did not have information on the existence of quasi-military formations in the time, relevant for the indictment, neither it is correct that such formations operated by the approval of the VJ. There are numerous evidences that confirm such position of the defence.

716. Although the prosecution suggests that the assertions of VJ are not correct, which is that the engagement of volunteers as groups was prohibited and that the para-military groups operated with the approval of the VJ, it seems that the prosecution itself is not convinced about their assertions. Nevertheless, in its Pre-Trial Brief, the prosecution accepts that the VJ had an official and rigorous system of admitting volunteers.<sup>1052</sup> Apart from that, when it asserts that the para-military groups operated with the approval of VJ, the prosecution allows the possibility that its allegations are not correct (“...suggests that they were in fact operating with the approval of the VJ and/or MUP or what witness saw was the VJ or MUP.”)<sup>1053</sup>

717. Before the Trial Chamber, defence would firstly like to point at the prosecution evidence that represents the supreme command staff order, dated 7<sup>th</sup> of April 1999, which clearly shows that the admission of volunteers into VJ was legally regulated by the article 15 of the Yugoslav Army Statute Law and that, by the aforementioned order, the supreme command staff ordered that the volunteers are to be admitted by following strict compliance with the provisions of the law, which prior referred to those who ask for direction to units in the zone of PrK responsibility. The admission of volunteers should be carried out after a complete examination. In the item 9 of the same order, it is ordered that, in the course of training, the volunteers must be specially warned about intolerance of illegal and other negative conduct and that legal measures, being in

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<sup>1051</sup> T.7237

<sup>1052</sup> Pre-Trial Brief, para 182

<sup>1053</sup> Pre-Trial Brief, para 183

force in the condition of war, shall be applied to the executors. Eventually, under the item 11, it is further cited; “The transport from the admission centre till the 3<sup>rd</sup> army command shall be organized by the commands of 1<sup>st</sup> and 2<sup>nd</sup> armies, for the volunteers, from their territory and from the 3<sup>rd</sup> army command till the PrK command, by the 3<sup>rd</sup> army command.”<sup>1054</sup>

718. The prosecution witness Aleksandar Vasiljević in his oral testimony confirmed that there were two admission centres in Grocka near Belgrade and Medii near Niš, in which the examination of volunteers was performed, exactly due to bad experiences from the previous wars and in that occasion, he confirmed that approximately 50% of the applied volunteers did not pass examination and was not admitted into VJ<sup>1055</sup>.

719. The evidence that represents the information of the 3<sup>rd</sup> army command on the acceptance, admission and deployment of volunteers in the 3<sup>rd</sup> army was also listed in the files.

720. This evidence clearly shows that there were two admission centres near Belgrade and Niš in which the admission of volunteers and their examination were carried out and that these admission and examination were not executed on the level of PrK<sup>1056</sup>.

721. Having in mind the aforementioned facts and the item 11 of the mentioned evidence, as well as the testimony of the witness Vasiljević, it is clear that acceptance and admission of volunteers into the VJ was not under the authority of the PrK neither General Lazarević.

722. However, apart from the fact that selection and examination of the volunteers were executed on the level of the higher commands in Belgrade, the commander of the PrK, General Lazarević, although not being in charge for selection and admission of volunteers, still executed a strict control of those who were admitted into PrK.

723. Accordingly, shortly after the admission, one part of the volunteers was returned from the corps and one part of volunteers was arrested due to the suspect that they committed criminal acts<sup>1057</sup>.

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<sup>1054</sup> P1479

<sup>1055</sup> A.VasiljevićT.8683

<sup>1056</sup> P1938

<sup>1057</sup> P1938;P1943

724. The Accused Lazarević in his testimony before the court confirms the aforementioned in regard of competence and procedure of the volunteers' admission and adds that the admission of volunteers on the level of PrK brigades was in the jurisdiction of higher command and that the brigades further deployed volunteers in inferior units<sup>1058</sup>.

725. Further on, the Accused Lazarević cites that, based on the order of the 3<sup>rd</sup> army command, the PrK command made its order to establish the private acceptance sub-centre at the level of military county Priština for the volunteers from Kosovo. The essence of this order is that all these volunteers from the sub-centre were sent to the acceptance centre of the 3<sup>rd</sup> army in Niš in order to pass the assigned procedure<sup>1059</sup>.

726. Also the Accused Lazarević during his testimony cited that, during the war on KiM, approximately 1400 volunteers were admitted in PrK, out of which almost one third was returned due to various grounds<sup>1060</sup>.

727. Besides, the Accused Lazarević took additional control measures over the volunteers. Accordingly, as he noticed the appearance of weapon misuse, especially by the military conscripts and volunteers, he ordered to the subordinated seniors to send those persons to the authorized medical commission whenever they spot such non-military conduct and after an adequate solution, to terminate the military duty of such persons<sup>1061</sup>.

728. The defence witness Branko Gajić in his testimony before the court denies the existence of the para-military groups in VJ and explains details about the admission of the group, known as "Pauk" /"Spider"/. He, nevertheless, testifies that this group was directed to 125<sup>th</sup> motorized brigade and that it was admitted in this brigade through the group of men, actually, through Colonel Stupar who guaranteed for it.<sup>1062</sup>

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<sup>1058</sup> V.LazarevićT.17976-17978; 17981

<sup>1059</sup> V.LazarevićT.17979

<sup>1060</sup> V.LazarevićT.17980

<sup>1061</sup> 5D315

<sup>1062</sup> B.GajićT.15311

729. Also, in the cross examination, he accepts that the Colonel Stupar performed some function in GŠVJ /General staff of the Yugoslav Army/, but he does not know which.<sup>1063</sup>
730. Further he testifies that in 125<sup>th</sup> motorized brigade they were admitted as volunteers, having orderly papers and that those papers proved passing the regular procedure<sup>1064</sup>. To the explicit question, this witness responds that the oversight in regard to these persons emerged in the admission centre and not within any command on Kosovo.<sup>1065</sup>
731. The defence witness Momir Stojanović in his testimony before the court also denies the existence of para-military formations, especially in the VJ, and, as to the group of volunteers named “Pauk” he claims to have findings. He claims that this group passed the regular procedure of volunteers’ admission and that it did not come to the corps units under that name and that they heard about that name later on, as this group was returned to Belgrade and as they were in trial due to alleged preparation of assassinating Milošević.<sup>1066</sup>
732. He adds that they were deployed in several units of the 125<sup>th</sup> motorized brigade because the volunteers could not remain as group.<sup>1067</sup>
733. This witness claims that they always wore a regular uniform of the Yugoslav army and, within those 15 days, they spent in the corps units, did not commit any crime and that they were engaged at the watch-tower of Košare in the state border defence.<sup>1068</sup>
734. Eventually, the defence witness Vlatko Vuković in his oral testimony claims that in his battalion a permanent volunteers platoon did not exist as formation. He explains that once, after the beginning of major mainland offensive of KLA over the mountain Paštirk, he ordered to the commander of the 1<sup>st</sup> troop to establish the volunteers platoon only for this occasion. Also, he emphasizes that this platoon consisted exclusively of volunteers in the regular military service and regular military conscripts. These are, hence, soldiers that voluntarily applied for this action. He adds that the name “Fantomi /Phantoms”/ is in fact a coded sign of communication, used for

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<sup>1063</sup> B.GajićT.15325

<sup>1064</sup> B.GajićT.15312

<sup>1065</sup> B.GajićT.15326

<sup>1066</sup> M.Stojanović19777-19778

<sup>1067</sup> M.Stojanović19778

<sup>1068</sup> M.StojanovićT.19779-19780

this action from 30<sup>th</sup> of May 1999 exclusively and this coded name was created by the platoon commander.<sup>1069</sup>

735. A prosecution evidence fully corresponds with all these allegations of the witness Vuković; the prosecution evidence represents a notebook of sent telegrams of Vuković's battalion, whereby, from the entries for 28<sup>th</sup> of May 1999, it is clearly visible that Vuković orders the establishment of volunteers platoon during 29<sup>th</sup> of May 1999 and assigns them with task to take a specific defence line.<sup>1070</sup>

### **c. CO and CZ (Civil Defence and Civilian Protection)**

736. The defence claims that the civil defence and the civilian protection, as well as the units of civilian protection and civil defence, were not under the command and control of the PrK commander, Accused General Lazarević. There are numerous evidences in aspect of oral testimonies, as well as in aspect of documents that confirm this defence assertion beyond reasonable doubt.

737. Accordingly, the prosecution witness Aleksandar Vasiljević in his testimony before the Tribunal claims that the units of civilian protection and civil defence were not subordinated to PrK but that they were under the command of the Ministry of Defence.<sup>1071</sup>

738. The defence witness General Geza Farkaš in his oral testimony before the Trial Chamber emphasizes that, before he was appointed Chief of the Security Administration of VJ on 24<sup>th</sup> of March 1999, was at the position of Assistant Minister of defence for Civil defence.<sup>1072</sup> Further on, he cites that the civil defence and civilian protection units, as on KiM, so in entire SRJ /Socialistic Republic of Yugoslavia/, were subordinated to the Federal Ministry of Defence. He also indicates that the Ministry of Defence, according to the Constitution and Defence Statute Law, as well as other Laws, secured armament for all units of civil defence.<sup>1073</sup>

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<sup>1069</sup> V.VukovićT.21335-21336

<sup>1070</sup> P2010, entry for 28th of May 1999

<sup>1071</sup> A.VasiljevićT.8963

<sup>1072</sup> G.FarkašT.16290

<sup>1073</sup> G.FarkašT.16331

739. The witness Farkaš claims that the reporting system in civil defence and in civilian protection was independent and similar to the system of reporting in the army, as well as that the Administration of Priština defence was obliged to send reports up to the level of Federal Ministry of Defence.<sup>1074</sup>
740. He specifically mentions that the system of establishment of the command personnel in the civil defence and civilian protection was independent from the establishment system in VJ and that it was exclusively in the jurisdiction of the Ministry of Defence.<sup>1075</sup> He confirms that he executed appointments of the command personnel in the civil defence and civilian protection, while he was on the position of Assistant Minister of defence for Civil defence and that he signed decisions on appointments, being presented to him.<sup>1076</sup>
741. The prosecution witness Zlatomir Pešić also claims that the units of civil defence and civilian protection in terms of organization, find their place within the Ministry of Defence and that, as such, have no connection with the VJ whatsoever.<sup>1077</sup> He further emphasizes that those units had their own command line that, through the manager of Ministry of Defence sector for Kosovo, Ilić, went to the Ministry of Defence in Belgrade without any joints with PrK.<sup>1078</sup>
742. The order of Priština Defence Administration, signed by the Chief of Administration, Petar Ilić, confirms these allegations of the witness as correct<sup>1079</sup>.
743. The provincial Staff of the civilian protection was also subordinated to the Federal Ministry of Defence, which is clearly visible from the defence evidence that represents the declaration on appointment of Assistant Chief of provincial staff of civilian protection. Nevertheless, the commander of the provincial staff of civilian protection<sup>1080</sup>, based on the order of the Federal Minister of Defence, takes decision by which he appoints the Assistant Chief.
744. The Accused Lazarević in his testimony confirms all these allegations and emphasizes that the preparation, organization, training, equipping and use of the forces of the civil defence

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<sup>1074</sup> G.FarkašT.16332-16333

<sup>1075</sup> G.FarkašT.16333

<sup>1076</sup> G.FarkašT.16333; P1294

<sup>1077</sup> Z.PešićT.7184,7185

<sup>1078</sup> Z.PešićT.7184,7185

<sup>1079</sup> 5D1314

<sup>1080</sup> 5D1199

and civilian on KiM was carried out by the competent organs of the Ministry of Defence of the FRY. To the question who commanded these forces, the Accused responses, that within those forces, the command went from the top of the Ministry of Defence through the administration for defence of the Republic of Serbia and than down the chain, which he mentioned the administration of defence in Priština and the Regional organs of that administration within the Districts and municipalities<sup>1081</sup>

745. The Accused further points at the prosecution evidence P1339 that confirms his allegations.<sup>1082</sup>

746. The Accused Lazarević also claims that the armament of the civil defence was in the jurisdiction of the Federal Ministry of Defence. He comments the evidence which shows that the Chief of Priština Defence Administration orders the composition of lists for armament to the Chiefs of Departments and Chiefs of sectors, which will be implemented by the Federal Ministry of Defence through their organizational units.<sup>1083</sup>

747. The defence at this spot wants to point out to the Trial Chamber that the prosecution, in the course of the procedure, suggested that the Accused Lazarević used “the armed non-Albanian population” for the execution of certain tasks, using its evidence P2808 within<sup>1084</sup>.

748. The defence concurs that, within the order for breaking and destruction of ŠTS /Shiptar Terrorist forces/ in the area of Malo Kosovo, Drenica and Mališevo, from the 16<sup>th</sup> of February 1999, in the item 2-task of PrK, there is a clause that the armed non-Albanian population shall be engaged in safeguarding of the military establishments and communications, as well as for the defence of the locations with the non-Albanian population. The defence alludes to the Trial Chamber that this clause was verbatim copied from the order of 3<sup>rd</sup> Army “Grom 3” /Thunder 3/, dated 27<sup>th</sup> of January 1999<sup>1085</sup>, whereby, under the item 5.1. the PrK was given a task for the aforementioned engagement of the armed population.<sup>1086</sup>

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<sup>1081</sup> V.LazarevićT.17692,17693

<sup>1082</sup> V.LazarevićT.17694,17695;P1339

<sup>1083</sup> V.LazarevićT.17966,17967;5D300

<sup>1084</sup> P2808

<sup>1085</sup> 5D245

<sup>1086</sup> 5D245,item 5-Unit's tasks;5.1.PrK

749. In his testimony the Accused Lazarević explained that he, as commander of the corps did not have legal authority to change the task, set by the Army commander and that he, as the commander of the corps has never issued a substantial order to his subordinated units for a substantial use of the armed non-Albanian population.<sup>1087</sup>

750. Hence, it is evident that the commander of the corps has the obligation to copy the task, set to him by the superior command; however, the Accused Lazarević has never, by any single order, ordered a concrete use of any formation of the armed non-Albanian population or any other armed population.

751. From all aforementioned analyzed evidence, the only conclusion can be brought with certainty, that is, that neither the units of civil defence or civilian protection, nor any other component of the armed civil population, were under the command and control of the Accused Lazarević as the PrK commander.

#### **d. Local Defence (Reserve Police detachment)**

752. General LAZAREVIĆ defense witness, Colonel MITIĆ explained that the RPO/Reserve Police Detachments/ were used for defending the villages/settled areas, as this was not one of the duties performed by the VTOD/Military- Territorial Detachments/.

753. Further, he stated that these detachments provided excellent economic conditions, so that many men from the combat units transferred onto these units of the MUP/Ministry of Interior/. Members of the reserve police detachments were under the authority of the MUP.<sup>1088</sup>

754. The prosecution witness CVETIĆ explained that the members of the RPO, due to the lack of police uniforms, mainly wore parts of the military uniforms.<sup>1089</sup> A significant amount of RPO members had their previous assignment with Civilian Defence Units or the Army reserve

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<sup>1087</sup> V.LazarevićT.17907,17908

<sup>1088</sup> 5D1390paragraph32

<sup>1089</sup> T.8053

forces<sup>1090</sup>, which is the main reason why many of the RPO members owned parts of the military uniform.

755. From the document of MUP-SUP Kosovska Mitrovica, of 1 July 1998<sup>1091</sup> it is visible that a large number of RPO members originate from the Yugoslav Army reserve forces. The defense witness, Colonel MITIĆ claims that there was a problem with the unauthorized registration of men who were military conscripts<sup>1092</sup> by the MUP. Colonel MITIĆ's claim is supported by the document issued by the VTO Command to the MUP of Serbia.<sup>1093</sup>

756. That the problem existed even during the war was confirmed by the witness MITIĆ, describing the report by his command of 17 April 1999<sup>1094</sup>, which states that one of the central activities on 18 April 1999 was: 'Calling up military conscripts who are in the reserve forces of the MUP(as RPO)', as it was necessary for the conscripts to return to their combat units.<sup>1095</sup>

757. The fact that these reserve police units existed even during the war period, is supported by the count 19 from the minutes of the meeting, held at the HQ of the MUP on 7 and 11 May 1999. "19. Members of the RPO/Reserve Police Squad/ may not wear police or military uniforms if they have not been mobilized or engaged in reserve contingents of the MUP and VJ."<sup>1096</sup>

758. At the operational meeting with the RPO commanders, held in Peć on 15 February 1999, in the presence of the Major General of the Police, Momčilo Stojanović, and other senior MUP staff members in charge of RPO, it was clearly stated in the minutes the relations of this police structure, and under whose authority they operate, so that in the count 2 it is stated that the senior heads of the Secretariat of the MUP are responsible for the work of RPO. In the count 3 the attention is placed on the need for continuous evaluation of the situation and maintaining a regular contact with the members of the RPO, as well as to stay in contact twice daily via radio

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<sup>1090</sup> T.8051

<sup>1091</sup> P1114

<sup>1092</sup> 5D1390 paragraph24

<sup>1093</sup> 5D1014

<sup>1094</sup> 5D985

<sup>1095</sup> T.20876-20877, 5D985count8

<sup>1096</sup> 6D802 page2

link. In the count 7 it is stated that the cooperation needs to be intensified with the members of the Yugoslav Army, as well as with their Military detachments.<sup>1097</sup>

759. This clearly demonstrates that these are two entirely detached structures, and that the VJ has no authority over these units.

#### **e. Civil Authorities (Temporary Executive Council)**

760. The defence claims that in the course of this procedure, beyond reasonable doubt, it has been established that in the period, relevant for the indictment, organs of the civil powers on KiM were functioning and that they were not in any subordination towards the VJ, that is, PrK /Priština corps/.

761. In September 1998, the Assembly of the Republic of Serbia established a Temporary Executive Council for KiM. This Temporary Executive Council (TEC) functioned in all time this indictment is referring to. Also, during this period, civil municipality organs of the local self-government functioned as well.

762. Apart from that, judicial organs in aspect of municipal and county courts and offices of the prosecutor functioned during the entire period this indictment is referring to.

763. Accordingly, the defence witness Danica Marinković, being judge of the county court in Priština, testifies that courts and offices of the prosecutor operated in 1999 as well, in the time of NATO bombardment, having more affaires to process than during entire 1998.<sup>1098</sup>

764. The Temporary Executive Council established the financial police and market inspection bodies that functioned under this organ during the entire period.<sup>1099</sup>

765. Decision on staff establishment for coordination of activities of civil structures for the area of KiM, in regard to civil needs and affaires in the cooperation with VJ and MUP /Ministry

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<sup>1097</sup> 5D1415count 7

<sup>1098</sup> D.Marinković T.23457

<sup>1099</sup> 5D1201

of Interior/<sup>1100</sup> shows that the relation between the VJ, that is, PrK and the Temporary Executive Council, was at the level of cooperation. It is visible from this decision that the task of the staff is taking measures considering the supply of civilians with energy-generating products, consumer goods, basic sustaining food, medicaments, etc.

766. The prosecution suggests that the Accused Lazarević attended the meeting of the Temporary Executive Council once, connecting it with the participation in JCE /Joint Criminal Enterprise/.<sup>1101</sup>

767. However, if we look at the prosecution evidence, it is visible that the Accused Lazarević attended the meeting of the Temporary Executive Council on 24<sup>th</sup> of March 1999, as the immediate war peril was proclaimed. The only logical conclusion that might come out of that is that such presence at the time of immediate war peril proclamation would be logical, normal and inevitable. There is no assessor of facts that would interpret such presence in given circumstances in some other way.<sup>1102</sup>

768. Witness Zoran Anđelković in his oral testimony before the court<sup>1103</sup> talks about the cooperation and not about the relation of subordination between the VJ and Temporary Executive Council, and emphasizes that this cooperation has always been in function of providing help to the civil population, like Serbian like Albanian<sup>1104</sup>.

## **f. MUP**

### **(i) Relationship with MUP**

769. The defence claims that the relation between these two different state structures, that is, two different organs, during the 1998 and during 1999, was exclusively on the level of cooperation and coordination of activities.

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<sup>1100</sup> 2D375

<sup>1101</sup> Pre-Trial Brief para 209

<sup>1102</sup> P1200

<sup>1103</sup> Z.AndelkovićT.14668,14669

<sup>1104</sup> Z.AndelkovićT.14669,14670

770. There are numerous evidences that show that cooperation and coordination between those two state organs is completely usual and normal appearance in all states of the world and that in conditions that were represented in Kosovo in 1998 and 1999, this cooperation and coordination were not only legitimate but also necessary.

771. We have already seen that the prosecution witnesses Maisonneuve<sup>1105</sup>, Colonel Crosland<sup>1106</sup>, and Dušan Lončar<sup>1107</sup> testify about that. Further, the legal ground of this coordination and cooperation is confirmed by the Rule of the Service of the VJ<sup>1108</sup> and the directive by which NGŠ/Chief of General Staff/ of VJ, Perišić allowed the use of VJ in breaking and destroying of DTS in cooperation with the forces of MUP of RS<sup>1109</sup>.

772. K25 says that the MUP forces had the principal role in field actions taken in the fight against the OVK while the primary task of the VJ forces was to take positions and deploy units in case of possible NATO ground invasion<sup>1110</sup>.

773. The units of PrK kept defending the border and their establishments by the main forces, while by minor forces (up to 10%) they participated in supporting MUP in antiterrorist actions, the Accused Lazarević was testifying about as well.<sup>1111</sup> He also adds that through the doctrinaire rule FM3, which regulates the use of land forces of USA, and it is applied by NATO, it is anticipated that in conditions when there isn't a unique chain of command, the commanders of various units, harmonize and synchronize their activities till they reach a consensus on the best way of task realization, whereby each of the commands retains commands authorizations over their units.<sup>1112</sup>

774. The evidences have shown that for each individual engagement of PrK unit in supporting the MUP forces in antiterrorist actions, the army commander was giving approval, exclusively

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<sup>1105</sup> J.O.M.MaisonneuveT.11183

<sup>1106</sup> J.CroslandT.9815

<sup>1107</sup> D.LončarT.7612-7613

<sup>1108</sup> P1085

<sup>1109</sup> 4D137, para III

<sup>1110</sup> P2365

<sup>1111</sup> V.LazarevićT.17793

<sup>1112</sup> V.LazarevićT.17794

according to request of the MUP forces commander for KiM. The defence evidence 4D 377 talks about it.<sup>1113</sup>

775. Other defence evidence that represents the order of the 3<sup>rd</sup> army commander dated 7<sup>th</sup> of August 1998, confirms the allegations that the VJ on KiM was used for the safeguarding of the state border and military establishments of special significance, as well as protection of VJ composition, and in its minor part and according to the previously approved decision, VJ was engaged for supporting the MUP forces<sup>1114</sup>

776. The evidences have also shown that the relation of coordination and cooperation between the VJ and MUP continued in 1999. The Accused Lazarević testified on that as well, who in his testimony indicates that the relation of coordination during the war in Kosovo, couldn't be established at the level of PrK and MUP headquarters due to their constant engagement and deployment. The Accused further cites that this relation of coordination and cooperation was reduced to a level of individual contacts of lower ranged officers of VJ and MUP.<sup>1115</sup>

777. The defence evidence 5D476 shows that the allegations of the Accused Lazarević in his oral testimony are correct; the Accused Lazarević there determines that the MUP staff for KiM issued an order to its secretariats (SUP) to approach planning of actions to break ŠTS in their zones. Due to that, he gives task to the commanders of their subordinated units to establish contact with chiefs of SUP in order to organize coordination in breaking ŠTS.<sup>1116</sup>

778. The defence at this spot alludes to an already mentioned defence evidence, that is, order of the 3<sup>rd</sup> army commander dated 1<sup>st</sup> of February 1999, by which, in item 5 orders to the commander of PrK to make a plan of blocking and destroying ŠTS in the area of Drenica, Lab and Mališevo and that, by the cited plan, enables a complete COORDINATION with the units of MUP RS.<sup>1117</sup>

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<sup>1113</sup> 4D377, item4

<sup>1114</sup> 5D106

<sup>1115</sup> V.LazarevićT.18035

<sup>1116</sup> 5D476

<sup>1117</sup> 5D249,item5

779. As we have already analyzed it, commander of the PrK, in concordance with these orders of the superior command, in his further orders to his subordinated units, he was giving task to establish the coordination with the units of MUP.

**(ii) Unsuccessful re-subordination**

780. In regard to the fact that the units of MUP on KiM neither in 1998 nor in 1999 were re-subordinated to PrK and besides the order on the re-subordination from April 1999, in the files of cases there is a huge number of written and oral testimonies that confirm this fact.

781. The defence shall, due to limited volume of the Brief, at this spot merely advert to only those exhibits that most distinctly and most convincingly show that the re-subordination has never taken place.

782. First of all, witnesses themselves, put on stand by the prosecution in this case, confirm this defence position. Accordingly, the prosecution witness Ljubinko Cvetić, who in the time relevant for the indictment, was Chief of SUP of Kosovska Mitrovica, emphasizes that the chains of command in the VJ and MUP, anticipated by the law, remained uninterrupted.<sup>1118</sup> The same witness adds that the re-subordination of MUP to the Yugoslav Army has never taken place.<sup>1119</sup>

783. In his statement, witness K25, member of PJP, points out that all units of the MUP in Kosovo were commanded by the MUP HQ in Priština. This witness also says that, when actions were to be taken, the MUP headquarters decided on deployment of units of the MUP forces. In his statement, this witness says that from his experience, he knows that there was never a situation when the VJ would issue orders to MUP and there was too much of a rivalry and mistrust between the two organizations to allow for such a possibility.<sup>1120</sup>

784. The prosecution witness, Aleksandar Vasiljević also claims that the re-subordination of MUP or its units to the Yugoslav Army has never taken place at all.<sup>1121</sup>

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<sup>1118</sup> Lj.CvetićT.8123

<sup>1119</sup> Lj.CvetićT.8140

<sup>1120</sup> P2365, para

<sup>1121</sup> .VasiljevićT.8869

785. The prosecution witness Dušan Lončar also decisively states that MUP has never commanded the army neither has the army commanded MUP, stating that the re-subordination of MUP or MUP units to the Army has never taken place.<sup>1122</sup>

786. Witnesses, brought before the court by the Lukić defence, also testified about the absolute non-re-subordination of MUP to the Army.

787. Accordingly, the witness Miroslav Mijatović, who, in the time relevant for the indictment, was Deputy Commander of the Staff of the MUP for KiM, emphasizes that in the situations, in which the units of VJ and PJP squads participated in the joint action, commander of the PJP squad commanded his squad and the commander of the brigade commanded his brigade.<sup>1123</sup>

788. The witness Bogunović Nebojša in his oral testimony states that in the area, being under the supervision of SUP of Kosovska Mitrovica, where he performed his duty, the re-subordination of MUP to the Yugoslav Army has never taken place.<sup>1124</sup>

789. The witness Petar Damjanac, Chief of OUP Glogovac, during his testimony before the court, stated that the re-subordination of MUP to the Yugoslav Army has never taken place because he has never obtained such order by his superiors and that he, as professional policeman can manage and act only according to the issued orders of the command, which is superior to him.<sup>1125</sup>

790. The defence witnesses, members of the VJ also testified before the court that the re-subordination has never taken place.

791. The Accused Lazarević in his testimony emphasizes that the re-subordination couldn't have taken place because there was not a single precise order, saying which units of MUP should be put under the command of the Army. Since the MUP and VJ are organizations that act

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<sup>1122</sup> D.LončarT.7609-7611

<sup>1123</sup> M.MijatovićT.22300-22301

<sup>1124</sup> N.BogunovićT.25132-25133; 6D 1027

<sup>1125</sup> P.DamjanacT.23780

according to different and independent principles in terms of functioning and organization, the attempt of the re-subordination was a “mission impossible.”<sup>1126</sup>

792. As a contribution to the testimony of the Accused Lazarević, the defence offered several military documents that confirm it and which were commented by the Accused in his testimony.<sup>1127</sup>

793. Another of the witnesses that confirms that the re-subordination of MUP to the Army has never occurred is Radojko Stefanović.<sup>1128</sup>

794. Also, the witness of the Trial Chamber, Milan Djaković in his oral testimony confirms that the re-subordination of MUP to the Army hasn't occurred, emphasizing that MUP did not accept the command of the VJ and that the relation between these two organizations remained on the level of coordination.<sup>1129</sup>

795. In his testimony, he also picturesquely describes what the atmosphere in regard to the re-subordination of MUP to the Army was among the highest ranked officers of MUP:

*“Well, the reaction*

*24 of General Djorđević, well, I have to say exactly what happened. He 25 said, what do you mean Ojdanić? Who is he going to command?”*<sup>1130</sup>

796. At last, there are numerous documents of MUP that confirm that the re-subordination hasn't taken place.

797. The manager of the MUP staff himself, General Lukić, after he, on behalf of MUP and the commander of the 3<sup>rd</sup> army, Pavković, on behalf of VJ, submitted report to the President of FRY, he informs the squads of PJP and SAJ that chiefs of secretariat and commanders of the PJP

<sup>1126</sup> V.LazarevićT.18037-18048

<sup>1127</sup> 4D299; P1267; 5D795; 5D1084; P1723; 5D434

<sup>1128</sup> R.StefanovićT.21684

<sup>1129</sup> M.DjakovićT.26496

<sup>1130</sup> M.DjakovićT.26495

and SAJ squads are responsible for the situation on the field, conduct and work of the members of MUP, as well as for the execution of given requests<sup>1131</sup>.

798. From the minutes of the meeting with leading employees of the police on KiM, it is visible that the Assistant Minister Obrad Stevanović says that commanding and managing the units in the area of the secretariat is executed by the chiefs. Further he orders that a plan of territory control, redeployment of forces and fortification should be made. He also orders that the cooperation with the VJ should be performed through the commanders on the field and in case of difficulties, to inform the staff.<sup>1132</sup>

799. From the minutes of the meeting, held in the headquarters of MUP for KiM in Priština on 7<sup>th</sup> of May 1999, it is visible that the Assistant Minister Obrad Stevanović gives task to SUP that they, after finishing major actions, independently plan and organize antiterrorist actions in their area. He adds that the plan must be approved by the staff and that it will be conducted with manoeuvre squads<sup>1133</sup>. He notices that the defence from land aggression is a task that will be carried out by the VJ and that the territory control shall be realized by the territorial squads. At the end of the presentation, he orders that all PJP squads must be re-subordinated to the chief of secretariat<sup>1134</sup>.

800. At the same meeting, General Lukić observes that within the work of OPG, chief of SUP gives permission for certain actions and informs the chief of staff about it. He adds that the members of the police and reserve police composition wear green uniform only in antiterrorist actions.<sup>1135</sup>

801. From the minutes of the meeting, held in the headquarters of MUP for KiM in Priština on 11<sup>th</sup> of May 1999, it is noticeable that all commanders of the PJP squad practically talk about having the cooperation with VJ, somewhere better, somewhere worse, but that they are not re-subordinated anywhere to the VJ(22 OPJP–commander Boško Buha, 122<sup>nd</sup> intervention brigade –

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<sup>1131</sup> 5D1289

<sup>1132</sup> P1989, pages 5 and 6

<sup>1133</sup> P1996, page 11

<sup>1134</sup> P1996, page 11

<sup>1135</sup> P1996, page 12

deputy commander Nikolić Dragan, 73. OPJP–Commander Milić Miladin, 36. OPJP–Commander Grekulović Srđan, 86.OPJP–Commander Obradović Dragan)<sup>1136</sup>.

802. It should be especially emphasized that 85 OPJP commander Major Repić Rade at the same meeting said the following;“COOPERATION with the VJ is good although they tried to pull us quickly under their command, but reason prevailed and we are cooperating without problems now”<sup>1137</sup>.

803. At the meeting held on 11<sup>th</sup> of May 1999, three weeks after a formal order for a re-subordination, all PJP commanders are present and no one of them did not say that they are re-subordinated to the VJ units on the field, during the combat activities.All of them are talking about COOPERATION.

804. At the same meeting, Obrad Stevanović repeats that the police units are re-subordinated to the chief of SUP and that the leaders of OPJP and the police managers must attend every collegium of SUP.

805. At the end of the meeting, General Lukić orders to the present ones to carry out a complete control of the territory after big actions and than introduce a plan of small actions on the territory of one secretariat.“...As proponents of antiterrorist struggle, our task is to keep destroying terrorists until they are completely neutralized”. “...Urgently set up checks of those wearing police uniforms. Uniforms may only be worn by members of the police and the reserve police when it is engaged and no one else. The green uniform may only be worn in antiterrorist actions.”<sup>1138</sup>

806. The prosecutor suggests that the re-subordination of MUP is anticipated by the Decree on defence, by article 17, in which it says that in case of the condition of war, the units and MUP organs CAN be used for the execution of combat tasks when they subordinate to the senior of VJ who commands the combat actions.

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<sup>1136</sup> P1993

<sup>1137</sup> P1993,item 9

<sup>1138</sup> P1993,page 9

807. Here it is easily noticeable that the law says “CAN”, hence, it anticipates this opportunity and it does not anticipate that the re-subordination is executed automatically as the war conditions are proclaimed. The issuing of the special order for the re-subordination proves that this is so; the order, as we have seen, was not implemented, because MUP refused to re-subordinate. It would not be necessary to issue a special order, if the re-subordination is executed automatically, with proclaiming the conditions of war<sup>1139</sup>.

**g. alleged ZK (Joint Command) in 1999**

808. The prosecution claims that the so called Joint Command was established in June 1998 and that performed its mandate in 1999 as well. It is also further stated that the so called Joint Command had command authorizations over the FRY and the forces of Serbia that carried out activities in this area and that was issuing written orders which were in the form of VJ.<sup>1140</sup>

809. The prosecution tried to prove its thesis through its witness Aleksandar Vasiljević, as well as through 16 orders that in their headers bear the title Joint Command for KiM, that are unsigned and on which, instead of a signature, also stands, in typed characters, the Joint Command for KiM.<sup>1141</sup>

810. The defence claims that the prosecution, beyond reasonable doubt, did not prove the thesis that the so called Joint Command merely exists as body and especially that it exists in 1999 as well, neither that it had any command authorizations whatsoever, nor that it issues orders for operations in frames in which the crimes have allegedly been committed.

811. The defence at this spot wishes to point out to the Trial Chamber at the differences and inconsistencies of the witness Aleksandar Vasiljević when it comes to the meeting that he attended in Priština on 1<sup>st</sup> of June 1999.

812. In his statement from 14<sup>th</sup> of January 2007, the witness Vasiljević talks about the meeting on Joint Command.<sup>1142</sup> In the notebook from 1999, he cites that he was at the meeting in the

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<sup>1139</sup> P985,article 17

<sup>1140</sup> Pre-Trial Brief para 203-204

<sup>1141</sup> The exhibits in range P1966-P1977

<sup>1142</sup> P2594,para75

command of the Priština corps<sup>1143</sup>. At last, in his statement from 25<sup>th</sup> of July 2007, Vasiljević says that he was at the meeting in the command/headquarters of the Priština corps<sup>1144</sup>.

813. In the statement from 14<sup>th</sup> of January 2007, this witness cites that he was summoned by Pavković to JC<sup>1145</sup>. However, in the statement from 25<sup>th</sup> of July 2007, Vasiljević says that Pavković summoned him to the joint staff.<sup>1146</sup>

814. In the statement from 25<sup>th</sup> of July 2007, Vasiljević says that at the meeting from 1<sup>st</sup> of June 1999 he did not have an impression that Šainović was the commander of some Joint Command<sup>1147</sup>. The defence emphasizes that this witness, in his statement from 14<sup>th</sup> of January 2007 emphasizes that no orders were issued at this meeting<sup>1148</sup>.

815. All that the witness Vasiljević knows about the Joint Command in 1998, he allegedly heard from the witness Momir Stojanović<sup>1149</sup>. He also adds that from the witness Stojanović he did not hear anything related to Joint Command in the course of 1999.<sup>1150</sup>

816. The defence notices that the witness Vasiljević does not have any immediate findings on the so called Joint Command, he did not see any document in the relevant time frame and all that he knows, refers to 1998, which he also allegedly heard from the witness Momir Stojanović.

817. However, the witness Stojanović denies that he merely spoke to Vasiljević on the matter of Joint Command and points out that Vasiljević did not ask him about the Joint Command at all during all time of his stay on KiM.<sup>1151</sup> Stojanović denied all allegations on the Joint Command for which Vasiljević claims to have heard from him.<sup>1152</sup>

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<sup>1143</sup> P2862

<sup>1144</sup> 2D387, para 1

<sup>1145</sup> P2594, para 80

<sup>1146</sup> 2D387, para 1

<sup>1147</sup> 2D387, para 4

<sup>1148</sup> P2594, para 81

<sup>1149</sup> A.VasiljevićT.8812

<sup>1150</sup> A.VasiljevićT.8820

<sup>1151</sup> M.StojanovićT19777; 19804-19805

<sup>1152</sup> M.StojanovićT19804-19805

818. This witness indicated that he does not have findings that such meetings, so called Joint Command were held in 1999. He adds that, regarding the position that he was holding, he should have known that they were held in 1999.<sup>1153</sup>

819. The witness Stojanović denied that the 1<sup>st</sup> of June 1999 meeting was the Joint Command meeting<sup>1154</sup> and explained that he understands the arrival of Šainović as the arrival of high state official who came to notify them that soon the agreement is to be signed and that the retreat shall follow.<sup>1155</sup>

820. The defence witness Stojanović Momir testifies that the 1<sup>st</sup> of June 1999 meeting lasted between 10 and 15 minutes. Pavković said that Šainović arrived from Belgrade to report about the negotiations that were in their final phase and that anticipated soon cease fire and retreat of units of VJ and MUP from KiM. Stojanović says that Šainović said that the retreat should follow rather shortly and that all activities should be terminated as soon as possible. Everybody was very surprised, Lazarević and Lukić mentioned that they have some activities still current, to which Šainović said; "I don't know. You see, all that has to be finalized, brought to an end. The agreement is about to be signed, and it envisaged a withdrawal of the army and police from Kosovo"<sup>1156</sup>.

821. He also testified that Šainović did not issue any order, but that he simply explained that the retreat of MUP and VJ from KiM should start, according to the agreement that should be signed. Šainović's words are evaluated by Stojanović not as order but as statement of fact of a suggestion.<sup>1157</sup> Three days after this meeting, the agreement was signed and VJ and MUP started with their withdrawal.<sup>1158</sup>

822. As contribution to such testimony of the witness Stojanović there is a combat report of PrK dated 5<sup>th</sup> of June 1999, from which is visible that the corps commander Lazarević was in

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<sup>1153</sup> M.StojanovićT19765-19766

<sup>1154</sup> M.StojanovićT19802

<sup>1155</sup> M.StojanovićT19802-19803

<sup>1156</sup> M.StojanovićT19774-19775

<sup>1157</sup> M.StojanovićT.19775

<sup>1158</sup> M.StojanovićT.19777

Djeneral Janković in regard to regulation of matters related to the agreement on the KOSMET crisis solution.<sup>1159</sup>

823. Another participant of the meeting, witness Zoran Anđelković testified that he and Šainović were present at the meeting in the hotel “Grand” on 1<sup>st</sup> of June 1999, which was also attended by Vasiljević and other representatives of the VJ and MUP. The present ones mentioned what was happening on the field, while Šainović talked about negotiations Ahtissari, Chernomyrdin and Milošević<sup>1160</sup>. Anđelković added that nobody reported to Šainović neither Šainović issued any orders.<sup>1161</sup>

824. It is obvious that Vasiljević, Stojanović and Anđelković agree that no orders were issued at the aforementioned meeting.

825. The defence claims that, apart from non-existence of the so called Joint Command and inability to have any command powers, it also could not, neither it issued written orders that were in the form of the VJ.

826. As to the order with a header of Joint Command from 1999, the defence already partially discussed it in the chapter VII, in paragraph 3. a (who prepared for the spring offensive) and it lists it here again.

827. The defence has already analyzed the directive of GŠVJ from 16<sup>th</sup> of January 1999<sup>1162</sup> and the 3<sup>rd</sup> army “Grom 3” order from 27<sup>th</sup> of January 1999, by which the tasks of PrK<sup>1163</sup> are defined, as well as the order of the 3<sup>rd</sup> army dated 1<sup>st</sup> of February 1999 by which the PrK command is ordered to make a plan of blocking and destruction ŠTS in the area of Drenica, Lab (Malo Kosovo) and Mališevo<sup>1164</sup>, till the 15<sup>th</sup> of February 1999.

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<sup>1159</sup> 5D236, page 7, item 6

<sup>1160</sup> Z. Anđelković T. 14663

<sup>1161</sup> Z. Anđelković T. 14664

<sup>1162</sup> 3D690

<sup>1163</sup> 5D245

<sup>1164</sup> 5D249

828. The PrK command has on 16<sup>th</sup> of February 1999, according to the 3<sup>rd</sup> army order, issued an order to break and destroy ŠTS in the area of Malo Kosovo(Lab),Drenica and Mališevo.<sup>1165</sup>
829. The readiness for the execution of this order was not specified and it was anticipated to three to four days from the special order.<sup>1166</sup>It is obvious that individual orders of PrK with a header Joint Command for KiM came out of this order.
830. The Accused Lazarević in his testimony firstly cites that support provision to MUP in antiterrorist actions was anticipated by the orders of GŠVJ and 3<sup>rd</sup> army “Grom 3”<sup>1167</sup>.
831. The Accused Lazarević, by commenting the concrete antiterrorist action in Mališevo, emphasized that PrK issued preparation orders for those actions, with precisely defined tasks and exclusively, to the subordinated units of the corps.<sup>1168</sup>After these preparation orders, the corps would issue orders with a header of ZK/JC whose exclusive aim was to emphasize that this was an action of coordination with MUP or providing support to MUP.<sup>1169</sup>
832. The Accused Lazarević pointed out that the operators of the Priština corps, regarding the experience from 1998, in regard to planning the coordinated actions with MUP and providing support to MUP, continued to use draft orders/pelcer order/ with a title ZK.<sup>1170</sup>This term was only used in the situations in which the coordinated actions with MUP were carried out and in no other situation.<sup>1171</sup>
833. The Accused Lazarević explains that, after the executed actions according to the orders that had the header of Joint Command, the PrK command requested reports and analysis of the actions from their subordinated units.<sup>1172</sup>From the defence evidence 5D 373, it is confirmed that the corps command is the one who asks the analysis of the actions that were executed according to the orders with a header ZK.<sup>1173</sup>

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<sup>1165</sup> P2808

<sup>1166</sup> P2808, item 5, para 1

<sup>1167</sup> V.LazarevićT.17995

<sup>1168</sup> V.LazarevićT.17998; 5D 339

<sup>1169</sup> V.LazarevićT.17924-17925; 17999

<sup>1170</sup> V.LazarevićT.17294-17295; 17298

<sup>1171</sup> V.LazarevićT.17928

<sup>1172</sup> V.LazarevićT.17997;18008

<sup>1173</sup> 5D373

834. From the defence evidence 5D343 it is visible that the task for breaking the ŠTS in the area of Drenica (order with a header ZK–P1968) and the idea how to execute the task, was given by the corps commander and not by some Joint Command.<sup>1174</sup> The Accused confirmed that in his testimony.<sup>1175</sup>
835. From the defence evidence 5D84 and which represents the combat report of the PrK command, addressed to the 3<sup>rd</sup> army command, it is clearly visible that the commander of the PrK made decision on the blockade and breaking the ŠTS in the area of Jablanica (order with a header ZK–P2003) and not the Joint Command.<sup>1176</sup> Also, from the defence evidence 5D85, it can be seen that the action in the area of Jablanica was undertaken pursuant to the PrK commander decision.<sup>1177</sup> The Accused Lazarević confirmed these allegations in his testimony as well.<sup>1178</sup>
836. The report on taking action for destruction of ŠTS in the area of Mališevo (order with header ZK–P1969)<sup>1179</sup> confirms that the 3<sup>rd</sup> army command with the forward command post in Priština reported to the Supreme command staff on these antiterrorist actions. The Accused confirms it in his testimony<sup>1180</sup>
837. The defence witness Božidar Delić confirms that the orders with a header ZK were in fact the orders of PrK and who in his testimony cites that his command use to receive these orders in envelopes, with other documents from the PrK command that were bearing the stamp of the military post of PrK. The military brigade post, to which it was addressed to, was also marked on this envelope, as well as the title of the action which should be carried out. During his testimony, he recognized the envelope for the certain action in the area of Jablanica (order with a header ZK –P2003)<sup>1181</sup>.

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<sup>1174</sup> 5D343, item 1

<sup>1175</sup> V.LazarevićT.17997

<sup>1176</sup> 5D84, item 2.1.

<sup>1177</sup> 5D85, item 2.1.; item 9

<sup>1178</sup> V.LazarevićT.18002-18003

<sup>1179</sup> P1446

<sup>1180</sup> V.LazarevićT.17999-18000

<sup>1181</sup> B.DelićT.19350;5D1365

838. This witness further says that it hasn't been any dilemma for him that these are the documents from the corps and that he knew that those are the documents of his commander, that is, the PrK command.<sup>1182</sup>
839. Other commanders of the brigades that testified before the Tribunal are also compliant that the orders with a header of ZK are in fact the orders of the PrK. For instance, Miloš Mandić testifies that those were the orders of PrK, of his superior command and that his brigade sent all combat reports and all requests exclusively to the PrK command, which acted upon them and took adequate measures.<sup>1183</sup>
840. In that sense, there is also the testimony of Mihajlo Gergar who indicates that the orders with a ZK header are the orders of PrK which he received in the envelope with a decision excerpt on the chart of the corps command and other orders.<sup>1184</sup>
841. The witness Radojko Stefanović in his testimony before the court indicates that the form of the document with a title ZK was recorded in the computer and that it was used in 1998 and 1999, only with aim to mark the joint actions of VJ and MUP.<sup>1185</sup>
842. At last, the Trial Chamber witness, General Djaković confirms the allegations of the witness Stefanović, emphasizing that the documents with a title ZK were recorded in the computer and that they were used exclusively to mark the joint actions of VJ and MUP and that this was the practice in 1998 as well.<sup>1186</sup>
843. The defence evidence 5D475 indirectly testifies that the so called Joint Command did not exist and did not represent any command. From this document it is visible that General Lazarević as commander of the 3<sup>rd</sup> army, on 12<sup>th</sup> of March 2001 asked from the President of FRY to dismiss him from duty because the command over the PrK forces and 3<sup>rd</sup> army forces should have been taken over by THE TEMPORARY JOINT COMMAND starting as of 20<sup>th</sup> of March 2001. General Lazarević in explication of his requests indicates that this would mean A

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<sup>1182</sup> B.DelićT.19353

<sup>1183</sup> 5D1391,para 27,28,29

<sup>1184</sup> 5D1400,para 31,32

<sup>1185</sup> R.Stefanović T.21661,21662

<sup>1186</sup> M.DjakovićT.26453

PRECEDENT in the function of commanding system. When it says precedent, it is clear that never before that there haven't been any such or similar situations.<sup>1187</sup>

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<sup>1187</sup> 5D475

## **IX RESPONSIBILITY UNDER ARTICLE 7 (1) OF THE STATUTE**

### **a. Joint Criminal Enterprise under Article 7 (1) of the Statute**

844. During its oral Rule 98bis Submissions the Prosecution stated that in light of the Appeal Judgment in Brdjanin it intended now only to proceed on the basis of the second articulation, namely that members of the JCE used members of the forces of the FRY and Serbia that they had control over to carry out the deportations, forcible transfers, murders and persecutions.<sup>1188</sup>

845. The prosecution did not, beyond reasonable doubt, prove that there was a plan at all, to modify the ethnic balance on Kosovo by deportation of Albanian civilians in aim to enable the Serbian control over this province. Regarding that such plan did not exist, the prosecution could not prove that acts by counts 3, 4 and 5 of the indictment were reasonably anticipated consequences of this joint plan that was allegedly implemented through the execution of acts from the counts 1 and 2 of the indictment.

846. The defence observes that in the case files there is a great number of exhibits that the aforementioned thesis of the prosecution at least bring to a reasonable doubt. There are numerous evidences that actually clearly point at the nonexistence of any plan, pointed at the Albanian population, that there is no joint criminal enterprise and that none of the accused is a participant of such enterprise.

847. Discussions in chapters VII and VIII of this Defence Final Brief support such position of defence and at this spot, we list them again.

848. Although the defence holds position that there is no plan or JCE, at this spot we wish to, for the reason of caution, analyze the alleged participation of the Accused Lazarević in the plan that the prosecution claims it existed.

849. The defence claims that the prosecution missed to prove, beyond reasonable doubt, that general Lazarević is a participant of the alleged JCE and that he contributed to the realization of

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<sup>1188</sup> Rule 98bis Decision–T.12786-12787

this enterprise by his deeds, that is, that he had intention to contribute to the realization of this plan by his acts or his negligence.

850. The prosecution failed to prove that general Lazarević, if there even was a plan, was aware about the existence of the attack, directed to the civil population and that his acts are integral parts of this attack.

851. Since the prosecution did not prove that general Lazarević was aware on the existence of some criminal plan, directed towards the civil population, neither it proved the intention to participate in such plan, he cannot be responsible not even for those acts, which were not agreed in the JCE and which are natural anticipated consequence of the possible plan, and therefore with him an adequate *mens rea* is missing, necessary for responsibility existence pursuant to 3<sup>rd</sup> extended base of JCE.

852. In order to support such conclusion, the defence turn attention to the Trial Chamber to the testimony of the prosecution witness Ratomir Tanić who, in his written testimony before the court, accepts accuracy of acts of his written statement in which he indicated that the Accused Lazarević did not have a complete image on what was happening because he was not a member of the state commission.<sup>1189</sup>

853. The witness Byslim Zyrapi indicates that in the time relevant for the indictment the KLA grew up to 18.000 combatants that retreated along with the population. This witness, being actually Chief of GŠ KLA adds that after the beginning of NATO bombardment, the Serbian forces attacked KLA and not civilians.<sup>1190</sup>

854. The same witness points to the court that in lines of KLA combatants, women were present as well and that KLA had help from the Government of Albania<sup>1191</sup>.He adds that the KLA combatants were accommodated in schools, collective facilities and houses<sup>1192</sup>.He

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<sup>1189</sup> R.TanićT.6756

<sup>1190</sup> B.ZyrapiT.5989-5990

<sup>1191</sup> B.ZyrapiT.6180

<sup>1192</sup> B.ZyrapiT.6181,6182

emphasizes that the local staffs consisted of local population, that they were supplied and armed by the KLA and that they wore civil uniform because they did not have a military one.<sup>1193</sup>

855. The witness Maisonneuve testifies that it would be right to conclude that KLA used villages as their bases.<sup>1194</sup>

856. At last, general Klaus Naumann indicates that the implementation of civil population protection was extremely aggravated, regarding that the rebellions were also in civil clothes and that they mixed with civil population<sup>1195</sup>.

857. Only these prosecution evidence clearly enough and unambiguously point at the fact that KLA was in villages which it used to turn into bases, that it did mix and move with the civil population and ordered them those movements<sup>1196</sup> and that combatants were men and women and many of them wear civil clothes.

858. Having in mind those facts, apart from proofing that there is no plan for civilians' deportation, these are certainly a distinct proof that, even there has been a plan, Lazarević couldn't have recognized it and been aware of it.

859. The defence has, nevertheless, in the previous discussion within this defence Final Brief, alluded to the Trial Chamber that the Accused Lazarević was not present at any meeting in Belgrade not in 1998 neither in 1999. The Accused Lazarević has been given from his superior command orders to defend the country and fight against KLA in the cooperation with MUP, orders which were based on the law. The KLA was legitimate target for such actions of the VJ and MUP.

860. In the situation of execution of the legitimate fight against the KLA that applied the aforementioned tactic of using the civil population, and the beginning of the intensive NATO bombardment, the movements of the civil population did not necessarily have to suggest to the Accused Lazarević that there could be a plan implemented. If this plan did indeed exist, the Accused did not have to be aware of it, for the reason of the aforementioned circumstances.

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<sup>1193</sup> B.ZyrapiT.6232

<sup>1194</sup> J.O.M. MaisonneuveT.11135

<sup>1195</sup> K.NaumannT.8319

<sup>1196</sup> B.ZyrapiT.5997, 6003; P2457

861. The prosecution did not, beyond reasonable doubt, prove that the Accused Lazarević demonstrated intend to contribute to the implementation of the alleged plan by his acts.

862. Moreover, the prosecution did not present any evidence which would assert the existence of an adequate *mens rea*.

863. Exactly the prosecution witness General Dušan Lončar, being asked a direct question whether he knew that there had ever been a plan to attack the civil Albanian population and to deport it from KiM, he responses;“First of all, knowing people that were on the top of this corps, Generals Lazarević and Pavković,as well as the commanders and people leading this organ, I would discard every possibility in those terms and I think that it would be highly inappropriate.”<sup>1197</sup>

864. To the question, whether he had a chance, while staying on Kosovo, to evaluate the professional conduct of Generals Pavković and Lazarević, this witness responded that for Lazarević he can state which most of the VJ officers believe and that is that he is a general **par excellence**<sup>1198</sup>

865. In the prosecution evidence P2004 that represents the combat report of the PrK command to the 3<sup>rd</sup> army dated 13<sup>th</sup> of April 1999, in item 4, in which the condition of moral of the corps members is discussed, the following is cited;“The moral of the corps composition is very good and stabile. The moral is positively influenced by more and more expressed positions of the world political factors that the issue of KiM should and must be dealt with political instruments.”<sup>1199</sup>This report of the Accused Lazarević picturesquely shows that his intend does not mean the deportation of the Albanians under the mantle of NATO aggression but that the solution of Kosmet crisis should be found through instruments of peace.

866. That the Accused Lazarević did not demonstrate the intention to participate in any plan pointed against the Albanian civilians, but that he, as the soldier of honour and as a professional, performed his duty in the defence of the country, is most prominently shown through

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DA  
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<sup>1197</sup> D.LončarT.7687

<sup>1198</sup> D.LončarT.7687

<sup>1199</sup> P2004

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**b. ordering and planning under Article 7 (1) of the Statute**

867. The Prosecution failed to prove that the Accused Lazarevic, as a person in a position of authority, instructed another person to perpetrate an offence.

868. The Prosecution failed to prove that the Accused Lazarević acted with direct intent or with awareness of the substantial likelihood that a crime would be committed in the execution of his orders.

869. The prosecution claims that General Lazarević participated in the JCE, primarily using his position to plan and order operations in which the crimes were perpetrated and for which he is charged by the indictment, and that he contributed to the enterprise with intention to commit those crimes. The prosecution did not prove this assertion beyond reasonable, for the simple reason of not having offered a single order of General Lazarević as the PrK commander that would support this thesis.

870. By analyzing all orders of General Lazarević as the PrK commander, which were listed in the case file, it is unambiguously and clearly concluded that these are exclusively directed to engagement of PrK units in fights against the KLA and protection of people from NATO bombardment. Apart from these tasks, in the major number of orders to the subordinated units, it is ordered to take measures in order to protect civilians. There are numerous orders that exclusively deal with the civilians' protection.

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871. Accordingly, for example, in the 25<sup>th</sup> of May 1999 order, the Accused Lazarević especially orders the ban of uncontrolled entry of members of his units in the populated locations and property pillage(item9,secure safeguarding). Furthermore, he specifically orders the establishment of righteous and human relation towards the civil population and that in all situations all regulations of the international war law should be consequently obeyed(item 11, moral-psychological security).<sup>1201</sup>

872. The prosecution offered to his witness, General Aleksandar Vasiljević who was at highest functions in the Yugoslav Army, to analyze this order of the PrK commander, the Accused Lazarević(P2014). This prosecution witness evaluated the aforementioned order as the classic document, composed precisely and professionally by the PrK command, as well as that it represents the order of high quality.<sup>1202</sup>

873. The same case is with the order of the Accused Lazarević on the engagement of PrK forces, whereby, besides the usual and regular combat tasks, he especially orders to the units the prevention of pillage, theft and all other forms of crime and war profit as well as the protection of population from depredation. From all subordinated units, general Lazarević by this order requests prompt and efficient identification and catching infringers and negative phenomena carriers, towards which the Military Court would implement the most severe measures, anticipated by the law.<sup>1203</sup>

874. In order to create a clear image on these assertions before the Trial Chamber, it must be emphasized that also the subordinated units within the implementation of the Accused Lazarević's orders accentuated the protection of the civil population. Numerous evidences can serve as example.<sup>1204</sup>It is visible from these exhibits that the subordinated units act according to the orders of the PrK commanders.

875. In the orders of the 2<sup>nd</sup> motorized battalion commander, dated 3<sup>rd</sup> of April 1999 and 8<sup>th</sup> of April 1999, it has been ordered that the troop and squad commanders are responsible for prevention of pillage, terror and similar misdeeds, that they must treat the civil population

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<sup>1201</sup> P2014

<sup>1202</sup> A.VasiljevićT.8732, 8734

<sup>1203</sup> P2029

<sup>1204</sup> 5D86;5D87;5D1101;5D390;5D486;5D793;5D1033;5D1004;5D1037;5D816

professionally and that the unnecessary destruction of establishments must be prevented. Special attention should be dedicated to protection and care of children and elderly<sup>1205</sup>

876. Accordingly, the 7<sup>th</sup> infantry brigade on 24<sup>th</sup> of April 1999 orders the speeding up and enabling return of civil population that returns to their villages from which it moved, preventing the civil population to be in certain locations due to escapades.<sup>1206</sup>

877. One shall also mention the orders of the VoK Priština/Military County of Priština/ commander from 20<sup>th</sup> of April 1999 and 24<sup>th</sup> of April 1999, by which the attention is turned especially to the protection of civil population, ban of any autocracy in relation to civil population and prevention of movement, as well as the overflow of the population, save in case if the civil population is jeopardized by combat actions or NATO aircraft activities. In the case of peril over the civil population, it is ordered to evacuate the mentioned population and temporary place it in temporary location.<sup>1207</sup>

878. Exactly this commander of VoK Priština, Zlatimir Pešić, was the prosecution witness in this case and by that occasion, he clearly and unambiguously said that, as of he became subordinated to the PrK command, approximately on 10<sup>th</sup> of April 1999, he has never obtained from General Lazarević a written or an oral order, which would oppose the law or basic regulations on the use of VJ.<sup>1208</sup>

879. In his oral testimony, this witness indicates the example that he personally attempted to return the convoy of civilians, having counted 300 to 400 men and to prevent them from leaving their village.<sup>1209</sup>

880. The defence points to the Trial Chamber at the order of the Accused Lazarević dated 16<sup>th</sup> of April 1999, by which he requests that in all PrK units, certain forces are to be established in order to bestow the civil population. Further on, he orders the establishment of a complete insight into the numerical situation of the civil population in the deployment areas in order to make an

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<sup>1205</sup> 5D86,item19;5D87,item19

<sup>1206</sup> 5D816

<sup>1207</sup> 5D32;5D35

<sup>1208</sup> Z.PešićT.7267

<sup>1209</sup> Z.PešićT.7206,7207

indispensable balance of provisions, necessary for the population nourishment and satisfaction of other life needs.<sup>1210</sup>

881. In the order from 2<sup>nd</sup> of May 1999, which was sent to all brigade commanders, the Accused Lazarević specifically orders to settle the population in adequate facilities, not to leave it in open space, to create condition for satisfaction of basic life needs and prevent any jeopardy of integrity, personal and property safety of the population.<sup>1211</sup>

882. In his oral testimony, the Accused Lazarević, by interpreting these orders of his, confirmed the authenticity of those orders and emphasized that he personally assembled them and that their basic aim was to form special elements for the protection of the civil population in each view, within the frames of the corps units. He also ordered that all members of the corps should be introduced to these orders, stick to them constantly and to inform him about their execution.<sup>1212</sup>

883. It is, hence, clear, that the prosecution by any single evidence did not succeed to support the own thesis, that general Lazarević had contributed to the enterprise in general by ordering and planning, and it especially did not prove that the Accused had intention to commit a crime. Absence of any evidence in that view keeps the prosecution thesis at the level of speculation, especially if one takes into consideration the significant number and persuasion of proofs, apostrophised by the defence above.

884. All aforementioned proofs, as well as the evidences that the defence analyzed in previous chapters, unambiguously point at the conclusion that the Accused Lazarević exclusively planned the activities of his subordinated units pursuant to directives and orders of the superior 3<sup>rd</sup> army command and GŠVJ.

885. The Accused exclusively participated in planning of use of his units in defence from NATO aggression and in planning of legitimate actions against KLA, pursuant to law and military doctrine. The prosecution did not offer any single evidence that would point at the opposite.

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<sup>1210</sup> P1306, item 1,2,3,5,6,7

<sup>1211</sup> 5D389

<sup>1212</sup> V.LazarevićT.18053,18054,18055

886. Therefore, the prosecutor, beyond reasonable, did not prove that the Accused Lazarević, alone or along with others, conceived a criminal conduct that represents the criminal offenses, which he has been charged with. The prosecution did not prove that planning of the Accused Lazarević was the factor that essentially contributed to the execution of criminal offenses.

887. The prosecutor, did not, beyond reasonable, prove that the Accused Lazarević acted with a directed intend or awareness on the essential probability that the criminal offense would be perpetrated within the execution of that plan.

**c. instigation under Article 7 (1) of the Statute**

888. The prosecution did not, beyond reasonable doubt, prove that the Accused Lazarević instigated other or other persons to perpetrate the criminal offense. The prosecution did not, beyond reasonable doubt, prove that the Accused Lazarević executed any act that would represent the factor which significantly contributed to the conduct of other persons that perpetrate the criminal offenses.

889. The prosecution did not, beyond reasonable doubt, prove that the Accused Lazarević acted with a direct intention or awareness on the essential probability that the criminal offense would be perpetrated, within the execution of such instigation.

890. The prosecution did not, nevertheless, present any single evidence on which the assertion would be based that the Accused Lazarević performed any act or failure, that could be interpreted as instigation of the other to perpetrate the act, neither there is proof that would prove that acts or failures of the Accused Lazarević essentially contributed to the execution of criminal offense.

891. As contribution of its assertion that the prosecution did not prove the aforementioned allegations and that the evidence show exactly the opposite, the defence invites to discussion from the chapter VII 3.d and 3.e, as well as the chapters IX a. and b. of this Defence Final Brief and, at this spot, it lists them again.

892. As supplement of its thesis that the numerous evidences, presented in the course of the procedure, showed that the Accused Lazarević does not instigate anyone to perpetrate the criminal offenses and that in his conduct there is no adequate *mens rea*, for this responsibility aspect, we shall point to the Trial Chamber at some additional evidences:
893. The Accused Lazarević, already on March 1999, in his order to the subordinated units, under item 5, requested revealing and prevention of criminal and other activities and requested taking measures of discipline and criminal responsibility towards the executors of such acts.<sup>1213</sup>
894. In his order from 23<sup>rd</sup> of March 1999, he informs the subordinated compositions that the NATO aggression to FRY is more certain and asks that the seniors, in all situations, must show the highest moral and professional qualities in the interest of military profession and honour, beside decisiveness, courage and self-sacrifice.<sup>1214</sup>
895. The order of the 52<sup>nd</sup> anti-rocket brigade of PVO from 2<sup>nd</sup> of April 1999 transmits the order of the PrK command from 29<sup>th</sup> of March 1999 by which the command ordered that the regulations of the international war law must be obeyed in all situations and that against persons who violate the rules of the international war law, immediately after finding, rigorous prosecution measures are to be taken by the empowered military court.<sup>1215</sup>
896. The Accused Lazarević in his order from 1<sup>st</sup> of April 1999, besides the combat tasks, decisively orders that in all garrisons, in cooperation with the MUP forces, VTJ and military, investigation and judicial organs, pillage, theft and other forms of crime should be prevented and the civil population should be protected from robberies. He further requests that the temporary compositions of tested, chosen and prepared manpower must be established for this task, including also the military police. The Accused requests prompt and efficient identification and apprehension of offenders and carriers of negative phenomena, towards which the military court shall take the most rigorous measures, anticipated by the law.<sup>1216</sup>(the seriousness of the Accused Lazarević's approach to this problem is obvious and therefore the prosecution's allegations on pro forma orders are not correct)

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<sup>1213</sup> 5D260,item5

<sup>1214</sup> 5D1293,item9.v

<sup>1215</sup> 5D1144,items 1-5

<sup>1216</sup> P2029,item4

897. In the order from 5<sup>th</sup> of April 1999, the Accused Lazarević from the subordinated units requests enabling of engagement and secure work of the military investigation and court organs. He asks that the responsibility of all members of the corps should maximally become rigorous in view of respecting the international war law and all previously issued orders by the PrK command. He demands that MUP should be provided with help within return and protection of the displaced persons and that against all offenders of the security regime rigorous measures of responsibility should be taken.<sup>1217</sup>(it is easy to recognize the decisiveness of the Accused Lazarević in this order to prevent possible execution of criminal offenses of his subordinate in his orders)
898. From the order of the 211<sup>th</sup> ok brigade from 18<sup>th</sup> of April 1999, and which implements the order of the PrK command from 16<sup>th</sup> of April 1999, commander Gergar orders that the ambulance service of the brigade provides help in terms of health security of the civil population and prohibits every appearance of freedom and rights of the citizens prevention, unless they jeopardize the security of the units. In everything else, in relation to civil population, the civil population should be treated in highly human manners, with responsibility and in accordance with all regulations of the international humanitarian law.<sup>1218</sup>
899. The commander of the 37<sup>th</sup> motorized brigade and due to objections of the PrK commander about the spotted irregularities in that brigade, on 1<sup>st</sup> of May 1999, besides measures for correction of disciplinary failures, he orders that all forms of crime against the civil population should be rigorously prevented and that against the carriers of these phenomena criminal reports should be submitted, whereby it is necessary to engage several assistants commanders for intelligence-security affaires.<sup>1219</sup>
900. The command of the 175<sup>th</sup> infantry brigade in its combat report to PrK informs that the major number of disciplinary and before all, criminal prosecution measures has been taken. It is indicated that first judgments that arrived, give positive results. It is added that one should keep persevere on this task completely.<sup>1220</sup>

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<sup>1217</sup> 5D365, items3,4,5

<sup>1218</sup> 5D592, items2,3

<sup>1219</sup> 5D1020, item6

<sup>1220</sup> 5D554, item5

901. It is, hence, obvious that the subordinated units seriously took the orders and requests of the PrK commander, the Accused Lazarević and that they took all the measures to prevent the execution of criminal offenses and to punish the perpetrators of criminal offences.

902. Eventually, the corps commander, along with the 3<sup>rd</sup> army commander was controlling whether these orders of his are obeyed and carried out. In the occasion of visiting one part of the 175<sup>th</sup> infantry brigade units, they found unfavourable conditions. On the spot, and within their authorities, they ordered implementation of most rigorous measures of the criminal prosecution towards the responsible seniors. This was the cause that the corps commander once again warns (the word “to warn” is written in caps lock and bolded, in order to point at the seriousness) the subordinated commanders about the implementation of rigorous measures within the realization of the order, issued by corps commander.

903. From all indicated evidences, it is absolutely clear that they strongly support the defence conclusion that the Accused Lazarević did not instigate other persons to perpetrate the criminal offenses but, on the contrary, that the prosecution did not, beyond reasonable doubt, prove that the Accused Lazarević demonstrates an adequate *mens rea* for this form of responsibility. We have seen that he, in his orders, warns, prevents the criminal offenses and requests the punishment of the perpetrators of criminal offences; it is therefore clear that by the Accused Lazarević, an intend or awareness that he, by his acts creates an essential probability for the perpetration of criminal offenses, does not exist.

904. Here as well, the prosecution thesis remains in the sphere of a simple speculation.

#### **d. Aiding and abetting under article 7 (1) of the Statute**

905. The prosecution did not, beyond reasonable doubt, prove that the Accused Lazarević was providing practical help, encouraging or giving moral support, which had an essential effect to the execution of criminal acts which he is charged with by the indictment.

906. The prosecution also did not, beyond reasonable doubt, prove that the Accused Lazarević knew that his acts would help to the crime perpetration by the perpetrators of criminal offenses and that he was aware of the essential probability that his acts would help to the crime perpetration by the perpetrators of criminal offenses, acts which he is charged with by the indictment.
907. The prosecution set this responsibility as alternative responsibility pursuant to article 7 (1) of the Statute, suggesting firstly that the Accused Lazarević aided and abetted in crime execution, by allowing and easing the participation of manpower and resources of VJ in the combat actions on Kosovo.
908. The defence had, in previous discussion and through the numerous evidences and testimonies, showed that the Accused Lazarević is not the one who gives orders or allows the use of units on Kosovo. The Accused Lazarević uses the units pursuant to directives of the law and orders of GŠ VJ and the 3<sup>rd</sup> army. The Accused Lazarević commands the subordinated units in exclusive execution of legitimate tasks, set to him by the supreme command.
909. The essence and the character of those combat actions were shown by the defence through numerous evidences and testimonies, through the prosecution witnesses as well as through the defence witnesses, in chapters VII and VIII. At this spot it lists them once again.
910. The prosecution suggests that the Accused knew that the goals of the JCE could not be achieved without participation of the PrK. The defence finds that JCE did not even exist, or, at least, the prosecution did not, beyond reasonable doubt, prove it.
911. The PrK and the Accused Lazarević did not implement any aims of the alleged JCE, which is shown through numerous orders of the corps, which exactly refer to protection and aid to the civil population and intention of their return home. These orders have already, in their major part, been apostrophized earlier by the defence, whereby at this spot, we also offer additional ones:
912. In his order from 19<sup>th</sup> of April 1999, the Accused Lazarević orders the evaluation of the entire situation of accommodation and movement of the civil population in all units of the corps. Further on, he request protection of civil population and prevention of any movements and

overflows. He adds that, if the civil population finds itself in the zone of combat actions or is jeopardized by NATO or ŠTS, the civil population must be evacuated to more favourable areas and protected from the activities. He demands from his units to find the most adequate locations, villages and residential establishments for evacuation and temporary accommodation of the civil population.<sup>1221</sup>

913. In the order from 22<sup>nd</sup> April 1999, the Accused Lazarević orders the speeding up of civil population return to their villages and towns from which they moved out. He asks from the brigades' commanders not to allow the civil population to be in locations due to escapades and repeats that they must be enabled to return to the locations which they abandoned earlier.<sup>1222</sup>

914. In his order from 23<sup>rd</sup> of April 1999, the Accused Lazarević repeats that acceptance, deployment and safeguarding of civil population should be executed pursuant to already issued order of the PrK command. He requests that any autocracy, especially of lower command system in relation to civil population should be prevented.<sup>1223</sup>

915. In his order from 2<sup>nd</sup> of May 1999, the Accused Lazarević requests, in accordance with already issued order, to continue with accommodation of civil population, placing it into adequate facilities and keeping it away from open space. He requests that it is enabled with conditions for the satisfaction of basic life needs and to prevent any threatening of integrity, personal and property safety of the population.<sup>1224</sup>

916. In his order dated 6 May 1999, apart from the task to the subordinated units for breaking and destroying the ŠTS in the area of Kačikol, the Accused Lazarević, from the task given units, requests not to do any mistreatment and persecution of the civil population and to treat the possible escaping population, which might occur due to combat actions, according to previously issued orders.

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<sup>1221</sup> 5D201,items1,2

<sup>1222</sup> 5D372,item3

<sup>1223</sup> 5D374,item 3

<sup>1224</sup> 5D389

917. There are numerous evidences that the defence listed into the case files which prove that the subordinated units also took measures and tasks issued by the Accused Lazarević, as we have seen it above.

918. At this spot, we allude to the Trial Chamber in relation to following evidences that confirm the previous quotations;5D1103, 5D509, 5D1104, 5D1109, 5D793, 5D390.

919. The Accused Lazarević himself, in his testimony before the court, to the direct question on the plan existence and its possible awareness, for the plan, he emphasized the following:

*6 “A. Before this Trial Chamber, speaking under an oath, as I have been  
7 for several days now, I can categorically state that there was no plan  
8 that the corps command or its subordinate units knew of or participated in  
9 or got from their superiors, so absolutely not”<sup>1225</sup>*

920. The prosecution suggests that the Accused Lazarević demonstrated his aiding and abetting in crime execution in the way to have abstained from taking any important disciplinary measures against the VJ or MUP members.

921. The defence, in chapters VII and VIII, has already discussed that the Accused Lazarević had no authorities in view of taking measures towards the members of MUP. Besides, the defence in these chapters showed great number of measures as well as their arduousness that the Accused Lazarević was taking, in the frame of his powers. The defence at this spot lists them once again.

#### **e. Conclusion**

922. The defence is convinced that, by the strength of numerous evidences, oral testimonies and argumentations, it indisputably showed that the prosecution did not, beyond reasonable doubt, prove that the Accused Lazarević is guilty for ordering, planning, instigation and/or aiding and abetting pursuant to article 7 (1) of the Statute for acts that he is charged with, according to the counts 1 to 5 of the indictment.

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<sup>1225</sup> V.LazarevićT.18129

## **X RESPONSIBILITY UNDER ARTICLE 7 (3) OF THE STATUTE**

### **a. Discussion**

923. For the acts by counts 1 to 5 of the indictment, General Lazarević is charged with responsibility of the supervisor, anticipated by the articles 7 (3) of the Statute.

924. The defence claims that the prosecutor, beyond reasonable doubt, failed to prove that General Lazarević failed to use his powers and duties in order to prevent the subordinated to perpetrate the criminal offenses, that is, that he failed to punish them afterwards.

925. Numerous evidences, apostrophized by the defence within the analysis of the basis of responsibility pursuant to article 7 (1), are applicable to the estimation of the responsibility pursuant to article 7 (3).

926. The defence firstly, by analyzing the incidents from the crime base, showed that the prosecution did not, beyond reasonable doubt, prove that the units under the command or control of the Accused Lazarević participated in the aforementioned incidents.

927. The defence further on, by analyzing evidences in discussion in chapters VII, VIII and IX showed that the prosecution did not, beyond reasonable doubt, prove that the Accused Lazarević failed to take indispensable and reasonable measures to prevent the perpetration of criminal offenses and to punishes the perpetrators of criminal offenses.

928. The evidences on returning volunteers, submission of criminal reports against the officers, informing and warning the subordinated units to abstain from the perpetration of criminal offenses and applying regulations of the international humanitarian law, certainly represent indispensable and reasonable measures to prevent crimes, that is, to punish the perpetrators of criminal offenses. Here, we again emphasize that the process of criminal procedures and punishment of the perpetrators of criminal offenses was in the jurisdiction of the military judicial organs that were independent from the command, that is, from the corps commander.

929. The defence reminds the Trial Chamber of the fact that, as much general Lazarević was physically and by the command line distant from the military, police and state top in Belgrade, he was also, as the commander of PrK, distant from the immediate activities of units, subordinated to him, in actions on the field itself. We remind that, according to the command line under general Lazarević as the PrK commander, there were the brigade commanders, and below them, the battalions commanders, followed by the squads and troops commanders, which clearly points at the fact that taking measures directly depended on degree and quantity of information which were coming from the subordinated units.

930. The prosecution suggests that the Accused Lazarević could have requested a concrete further investigation and demand of additional reports or investigations. Apart from evidences that we have already apostrophized at this spot, we suggest to the Trial Chamber that the Accused Lazarević took these measures as well. Nevertheless, in his testimony, the Accused Lazarević indicates that he sent three commissions to the 37<sup>th</sup> motorized brigade in order to investigate some suspicions.<sup>1226</sup> These allegations of General Lazarević were confirmed by the witness Momir Stojanović who managed one of the commissions<sup>1227</sup>. The testimonies of the Accused Lazarević and the witness Stojanović were confirmed by the witness Ljubiša Diković in his testimony before the Tribunal<sup>1228</sup>.

931. It is, hence, obvious, and pursuant to numerous evidences that we previously indicated, that General Lazarević reacted in every illegal case which he was informed about. The Accused Lazarević also reacted in the case of being suspicious that irregular and illegal conduct of his subordinates can occur, which was also confirmed by the aforementioned evidences. The prosecution failed to fortify and show that General Lazarević did not take measures to prevent the act or to punish the perpetrators of criminal offenses, in any case which he was aware of.

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<sup>1226</sup> V.LazarevićT.18237,18238

<sup>1227</sup> M.StojanovićT.19756-19758

<sup>1228</sup> Lj.DikovićT.19898,19899

**b. Conclusion**

932. The defence firmly takes position that the prosecution did not prove beyond reasonable doubt the responsibility of the Accused Lazarević, not even pursuant to article 7 (3) of the Statute, for the acts by the counts 1 to 5 of the indictment, the Accused is charged with.

## XI SENTENCING AND MITIGATING CIRCUMSTANCES

933. The Defence upholds that the Accused Lazarevic is not guilty and that he should be acquitted on all counts of the Indictment. If the Trial Chamber should find, however, that the Accused Lazarevic is responsible under some or all of the Counts of the Indictment, the Defence submits that there are many mitigating circumstances supporting the Accused Lazarevic, which must be taken into account.

### Relevant Legal Provisions relating to sentencing

934. Factors that must be taken into consideration, in terms of aggravating or mitigating sentence are not comprehensively defined in the Statute or Rules of procedure; therefore the Trial Chamber disposes with significant discretion right in the occasion of deciding which way those factors in the certain case shall be applied in.<sup>1229</sup>

935. The Tribunal Case Law holds that deterrence and retribution are the primary principles underlying the sentencing of an individual by the Tribunal.<sup>1230</sup> Retribution entails a proportionate punishment for the offence committed, and deterrence ensures that the penalty imposed will dissuade others from the commission of such crimes.

936. Article 24 of the ICTY Statute and Rule 101 of the ICTY Rules set forth the factors to be taken into account by the Chamber in determining the sentence. Article 24 directs that Trial Chambers “shall have recourse to the general practice regarding prison sentence in the courts of the former Yugoslavia.”<sup>1231</sup> In addition, this Article instructs Trial Chambers to take into account “such factors as the gravity of the offence and the individual circumstances of the convicted person.”<sup>1232</sup>

937. ICTY Rule 101 (B) adds any aggravating or mitigating circumstances to the list of mandatory considerations in the determination of sentence.

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<sup>1229</sup> Prosecutor v. Blaškić, IT-95-14-A, Appeal judgment, para 685

<sup>1230</sup> Delalic Appeal Judgment, para 806

<sup>1231</sup> The Statute, Article 24 (1)

<sup>1232</sup> The Statute, Article 24 (2)

### Mitigating circumstances

938. As it was already stated above there are many mitigating circumstances supporting the Accused Lazarevic, which must be taken into account. The defence here reminds of the Tribunal's practice position, by which the aggravating factors must be proved beyond reasonable doubt, while the standard of proofing of the mitigating factors are the evaluation of the probability.<sup>1233</sup>

939. Among other factors that are taken into consideration as proofs for mitigating circumstances are; cooperation with the prosecutor, voluntarily surrender, good personal characteristics and absence of previous sentences, conduct in the detention unit, personal and family appearances.<sup>1234</sup>

940. The defence respectfully submits that the Trial Chamber firstly should take into consideration the conduct, attitude and cooperation that General Lazarević showed during entire procedure. First of all, his voluntary surrender to the Tribunal, according to defence's position, should be appreciated as the mitigating circumstance. The Accused Lazarević surrendered to the court, (REDACTED), so as to prove his innocence before the court. In the pre-trial phase, the Accused Lazarević gave an interview to the prosecution and this fact speaks for itself and for his intention to cooperate with the tribunal and the prosecution, as well as to give his active contribution in efforts to establish the truth in this procedure. In addition, the defence submits that the accused Lazarevic gave this interview only few days after initial appearance, without possibility to read and analyse the OTP's supporting material.

941. Also, the only one of the Accused in this procedure who testified before the Trial Chamber is the Accused Lazarević. The defence finds that this fact must be recognized as the mitigating circumstance on the side of the Accused Lazarević and in that sense, be the subject of the Trial Chamber's evaluation. Exactly by the testimony at the beginning of the defence case, before all other witnesses of his defence, the Accused Lazarević showed readiness and will to assist to the Trial Chamber in terms of truth establishment in this procedure.

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<sup>1233</sup> Prosecutor v. Blaškić, IT-95-14-A, Appeal judgment, para 697

<sup>1234</sup> Prosecutor v. Blaškić, IT-95-14-A, Appeal judgment, para 696

942. The judge Bonomy himself emphasized that the fact that somebody of the Accused testifies at the mere beginning of his defence case shall have a special weight for the Trial Chamber.

18 *”...We appreciate that there are no*  
 19 *rules which absolutely restrict the freedom of any accused to decide at*  
 20 *what stage in his evidence -- of the presentation of his case he will give*  
 21 *evidence.*  
 22 *But it seems to us that the evidence of any accused is likely to*  
 23 *carry more weight if it's given right at the beginning of his case, rather*  
 24 *than given later in the light of everything else he's heard.”*<sup>1235</sup>

943. Furthermore, about accused's good behaviour speaks also the Report from the Acting Commanding Officer of the UNDU dated 07 July 2008. It is stated that during his time in custody, Mr. Lazarevic has at all times shown respect for the management and staff of the unit and has complied with both the Rules of Detention and the instruction of the guards<sup>1236</sup>.

944. Further on, the defence at this spot respectfully submits that the Trial Chamber should give credit to the Accused for the extent to which his Counsel co-operated with it and with the Prosecution in the efficient conduct of the trial. Counsel were careful not to compromise their obligations to the Accused, but the restriction of the issues which they raised to those issues which were genuinely in dispute enabled the Trial Chamber to complete the trial in much less time than it would otherwise have taken. The defence finds the establishment of such position in the practice of this Tribunal.<sup>1237</sup>

945. A very significant mitigating circumstance is good personal characteristics of the Accused Lazarević. All officers had a highly esteemed opinion about him. They thought of him as of professional soldier, good, honest and honoured man. The Accused Lazarević has never been politician or careerist,, he was a soldier who defended his country. At this spot, due to limited volume of this Defence Final Brief, the defence shall indicated quotations only of some witnesses that expressed such high opinion on the Accused Lazarević. Accordingly, the prosecution witness Dušan Lončar in his testimony indicates:

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<sup>1235</sup> Judge I. Bonomy T.12814

<sup>1236</sup> 5D1460

<sup>1237</sup> Prosecutor v. Krnojelac, case no. (IT-97-25-T), Trial Judgment, para 520

13 *“...As for*  
 14 *Lazarevic, I can state what most other officers of the VJ believe, that*  
 15 *this is a **general par excellence**”.*<sup>1238</sup>

946. The defence witness Vladimir Marinković in his testimony before the court indicates that General Lazarević was, and still is a role model in terms of military and human qualities.

6 *Q. “Lieutenant-Colonel, do you know General Lazarevic?*  
 7 *A. Yes, I do.*  
 8 *Q. How long have you known him for?*  
 9 *A. Since 1993. At that time he became my commander at the*  
 10 *communications regiment.*  
 11 *Q. Can you tell us something about General Lazarevic as a person and*  
 12 *an officer?*  
 13 *A. I can tell you that he was and still is a model, my personal model*  
 14 *to which I aspire in terms of military career and human qualities.*<sup>1239</sup>

947. Also, that the Accused Lazarević is an honest, honoured man and indeed a professional soldier who neither enjoyed nor asked for privileges, it can be concluded from the testimony of this witness in the part in which he talks about two Lazarević’s sons, who were mobilized during the war on Kosovo into the VJ units:

15 *Q. Lieutenant-Colonel, you spent the entire period of war in the*  
 16 *territory of Kosovo?*  
 17 *A. Yes.*  
 18 *Q. Do you know anything about the sons of General Lazarevic,*  
 19 *whether they were members of the army?*  
 20 *A. Yes. I know that the oldest and middle son were members of the*  
 21 *army, and I know both of them personally.*  
 22 *Q. What status did the two of them have?*  
 23 *A. As far as I am aware, they had the status of soldiers, troops in*  
 24 *the Army of Yugoslavia.*  
 25 *Q. Did they have any sort of privileges? Were they privileged in any*

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1 way?

2 A. As far as I'm aware, no.”<sup>1240</sup>

<sup>1238</sup> D.LoncarT.7648

<sup>1239</sup> V.MarinkovicT.20275

948. The Ojdanić defence witness, Slobodan Kosovac in his testimony emphasizes military and human qualities of the Accused Lazarević and within, points at the fact that General Lazarević is the last one who left Kosovo, only after the last of his soldiers left the provincial territory.

23 *Q. General, can you tell us a bit more about General Lazarevic, what*  
 24 *kind of a person he is and what kind of a soldier he is?*

25 *A. As for General Lazarevic, his assessments speak in itself and his*

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*1 results. I would just like to say a few basic things, in view of the*  
*2 brevity of time. He is a high professional, responsible, hard-working,*  
*3 industrious, and above all a humane person. I would like to give you an*  
*4 example. **He is the last person who left the territory of Kosovo only***  
*5 **after all his soldiers had left, when he saw that all of his soldiers had***  
*6 **left, it is only then that he himself left the territory of Kosovo.***<sup>1241</sup>

949. (REDACTED)

950. (REDACTED)

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<sup>1240</sup> V.MarinkovicT.20275,20276

<sup>1241</sup> S.KosovacT.15837,15838

**XII CONCLUSION**

951. On the basis of the totality of evidence the Prosecutor has failed to prove its case against Vladimir Lazarevic beyond reasonable doubt. Accordingly, he must be acquitted of all charges against him as alleged in the Indictment.

Counsel for the Accused



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Co - Counsel

Dated, 29 July 2008  
The Hague, The Netherlands

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