

**UNITED  
NATIONS**

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International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of Former Yugoslavia since 1991	Case No.	IT-04-84bis-T
	Date:	11 June 2012

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**IN TRIAL CHAMBER II**

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

**Registrar:** Mr. John Hocking

**THE PROSECUTOR**

v.

**RAMUSH HARADINAJ  
IDRIZ BALAJ  
LAHI BRAHIMAJ**

**PUBLIC REDACTED**

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**PROSECUTION'S FINAL TRIAL BRIEF**

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Mr. Richard Harvey and Mr. Paul Troop for Lahi Brahimaj

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## I. OVERVIEW

1. From at least April until late September 1998, Ramush **Haradinaj**, Idriz **Balaj**, Lahi **Brahimaj** and other soldiers of the Kosovo Liberation Army (“KLA”) pursued the common criminal purpose to suppress real or perceived opposition through the mistreatment of civilians who were, or were perceived to be, collaborating with the Serbian forces or otherwise not supporting the KLA.

2. The crimes in Jablanica/Jabllanicë occurred during an armed conflict between the KLA and the armed forces of the Federal Republic of Yugoslavia (“FRY”) and the Republic of Serbia, and against a backdrop of violence by the KLA against its perceived opposition in the Dukagjin zone and beyond. The aim was to consolidate KLA control over the Dukagjin zone.

3. This retrial is about the implementation of the common criminal purpose at the KLA barracks in Jablanica/Jabllanicë, within Đakovica/Gjakovë municipality, a heavily-guarded KLA stronghold in an area which had not been under Serbian control for several years. The members of the joint criminal enterprise (“JCE”) used the KLA barracks in Jablanica/Jabllanicë as a detention facility to detain, interrogate, cruelly treat, torture and murder perceived opponents.<sup>1</sup>

4. The Dukagjin zone encompassed the municipalities of Dečani/Dečan and Peć/Pejë, virtually all of Đakovica/Gjakovë municipality, and parts of the municipalities of Istok/Istog and Klina/Klinë.<sup>2</sup> From April to September 1998, the Dukagjin zone was mainly under the control of the KLA.<sup>3</sup> With a few exceptions, the KLA occupied the territory bounded by the roads linking Peć/Pejë, Klina/Klinë and Đakovica/Gjakovë.<sup>4</sup>

<sup>1</sup> See below, para.86.

<sup>2</sup> Z.Stijović, P121, para.47; P154; J.Krasniqi, P67, T.3479-3480; Crosland, P8, T.2945-2950; P10; Witness 17, P344 (under seal), para.25.

<sup>3</sup> C.Krasniqi, P54, para.90; P58; Crosland, P8, T.2968, 3027-3030; Pappas, P320, paras.6, 10-12, 15, 23; Haskaj, P40, para.34; P39, T.10324-10325; P42; S.Çekaj, P2, T.4404-4406, 4418-4422, 4427-4428; P5; Hasanaj, P37, paras.10-12, p.10.

<sup>4</sup> C.Krasniqi, P54, paras.46-50, 77, 90; P57; P58; S.Çekaj, P4, paras.6, 11, 13.

## II. THE ROLES OF THE ACCUSED

5. Each of the Accused played an important role, not only in Jablanica/Jabllanicë, but across the Dukagjin zone.

### A. Role of Ramush Haradinaj

6. In 1998, Ramush **Haradinaj** *a.k.a.* Smajl was a highly influential figure in the Dukagjin zone through his family connections.<sup>5</sup> As early as January 1998, the Serbian State Security Service (“DB”) knew about a KLA “core” in the Dečani/Deçan area, headed by **Haradinaj** and his brother Daut.<sup>6</sup> On 24 March 1998, the Serbian Ministry of the Interior Police (“MUP”) and the KLA, fought around the Haradinaj family compound in Glodane/Gllogjan.<sup>7</sup> By this time **Haradinaj**’s family compound was sufficiently stocked with weapons to allow his KLA forces to battle the Serbian forces throughout the day.<sup>8</sup> Following this confrontation, the Glodane/Gllogjan KLA Staff commanded by **Haradinaj**<sup>9</sup> became the focal point of the KLA in the area.<sup>10</sup>

7. DB sources indicated that “after 24 March 1998, Ramush **Haradinaj** became the undisputed leader of the Glodane/Gllogjan KLA”.<sup>11</sup> Kosovar Albanian witnesses confirmed that as a result of the battle that day, KLA soldiers, and the population in general, regarded **Haradinaj** with great respect and considered him to be the commander of the Dukagjin zone.<sup>12</sup>

8. The respect which **Haradinaj** commanded was aptly described by KLA soldier Zymer Hasanaj who indicated that there existed an expression: “God in heaven, Ramush on earth”, which meant that **Haradinaj** had “great authority” and

<sup>5</sup> Z.Stijović, P121, para.45; P122, T.9013; Zyrapi, P160, paras.8-10.

<sup>6</sup> P153, p.2.

<sup>7</sup> Zlatković, P373, paras.22-28; P371, T.6865-6870; Tetaj, P77, paras.9-10.

<sup>8</sup> P31, pp.1-2; Z.Stijović, P121, para.41; M.Stojanović, P421, T.2005-2010; Tetaj, P77, para.9.

<sup>9</sup> Z.Stijović, P121, paras.45-46; Witness 80, T.2372-2373.

<sup>10</sup> Rexhahmetaj, P298, para.11; P299, p.2; Tetaj, P77, para.20; C.Krasniqi, P54, paras.38, 40, 42-43.

<sup>11</sup> Z.Stijović, P121, para.45 [emphasis added].

<sup>12</sup> C.Krasniqi, P54, paras.40, 43, 61; Hasanaj, P37, paras.4-5; P36, T.8743; Witness 29, P359, T.3481-3482, 3486-3489; Zyrapi, P160, paras.8-9; Witness 28, P358 (under seal), para.72; Witness 76, P305, para.13; Rexhahmetaj, T.1096-1099; P297, para.18; P299, p.3; S.Çekaj, P2, T.4482; Shala, P69, T.9980; Witness 80, T.2373, 2382-2384, 2420-2421.

that “[n]o one was superior to him.”<sup>13</sup> According to Witness 76, a Kosovar Albanian [REDACTED],<sup>14</sup> **Haradinaj** “was like the Lord of Dukagjini.”<sup>15</sup>

9. KLA commander Skender Rexhahmetaj confirmed that prior to assuming formal control on 23 June 1998, **Haradinaj** “had *de facto* authority over the Dukagjin zone.”<sup>16</sup> Rexhahmetaj further explained that “[t]he whole population” “always respected” **Haradinaj**.<sup>17</sup> He also said that “if you are respected you enjoy authority.”<sup>18</sup> **Haradinaj**’s *de facto* authority extended as far as Jablanica/Jabllanicë. According to Witness 80, well before **Haradinaj**’s formal appointment as the commander of the Operative Staff of the Dukagjin Plain, **Brahimaj**, the local commander of the Jablanica/Jabllanicë KLA headquarters, introduced **Haradinaj** as “the Dukagjin commander”.<sup>19</sup> On this occasion in May 1998, other KLA officers and commanders who were present also referred to **Haradinaj** as the commander of the zone.<sup>20</sup> Witness 80’s account is supported by Shefqet Kabashi. Kabashi, who joined the KLA in Jablanica/Jabllanicë in April 1998, said he “knew [...] for sure”<sup>21</sup> that **Haradinaj** was the commander of the Dukagjin zone.<sup>22</sup>

10. **Haradinaj** was instrumental in ensuring the growth and organisation of the KLA within the Dukagjin zone. In the Spring of 1998, villagers who wanted to organise a defence structure in their village went to see **Haradinaj**.<sup>23</sup> Furthermore, according to Zoran Stijović, the Head of the Analytical Section of the Serbian DB in Priština/Prishtina,<sup>24</sup> people could not go to Albania and procure weapons without the knowledge of **Haradinaj** and the group he led in Glodane/Gllogjan.<sup>25</sup>

11. Having encouraged the creation of village defences,<sup>26</sup> **Haradinaj** summoned KLA village commanders to Glodane/Gllogjan where he chaired a meeting on or around 23 May 1998. The purpose of this meeting was to create the Glodane/Gllogjan

<sup>13</sup> Hasanaj, P37, para.5.

<sup>14</sup> Witness 76, P304 (under seal), para.4; P290 (under seal).

<sup>15</sup> Witness 76, P305, para.13.

<sup>16</sup> Rexhahmetaj, P297, para.18; P299, p.3.

<sup>17</sup> Rexhahmetaj, T.1099.

<sup>18</sup> Rexhahmetaj, T.1097.

<sup>19</sup> Witness 80, T.2382-2386.

<sup>20</sup> Witness 80, T.2373, 2420-2421.

<sup>21</sup> Kabashi, P119, T.4218.

<sup>22</sup> Kabashi, P119, T.4179, 4185-4188, 4193-4194, 4217-4218, 4246-4247.

<sup>23</sup> Rexhahmetaj, P297, para.8.

<sup>24</sup> Z.Stijović, P121, para.2.

<sup>25</sup> Z.Stijović, T.563-570; P127.

Regional Staff, a sub-zone structure under the authority of sub-zone commanders which comprised several villages.<sup>27</sup> In addition to serving as a sub-zone commander himself, it was decided at this meeting that **Haradinaj** would serve as the head of the Glodane/Gllogjan Regional Staff.<sup>28</sup> In this capacity, he exercised authority over military and civilian matters.<sup>29</sup> Shemsedin Çekaj, who also served as a KLA sub-zone commander within the Glodane/Gllogjan Regional Staff, accepted that **Haradinaj** was the “first among equals” because he “was someone who was very important and enjoyed great respect”.<sup>30</sup>

12. After the creation of the Glodane/Gllogjan Regional Staff, **Haradinaj** continually expanded its area of control.<sup>31</sup> When Colonel John Crosland, British Defence and Military Attaché to the FRY,<sup>32</sup> met **Haradinaj** at his headquarters in Glodane/Gllogjan some time between March and May 1998,<sup>33</sup> **Haradinaj** “indicated that he controlled what was called the Dukadjin [*sic*] area”.<sup>34</sup>

13. At a meeting on 23 June 1998,<sup>35</sup> **Haradinaj** was appointed commander of the Operative Staff of the Dukagjin Plain, formalising his overall command over the entire Dukagjin zone, including the KLA headquarters in Jablanica/Jabllanicë.<sup>36</sup> According to Rexhahmetaj, **Haradinaj** was proposed for leadership by the professional soldiers who attended the meeting because they “respected him and [...] could stand by him professionally as soldiers” and “the people admired him”.<sup>37</sup> Beyond that, **Haradinaj** had “shown that he was a good soldier, a good leader, and a person who could gather people around him”.<sup>38</sup>

<sup>26</sup> Rexhahmetaj, T.1046-1048; P298, para.13; P299, p.2.

<sup>27</sup> P215 (under seal), p.2; P174; Hasanaj, P37, para.8; Tetaj, P75, T.3628-3637, 3641-3645, 3648; P78; S.Çekaj, P2, T.4432-4437, 4439; P6; Rexhahmetaj, T.1087; P298, paras.17-21; P297, paras.11-12, 14; P299, p.3. This structure is varyingly referred to as the: “Regional Staff of Glodane/Gllogjan” (Tetaj, P75, T.3648); “Dukagjin/Dukagjini Regional Staff” (see e.g. P181; P182; P185; P188; P189) and “Dukagjini Regional Headquarters” (see e.g. P175; P183; P184; P186; P187) (hereinafter “Glodane/Gllogjan Regional Staff”).

<sup>28</sup> Tetaj, P75, T.3636, 3641-3642, 3648; P78.

<sup>29</sup> P175; P176; P179; P181-P189.

<sup>30</sup> S.Çekaj, P2, T.4482.

<sup>31</sup> S.Çekaj, P4, para.17; P179; P180; P190-P192.

<sup>32</sup> Crosland, P8, T.2925.

<sup>33</sup> Crosland, P8, T.2964-2968, 4690-4692.

<sup>34</sup> Crosland, P8, T.2968.

<sup>35</sup> Tetaj, P75, T.3656-3661.

<sup>36</sup> P191-P194; P196; S.Çekaj, P4, paras.18-21; Zyrapi, T.738, 775-776; Tetaj, P75, T.3656-3661.

<sup>37</sup> Rexhahmetaj, T.1101.

<sup>38</sup> Rexhahmetaj, T.1100.

14. The Operative Staff of the Dukagjin Plain was headquartered in Glodane/Gllogjan.<sup>39</sup> Aside from a few days at the end of August 1998 when **Haradinaj** ceded formal command to Tahir Zemaj, who led the rival Armed Forces of the Republic of Kosovo (“FARK”),<sup>40</sup> **Haradinaj** retained his position of command over Dukagjin zone throughout the Indictment period.<sup>41</sup>

15. As commander of the Operative Staff of the Dukagjin Plain, **Haradinaj** exerted authority over civilian and military matters within the zone.<sup>42</sup> He was a strong, dynamic and “hands-on” regional commander, with direct contact, authority and control over the zone and his subordinates.<sup>43</sup> In his capacity as zone commander, **Haradinaj** tolerated no dissent to the authority of the KLA, going so far as to ban “[p]olitical activity of any party or association of a political nature”.<sup>44</sup> He also had the authority and ability to discipline KLA soldiers in the Dukagjin zone.<sup>45</sup> On the basis of what he observed when touring the Dukagjin zone in July 1998, Bislim Zyrapi, the then Director of the Operational Department of the KLA General Staff,<sup>46</sup> confirmed that **Haradinaj**’s “authority was respected”.<sup>47</sup>

## B. Role of Idriz Balaj

16. Idriz **Balaj** *a.k.a.* Toger/Togeri<sup>48</sup> was the commander of the Black Eagles—a rapid reaction unit designed to engage in combat throughout the Dukagjin zone.<sup>49</sup> After its formation in April 1998,<sup>50</sup> the Black Eagles were part of the Glodane/Gllogjan KLA headquarters which **Haradinaj** led.<sup>51</sup> **Balaj** trained the

<sup>39</sup> Tetaj, P75, T.3660-3661.

<sup>40</sup> Witness 17, P344 (under seal), para.100; Rexhahmetaj, P298, para.30; P299, p.2; P279; P280.

<sup>41</sup> P281; Witness 17, P344 (under seal), para.108; Rexhahmetaj, P298, paras.31-33; P299, p.2; Zyrapi, P160, paras.43-45.

<sup>42</sup> P74; P195-P201; P203; P204; P206-P214; P216; P218-P226; P228-P235; P237-P253; P255-P257; P259; P262-P266; P268; P270-P273; P275; P276; P83; Shala, P69, T.9980-9981.

<sup>43</sup> Crosland, P9 (under seal), T.2037-2038; Tetaj, P75, T.3619; P262; P267; Zyrapi, T.776; Witness 80, T.2421; P203; P205; C.Krasniqi, P54, para.66; S.Çekaj, P2, T.4484; P204; P348 (under seal); P234; P240; P265; P269; Hasanaj, P37, paras.5-6; Witness 17, P344 (under seal), para.59.

<sup>44</sup> P208. *See also* P195, pp.3-4.

<sup>45</sup> P204, p.2; P218; P211; P210; P259; P196; P212; P349 (under seal). *See below*, paras.164, 221. *See also* P195, p.4.

<sup>46</sup> Zyrapi, P159, T.3207-3208.

<sup>47</sup> Zyrapi, T.776.

<sup>48</sup> S.Çekaj, P2, T.4393-4394; Haskaj, P40, para.14; Tomaš, P338, para.26; Z.Stijović, P121, para.50; Witness 17, P344 (under seal), para.15; Witness 80, T.2453.

<sup>49</sup> Shala, P69, T.9970-9975; Haskaj, P40, paras.10, 12, 14-15; S.Çekaj, P2, T.4438-4439; Zyrapi, T.649-650; P159, T.3218-3220, 3225-3227; Tetaj, P75, T.3669-3670; Rexhahmetaj, P297, paras.19-20; P298, paras.39-40; Witness 80, T.2403; Z.Stijović, P121, para.50.

<sup>50</sup> S.Çekaj, P2, T.4438-4439, 4501-4502.

<sup>51</sup> Rexhahmetaj, P297, para.21; P299, p.3.



soldiers who joined his unit.<sup>52</sup> **Balaj** possessed significant authority by virtue of his command over the Black Eagles and his close relationship with **Haradinaj** and **Brahimaj**.<sup>53</sup>

17. **Balaj** was well-known for his violent behaviour. Shefqet Kabashi stated that he saw **Balaj** at “the Jablanica headquarters [and] [a]nybody [**Balaj**] found he would beat them.”<sup>54</sup> Witness 77 further confirmed that **Balaj** was known for his violent behaviour, and described incidents in which **Balaj** brutally mistreated FARK soldiers.<sup>55</sup> Ordinary villagers whose family members had been mistreated or had disappeared complained about **Balaj**’s behaviour to FARK commander Tahir Zemaj. To Witness 17 this indicated that “something was wrong.”<sup>56</sup>

18. The evidence given by Shefqet Kabashi and Witness 77 is consistent with the notorious reputation which **Balaj** and his Black Eagles had for engaging in violent crime. According to Zoran Stijović, “[t]he very name of Idriz **Balaj** instilled fear and was perceived as a threat among the [Albanian] population.”<sup>57</sup> KLA commander Rrustem Tetaj heard that members of **Balaj**’s Black Eagles who wanted to leave the unit or who were expelled from the unit were executed in order to prevent them from discussing the criminal activities in which the unit had engaged.<sup>58</sup> Tetaj also testified that **Balaj** and his Black Eagles were known for their brutality,<sup>59</sup> and were widely suspected of being responsible for the kidnapping and killing of Albanians, Serbs and Roma in the area:

It was like a secret, a public secret, everything which happened in Dukagjin. If it was not proved, then everybody said that this was done by Toger [...] This is what we heard, and that was how it happened. Everything bad that happened, it was attributed to the Toger.<sup>60</sup>

19. KLA soldiers feared **Balaj** and his Black Eagles. KLA soldier Pjetër Shala *a.k.a.* Ujku<sup>61</sup> indicated that other units did not “meddle” with the Black Eagles.<sup>62</sup>

<sup>52</sup> Haskaj, P40, paras.10, 14.

<sup>53</sup> See below, paras.28-29, 31-34, 36, 38, 40, 105-109, 187-191.

<sup>54</sup> Kabashi, P119, T.4262.

<sup>55</sup> Witness 77, T.1201-1203. [REDACTED]. See also Witness 77, T.1209-1211.

<sup>56</sup> Witness 17, P342, T.7577-7580, 7744.

<sup>57</sup> Z.Stijović, P122, T.9087 [emphasis added].

<sup>58</sup> Tetaj, P75, T.3691-3692.

<sup>59</sup> Tetaj, P75, T.3677.

<sup>60</sup> Tetaj, P75, T.3670.

<sup>61</sup> Shala, P69, T.9938.

According to Witness 80, **Balaj** “was there for the worst; unfortunately for many Albanians. [...] He did the same things he did during the war also after the war, jeopardizing the life of many people.”<sup>63</sup>

### C. Role of Lahi Brahimaj

20. Lahi **Brahimaj** *a.k.a.* Maxhup/Maxhupi<sup>64</sup> was second only to **Haradinaj** in power and prestige within the KLA of the Dukagjin zone. **Brahimaj** was the local commander of the KLA’s strategic stronghold of Jablanica/Jabllanicë during the Indictment period.<sup>65</sup> He was also a member of the KLA General Staff,<sup>66</sup> **Haradinaj**’s uncle<sup>67</sup> and an important and respected KLA figure in the Dukagjin zone.

21. From at least 1997, **Brahimaj** was in charge of the KLA headquarters in Jablanica/Jabllanicë, the oldest KLA headquarters in Western Kosovo.<sup>68</sup> The Jablanica/Jabllanicë region had been a “no-go” area for the MUP from the early 1990s.<sup>69</sup> By 1996, the KLA had established a visible presence in Jablanica/Jabllanicë including guards, checkpoints and curfews.<sup>70</sup>

22. Recognizing **Brahimaj**’s significance, the Serbian DB kept track of his activities and contacts in Jablanica/Jabllanicë.<sup>71</sup>

23. By April 1998, civilians who were, or were perceived to be, collaborating with the Serbian forces or otherwise not supporting the KLA were detained at the barracks in Jablanica/Jabllanicë.<sup>72</sup> Throughout the Indictment period **Brahimaj** commanded

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<sup>62</sup> Shala, P69, T.9974-9975.

<sup>63</sup> Witness 80, T.2403.

<sup>64</sup> Witness 6, P84, T.5218, 5245; Witness 17, P343 (under seal), T.7758; Kabashi, P119, T.4259.

<sup>65</sup> Kabashi, P119, T.4193, 4196, 4264-4265; Z.Stijović, P121, paras.23, 49; P122, T.9000-9001, 9006; P155; C.Krasniqi, P54, paras.33, 35, 62; Tomaš, P338, para.10; Hasanaj, P37, para.6; P193; Witness 75, T.911; Witness 76, P305, para.12; Witness 69, P364, T.9850-9851; Witness 80, T.2327; Witness 3, T.1598-1599; Shala, P69, T.9944-9948; Zyrapi, P159, T.3387-3388; Witness 7, P94, paras.7, 13, 16-26.

<sup>66</sup> Rexhahmetaj, P298, para.31; Z.Stijović, P121, para.48; J.Krasniqi, P64, T.5009-5010; Zyrapi, T.760; P159, T.3394.

<sup>67</sup> C.Krasniqi, P54, para.35; P151, p.1; Z.Stijović, P121, para.41; Witness 80, 2383-2384; Rexhahmetaj, T.1092.

<sup>68</sup> Z.Stijović, P121, para.49; P122, T.9006; P155; C.Krasniqi, P54, para.35.

<sup>69</sup> Avramović, P451, para.10; Gajić, P27, para.13; P28, p.1; Z.Stijović, P121, para.23; P122, T.9000, 9003-9004, 9007-9008; C.Krasniqi, P54, para.35; Rexhahmetaj, P297, para.10.

<sup>70</sup> Z.Stijović, P121, para.23.

<sup>71</sup> Z.Stijović, T.538-543, 547; P122, T.9000-9003, 9006; P124; P125.

<sup>72</sup> See below, para.87.

this detention facility,<sup>73</sup> maintained a near constant presence there<sup>74</sup> and was involved in all aspects of the mistreatment which detainees suffered.<sup>75</sup>

### III. CLOSE ASSOCIATION BETWEEN THE ACCUSED

24. Throughout the Indictment period, all three Accused worked closely with each other and with other JCE members in the mistreatment of perceived opponents in Jablanica/Jabllanicë and in establishing KLA control over the Dukagjin zone.

25. The KLA set up a make-shift detention facility at the barracks in Jablanica/Jabllanicë where perceived opponents were interrogated, mistreated and often murdered. As the KLA commander in Jablanica/Jabllanicë, **Brahimaj** was instrumental in running this detention facility.<sup>76</sup> As zone commander, **Haradinaj** had the ultimate authority to decide who was a collaborator within the Dukagjin zone.<sup>77</sup> **Haradinaj** also maintained a presence in Jablanica/Jabllanicë throughout the Indictment period,<sup>78</sup> and knew that, as in Glodane/Glllogjan and other parts of Kosovo controlled by the KLA, real or perceived opponents were being mistreated in Jablanica/Jabllanicë.<sup>79</sup> **Haradinaj** accepted, supported and furthered such conduct. **Balaj** and **Brahimaj** were among those who physically participated in the mistreatment and murder of detainees in Jablanica/Jabllanicë.<sup>80</sup> They issued instructions for detainees to be sent to Drenica, a common euphemism employed by the KLA when ordering the execution or liquidation of perceived opponents.<sup>81</sup> Aware that serious abuses had occurred in Jablanica/Jabllanicë, on 25 October 1998,

<sup>73</sup> Witness 7, P94, paras.7, 13, 16-26; Witness 75, T.911; Witness 76, P305, para.12; Witness 3, T.1598-1599; Kabashi, P119, T.4264-4265; Z.Stijović, P121, para.49.

<sup>74</sup> Witness 7, P94, paras.7-17, 19-26; Witness 75, T.911; Witness 76, P305, para.12; Witness 6, P84, T.5218; Haverinen, P46, paras.14-15, Annexes 4 and 5; Kabashi, P119, T.4252-4259, 4262; Witness 3, T.1598-1599.

<sup>75</sup> See below, paras.87, 102, 107-108, 118, 125, 144-145, 148, 152-154, 159-160, 163, 176, 183-186, 188-190, 238.

<sup>76</sup> See below, paras.102, 107-108, 118, 125, 144-145, 148, 152-154, 159-160, 163, 176, 183-186, 188-190, 236-238.

<sup>77</sup> J.Krasniqi, P67, T.3324-3325; P176, p.6; P177, p.2.

<sup>78</sup> Witness 80, T.2380-2382, 2386, 2421. See below, paras.36, 38, 164, 166, 168, 208, 213-214.

<sup>79</sup> See below, Section IV, paras.208-209, 211-214, 218, 224-228.

<sup>80</sup> Kabashi, P119, T.4362. See below, paras.87, 107-108, 118, 125, 144-145, 148, 152-154, 159-160, 163, 176, 183-186, 188-190, 231-233, 238, 250-252, 256.

<sup>81</sup> See below, paras.48, 108, 118, 231, 238, 250, 256.

**Haradinaj** nonetheless wrote “to thank the village of Jabllanica, Gjakova municipality, for their constant readiness to help the Kosovo Liberation Army.”<sup>82</sup>

26. The Accused’s participation in the specific crimes charged is described in detail in the sections: “The Crimes in Jablanica/Jabllanicë”<sup>83</sup> and “The Accused’s Individual Criminal Responsibility”.<sup>84</sup>

27. In early 1998, the KLA in western Kosovo was organised around family power bases.<sup>85</sup> In addition to heading the two most prominent clans in the Dukagjin zone, <sup>86</sup> **Haradinaj** and **Brahimaj** maintained a strong family connection with each other which mirrored their close working relationship.<sup>87</sup> The two commanded the most important KLA headquarters of the Dukagjin zone: Glodane/Gllogjan and Jablanica/Jabllanicë. These were strategic locations in the KLA’s weapons supply route,<sup>88</sup> and in the KLA’s overall plan to create a corridor linking the Drenica zone to the Albanian border.<sup>89</sup> **Haradinaj** and **Brahimaj** co-operated in procuring and distributing weapons from Albania.<sup>90</sup>

28. By 30 March 1998, Jablanica/Jabllanicë was guarded and fortified by armed and trained KLA members commanded by **Brahimaj**.<sup>91</sup> Before moving to Glodane/Gllogjan, **Balaj** was based in Jablanica/Jabllanicë where he trained KLA soldiers.<sup>92</sup>

29. The Jablanica/Jabllanicë and Glodane/Gllogjan headquarters co-operated during military actions during the Indictment period.<sup>93</sup> As noted above, on 24 March 1998, the MUP and the KLA fought a day-long battle around **Haradinaj**’s family compound in Glodane/Gllogjan.<sup>94</sup> KLA soldiers based in Jablanica/Jabllanicë went to

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<sup>82</sup> P171.

<sup>83</sup> See below, Section VI.

<sup>84</sup> See below, Section VII.

<sup>85</sup> Zyrapi, T.703.

<sup>86</sup> Zyrapi, T.703.

<sup>87</sup> P151, pp.1, 3-5; Witness 80, T.2383-2384.

<sup>88</sup> Z.Stijović, T.563-569; P121, para.25; P127; Witness 77, T.1299-1300 (private); Rexhahmetaj, P297, paras.8-10; Kabashi, P119, T.4185-4191; Zyrapi, T.682-683.

<sup>89</sup> Z.Stijović, P122, T.9004-9005; P28, p.3; Crosland, P9 (under seal), T.1945-1947.

<sup>90</sup> Shala, P69, T.9938-9945, 9979.

<sup>91</sup> P152; C.Krasniqi, P54, para.33; P28.

<sup>92</sup> Shala, P69, T.9969-9970.

<sup>93</sup> Rexhahmetaj, P297, paras.16, 18; C.Krasniqi, P54, paras.51-52; Hasanaj, P37, para.8. See also S.Çekaj, P4, paras.13-16.

<sup>94</sup> See above, para.6.

Glodane/Gllogjan as reinforcements.<sup>95</sup> A number of them, including **Balaj**, remained in Glodane/Gllogjan.<sup>96</sup> Following the battle, **Haradinaj** and others sought refuge in Jablanica/Jabllanicë where **Haradinaj** recovered from his injuries at **Brahimaj**'s home.<sup>97</sup> After **Haradinaj** and his fighters retreated to Jablanica/Jabllanicë, the MUP found arms, ammunition, uniforms, and lists of current or former MUP officers and alleged Albanian collaborators at **Haradinaj**'s family compound.<sup>98</sup>

30. The confrontation at **Haradinaj**'s family compound galvanised Kosovar Albanian support,<sup>99</sup> and following this battle, the Glodane/Gllogjan KLA Staff became the epicentre of the KLA in the area.<sup>100</sup> **Haradinaj** encouraged villagers in the area to organise KLA staffs, assisted them in obtaining weapons from Albania<sup>101</sup> and influenced their selection of leaders.<sup>102</sup>

31. After **Balaj** transferred to Glodane/Gllogjan, his Black Eagles unit was formed in April 1998.<sup>103</sup> **Balaj** worked closely with **Haradinaj**. Serbian DB intelligence confirmed that **Haradinaj** and **Balaj** were very close, and were often seen together.<sup>104</sup> **Balaj**'s Black Eagles unit was a part of the Glodane/Gllogjan KLA headquarters which **Haradinaj** led.<sup>105</sup> **Haradinaj** controlled the unit's deployment and **Balaj** was his direct subordinate.<sup>106</sup> **Balaj** reported to **Haradinaj**.<sup>107</sup>

32. Throughout the Indictment period, **Balaj** and his Black Eagles were physically based in proximity to **Haradinaj**'s Glodane/Gllogjan headquarters.<sup>108</sup> KLA members needed special authorisation from **Haradinaj** to visit the Black Eagles headquarters.<sup>109</sup> **Balaj** frequently travelled with **Haradinaj** and appeared alongside

<sup>95</sup> Shala, P69, T.9970-9971; Rexhahmetaj, P297, paras.16, 18.

<sup>96</sup> Shala, P69, T.9970-9971.

<sup>97</sup> Z.Stijović, P121, para.41; P151, p.3; P31, p.2.

<sup>98</sup> Z.Stijović, T.570; P121, para.41. *See below*, para.59.

<sup>99</sup> Rexhahmetaj, P298, para.11; P299, p.2; Tetaj, P77, para.20; P75, T.3705.

<sup>100</sup> Tetaj, P77, para.20; C.Krasniqi, P54, para.43.

<sup>101</sup> Tetaj, P77, paras.20, 22; P75, T.3613, 3621-3623; S.Çekaj, P2, T.4393, 4395, 4397; C.Krasniqi, P54, para.45; P52, T.5706, 5708-5709; Z.Stijović, P121, para.25; P122, T.9073-9076; Hasanaj, P37, para.3; Rexhahmetaj, P297, paras.7-8; P127.

<sup>102</sup> Z.Stijović, P122, T.9073-9074; Hasanaj, P37, paras.4-6; P36, T.8743.

<sup>103</sup> S.Çekaj, P2, T.4438-4439, 4501-4502.

<sup>104</sup> Z.Stijović, P121, para.50; P122, T.9073-9074.

<sup>105</sup> Rexhahmetaj, P297, para.21; P299, p.3.

<sup>106</sup> Rexhahmetaj, P297, para.21; P298, para.40; Z.Stijović, P121, para.50; Shala, P69, T.9971-9972; Zyrapi, T.649-650; P159, T.3226-3227; Witness 17, P342, T.7556.

<sup>107</sup> Witness 17, P342, T.7556, 7558; Z.Stijović, P121, para.50.

<sup>108</sup> Haskaj, P40, paras.13, 17; P41, pp.1-2; S.Çekaj, P2, T.4438-4439; Rexhahmetaj, P298, para.39; Zyrapi, T.649; P159, T.3218-3220.

<sup>109</sup> Shala, P69, T.9974-9975.

him at various meetings.<sup>110</sup> **Balaj** accompanied **Haradinaj** to a meeting with Rustem Tetaj in Glodane/Gllogjan in mid-April 1998,<sup>111</sup> and to a similar meeting with Shemsedin Çekaj in Rznić/Irznj on 20 April 1998.<sup>112</sup> **Haradinaj** had frequent contact with **Balaj** and the Black Eagles when the unit was based in Glodane/Gllogjan.<sup>113</sup> **Balaj** also accompanied **Haradinaj** to almost every important KLA/FARK meeting in the Dukagjin zone, and was responsible for **Haradinaj**'s security at these meetings.<sup>114</sup> Based upon what he observed during meetings at which **Haradinaj** and **Balaj** were present, Rexhahmetaj concluded that they had a close relationship.<sup>115</sup>

33. **Haradinaj** used **Balaj** and his Black Eagles to intimidate opponents. **Balaj** and the Black Eagles were **Haradinaj**'s show of force when he confronted the FARK command in Papraçane/Prapacan on 10 July 1998.<sup>116</sup> **Haradinaj** also accepted and encouraged **Balaj**'s violent behaviour. On 11 August 1998, **Balaj** detained a group of monitors from the European Community Monitoring Mission ("ECMM") in Rznić/Irznj; took them to **Haradinaj**'s headquarters in Glodane/Gllogjan; accused them of spying for the Serbs; and beat, kicked and punched the group's Albanian interpreter before handing them over to **Haradinaj**, who interrogated each of them.<sup>117</sup> **Haradinaj** demonstrated his support for **Balaj**'s violence against perceived enemies and opponents most clearly when he and **Balaj** attacked four FARK soldiers in Glodane/Gllogjan on 4 July 1998.<sup>118</sup> Complaints concerning **Balaj**'s behaviour were delivered in vain to **Haradinaj**,<sup>119</sup> who lauded **Balaj**'s fighting skills.<sup>120</sup>

34. On or around 23 May 1998, the KLA formed the Glodane/Gllogjan Regional Staff, commanded by **Haradinaj**.<sup>121</sup> After its formation, **Balaj** attended its meetings and reported to the Staff.<sup>122</sup>

<sup>110</sup> S.Çekaj, P2, T.4393-4395; Witness 17, P344 (under seal), para.15; Tetaj, P75, T.3618-3621; Rexhahmetaj, P297, para.19; P298, paras.39-41; Witness 80, T.2422.

<sup>111</sup> Tetaj, P75, T.3612-3613, 3618-3621, 3709-3710.

<sup>112</sup> S.Çekaj, P2, T.4390, 4393-4395.

<sup>113</sup> Haskaj, P39, T.10313-10314; P40, para.17; P41, p.2.

<sup>114</sup> Witness 17, P344 (under seal), paras.15, 41; P342, T.7555-7557; Witness 29, P359, T.3537-3539.

<sup>115</sup> Rexhahmetaj, P298, paras.39-41.

<sup>116</sup> See below, para.84.

<sup>117</sup> See below, para.85.

<sup>118</sup> See below, paras.81-83.

<sup>119</sup> Witness 17, P344 (under seal), paras.40, 50, 109; P342, T.7572-7582; Tetaj, P75, T.3673-3675.

<sup>120</sup> Rexhahmetaj, P297, para.19; Zyrapi, P159, T.3383.

<sup>121</sup> See above, para.11.

35. The Jablanica/Jabllanicë headquarters was not formally included within the Glodane/Gllogjan Regional Staff because it was not under an immediate threat of attack by Serb forces due to its remote location.<sup>123</sup> Nevertheless, by May 1998, **Brahimaj** regarded **Haradinaj** as his superior.<sup>124</sup> By this time **Haradinaj** had visited the KLA detention centre in Jablanica/Jabllanicë and was working closely with KLA officials there.<sup>125</sup> In early June 1998, Rexhahmetaj approached **Haradinaj** to arrange a meeting to improve coordination with the Jablanica/Jabllanicë headquarters because he knew that **Haradinaj** had contacts with the KLA in Jablanica/Jabllanicë.<sup>126</sup> On 9 June 1998, **Haradinaj** and **Brahimaj**'s brother Nazmi ensured that an injured soldier was transferred to another zone which had better medical facilities.<sup>127</sup>

36. On 21 and 23 June 1998, **Haradinaj** called and chaired meetings to further expand the organisation of the KLA under his command.<sup>128</sup> **Brahimaj** and Nazmi **Brahimaj** represented the Jablanica/Jabllanicë Staff.<sup>129</sup> At the meeting on 21 June 1998, **Haradinaj** discussed regulations issued that day concerning the operation of the KLA Military Police ("PU").<sup>130</sup> These regulations formalised the PU's role as a force dedicated to targeting perceived collaborators.<sup>131</sup> The meeting on 23 June 1998 was held in **Brahimaj**'s house.<sup>132</sup> Reflecting the importance that the family ties between **Haradinaj** and **Brahimaj** had played in the establishment and growth of the KLA within the Dukagjin zone, **Haradinaj** told those present: "[W]e need to be positioned well, organised. Friendly and family connections are not enough. I can help as a friend or a relative, but I cannot make someone else do the same."<sup>133</sup> **Haradinaj** and **Brahimaj** nominated each other to assume command over the Dukagjin zone.<sup>134</sup> **Haradinaj** was ultimately voted commander of the Operative Staff of the Dukagjin Plain, to be headquartered in Glodane/Gllogjan.<sup>135</sup> **Brahimaj**

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<sup>122</sup> S.Çekaj, P2, T.4436-4442; P177.

<sup>123</sup> Rexhahmetaj, P297, para.18.

<sup>124</sup> See above, para.9.

<sup>125</sup> Witness 80, T.2382-2384, 2386; P178.

<sup>126</sup> Rexhahmetaj, T.1091-1094; P297, para.16; P299, p.3.

<sup>127</sup> P178.

<sup>128</sup> P190; P191; P192; Tetaj, P75, T.3658-3659.

<sup>129</sup> P190; P191; P192; Rexhahmetaj, P297, para.15; S.Çekaj, P4, para.18.

<sup>130</sup> P190, p.3; P349 (under seal).

<sup>131</sup> P349 (under seal).

<sup>132</sup> Tetaj, P75, T.3657-3658; S.Çekaj, P4, para.18.

<sup>133</sup> P191, p.2.

<sup>134</sup> P191, p.4; P192, p.3.

<sup>135</sup> P191, p.4; P192, p.3; S.Çekaj, P4, para.19; Tetaj, P75, T.3657-3661.

formally became **Haradinaj**'s deputy commander.<sup>136</sup> **Balaj**'s position as **Haradinaj**'s direct subordinate was also formalised by virtue of his appointment as **Haradinaj**'s officer responsible for "sabotage and antiterrorist combat".<sup>137</sup>

37. Despite only assuming formal authority over **Brahimaj** on 23 June 1998, prior to that date **Haradinaj** was in a position of influence and *de facto* authority *vis-à-vis* **Brahimaj** and other KLA soldiers in Jablanica/Jabllanicë by virtue of: his position as the commander of the Glodane/Gllogjan KLA headquarters;<sup>138</sup> the widespread perception of him as the commander of the Dukagjin zone;<sup>139</sup> the perception of **Brahimaj** and other KLA soldiers in Jablanica/Jabllanicë that **Haradinaj** was in a position of authority;<sup>140</sup> **Haradinaj**'s role in organising the KLA within the Dukagjin zone<sup>141</sup> and his close familial relationship with **Brahimaj**.<sup>142</sup>

38. After 23 June 1998, in addition to exercising formal authority over **Brahimaj** and **Balaj**, **Haradinaj** continued to work closely with them. **Haradinaj** used **Brahimaj**'s home in Jablanica/Jabllanicë as an alternative command post, convening official meetings there on 1 July and in mid-July 1998.<sup>143</sup> **Haradinaj** also continued to closely manage the KLA headquarters in Jablanica/Jabllanicë by appointing soldiers to positions of leadership within the village.<sup>144</sup> For example, by mid-July 1998, Driton Zeneli, a soldier who had replaced **Haradinaj** as the commander of the Glodane/Gllogjan Staff, was responsible for front-line positions in Jablanica/Jabllanicë.<sup>145</sup>

39. When **Haradinaj** terminated **Brahimaj**'s appointment as his deputy commander on 5 July 1998, **Haradinaj** appointed **Brahimaj**'s brother Nazmi as **Brahimaj**'s replacement.<sup>146</sup> **Brahimaj** retained his position as the commander of Jablanica/Jabllanicë, and continued to work under **Haradinaj** and the Operative Staff

<sup>136</sup> P191, p.4; P192, p.3; P193; P195, p.1.

<sup>137</sup> P193.

<sup>138</sup> See above, paras.6-7, 10, 27, 30.

<sup>139</sup> See above, paras.7-9, 12.

<sup>140</sup> See above, para.9.

<sup>141</sup> See above, paras.10-13, 30, 36.

<sup>142</sup> See above, paras.20, 27, 29, 35.

<sup>143</sup> Zyrapi, T.681-682; P159, T.3207-3211, 3213, 3387-3388; P204.

<sup>144</sup> P198; P227; P248; P242; Zyrapi, T.685, 762.

<sup>145</sup> P198; P227; P248; P242; Zyrapi, T.685, 762.

<sup>146</sup> P218; S.Çekaj, P4, para.23. See also P211; P204, p.2.



of the Dukagjin Plain.<sup>147</sup> **Brahimaj** was also the finance director of the KLA General Staff<sup>148</sup> and served as a liaison between **Haradinaj** and the General Staff.<sup>149</sup>

40. On 8 July 1998, **Haradinaj** listed **Balaj** as the officer in the Glodane/Gllogjan Staff responsible for the Special Units within the Operative Staff of the Dukagjin Plain.<sup>150</sup>

41. Reflecting the close ties which **Haradinaj** shared with the Brahimaj family, at a meeting on 20 August 1998 to discuss the leadership of the Dukagjin zone, Nazmi Brahimaj opposed an initiative to replace **Haradinaj** as zone commander. Voicing his support for **Haradinaj**, Nazmi Brahimaj indicated that **Haradinaj**

has shown himself to be a distinguished staff member of the KLA, and a fine fighter and military strategist. [**Haradinaj**'s] military experience has contributed to the progress of the war, until it has assumed the dimensions of an /?outright/ war, and the frontal war that we see today.<sup>151</sup>

42. **Haradinaj** reciprocated, speaking glowingly of Nazmi Brahimaj and Alush Agushi (*a.k.a.* Mala<sup>152</sup>), another soldier from Jablanica/Jabllanicë<sup>153</sup>:

[C]ertain tested members of the Operational Staff of the Plain of Dukagjini should not be ignored, such as Mala, Nazmi, and certain others. Work should be found for them and they should be assigned to a section under this directorate, where they may find their place.<sup>154</sup>

43. As set out in greater detail below, throughout the Indictment period, the three Accused and other JCE members co-operated in the mistreatment of perceived opponents in Jablanica/Jabllanicë.

<sup>147</sup> See below, paras.144-146, 148, 152-155, 158-163, 165, 176, 189-191.

<sup>148</sup> Zyrapi, P159, T.3212-3213, 3394; Rexhahmetaj, P298, para.32.

<sup>149</sup> Z.Stijović, P121, para.48; J.Krasniqi, P64, T.5009-5010.

<sup>150</sup> P227.

<sup>151</sup> P279, pp.1-2.

<sup>152</sup> Zyrapi, P160, para.31; P192.

<sup>153</sup> Shala, P69, T.9955; D.Krasniqi, P50, T.4810; Witness 80, T.2372, 2402, 2406, 2417.

<sup>154</sup> P279, p.3.

#### IV. KLA VIOLENCE AGAINST PERCEIVED OPPONENTS

44. The crimes charged occurred in the context of an armed conflict between the Serbian forces and the KLA, which existed throughout Kosovo at all times relevant to the Indictment from and including 22 April 1998.<sup>155</sup> The KLA, as its name implies, fought a war of liberation against the Serbian forces. The Accused pursued that aim, and in doing so, sought to control the Dukagjin zone – to the exclusion of enemy forces – by suppressing real or perceived opposition.

45. While the Accused were fighting a war, and thus used legitimate force to establish KLA control of the Dukagjin zone, they also jointly achieved their aim through the brutal elimination of opposition. The targeted civilians were, or were perceived to be, collaborating with the Serbian forces or were otherwise not supporting the KLA. Members of the KLA abducted, interrogated and mistreated such persons and often murdered them. These acts of violence created an atmosphere of fear and intimidation within the population of the Dukagjin zone and elsewhere in Kosovo where the KLA was operating.

46. [REDACTED].<sup>156</sup>

47. KLA commander Cufë Krasniqi confirmed that “[i]t was a duty of every KLA soldier to report if they knew a collaborator.”<sup>157</sup> KLA spokesperson<sup>158</sup> Jakup Krasniqi testified that KLA operational units had the power and discretion to determine who “was harmful to the KLA”.<sup>159</sup>

48. Numerous perceived KLA opponents were cruelly treated and tortured at the detention facility in Jablanica/Jabllanicë.<sup>160</sup> At least one died as a consequence of the mistreatment.<sup>161</sup> Others were executed.<sup>162</sup> KLA soldiers regularly employed the euphemisms, ‘send them to Drenica’, or “taken to Pejë”, which meant that a person was to be or had been executed.<sup>163</sup> The KLA’s willingness to resort to violence was so

<sup>155</sup> AF1.

<sup>156</sup> [REDACTED].

<sup>157</sup> C.Krasniqi, P54, para.87.

<sup>158</sup> J.Krasniqi, P65, para.4.

<sup>159</sup> J.Krasniqi, P67, T.3324-3325.

<sup>160</sup> See below, Sections V, VI.

<sup>161</sup> See below, paras.160-163, 165, 167.

<sup>162</sup> See below, paras.108-110, 114, 118, 120, 134, 137, 177-178, 181.

<sup>163</sup> Witness 80, T.2405; Kabashi, P119, T.4253; D.Krasniqi, P50, T.4824-4825. See below, paras.108-110, 118.

notorious that the true meaning of these phrases was known to common KLA soldiers and villagers. According to Kabashi, if someone was sent to Drenica, it meant “you will see the end of that person. That person was supposed to be executed.”<sup>164</sup> He added that the phrase “sent them to Drenica” was “constantly used”.<sup>165</sup> Witness 80 confirmed that the phrase meant “they would be killed or would not [*sic*] longer be seen alive.”<sup>166</sup> Ded Krasniqi, the father of Count 5 victim Pal Krasniqi, was told that his son “had been taken to Pejë”, which meant that he “disappeared, not to return ever again.”<sup>167</sup>

49. Victims of the KLA included:

- Non-Serbs who had been recruited into the Serbian security services, police or military, or otherwise served or were perceived to serve the Serbian regime and were thus considered collaborators;<sup>168</sup>
- Kosovo Albanians who did not want to take up arms to fight against the Serb state,<sup>169</sup> or who supported the Democratic League of Kosovo (“LDK”), opposition political party;<sup>170</sup>
- Serbs as well as ethnic Montenegrins who, like Serbs or those spying for the Serbs, were considered KLA enemies;<sup>171</sup>
- Catholic Kosovar Albanians, who frequently did not support or join the KLA and had good relations with Serbs;<sup>172</sup> and
- Roma/Egyptian Kosovar Albanians, as many did not join the KLA and had good relations with Serbs.<sup>173</sup>

The victims in Counts 1 to 6 came from these groups.

<sup>164</sup> Kabashi, P119, T.4253.

<sup>165</sup> Kabashi, P119, T.4253.

<sup>166</sup> Witness 80, T.2405.

<sup>167</sup> D.Krasniqi, P50, T.4823-4824.

<sup>168</sup> J.Krasniqi, P65, Annex 18, p.4; P67, T.3320, 3326-3327, 3437; P64, T.5060-5062, 5064-5065, 5153; Kabashi, P119, T.4194-4195; Witness 80, T.2340.

<sup>169</sup> Avramović, P449, T.6602.

<sup>170</sup> Tetaj, P77, para.29; P75, T.3671; Witness 80, T. 2324-2325, 2621; Witness 7, P94, para.15.

<sup>171</sup> P135; Z.Stijović, P121, paras.22, 59; P149 (under seal), p.2; P31, p.3; Witness 80, T.2396; P442, p.6.

<sup>172</sup> Witness 6, P85 (under seal), T.5238-5239, 5263; Witness 66, P107 (under seal), T.8415-8416; P34, p.4; P33.

<sup>173</sup> Witness 66, P107 (under seal), T.8413-8416.

50. The violence and the atmosphere of fear and intimidation is reflected in: (a) the KLA's public communiqués; (b) the KLA's 'blacklists' of persons suspected of disloyalty; (c) the use of the PU to identify collaborators and suppress those working against the KLA; (d) contemporaneous Serb military, police and intelligence service reports; and (e) the cruel treatment, torture and murder of persons suspected of collaboration or sympathy with the enemies of the KLA.

51. It was within this context that **Haradinaj, Balaj, Brahimaj** and other KLA soldiers, including other members of the Brahimaj family, worked together to suppress and eliminate perceived opponents in Jablanica/Jabllanicë.

#### A. KLA communiqués

52. From the early 1990s onward, the KLA terrorised Serb civilians and others considered to be enemies of the Kosovar Albanians. The KLA's methods were violent and brutal. Its leadership advocated and pursued terrorist acts and ethnically motivated violence. It then issued communiqués proudly taking responsibility for these acts.

53. The "Kosovo People's Movement", the separatist party which established the KLA in April 1993,<sup>174</sup> printed an Albanian-language newsletter in Switzerland called *Zëri i Kosovës*.<sup>175</sup> *Zëri* became the KLA's mouthpiece, publishing communiqués in the name of the KLA General Staff claiming responsibility for specific attacks against police and alleged collaborators.<sup>176</sup>

54. From 1994 onwards the KLA publicly claimed responsibility in its communiqués for murders and other attacks against collaborators and others not supporting the KLA.<sup>177</sup> The KLA was not shy in taking responsibility for murdering civilians, including police officers, and other acts of terrorism, and, by the end of 1997, it had issued some 40 communiqués claiming responsibility for such attacks.<sup>178</sup>

<sup>174</sup> J.Krasniqi, P67, T.3294, 3296, 3306-3307; Z.Stijović, P121, para.18; P122, T.8962.

<sup>175</sup> J.Krasniqi, P64, T.5013, 5015.

<sup>176</sup> J.Krasniqi, P64, T.5013; Z.Stijović, P122, T.8928.

<sup>177</sup> P129; P131; P132; P134; P136-P139; P142-P146; P126; Z.Stijović, T.551-556; P121, paras.19-20; J.Krasniqi, P65, Annexes 1, 2, 4, 5.

<sup>178</sup> P129-P146; Z.Stijović, P121, para.20; J.Krasniqi, P65, Annexes 1-19.

For example, on 11 December 1997, the KLA introduced itself by announcing that it had turned “the barrel of a gun against the invader and traitors.”<sup>179</sup>

55. Throughout 1998, the KLA announced and claimed responsibility for attacks and punitive measures against collaborators.<sup>180</sup> In 1998, the KLA claimed responsibility for attacks against the Serbian police<sup>181</sup> and on 4 March 1998, the KLA General Staff publicly declared “death to enemies and traitors.”<sup>182</sup> On 6 July 1998, Jakup Krasniqi warned collaborators that “we will kill them if they continue to follow the wrong path.”<sup>183</sup> KLA communiqué 53, issued on 19 September 1998, stated: “[p]unitive measures of various kinds are also being undertaken against collaborationist elements that continue to serve the occupying power.” In the *Limaj et al.* trial, Jakup Krasniqi confirmed the accuracy of this communiqué, stating that, “of course” the KLA had taken punitive measures against collaborators.<sup>184</sup> He attempted to back away from this admission during his testimony in the original trial in this case.<sup>185</sup> His testimony in the original trial on this point should be rejected as self-serving, particularly given that he admitted to having heard that the KLA executed collaborators.<sup>186</sup>

56. The claims in the communiqués were not propaganda. They generally corresponded with actual attacks on suspected collaborators and KLA opponents, including attacks against:

- Lufti Ajazi, a Kosovar Albanian working for the Serbian DB;<sup>187</sup>
- Radivoje Papović, the Dean of the University of Priština/Prishtina “the well-known enemy of the Albanian folk”;<sup>188</sup>
- Ali Qellapeku, a 70-year-old former DB informer, who was killed because of his “anti-nationalist activity”;<sup>189</sup>

<sup>179</sup> P145; J.Krasniqi, P67, T.3324-3325.

<sup>180</sup> P148; J.Krasniqi, P65, Annexes 13, 16.

<sup>181</sup> J.Krasniqi, P65, Annexes 6, 7; P147.

<sup>182</sup> J.Krasniqi, P65, p.37, Annex 8; P67, T.3335-3336.

<sup>183</sup> J.Krasniqi, P67, T.3359-3363.

<sup>184</sup> J.Krasniqi, P67, T.3354.

<sup>185</sup> J.Krasniqi, P64, T.5152-5154.

<sup>186</sup> J.Krasniqi, P64, T.5118.

<sup>187</sup> Z.Stijović, P121, para.19; P122, T.8932, 8956-8960.

<sup>188</sup> Z.Stijović, P121, para.20(h); P122, T.8974-8975; P139.

<sup>189</sup> Z.Stijović, P121, para.20(k); P122, T.8993-8994; P142; J.Krasniqi, P65, Annex 2.

- Zdravko Tomčić, “the Serbian-imposed” President of the municipality of Podujevo/Podujevë;<sup>190</sup>
- Qamil Gashi, a Serbian Socialist Party (“SPS”) official described as “a missionary of the Serb invader against our liberation war”;<sup>191</sup>
- Maliq Sheholli, an Albanian SPS member, described as “a collaborator of the Serbian occupier”;<sup>192</sup> and
- Jakup Kastrati and Cen Desku, two LDK members, because “they called on people to surrender arms” to the Serbian authorities and “cooperated with collaborationists”.<sup>193</sup>

57. Communiqués also claimed responsibility for attacks on police stations.<sup>194</sup> Automatic weapons and grenades were commonly used, and policemen were killed. The police stations in Rznić/Irzniq, Klinčina/Klinčinë and Ćelopek/Qallapek were repeatedly attacked.<sup>195</sup> This was consistent with the actions of the KLA over the preceding years and its numerous communiqués boasting of similar acts of violence against Serb civilians and other perceived opponents.

#### **B. KLA ‘blacklists’**

58. KLA ‘blacklists’ of individuals who were suspected of being disloyal to the KLA, sympathising with the opposition LDK, or having worked for the Serbian authorities, were circulated amongst KLA village guards so that they could prevent these people from entering the villages.<sup>196</sup> The objective was to “compromise” or discredit those who had been “blacklisted”.<sup>197</sup>

59. When MUP forces attacked **Haradinaj’s** family compound in Glodane/Gllogjan on 24 March 1998, they found lists of alleged Albanians

<sup>190</sup> Z.Stijović, P121, para.20(o); P122, T.8983-8984; P145; J.Krasniqi, P65, Annex 5.

<sup>191</sup> Z.Stijović, P121, para.20(p); P146; J.Krasniqi, P65, Annex 4.

<sup>192</sup> Z.Stijović, T.552; P126, p.1.

<sup>193</sup> Z.Stijović, T.553-556; P126, p.2.

<sup>194</sup> P131; P137; P143; P144; P147.


<sup>195</sup> Z.Stijović, P122, T.8992-8993; Zlatković, P373, para.17.

<sup>196</sup> Tetaj, P77, paras.29-30; P75, T.3863, 3858-3859; Witness 17, P344 (under seal), paras.56-58; P342, T.7583-7586, 7694-7700.

<sup>197</sup> Tetaj, P77, para.29; P75, T.3671, 3858-3859.

collaborators, amongst arms, ammunition and uniforms. These lists included persons who were part of the DB's informant network.<sup>198</sup>

60. Tetaj, who was a former Yugoslav People's Army ("JNA") officer from Donja Luka/Lluka ë Ultë in Deçani/Deçan municipality,<sup>199</sup> knew of many people who had been "blacklisted".<sup>200</sup>

Persona  U0085675

1. Zenel Mehmet - [illegible]
2. Ali Mehmet - " - "
3. Mehmet Alia - " - "
4. Tahir Zhukri - " - "
5. Zenun Gashi - " me djal
6. Zenel Mehmet - " - "
7. Shekret Sadiku me familje
8. Dva gra bashkëpunëtorë Turjak - Kosturiç  
konfliktin në Turjak një i plagosur  
me një plagë kyçë prej një ore  
dhe detyrë në anën tjetër me  
shkretimin e sistemit neural  
zëndror (Induktor)
9. Misin Berisha - Rom Glogjan
10. Skender Sali Kuçi - Lutogllavë

Wanted /or missing ?/ Persons

1. Zenel /illegible/ /illegible
2. Ali /illegible / " "
3. Mehmet Alia " "
4. Tahir Zhukri " "
5. Zenun Gashi " together with his son
6. Zenel Mehmeti " "
7. Shekret Sadiku together with his family
8. Two women collaborators Turjak - Kosturiç

The conflict in Turjak, one wounded person, entrance wound on a side of the neck and the exit on the other side with the destruction of the central neural system (? inductive)

9. Misin Berisha - Roma person, Glogjan
10. Skender Sali Kuçi - Lutogllavë

D146, p.26 (Alb), pp.13-14 (Eng)

61. On or around 12 July 1998, Witness 17 was given a list of persons sought after by the KLA, including Zenun Gashi and Skender Kuçi.<sup>201</sup> Kuçi, who was accused of being a spy for the Serbs, was soon after detained in Jablanica/Jabllanicë and died as a consequence of the mistreatment inflicted upon him there.<sup>202</sup> Gashi, a retired police officer, was cruelly treated and murdered in KLA custody. His remains were found close to those of Pal Krasniqi (Count 5), in KLA controlled territory, along the canal wall at the Lake Radonjić canal.<sup>203</sup>

<sup>198</sup> Z.Stijović, T.570-573; P121, para.41; P31.

<sup>199</sup> Tetaj, P77, para.1; P75, T.3604-3605.

<sup>200</sup> Tetaj, P77, para.29; P75, T.3671.

<sup>201</sup> Witness 17, P344 (under seal), paras.56-59; P342, T.7583-7586, 7693-7700; D146, pp.13-14.

<sup>202</sup> See below, paras.159, 165, 167.

<sup>203</sup> Witness 52, P495 (under seal), T.9623-9625, 9635, 9640-9643; Dizdari, P467, paras.18-21; Selca, P332, T.10864, 10873-10875, 10884; Witness 17, P344 (under seal), paras.71-72; P342, T.7604, 7705, 7707; P428-P430; P461; P462; P477-P482; Dunjić, P471, paras.23, 40, 151, 227-234; P472; Aleksandrić, P439, paras.101-103; P474. See above, para.4.

### C. Use of the KLA Military Police (“PU”)

62. Members of the PU pursued, located and were complicit in the mistreatment of perceived opponents of the KLA. **Haradinaj** was instrumental in ensuring the PU assumed this role.

63. On 21 June 1998, he issued regulations which formalised the PU’s objective of targeting perceived opponents:<sup>204</sup>

[REDACTED]

64. Faton Mehmetaj was the commander of the PU in the Dukagjin zone. He was also **Haradinaj**’s subordinate and close associate. The meeting which **Haradinaj** chaired on or around 23 May 1998, at which the Glodane/Gllogjan Regional Staff was formed, was held at Mehmetaj’s home in Glodane/Gllogjan.<sup>205</sup> According to Tetaj, **Haradinaj** and Mehmetaj “initiated the meeting.”<sup>206</sup> In addition, **Haradinaj** and Mehmetaj shared an office in Glodane/Gllogjan,<sup>207</sup> attending numerous meetings together, including those held on 8 June,<sup>208</sup> 21 June,<sup>209</sup> 30 June,<sup>210</sup> 1 July<sup>211</sup> and 9 July 1998.<sup>212</sup> Mehmetaj also attended a KLA/FARK meeting in mid-August 1998 with other senior KLA members, including **Haradinaj**.<sup>213</sup>

65. Tetaj explained that it was Mehmetaj who had responsibility for “blacklisting” people, and circulating these ‘blacklists’ among village guards.<sup>214</sup> In May 1998 Mehmetaj “blacklisted” Tetaj.<sup>215</sup> Mehmetaj and PU official Pjetër Shala, the latter having been appointed by **Brahimaj** and others to the PU,<sup>216</sup> interrogated Tetaj.<sup>217</sup> According to Tetaj, “[t]hey accused me of giving information to the MUP in Pejë about the UÇK, considering I was a former JNA officer.”<sup>218</sup> Mehmetaj was also the

<sup>204</sup> [REDACTED] P190, p.3.

<sup>205</sup> Tetaj, P75, T.3628-3637, 3641-3645, 3648.

<sup>206</sup> Tetaj, P75, T.3633-3634.

<sup>207</sup> Witness 17, P344 (under seal), para.71.

<sup>208</sup> P177.

<sup>209</sup> P190.

<sup>210</sup> P202.

<sup>211</sup> P204.

<sup>212</sup> P240.

<sup>213</sup> Witness 17, P344 (under seal), para.110.

<sup>214</sup> Tetaj, P77, para.29.

<sup>215</sup> Tetaj, P77, para.30.

<sup>216</sup> Shala, P69, T.9938, 9956-9962.

<sup>217</sup> Tetaj, P77, para.30.

<sup>218</sup> Tetaj, P77, para.30.



one who ordered the arrest of retired MUP officer<sup>219</sup> Zenun Gashi.<sup>220</sup> As discussed above, following his arrest, Gashi was cruelly treated and murdered in KLA custody.<sup>221</sup>

66. On 23 June 1998, **Haradinaj** formally appointed Mehmetaj as his intelligence chief.<sup>222</sup> Under the PU regulations, Mehmetaj was authorised to “establish the structure of the KLA intelligence service” in the Dukagjin zone.<sup>223</sup> Zyrapi explained that Mehmetaj’s role “was to gather information about the enemy and those pieces of information had to be passed on to” **Haradinaj**.<sup>224</sup> Witness 17 confirmed that Mehmetaj commanded the PU until he was appointed, at **Haradinaj**’s request, to the joint KLA/FARK command on 21 August 1998.<sup>225</sup>

67. The PU’s involvement in identifying and targeting perceived opponents is also illustrated by Shala’s role in the forcible abduction of Naser Lika and Fadil Fazliu (Count 6) in May 1998.<sup>226</sup> After their abduction, Lika and Fazliu were taken to Jablanica/Jabllanicë, where they and others from the village of Grabanica/Grabanicë were threatened by **Brahimaj** and other KLA soldiers in the presence of **Haradinaj** and **Balaj**.<sup>227</sup> Fazliu was also beaten in Jablanica/Jabllanicë on this occasion.<sup>228</sup> In July 1998, a person in a PU uniform was present while **Brahimaj** interrogated Witness 3 at the detention facility in Jablanica/Jabllanicë. This PU official threatened to execute Witness 3 unless he admitted that he had collaborated with the Serbian police (Count 5).<sup>229</sup>

68. On 24 June 1998, **Haradinaj** reaffirmed the importance of targeting opponents when he directed local KLA headquarters and the “population” in the zone to “prevent any activities that go to the detriment of our war” and threatened punitive measures—including imprisonment—for any opposition to the order.<sup>230</sup>

<sup>219</sup> Witness 52, P495 (under seal), T.9624-9625.

<sup>220</sup> Witness 17, P344 (under seal), para.71; P342, T.7707.

<sup>221</sup> See above, para.61.

<sup>222</sup> S.Çekaj, P4, pp.15-16. See also P271.

<sup>223</sup> P272.

<sup>224</sup> Zyrapi, T.685-686.

<sup>225</sup> Witness 17, P344 (under seal), para.62; P342, T.7808-7809; P279.

<sup>226</sup> See below, para.187.

<sup>227</sup> See below, para.188.

<sup>228</sup> See below, para.188.

<sup>229</sup> See below, para.148.

<sup>230</sup> P196.

#### D. Contemporaneous Serb sources

69. Contemporaneous reports by the Army of Yugoslavia (“VJ”) and the DB confirm that the KLA committed acts of violence against persons who did not support it.

70. Between 1 and 2 March 1998, the KLA carried out a series of synchronised attacks on Serbian households in the Dukagjin area.<sup>231</sup> Major-General Gajić of the VJ stated that attacks on Serbian households were “a common occurrence of which I read many reports.”<sup>232</sup> Serbian intelligence and security forces correctly concluded that these attacks were intended to create fear and panic among the Serbian population to force them out of Kosovo.<sup>233</sup> KLA attacks were focused, in particular, on Serbs living along the arms-smuggling route which ran through Glodane/Gllogjan and Jablanica/Jabllanicë.<sup>234</sup>

71. Only a few Serbian families remained by the time of the attack on the Haradinaj family compound on 24 March 1998, in particular in the villages of Ljumbarda/Lumbardh, Upper and Lower Ratiš/Ratishë, Dašinovac/Dashinoc, Papračane/Papracan, Krushevac/Krushec, and Raušić/Raushiq. Further attacks occurred after the clash at the Haradinaj family compound on 24 March.<sup>235</sup> Zoran Stijović, who had relatives living in the area, stated:

Eighteen of the 44 hamlets in Deçane had a mixed population. After the clash in Gllogjan, KLA harassment and attacks continued. Civilians were typically attacked at night or ambushed usually with automatic weapons or hand grenades.<sup>236</sup>

72. By May 1998 the VJ was reporting an increase in KLA attacks. For example, on 13 May 1998, the Đakovica/Gjakovë Forward Command Post of the Priština Corps (“PrK”) reported:

The organisation of *Šiptar* terrorists is increasing, as are their activities aimed at frightening the Serb population and loyal *Šiptar* citizens who are located in the territory held by the terrorists.<sup>237</sup>

<sup>231</sup> Z.Stijović, P121, para.37; P149 (under seal); P150; Anđelković, P440, T.487, 492-493.

<sup>232</sup> B.Gajić, P27, para.15.

<sup>233</sup> P149 (under seal), p.2; P29, p.2; P30, p.1.

<sup>234</sup> Z.Stijović, P122, T.9004-9005.

<sup>235</sup> Z.Stijović, P121, para.51.

<sup>236</sup> Z.Stijović, P121, para.51. *See also* P443, p.1.

<sup>237</sup> P35, p.2. *See also* P133; P117.

73. [REDACTED].<sup>238</sup>

74. On 22 May 1998, the Peć/Pejë Forward Command Post of the 125th Motorised Brigade reported that:

The *Šiptar* /Albanian/ terrorists have, in the last two days in particular, increased the number of intercepting, kidnapping and attacks against the civilian population and the members of the MUP /Ministry of Interior/.<sup>239</sup>

75. On 3 June 1998, the Đakovica/Gjakovë forward command post of the PrK reported that:

[T]he enemy sabotage and terrorist forces [...] launched increasingly forceful terrorist operations against the Serbian and Montenegrin population, MUP members and against their own people and VJ members. [...] They have abducted various individuals, and are attacking civilians and security guards in organisations and taking their weapons.<sup>240</sup>

76. By July 1998, DB intelligence strongly indicated that members of the KLA in the Dukagjin zone had kidnapped and killed Serbs, Roma and Albanians who refused to join the KLA.<sup>241</sup>

#### **E. Mistreatment of Serb civilians, perceived collaborators and others not supporting the KLA**

77. Those who were perceived as unsupportive of the KLA were frequently mistreated in and around **Haradinaj**'s headquarters in Glodane/Gllogjan. After 24 March 1998, **Haradinaj** located his KLA headquarters at his uncle Smajl/Ismail Haradinaj's home.<sup>242</sup> By April 1998 perceived opponents were being mistreated in and around Smajl/Ismail Haradinaj's home.

##### ***1. Attacks against Serb civilians***

78. On 18 April 1998, in Smajl/Ismail Haradinaj's home, KLA soldiers mistreated Dragoslav Stojanović, Mijat Stojanović and Veselin Stijović in order to obtain

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<sup>238</sup> [REDACTED].

<sup>239</sup> P115, p.2.

<sup>240</sup> P116, pp.1, 2.

<sup>241</sup> Tomaš, P338, paras.5-6, 8. *See also* Zlatković, P373, para.29.

<sup>242</sup> C.Krasniqi, P52, T.5706; D.Stojanović, P410, T.1868-1870, 1904; M.Stojanović, P421, T.2025.

information and to punish them.<sup>243</sup> As a result of the mistreatment, Dragoslav Stojanović was in such a bad state that he had to be transported home on a tractor, undergo surgery and was hospitalised for 28 days.<sup>244</sup> Veselin Stijović had cuts on his head and bruises on his back. He and Mijat Stojanović received hospital treatment over several days.<sup>245</sup>

79. Three days later, on 22 April 1998, KLA soldiers mistreated Novak Stijović and Staniša Radošević in Glodane/Gillogjan, including at the home of Smajl/Ismail Haradinaj.<sup>246</sup> The KLA soldiers beat and interrogated them, and only released Staniša Radošević on the condition that he go and collect two weapons.<sup>247</sup>

## **2. Attacks against the FARK**

80. In the early 1990s, the LDK established a government-in-exile.<sup>248</sup> In 1998, Tahir Zemaj, a former JNA officer from Istinić/Isniq, was appointed commander of the army of this government-in-exile, known as the FARK.<sup>249</sup> On the night of 24-25 June 1998,<sup>250</sup> over 100 FARK soldiers, commanded by Zemaj, entered Kosovo from Albania to join the fight against the Serb forces.<sup>251</sup> **Haradinaj** sent word that the FARK force should not dare enter further into Kosovo.<sup>252</sup> The FARK met local resistance and could not advance beyond Jasić/Jasiq.<sup>253</sup> On 26 June 1998, **Haradinaj**, together with Naim Moloku, **Balaj** and other KLA soldiers, met Zemaj in Jasić/Jasiq, and ordered him to return to Albania with his forces.<sup>254</sup> Several days later, the FARK force relocated from Jasić/Jasiq to Istinić/Isniq.<sup>255</sup> Zoran Stijović described the KLA's position as "complicated by the arrival" of the FARK, stating, "[t]he first reaction of

<sup>243</sup> D.Stojanović, P410, T.1844-1940; M.Stojanović, P421, T.1985-2098; V.Stijović, P493, T.2119-2182; P417; P418; Anđelković, P441 (under seal), T.509, 591-592; P443, pp.1, 20-21; P445, pp.9-12.

<sup>244</sup> D.Stojanović, P410, T.1873, 1898-1900; P417; M.Stojanović, P421, T.2032-2034, 2092-2096; V.Stijović, P493, T.2141, 2143-2144.

<sup>245</sup> M.Stojanović, P421, T.2043; V.Stijović, P493, T.2148-2149.

<sup>246</sup> N.Stijović, P491, T.7142-7193; P492 (under seal), T.7142-7193; Anđelković, P441 (under seal), T.463-464, 466, 514, 588-590; P445, pp.13-15; P446; Radošević, P307 (under seal), T.956-1074; P306, T.956-1074.

<sup>247</sup> N.Stijović, P491, T.7151, 7153-7154, 7161-7162, 7189; Radošević, P306, T.981-984.

<sup>248</sup> Zyrapi, P159, T.3366; Witness 17, P344 (under seal), para.2; Tetaj, P75, T.3693.

<sup>249</sup> Witness 17, P344 (under seal), para.8.

<sup>250</sup> Witness 17, P344 (under seal), para.13.

<sup>251</sup> Z.Stijović, P121, para.63; Witness 77, T.1155-1157; Witness 17, P344 (under seal), para.13.

<sup>252</sup> Witness 77, T.1158-1159; Witness 17, P344 (under seal), para.14.

<sup>253</sup> Witness 77, T.1158-1159; Witness 17, P344 (under seal), para.14.

<sup>254</sup> Witness 17, P344 (under seal), paras.15-17.

<sup>255</sup> Witness 77, T.1164-1166 (private), 1254; Witness 17, P344 (under seal), para.20.

the KLA to their appearance was hostile. KLA spokesperson Jakup Krasniqi stated in public that the FARK was undermining the Albanian cause”.<sup>256</sup>

81. On 4 July 1998, Zemaj sent four FARK soldiers from Istinić/Isnqi towards Pacaj to collect an arms shipment.<sup>257</sup> En route, the group stopped in Rznić/Irznqi where they received a travel permit from the village KLA commander to allow them to travel more easily in the Dukagjin zone.<sup>258</sup> At the time, Rznić/Irznqi was under **Haradinaj**’s command.<sup>259</sup> In Rznić/Irznqi, Daut Haradinaj and **Balaj** intercepted the soldiers, threatened them, tore up their travel permit and ordered them to drive under their escort to **Haradinaj**’s Glodane/Gllogjan headquarters.<sup>260</sup>

82. When the group arrived at the headquarters, **Haradinaj** was addressing a large number of KLA soldiers lined up in two columns.<sup>261</sup> **Haradinaj** initially agreed to release the FARK soldiers.<sup>262</sup> However, as the group was returning to their car, **Haradinaj** ran after them and began swearing and insulting the soldiers. **Haradinaj** then struck one of the soldiers[REDACTED] on the head with a pistol and kicked him,<sup>263</sup> causing him to collapse to the ground.<sup>264</sup> **Balaj**, Daut Haradinaj, and a group of KLA soldiers then joined in the attack.<sup>265</sup> The attackers threatened to kill the soldiers and their FARK commanders.<sup>266</sup> **Haradinaj** declared that he would kill Witness 29 with his own hands, jumped on his back and shot him in the shoulder.<sup>267</sup> **Haradinaj** then ordered Witness 29 out of Glodane/Gllogjan.<sup>268</sup> The other three soldiers were dragged inside the Glodane/Gllogjan headquarters, where they were forced to undress, were tied up and were beaten with baseball bats and butts of guns until they lost consciousness.<sup>269</sup> **Haradinaj** eventually ordered Daut Haradinaj and **Balaj** to take the group to Kodralija/Kodrali.<sup>270</sup>

<sup>256</sup> Z.Stijović, P121, para.63.

<sup>257</sup> Witness 29, P359, T.3504; Witness 17, P344 (under seal), para.26; P217 (under seal)[REDACTED].

<sup>258</sup> Witness 29, P359, T.3510[REDACTED].

<sup>259</sup> [REDACTED].

<sup>260</sup> Witness 29, P359, T.3515-3518[REDACTED].

<sup>261</sup> Witness 29, P359, T.3518-3519.

<sup>262</sup> Witness 29, P359, T.3519-3520.

<sup>263</sup> Witness 29, P359, T.3522-3523[REDACTED].

<sup>264</sup> [REDACTED].

<sup>265</sup> Witness 29, P359, T.3522-3525[REDACTED] P217 (under seal).

<sup>266</sup> Witness 29, P359, T.3525-3526, 3530. [REDACTED].

<sup>267</sup> Witness 29, P359, T.3525-3526, 3530[REDACTED].

<sup>268</sup> Witness 29, P359, T.3531.

<sup>269</sup> [REDACTED]. See also Witness 29, P359, T.3531.

<sup>270</sup> [REDACTED].

83. **Balaj** and Daut Haradinaj further humiliated the three soldiers by making them run, stripped to their underwear, from Glođane/Gllogjan to Kodralija/Kodrali while **Balaj** and Daut Haradinaj drove behind them and shot at their feet.<sup>271</sup> Along the way, they took the three into the Black Eagles headquarters in Rznić/Irznj and beat them further.<sup>272</sup> [REDACTED].<sup>273</sup> [REDACTED].<sup>274</sup>

84. Tensions between the KLA and the FARK culminated in a confrontation in Papračane/Prapacan on 10 July 1998 during which **Haradinaj** once again ordered Zemaj and his force to leave Kosovo immediately.<sup>275</sup> That day, after the FARK command moved to Papračane/Prapacan, **Haradinaj** arrived in the village accompanied by Tetaj, **Balaj**, Daut Haradinaj and a group of 15-30 Black Eagles soldiers.<sup>276</sup> The Black Eagles took up a position in the yard and pointed their rifles at the Papračane/Prapacan barracks in a state of combat readiness.<sup>277</sup> **Haradinaj** confronted Zemaj and accused the FARK of being “Milošević collaborators.”<sup>278</sup> **Haradinaj** told the FARK officers that they had to leave the premises within 30 minutes “or it will come to fratricide.”<sup>279</sup> **Haradinaj** told the FARK soldiers that the FARK officers were there illegally and there were traitors among them.<sup>280</sup> The FARK officers subsequently vacated the barracks.<sup>281</sup> The situation was eventually defused however, and after two days of talks, the FARK officers were permitted to form three brigades under the banner of the KLA, each with a defined area of responsibility.<sup>282</sup>

### ***3. Attacks against other perceived opponents***

85. On 11 August 1998, **Balaj** forced a group of ECMM monitors whom he encountered in Rznić/Irznj to travel to Glođane/Gllogjan.<sup>283</sup> There, he accused them

<sup>271</sup> [REDACTED] P217 (under seal).

<sup>272</sup> [REDACTED] P217 (under seal).

<sup>273</sup> [REDACTED].

<sup>274</sup> [REDACTED].

<sup>275</sup> Witness 17, P344 (under seal), paras. 26-34, 41; P342, T.7563-7565.

<sup>276</sup> Witness 29, P359, T.3538-3539; Witness 17, P344 (under seal), para.41; Witness 77, T.1195-1197.

<sup>277</sup> Witness 17, P344 (under seal), para.41.

<sup>278</sup> Witness 17, P344 (under seal), para.41.

<sup>279</sup> Witness 17, P344 (under seal), para.41; Witness 29, P359, T.3538-3539; Witness 77, T.1197.

<sup>280</sup> D185 (under seal).

<sup>281</sup> Witness 77, T.1197.

<sup>282</sup> Witness 17, P344 (under seal), paras.47-54; P342, T.7632-7644; R.Tetaj, P77, para.35; D147; P242; P245; P246; P247; P248; P249; P250; P251; P252; P346 (under seal); P347 (under seal); P351 (under seal).

<sup>283</sup> Pappas, P317, T.4092.

of spying for the Serbs and beat their Albanian interpreter.<sup>284</sup> Subsequently **Haradinaj** interrogated and released the group.<sup>285</sup>

## V. THE MISTREATMENT OF PERCEIVED KLA OPPONENTS IN JABLANICA/JABLLANICË

86. **Haradinaj, Balaj, Brahimaj** and other KLA soldiers acted together to suppress real or perceived opponents in Jablanica/Jabllanicë.<sup>286</sup> In doing so, they mistreated civilians who were, or were perceived to be, collaborating with the Serbian forces or otherwise not supporting the KLA (“perceived opponents”). Perceived opponents were detained, cruelly treated, tortured and murdered at the KLA barracks in Jablanica/Jabllanicë.

87. All the victims of mistreatment in Jablanica/Jabllanicë were perceived opponents:

- Count 1:<sup>287</sup> Ivan Zarić was a Serb, travelling together with two Roma, Burim Bejta and Agron Berisha. Bejta had a Serb girlfriend and wore a bracelet engraved with her Serb name. Roma Kosovar Albanians were perceived opponents because many did not join the KLA and had good relations with Serbs. Zarić was a perceived opponent due to his Serb ethnicity. Furthermore, all three were from Dolac/Dollc, a predominantly-Serb village, which had been the target of a KLA attack days before the three victims were abducted. All three were considered Serb spies. They were arrested because they had allegedly been paid to report on the KLA.
- Count 2:<sup>288</sup> One of Ukë Rexhepaj’s sons, Sali, lived in Novi Sad (Serbia). Another son, Samir, was serving in the VJ in Nikšić (Montenegro). Ukë Rexhepaj had organised a farewell party for Samir before he started his national service with the VJ. Nesret Alijaj was the son-in-law of Ukë

<sup>284</sup> Pappas, P317, T.4098-4099, 4128-4129.

<sup>285</sup> Pappas, P317, T.4132-4134.

<sup>286</sup> See *Brđanin* AJ, para.480.

<sup>287</sup> See below, paras.99-114.

<sup>288</sup> See below, paras.115-120.

Rexhepaj. Both were arrested because they were suspected of being Serb collaborators.

- Count 3:<sup>289</sup> Witness 6 was accused by the KLA of associating with and spying for the Serbs. KLA members found a police-issued pistol and a photograph of Witness 6 together with an Albanian policeman in uniform in Witness 6's car and the KLA questioned him about these items. In addition to being considered a Serb spy, Witness 6 was a Catholic Albanian and was thus considered a KLA opponent.
- Count 4:<sup>290</sup> Nenad Remištar was a Serbian traffic policeman. He was not only a perceived opponent because of his ethnicity, but also because he worked as a policeman. The Bosnian victim in Count 4 was alleged to have served Serbian interests and interrupted the power supply while working at the Elektrokosova company in Dečani/Dečan. He was a perceived opponent due to his ties with the Serbs. The other three victims were Montenegrins, who like the Serbs, were automatically considered KLA enemies.
- Count 5:<sup>291</sup> Pal Krasniqi, a Catholic Kosovar Albanian who wanted to join the KLA in Jablanica/Jabllanicë, was accused of spying for the Serbs. Skender Kuqi was also accused of being a spy for, or collaborating with the Serbs. Witness 3 was accused of supporting the Serbian police and withholding a weapon.
- Count 6:<sup>292</sup> Naser Lika and Fadil Fazliu were LDK members from Grabanica/Grabanicë. They were perceived opponents due to their political affiliation and because the KLA in Jablanica/Jabllanicë considered them traitors for having withdrawn from Grabanica/Grabanicë during the Serb attack against the village. Lika was also suspected of having provided support to the Serbian forces.
- In the Spring of 1998, Jah Bushati<sup>293</sup> was abducted by KLA soldiers on the road between Bučane/Bucan and Žabelj/Zhabel and was taken to the

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<sup>289</sup> See below, paras.121-131.

<sup>290</sup> See below, paras.132-142.

<sup>291</sup> See below, paras.143-181.

<sup>292</sup> See below, paras.182-197.



Jablanica/Jabllanicë detention facility.<sup>294</sup> He was held there for several weeks and was severely beaten on the suspicion that he collaborated and spied for the Serbs.<sup>295</sup> When Witness 80 saw Bushati at the detention facility in late May 1998, Bushati had been so badly beaten, he could not stand.<sup>296</sup> Shefqet Kabashi saw **Brahimaj** beating Bushati at the detention facility.<sup>297</sup> [REDACTED].<sup>298</sup> Bushati was eventually released and forced to join the KLA.<sup>299</sup>

- Kabashi saw two detainees, Afrim Morina and Idriz LNU, at the detention facility in Jablanica/Jabllanicë in April 1998.<sup>300</sup> Both were suspected of “gathering information” on the KLA.<sup>301</sup> Both men had been badly beaten.<sup>302</sup> While Witness 80 was at the detention facility [REDACTED], there were other detainees whom he did not know.<sup>303</sup>

88. Witnesses in this case have referred to the compound housing the detention facility in Jablanica/Jabllanicë, and the buildings within that compound in different ways (e.g. “KLA compound”,<sup>304</sup> “staff building”,<sup>305</sup> “headquarters”,<sup>306</sup> “barracks”,<sup>307</sup> “prison”,<sup>308</sup> etc.). Irrespective of the manner in which it has been referred to, what is clear from the witness evidence in this case is that the detention facility:

- Functioned as both a barracks and a detention facility;<sup>309</sup>
- Was located to the left of the road at the entrance to Jablanica/Jabllanicë, from the direction of Žabelj/Zhabel;<sup>310</sup> and

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<sup>293</sup> P296 (under seal).

<sup>294</sup> [REDACTED] Kabashi, P119, T.4262, 4265.

<sup>295</sup> Witness 80, T.2340-2341. *See also* [REDACTED] Kabashi, P119, T.4262, 4265.

<sup>296</sup> Witness 80, T.2340-2341.

<sup>297</sup> Kabashi, P119, T.4262.

<sup>298</sup> [REDACTED].

<sup>299</sup> Witness 80, T.2341.

<sup>300</sup> Kabashi, P119, T.4179, 4193-4194, 4247-4251.

<sup>301</sup> Kabashi, P119, T.4250.

<sup>302</sup> Kabashi, P119, T.4249-4250.

<sup>303</sup> Witness 80, T.2415.

<sup>304</sup> Witness 16, P96, para.10.

<sup>305</sup> Witness 3, T.1543; Witness 80, T.2397, 2589-2590.

<sup>306</sup> Witness 7, P94, para.7; Witness 80, T.2333-2339, 2589-2590.

<sup>307</sup> Kabashi, P119, T.4246-4249.

<sup>308</sup> Witness 76, P305, paras.5-7, 9-12, pp.7-9.

<sup>309</sup> Kabashi, P119, T.4246-4253; Witness 80, T.2339-2340; Witness 3, T.1543-1545; Witness 6, P84, T.5246, 5360-5361; Witness 75, T.857.

- Contained two buildings: one had an office and a kitchen and was adjacent to the entrance to the compound, and another was in the middle of the compound with separate rooms and a basement filled with water.<sup>311</sup>



Exhibit P71: This is a photograph marked by Pjeter Shala who indicated that soldiers slept in the “house” depicted in the photograph, *see* P69, T.9950-9951. Shala drew an arrow pointing to the location of the “office” within the compound, *see* P69, T.9951. Witness 3 was shown P60, which depicts the same location as P71. He confirmed that it depicts the compound where he and others were detained, *see* T.1542-1543. Witness 76 was shown a copy of P60 and confirmed that it depicts the prison where her son was held, *see* P305, para.11, p.8.



Exhibit P293: This is a close-up photograph of the building depicted in P71. Witness 75 indicated that this was the building in Jablanica/Jabllanicë where his brother was detained, *see* T.861-864.

89. Many people were detained in Jablanica/Jabllanicë.<sup>312</sup> Most of the perceived opponents taken there were abducted, but some, like Pal Krasniqi (Count 5), went

<sup>310</sup> Shala, P69, T.9948; Witness 7, P94, para.6; Witness 6, P84, T.5246; Kabashi, P119, T.4246-4248; Witness 3, T.1530 (private), 1537 (private), 1541; Witness 80, T.2335; Witness 16, P96, para.10; Witness 7, P94, para.6.

<sup>311</sup> P70; P60; Witness 6, P84, T.5205-5206; Witness 80, T.2336-2339, 2415, 2589-2590; Kabashi, P119, T.4248-4249; Witness 3, T.1541-1543; Witness 76, P305, para.16; Witness 75, T.864-865.

<sup>312</sup> Witness 80, T.2389.

there to join the KLA.<sup>313</sup> They were subsequently detained, interrogated, cruelly treated and tortured.<sup>314</sup> The detainees were interrogated in relation to their ties with the Serbs<sup>315</sup> and were severely mistreated.<sup>316</sup> Some were put in the basement filled with water.<sup>317</sup> At least one detainee died due to the severity of the mistreatment.<sup>318</sup> Others were executed.<sup>319</sup>

90. The detention facility was in operation by at least April 1998.<sup>320</sup> It was notorious. Witness 6's father found out about his son's detention in Jablanica/Jabllanicë through word of mouth from locals (Count 3).<sup>321</sup> Upon his release, Witness 6 met a MUP acquaintance who was already aware of his detention in Jablanica/Jabllanicë.<sup>322</sup> In late June 1998, Kosovar Albanians from Štupelj/Shtupel told Nenad Remištar's relatives that Remištar was imprisoned with a Catholic Albanian in Jablanica/Jabllanicë (Count 4)<sup>323</sup> whom the Prosecution submits is Witness 6. The DB<sup>324</sup> and the VJ<sup>325</sup> also knew about the KLA detention facility in Jablanica/Jabllanicë.

91. Jablanica/Jabllanicë was a suitable location for the mistreatment of perceived opponents due to its remote location and because it was heavily guarded by the

<sup>313</sup> See below, para.171.

<sup>314</sup> Witness 80, T.2354-2357, 2365, 2368-2372, 2390, 2392, 2399-2407, 2415-2419, 2462-2463, 2645, 2651, 2666, 2668, 2703, 2712; Witness 6, P84, T.5207-5211, 5217-5218, 5220-5221, 5268-5269; P85 (under seal), T.5228-5241, 5259-5262; Witness 3, T.1545-1548; Witness 75, T.905-906 (private), 907; Witness 76, T.1371 (private); P304 (under seal), paras.5-7, 9, 16; Witness 23, P97, T.10538-10539; P99 (under seal), p.4; Witness 7, P94, paras.13-14, 16, 22-24; Witness 16, P95 (under seal), paras.4, 9, 13-14; Tetaj, P75, T.3681-3683; D.Krasniqi, P51 (under seal), T.4794; Z.Stijović, P121, paras.55-57; P157; Kabashi, P119, T.4248-4258, 4260-4262, 4265; P120 (under seal), T.4257-4258.

<sup>315</sup> See below, paras.148, 172.

<sup>316</sup> Witness 80, T.2354-2357, 2365, 2368, 2370-2372, 2390, 2392, 2399-2407, 2415-2419, 2462-2463, 2645, 2651, 2666, 2668, 2703, 2712; Witness 6, P84, T.5207-5211, 5217-5218, 5220-5221, 5268-5269; P85 (under seal), T.5228-5241, 5259-5262; Witness 3, T.1545-1548; Witness 75, T.905-906 (private), 907; Witness 76, T.1371 (private); P304 (under seal), paras.5-7, 9, 16; Witness 23, P97, T.10538-10539; P99 (under seal), p.4; D.Krasniqi, P51 (under seal), T.4794; Kabashi, P119, T.4248-4258, 4260-4262, 4265; P120 (under seal), T.4257-4258.

<sup>317</sup> Witness 80, T.2415, 2423, 2403; Witness 76, P304 (under seal), para.16; Witness 6, P84, 5205-5206.

<sup>318</sup> See below, paras.160-167, 170.

<sup>319</sup> See below, paras.105-110, 114, 118, 120, 133-134, 137, 177-178, 181.

<sup>320</sup> Kabashi, P119, T.4179, 4193-4194, 4247-4251.

<sup>321</sup> Witness 7, P93 (under seal), paras.3-27; P94, paras.3-27.

<sup>322</sup> Witness 6, P84, T.5301-5302.

<sup>323</sup> Witness 73, P109 (under seal), para.10.

<sup>324</sup> Z.Stijović, P121, para.55; Zlatković, P373, para.54.

<sup>325</sup> Živanović, P112, paras.43-44.

KLA.<sup>326</sup> In 1998, it was a no-go area for MUP forces, and had not been under Serbian control for several years.<sup>327</sup>

## VI. THE CRIMES IN JABLANICA/JABLLANICĚ

92. As members of the JCE, the Accused are liable for murder, cruel treatment and torture as violations of Common Article 3 of the 1949 Geneva Conventions (“Common Article 3”), punishable under Article 3 of the Statute.

### A. General Requirements of Article 3

93. Article 3 of the Statute covers all serious violations of the laws or customs of war.<sup>328</sup> Murder, cruel treatment and torture prohibited by Common Article 3 meet this standard.<sup>329</sup> Where a crime punishable under Article 3 is based upon Common Article 3, the victims must have taken no active part in the hostilities at the time the crime was committed.<sup>330</sup> Such victims include members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause.<sup>331</sup> The perpetrator of a Common Article 3 crime must have known or should have been aware of the victim’s status when the crime was committed.<sup>332</sup>

94. For Article 3 to apply, there must be an armed conflict (whether internal or international in character)<sup>333</sup> and the accused’s acts must be closely related to that armed conflict (nexus requirement).<sup>334</sup> An armed conflict existed in Kosovo at all times relevant to the Indictment from and including 22 April 1998 onwards, between (1) the armed forces of the FRY and the Republic of Serbia, consisting of the forces of the VJ and the MUP, including the PJP, JSO and SAJ (collectively “Serbian forces”), and (2) the KLA.<sup>335</sup> The crimes alleged in Counts 1 to 6 were closely related to the armed conflict. All of the victims were not taking active part in the hostilities at

<sup>326</sup> P152; C.Krasniqi, P54, para.33; P28; Rexhahmetaj, P297, para.10.

<sup>327</sup> Avramović, P451, para.10; Gajić, P27, para.13; P28, p.1; Z.Stijović, P121, para.23; P122, T.9000, 9003-9004, 9007-9008; C.Krasniqi, P54, para.35; Rexhahmetaj, P297, para.10.

<sup>328</sup> Tadić Jurisdiction AD, para.91. See Kunarac AJ, para.68; Čelebići AJ, para.125.

<sup>329</sup> See Common Article 3(1)(a); Kunarac AJ, para.68. See also Čelebići AJ, paras.147, 162-174, 420.

<sup>330</sup> Bošković AJ, para.66; Strugar AJ, paras.172-179; Čelebići AJ, para.420.

<sup>331</sup> Common Article 3. See Strugar AJ, para.175; Čelebići AJ, para.420.

<sup>332</sup> Bošković AJ, para.66. See also para.119.

<sup>333</sup> Tadić Jurisdiction AD, para.137. See also Galić AJ, para.120; Čelebići AJ, paras.140-150.

<sup>334</sup> Stakić AJ, para.342; Kunarac AJ, para.55. See also Tadić Jurisdiction AD, paras.67-70.

<sup>335</sup> AF1.

the time the crimes were committed and the perpetrators knew or should have known that this was the case.

## **B. Legal Requirements of the Crimes Charged**

### **1. Murder**

95. The elements of murder under Article 3 are: the death of the victim, as a result of an act or omission of the physical perpetrator, and the *mens rea* of the perpetrator.<sup>336</sup> A victim's death may be established by circumstantial evidence even where the body has not been recovered, provided that the victim's death is the only reasonable inference.<sup>337</sup> With regard to causation, the physical perpetrator's act or omission need not have been the sole cause for the victim's death; it is sufficient that the "perpetrator's conduct contributed substantially to the death of the person".<sup>338</sup> The *mens rea* for murder is satisfied when the Prosecution proves that the act or omission was committed with direct or indirect intent.<sup>339</sup>

### **2. Cruel treatment**

96. Cruel treatment is defined as an intentional act or omission which caused serious mental or physical suffering or injury, or which constituted a serious attack on human dignity.<sup>340</sup> The suffering inflicted by the relevant act or omission must be similar in gravity to the other offences listed under Article 3 of the Statute,<sup>341</sup> but need not be long-lasting.<sup>342</sup> The perpetrator must have acted with direct or indirect intent to commit cruel treatment.<sup>343</sup>

### **3. Torture**

97. The crime of torture consists of the following elements:

<sup>336</sup> *Kvočka* AJ, para.261; *Kordić* AJ, para.37.

<sup>337</sup> *Kvočka* AJ, para.260; *Popović* TJ, para.789.

<sup>338</sup> *Lukić* TJ, paras.899, 903; *Popović* TJ, para.788; *Milutinović* TJ, Vol.I, para.137; *Brđanin* TJ, para.382.

<sup>339</sup> See *Kvočka* AJ, para.261; *Haradinaj* TJ, para.124; *Popović* TJ, para.788; *Milutinović* TJ, Vol.I, para.138; *Strugar*, TJ, paras.235-236. See also *Kordić* AJ, paras.36-37.

<sup>340</sup> *Blaškić* AJ, para.595; *Čelebići* AJ, para.424; *Haradinaj* TJ, para.126.

<sup>341</sup> *Simić* TJ, para.74; *Krnojelac* TJ, para.130.

<sup>342</sup> *Krnojelac* TJ, para.131.

<sup>343</sup> *Haradinaj* TJ, para.126; *Krnojelac* TJ, para.132.

(i) The infliction, by act or omission, of severe pain or suffering, whether physical or mental.<sup>344</sup>

(ii) The act or omission must be intentional.<sup>345</sup> This means that the perpetrator acted or omitted with direct or indirect intent.<sup>346</sup>

(iii) The act or omission must aim at obtaining information or a confession, or at punishing, intimidating or coercing the victim or a third person, or at discriminating, on any ground, against the victim or a third person.<sup>347</sup>

98. It is not required that the severe pain or suffering be inflicted exclusively for one or more of the purposes mentioned, but only that such a purpose or purposes be part of the motivation behind the conduct.<sup>348</sup>

### C. Counts 1 through 6

#### 1. Count 1

99. In May 1998, Ivan Zarić, Burim Bejta, and Agron Berisha lived in Dolac/Dolc.<sup>349</sup> The village had a Serb majority as well as Catholic Albanian and Roma inhabitants, and Serbs and non-Serbs lived in harmony.<sup>350</sup> Zarić, Bejta and Berisha were civilians aged 22, 15 and 16 respectively.<sup>351</sup> Zarić was a Serb and had previously served in the army.<sup>352</sup> Bejta and Berisha were Roma.<sup>353</sup>

100. By May 1998, Dolac/Dolc was a target of KLA activity. A VJ combat report of 13 May 1998 indicates, in reference to the KLA, that “*Šiptar /Albanian/* terrorists attacked Dolac village, near Klina. MUP members intervened [...] two terrorists have been captured.”<sup>354</sup>

101. Days before the 19 May 1998 Serb attack<sup>355</sup> on Grabanica/Grabanicë,<sup>356</sup> Zarić, Bejta and Berisha left Dolac/Dolc on a horse-drawn cart, heading for the flour mill in

<sup>344</sup> Haradinaj AJ, para.290; Kunarac AJ, para.142.

<sup>345</sup> Haradinaj AJ, para.290; Kunarac AJ, para.142.

<sup>346</sup> Kunarac AJ, para.153; Martić TJ, para.77.

<sup>347</sup> Haradinaj AJ, para.290; Kunarac AJ, para.142.

<sup>348</sup> Kunarac AJ, para.155; Haradinaj TJ, para.128.

<sup>349</sup> Witness 66, P107 (under seal), T.8413-8414.

<sup>350</sup> Witness 66, P107 (under seal), T.8415-8416.

<sup>351</sup> Witness 66, P107 (under seal), T.8413-8415.

<sup>352</sup> Witness 66, P107 (under seal), T.8414-8415.

<sup>353</sup> Witness 66, P107 (under seal), T.8413-8414.

<sup>354</sup> P35, p.1.

<sup>355</sup> Zivanović, P112, para.80; P114; P115; Witness 3, T.1499-1500 (private), 1509, 1514-1515.

<sup>356</sup> Witness 66, P107 (under seal), T.8422-8423.

Grabanica/Grabanicë.<sup>357</sup> They were going to Grabanica/Grabanicë to mill corn into corn flour.<sup>358</sup> Bejta, who had a Serb girlfriend, wore a bracelet engraved with her Serbian name.<sup>359</sup> The three were expected to return within two hours,<sup>360</sup> but were never seen again by their families.<sup>361</sup>

102. The testimony given by Witness 3 [REDACTED] shows that three people, the description of whom is consistent with the three victims named in Count 1, were arrested and mistreated in Grabanica/Grabanicë. The three were then taken to Jablanica/Jabllanicë where they were further mistreated by **Balaj**, **Brahimaj** and other KLA soldiers. They were then murdered on the orders of **Balaj** and **Brahimaj**.

103. In the days leading up to the Serb attack on Grabanica/Grabanicë, the village was under guard as villagers feared a Serb attack.<sup>362</sup> [REDACTED],<sup>363</sup> [REDACTED].<sup>364</sup> He saw three young males, the oldest being a Serb, enter the village on a horse-cart.<sup>365</sup> They told Witness 3 they were heading to the mill in Grabanica/Grabanicë.<sup>366</sup> Witness 3 did not see them leave the village.<sup>367</sup>

104. [REDACTED], prior to the Serb attack against Grabanica/Grabanicë in May 1998, KLA soldiers Metë and Hazir Morina arrested three young males at the local mill.<sup>368</sup> These young males had come from the village of Dolac/Dollc on a horse and cart.<sup>369</sup> [REDACTED] had seen them come to the village “many times” before to mill corn.<sup>370</sup> Witness 3 confirmed that the mill was operating until Serb forces shelled Grabanica/Grabanicë on 21 May 1998.<sup>371</sup> [REDACTED] said that the young males were arrested on the suspicion that Serbs had paid them to report on the number of

<sup>357</sup> Witness 66, P107 (under seal), T.8413, 8417-8418, 8422-8424. [REDACTED].

<sup>358</sup> Witness 31, P102 (under seal), T.9516; Witness 66, P107 (under seal), T.8422.

<sup>359</sup> Witness 31, P102 (under seal), T.9514, 9521-9522.

<sup>360</sup> Witness 66, P107 (under seal), T.8424.

<sup>361</sup> Witness 31, P102 (under seal), T.9514-9517; Witness 66, P107 (under seal), T.8413, 8417-8418, 8422, 8431; P427, pp.1-2, 4-5, 7.

<sup>362</sup> Witness 3, T.1511-1512, 1596 (private).

<sup>363</sup> [REDACTED].

<sup>364</sup> [REDACTED].

<sup>365</sup> Witness 3, T.1596-1597 (private).

<sup>366</sup> Witness 3, T.1596 (private).

<sup>367</sup> Witness 3, T.1597 (private).

<sup>368</sup> [REDACTED].

<sup>369</sup> [REDACTED].

<sup>370</sup> [REDACTED].

<sup>371</sup> Witness 3, T.1595-1596 (private).

KLA soldiers and their positions in the village.<sup>372</sup> Following their arrest, the young males whom [REDACTED] saw were taken to the village headquarters and severely beaten with wooden sticks.<sup>373</sup> They were then taken from Grabanica/Grabanicë to Jablanica/Jabllanicë.<sup>374</sup>

105. Some days later,<sup>375</sup> Witness 80 saw the three at the detention facility in Jablanica/Jabllanicë. The three had been detained in the basement of the prison.<sup>376</sup> When Witness 80 saw them emerge from the basement, “[t]heir clothes were wet”, “[t]hey were beaten up”, and “[t]hey had bruises on their bodies.”<sup>377</sup> “They were tied to one another [...] like a chain.”<sup>378</sup>



Exhibit P293: This photograph depicts the building where detainees were held, *see* Witness 75, T.862-864.



Exhibit P295: This photograph depicts the basement of the building where detainees were held, *see* Witness 75, T.862-866.

<sup>372</sup> [REDACTED].

<sup>373</sup> [REDACTED]. [REDACTED].

<sup>374</sup> [REDACTED]. [REDACTED].

<sup>375</sup> Witness 80, T.2404, 2590.

<sup>376</sup> Witness 80, T.2403.

<sup>377</sup> Witness 80, T.2403-2404.

<sup>378</sup> Witness 80, T.2404.



106. Once out of the basement, they were “brutally” beaten up, until they were “black and blue”.<sup>379</sup> “They were beaten to a pulp.”<sup>380</sup> The victims were so terrified and abused that they urinated in their clothes.<sup>381</sup> While watching the beating, Witness 80 was threatened by KLA soldiers who told him: “Look out. Your day will come, too, when you will be like them.”<sup>382</sup>

107. Witness 80 saw many KLA soldiers participate in the beating,<sup>383</sup> including **Balaj**, **Brahimaj**, and Nazmi Brahimaj.<sup>384</sup> **Brahimaj** beat the victims with a stick,<sup>385</sup> while they cried: “Oh, my mother, oh, my mother.”<sup>386</sup> **Balaj** also “brutally” beat the victims,<sup>387</sup> threatened them with execution<sup>388</sup> and used a knife to cut off the ear of one of the victims.<sup>389</sup>

108. **Balaj** and **Brahimaj** ultimately ordered their execution, directing other KLA soldiers to “prepare the papers for Drenica”.<sup>390</sup>

109. After KLA soldiers took the three victims away, Witness 80 never saw them again.<sup>391</sup> The victims must have been executed by the KLA.

110. Relatives searched for Zarić, Bejta and Berisha for two days beginning on the evening of the day they disappeared, but were unable to find them.<sup>392</sup> In search of the victims, they went to Grabanica/Grabanicë and came across large numbers of KLA soldiers, some of whom threatened them at gunpoint.<sup>393</sup> Male relatives were told by the police not to go to Grabanica/Grabanicë because they risked being detained there.<sup>394</sup> Within days of the disappearance of the victims, relatives recovered the horse

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<sup>379</sup> Witness 80, T.2398.

<sup>380</sup> Witness 80, T.2390, 2400.

<sup>381</sup> Witness 80, T.2400.

<sup>382</sup> Witness 80, T.2404.

<sup>383</sup> Witness 80, T.2398-2399.

<sup>384</sup> Witness 80, T.2399-2400, 2407.

<sup>385</sup> Witness 80, T.2407.

<sup>386</sup> Witness 80, T.2407.

<sup>387</sup> Witness 80, T.2399-2400.

<sup>388</sup> Witness 80, T.2404-2405.

<sup>389</sup> Witness 80, T.2400-2401.

<sup>390</sup> Witness 80, T.2462-2463, 2406. *See also* Witness 80, T.2401-2402. *See also above*, para.48.

<sup>391</sup> Witness 80, T.2406.

<sup>392</sup> Witness 31, P101, T.9517-9520; Witness 66, P107 (under seal), T.8425-8429.

<sup>393</sup> Witness 66, P106, T.8426-8429.

<sup>394</sup> Witness 66, P106, T.8425.

and cart on which the three had travelled to Grabanica/Grabanicë.<sup>395</sup> The sack of corn which the victims had brought from their village was still in the cart.<sup>396</sup>

111. Zarić, Bejta and Berisha disappeared before Serbian forces entered Grabanica/Grabanicë. When the three entered the village, the KLA was already active there. **Brahimaj** had chaired a recruiting meeting in the village weeks before the 19 May 1998 Serb attack,<sup>397</sup> and KLA soldiers were openly showing themselves in the village.<sup>398</sup>

112. KLA soldiers, including **Balaj** and **Brahimaj**, cruelly treated Zarić, Berisha, and Bejta. The conditions in which the three victims were held, the beatings which they endured, the threats directed at them, the physical mutilation suffered by one of the three victims when his ear was cut off, and the order to execute the victims caused each victim serious physical and mental suffering and injury. Due to the nature and severity of the mistreatment, the perpetrators must have intended to cause such suffering and injury.

113. KLA soldiers, including **Balaj** and **Brahimaj**, tortured Zarić, Berisha and Bejta. The three victims were mistreated in order to punish them because they were suspected of being Serb spies.

114. The KLA murdered Zarić, Berisha and Bejta. One or more KLA soldiers acted with direct intent by implementing the explicit instructions of **Balaj** and **Brahimaj** who both directed that the victims' papers be prepared for Drenica, a common euphemism employed by the KLA as an execution order.<sup>399</sup>

## ***2. Count 2***

115. In March 1998, Ukë Rexhepaj, an Ashkali (Roma/Egyptian) civilian,<sup>400</sup> lived with his family in Iber Januzaj's house in Zajmovo/Zaijm.<sup>401</sup> Nesret Alijaj, a civilian,<sup>402</sup> was married to Rexhepaj's daughter.<sup>403</sup> One of Rexhepaj's sons, Sali, lived

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<sup>395</sup> Witness 66, P106, T.8429-8431.

<sup>396</sup> Witness 31, P102 (under seal), T.9520.

<sup>397</sup> Witness 3, T.1503, 1504 (private), 1506-1510, 1607 (private).

<sup>398</sup> Witness 3, T.1513-1514; Witness 66, P106, T.8426-8429.

<sup>399</sup> *See above*, para.48.

<sup>400</sup> Witness 54, P105 (under seal), T.8271.

<sup>401</sup> Witness 79, P1 (under seal), para.1.

<sup>402</sup> Witness 54, P105 (under seal), T.8273, 8274.

<sup>403</sup> Witness 54, P105 (under seal), T.8273; Witness 78, T.822.

in Novi Sad (Serbia) and another, Samir, was serving with the VJ in Nikšić (Montenegro).<sup>404</sup> Before Samir joined the VJ, Rexhepaj organised a farewell party for him in the village of Dolovo/Dollovë.<sup>405</sup>

116. On or about 20 May 1998, Rexhepaj and Alijaj returned from the post office in Klina/Klinë where they had received money wired by Sali.<sup>406</sup> They stopped at Januzaj's house to collect Witness 54.<sup>407</sup> The three then cycled towards Dolovo/Dollovë to feed their livestock.<sup>408</sup> En route to Dolovo/Dollovë, they were stopped by two men who threatened to shoot them.<sup>409</sup> These men wore dark green camouflage uniforms, carried light machine-guns,<sup>410</sup> and spoke Albanian.<sup>411</sup> They searched them and took their bicycles and other belongings.<sup>412</sup> They then blindfolded Rexhepaj and Alijaj, tied their hands<sup>413</sup> and forced them into a car.<sup>414</sup> Witness 54 was released.<sup>415</sup>

117. Shefqet Kabashi gave evidence corroborating the abduction of Rexhepaj and Alijaj. He stated that he saw two men—who were “Roma or Gypsy” and were “son-in-law and father-in-law”—at the Jablanica/Jabllanicë detention facility on the morning of 21 May 1998.<sup>416</sup> The two men whom Kabashi saw had been arrested because the KLA had suspicions about their conduct.<sup>417</sup> When Kabashi saw the two again later in the day, “[t]hey were tied with a wire.”<sup>418</sup>

118. Kabashi heard **Brahimaj** order that the two men be sent to Drenica which meant the victims were to be executed.<sup>419</sup> Kabashi's account of their execution is corroborated by International Committee of the Red Cross (“ICRC”) missing person

<sup>404</sup> Witness 54, P105 (under seal), T.8272-8273; Witness 78, P286 (under seal), paras.2-6.

<sup>405</sup> Witness 78, P286 (under seal), para.5; Witness 79, P1 (under seal), para.13.

<sup>406</sup> Witness 54, P105 (under seal), T.8274; Witness 78, P286 (under seal), para.17; Witness 79, P1 (under seal), para.3.

<sup>407</sup> Witness 54, P105 (under seal), T.8274, 8278.

<sup>408</sup> Witness 54, P105 (under seal), T.8275, 8277.

<sup>409</sup> Witness 54, P105 (under seal), T.8275, 8277. *See also* Witness 79, P1 (under seal), para.5.

<sup>410</sup> Witness 54, P105 (under seal), T.8276.

<sup>411</sup> Witness 54, P105 (under seal), T.8276.

<sup>412</sup> Witness 54, P105 (under seal), T.8275.

<sup>413</sup> Witness 54, P105 (under seal), T.8276.

<sup>414</sup> Witness 54, P105 (under seal), T.8275-8276.

<sup>415</sup> Witness 54, P105 (under seal), T.8275, 8280-8281; Witness 79, P1 (under seal), para.7.

<sup>416</sup> Kabashi, P119, T.4252-4253.

<sup>417</sup> Kabashi, P119, T.4252-4253.

<sup>418</sup> Kabashi, P119, T.4252.

<sup>419</sup> Kabashi, P119, T.4253.

reports and the evidence of the family members of Rexhepaj and Alijaj who have not seen the two men again.<sup>420</sup> Rexhepaj and Alijaj must have been executed by the KLA.

119. KLA soldiers cruelly treated Rexhepaj and Alijaj. Their violent abduction and the fact that they were held in detention at the Jablanica/Jabllanicë detention facility caused the victims serious physical and mental suffering. The conditions at the Jablanica/Jabllanicë detention facility were abhorrent.<sup>421</sup> No prisoner held there was spared mistreatment. Instead, prisoners faced a constant threat of mistreatment.<sup>422</sup> Due to the nature of the victims' abduction and their incarceration, the physical perpetrators must have intended to cause the victims such pain and suffering.

120. The KLA murdered Rexhepaj and Alijaj. One or more KLA soldiers acted with direct intent by implementing **Brahimaj's** explicit instruction that the victims be sent to Drenica, a common KLA euphemism employed as an execution order.<sup>423</sup>

### ***3. Count 3***

121. Witness 6 is a Catholic Kosovar Albanian civilian.<sup>424</sup> He did not support or join the KLA.<sup>425</sup> On 13 June 1998, Witness 6 and his family were driving along the Đakovica/Gjakovë-Klina/Klinë road.<sup>426</sup> KLA soldiers stopped them near a place called "Black Stone"<sup>427</sup> and searched Witness 6 and his car. They found a police-issued pistol and a photograph of Witness 6 with a retired Albanian police officer in uniform.<sup>428</sup> They questioned Witness 6 about the pistol and the photograph,<sup>429</sup> separated him from his family and took him by force to Jablanica/Jabllanicë.<sup>430</sup>

<sup>420</sup> Witness 54, P105 (under seal), T.8277; Witness 78, P286 (under seal), para.14; P427, pp.3, 6.

<sup>421</sup> See above, paras.87, 89, 105-107. See below, paras.123, 129, 133, 138-139, 146-148, 160-163, 172-175, 190-192.

<sup>422</sup> See Mrkšić TJ, para.525. See also Mrkšić AJ, para.411.

<sup>423</sup> See above, para.48.

<sup>424</sup> Witness 6, P85 (under seal), T.5239.

<sup>425</sup> Witness 6, P85 (under seal), T.5235.

<sup>426</sup> Witness 6, P84, T.5170, 5386.

<sup>427</sup> Witness 6, P84, T.5190-5195; Witness 23, P99 (under seal), pp.2-3; P97, T.10528; P87 (under seal).

<sup>428</sup> Witness 6, P84, T.5194, 5352-5355; Witness 23, P97, T.10540.

<sup>429</sup> Witness 23, P97, T.10540.

<sup>430</sup> Witness 6, P85 (under seal), T.5200-5201; Witness 23, P99 (under seal), p.3. See also Witness 80, T.2683-2684.

122. In Jablanica/Jabllanicë, Witness 6 was detained in a room immediately to the left of the compound entrance<sup>431</sup>—identified by Pjetër Shala as the barracks with a kitchen and an office.<sup>432</sup>



P89: Witness 6 circled the location where he spent his first night in custody with “Nenad”, *see* Witness 6, P84, T.5213-5217.

123. Nazmi Brahimaj and other KLA members then badly beat Witness 6 using baseball bats until he lost consciousness.<sup>433</sup> Witness 6 was tied up together with Nenad Remištar (Count 4) and both were left in the room overnight.<sup>434</sup> Nazmi Brahimaj and other KLA soldiers beat them.<sup>435</sup>

124. The next day, the two prisoners were moved to the four-room building in the middle of the yard.<sup>436</sup> Witness 6 was detained in this building for six weeks. Witness 6 spent the first four weeks locked in a room and saw soldiers only when they came to beat him on numerous occasions.<sup>437</sup> Every time KLA soldiers came into the room, they beat Witness 6:<sup>438</sup>

They beat me with baseball bats, with fists. For two weeks, I didn't know much of myself, I didn't know where my face was, where my neck was. I was all swollen up because of the beatings.<sup>439</sup>

<sup>431</sup> Witness 6, P84, T.5204-5205, 5213-5216, 5316; P89.

<sup>432</sup> Shala, P69, T.9950-9951; P71. *See above*, p.32.

<sup>433</sup> Witness 6, P84, T.5207-5210.

<sup>434</sup> Witness 6, P84, T.5210, 5325.

<sup>435</sup> Witness 6, P84, T.5210-5211, 5216.

<sup>436</sup> Witness 6, P84, T.5213, 5216; P88.

<sup>437</sup> Witness 6, P84, T.5213, 5217.

<sup>438</sup> Witness 6, P84, T.5217.

<sup>439</sup> Witness 6, P84, T.5220.



P88: This photograph depicts the building where Witness 6 “stayed for six weeks as a prisoner”, see Witness 6, P84, T.5205-5206.

125. **Brahimaj** and his relatives Nazmi and Hamza Brahimaj initiated and participated in frequent beatings,<sup>440</sup> causing Witness 6 to be sick and often unconscious.<sup>441</sup> **Brahimaj** and his brother Nazmi were at times present while other KLA soldiers beat Witness 6: “It wasn’t necessary that they themselves beat me up when they had others to send over”.<sup>442</sup> KLA soldiers, including **Brahimaj** and his brother Nazmi, accused Witness 6 of associating with and spying for the Serbs.<sup>443</sup>

126. Witness 6 learned the names of those responsible for his mistreatment in discussions with the personnel at the Jablanica/Jabllanicë detention facility and after his imprisonment.<sup>444</sup> Witness 6 knew each man by appearance, as **Brahimaj** and his brother Nazmi were there “[a]lmost every day”.<sup>445</sup> During Witness 6’s testimony in the original trial, the **Brahimaj** defence did not challenge<sup>446</sup> Witness 6’s correct identification of **Brahimaj** and Nazmi Brahimaj from photo-boards.<sup>447</sup>

<sup>440</sup> Witness 6, P84, T.5208, 5219, 5372-5373.

<sup>441</sup> Witness 6, P84, T.5326.

<sup>442</sup> Witness 6, P84, T.5220.

<sup>443</sup> Witness 6, P84, T.5352, 5398, 5400.

<sup>444</sup> Witness 6, P84, T.5209, 5218-5219, 5245.

<sup>445</sup> Witness 6, P84, T.5218-5219, 5372.

<sup>446</sup> Witness 6, P84, T.5372.

<sup>447</sup> Haverinen, P45 (under seal), paras.14-15, Annexes 4 and 5.

127. When Witness 6's beatings finally ceased, during his last two weeks in detention, he washed dishes.<sup>448</sup> During this time, Witness 6 was able to move within the compound and saw KLA soldiers beat other prisoners.<sup>449</sup>

128. A group of villagers, including Witness 16 and Witness 7, drove to Jablanica/Jabllanicë to demand Witness 6's release.<sup>450</sup> At the Jablanica/Jabllanicë detention facility, **Brahimaj** told them that Witness 6 had been arrested and sentenced, and spoke angrily against President Rugova and those who did not fight with the KLA.<sup>451</sup> On 25 July 1998, Witness 6 received two decisions signed by Nazmi Brahimaj, one releasing him and the other confiscating his car and his gun.<sup>452</sup> The latter was issued pursuant to a decision of the "Operative Staff of the Subzone of Dukagjin" of 24 July 1998.<sup>453</sup> Witness 6 was released on 25 July.<sup>454</sup>

129. Witness 6 sustained a broken arm<sup>455</sup> and some injuries to his back and legs<sup>456</sup> as a result of the beatings he endured, and experiences continuing weakness and pain.<sup>457</sup>

130. KLA soldiers, including **Brahimaj** and his brother Nazmi, cruelly treated Witness 6. The beatings which he received in Jablanica/Jabllanicë caused Witness 6 serious physical and mental suffering and injury. In light of the severity and the repetition of the mistreatment, the perpetrators must have intended to cause him such injury and suffering.

131. KLA soldiers, including **Brahimaj** and his brother Nazmi, tortured Witness 6. Witness 6 was mistreated to punish and/or intimidate him for his perceived collaboration with the Serbs and to discriminate against him on political grounds.

<sup>448</sup> Witness 6, P84, T.5205-5206, 5242-5243, 5334, 5361. *See also* D212 (under seal); Witness 80, T.2683-2684.

<sup>449</sup> Witness 6, P84, T.5231-5233, 5235-5241, 5243, 5332, 5337-5338.

<sup>450</sup> Witness 23, P99 (under seal), p.3; Witness 16, P95 (under seal), pp.2, 4; Witness 7, P93 (under seal), paras.2-5; P94, paras.2-5.

<sup>451</sup> Witness 16, P95 (under seal), p.4; Witness 7, P93 (under seal), paras.7-17; P94, paras.7-17.

<sup>452</sup> Witness 6, P84, T.5206, 5379; P85 (under seal), T. 5253-5257; P91 (under seal).

<sup>453</sup> P91 (under seal), p.1.

<sup>454</sup> Witness 6, P84, T.5206.

<sup>455</sup> Witness 6, P84, T.5243, 5259, 5373; Witness 23, P97, T.10539.

<sup>456</sup> Witness 6, P84, T.5259, 5373.

<sup>457</sup> Witness 6, P84, T.5243, 5268.

#### **4. Count 4**

##### **(a) Nenad Remištar**

132. Nenad Remištar, a Serb civilian, worked as a traffic policeman in Đakovica/Gjakovë.<sup>458</sup>

133. On 13 June 1998, Remištar was driving on the main road between Klina/Klinë and Đakovica/Gjakovë when KLA soldiers stopped his car, a blue Opel Kadett, near a place called “Black Stone”.<sup>459</sup> The soldiers took Remištar to Jablanica/Jabllanicë.<sup>460</sup> Remištar was tied up and left in the room adjacent to the entrance of the compound with Witness 6.<sup>461</sup> KLA soldiers, including Nazmi Brahimaj, kicked and beat Remištar with a baseball bat, leaving him unconscious and unable to walk.<sup>462</sup>

134. In the afternoon of 14 June 1998, Remištar was led away by KLA soldiers.<sup>463</sup> He has not been seen since.<sup>464</sup> Witness 6 heard that Remištar had been killed in Jablanica/Jabllanicë.<sup>465</sup> Remištar must have been killed by the KLA.

135. KLA soldiers, including Nazmi Brahimaj, cruelly treated Remištar. The beatings which he suffered caused Remištar serious physical and mental suffering and injury. In light of the severity of the beatings, the perpetrators must have intended to cause such suffering and injury.

136. KLA soldiers, including Nazmi Brahimaj, tortured Remištar. They mistreated Remištar to punish and/or discriminate against him because of his ethnicity and his job as a policeman.

137. The KLA murdered Remištar. Considering the severity of the mistreatment which Remištar suffered at the hands of the KLA, in whose custody he was last seen, Remištar must have been intentionally killed by the KLA.

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<sup>458</sup> Witness 73, P108, para.3.

<sup>459</sup> Witness 6, P84, T.5191-5192, 5195-5197; Witness 23, P99 (under seal), pp.2-3; P97, T.10528-10531; Witness 73, P109 (under seal), paras.3-4; P108, paras.3-4; Avramović, P451, para.13; P449, T.6600-6602, 6605; P455; P87 (under seal).

<sup>460</sup> Witness 6, P84, T.5210-5211; Z.Stijović, P121, para.55; Witness 73, P109 (under seal), paras.10-11; P108, paras.10-11.

<sup>461</sup> Witness 6, P84, T.5210, 5213, 5215-5216, 5304, 5316; P89.

<sup>462</sup> Witness 6, P84, T.5210-5211, 5324.

<sup>463</sup> Witness 6, P84, T.5211, 5316.

<sup>464</sup> Witness 6, P84, T.5211; Witness 73, P109 (under seal), para.13; P108, para.13.

<sup>465</sup> Witness 6, P84, T.5313-5314, 5323-5324.



(b) One Bosnian and three Montenegrin men

138. Around the end of June 1998, KLA soldiers brought one Bosnian and three Montenegrin men to the room where Witness 6 was detained.<sup>466</sup> KLA soldiers beat the four men with baseball bats and stabbed them with knives.<sup>467</sup> The four men bled from their wounds and “spat blood”.<sup>468</sup>

139. While beating the Bosnian man, the perpetrators accused him of serving the interests of Serbia and of interrupting the power supply while working at the Elektrokosova company in Dečani/Deçan, where he was employed.<sup>469</sup>

140. After three or four days, the four men were taken away and have not been seen since.<sup>470</sup>

141. KLA soldiers cruelly treated the four men. The beatings and stabbings caused the four men serious physical and mental suffering and injury. In light of the severity of the mistreatment, the perpetrators must have intended to cause such suffering and injury.

142. KLA soldiers tortured the four men. They mistreated the Bosnian man to punish him for his alleged collaboration with the Serbs. The Montenegrins were mistreated as punishment and/or to discriminate against them because of their ethnicity.

***5. Count 5***

143. The KLA imprisoned Witness 3, Skender Kuqi and Pal Krasniqi together in the same room in the Jablanica/Jabllanicë detention facility beginning in mid-July 1998. KLA soldiers mistreated each man during their detention. All three attempted to escape through the window in their room at the detention facility, but only Witness 3 succeeded. KLA soldiers recaptured Krasniqi and Kuqi, then mistreated and murdered them.

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<sup>466</sup> Witness 6, P84, T.5217, 5226-5227, 5387.

<sup>467</sup> Witness 6, P84, T.5228.

<sup>468</sup> Witness 6, P84, T.5228.

<sup>469</sup> Witness 6, P84, T.5227, 5329, 5397.

<sup>470</sup> Witness 6, P84, T.5227, 5230, 5330, 5387.

(a) Witness 3

144. Around 13 July 1998, **Brahimaj** arrested Witness 3, a Kosovar Albanian Muslim civilian from Grabanica/Grabanicë.<sup>471</sup> Witness 3 had been staying at [REDACTED] Tal Zeka's home in Žabelj/Zhabel at the time.<sup>472</sup> **Brahimaj** took Witness 3 to the Jablanica/Jabllanicë detention facility in the Mercedes-Benz car which Witness 3 later learned belonged to Skender Kuqi.<sup>473</sup>

145. Once at the detention facility, **Brahimaj** led Witness 3 to a room where Kuqi and another person were detained, opened the door and told Witness 3 to “[g]et in”.<sup>474</sup> Witness 3 later found out that the person detained with Kuqi was Catholic.<sup>475</sup> Witness 3's description of the clothing worn by this other person<sup>476</sup> is consistent with the descriptions of Pal Krasniqi's clothing given by Witness 6<sup>477</sup> and Ded Krasniqi,<sup>478</sup> and the description provided in the autopsy report relating to Krasniqi.<sup>479</sup> Witness 3 learned after the war that the person whom he saw detained with Kuqi was Pal Krasniqi.<sup>480</sup>

146. A few minutes after his arrival in the room where Kuqi and Krasniqi were being held, KLA soldiers, including a soldier named “Gjakova”, beat Witness 3 with baseball bats until he lost consciousness.<sup>481</sup> When he regained consciousness, Witness 3 found that he could not stand.<sup>482</sup> He was told by KLA soldiers to urinate in his pants.<sup>483</sup> His body “was completely bruised and swollen.”<sup>484</sup>

147. Witness 3 spent three days and two nights at the Jablanica/Jabllanicë detention facility.<sup>485</sup> He was only provided with food on the third day of his detention.<sup>486</sup> At night, Witness 3, Kuqi and Krasniqi had their hands tied behind their backs and their

<sup>471</sup> Witness 3, T.1538-1540, 1669-1670.

<sup>472</sup> Witness 3, T.1530 (private).

<sup>473</sup> Witness 3, T.1539, 1541-1543; P60.

<sup>474</sup> Witness 3, T.1544-1545.

<sup>475</sup> Witness 3, T.1578.

<sup>476</sup> Witness 3, T.1560.

<sup>477</sup> Witness 6, P84, T.5247.

<sup>478</sup> D.Krasniqi, P50, T.4787-4789.

<sup>479</sup> P484, p.2.

<sup>480</sup> Witness 3, T.1558.

<sup>481</sup> Witness 3, T.1545-1548.

<sup>482</sup> Witness 3, T.1547.

<sup>483</sup> Witness 3, T.1547-1548.

<sup>484</sup> Witness 3, T.1547.

<sup>485</sup> Witness 3, T.1547, 1563.

<sup>486</sup> Witness 3, T.1563.

ankles bound together.<sup>487</sup> On one of the nights, Nazmi Brahimaj entered the room in which Witness 3 was being held and kicked him, Kuqi and Krasniqi.<sup>488</sup>

148. On the third day of his detention, **Brahimaj** took Witness 3 to an adjacent room.<sup>489</sup> Apart from **Brahimaj**, another man and two women, who wore black uniforms, were present in the room.<sup>490</sup> The second man had PU insignia on his arm.<sup>491</sup> Once in the room, **Brahimaj** interrogated Witness 3 and accused him of supporting the Serbian police and of withholding a weapon.<sup>492</sup> During the interrogation, **Brahimaj** handed Witness 3 a revolver and said: “[t]ake this, kill yourself, because I don’t want to smear my hands with your blood.”<sup>493</sup> The other male KLA soldier, who wore PU insignia, told Witness 3 “to admit or I’ll kill you, I’ll slash your throat”.<sup>494</sup> Witness 3 was also beaten with a baton by the two female soldiers who were present in the room after **Brahimaj** told them “to practice on” Witness 3.<sup>495</sup>



P407: Witness 3 marked with an “L” on this photograph the room where he was interrogated by **Brahimaj**. Witness 3 was detained in the adjacent room, *see* Witness 3, T.1564-1567.

149. Following this beating, Witness 3 was returned to the room in which he had been held with Krasniqi and Kuqi.<sup>496</sup> Once in the room, Witness 3 told his fellow detainees that he intended to escape,<sup>497</sup> which he accomplished by climbing through the window in the room and running into the nearby woods.<sup>498</sup>

<sup>487</sup> Witness 3, T.1553-1554.

<sup>488</sup> Witness 3, T.1571.

<sup>489</sup> Witness 3, T.1564-1565; P407.

<sup>490</sup> Witness 3, T.1566.

<sup>491</sup> Witness 3, T.1566-1567.

<sup>492</sup> Witness 3, T.1566-1568, 1571-1572. *See also* Witness 80, T.2353.

<sup>493</sup> Witness 3, T.1567-1568.

<sup>494</sup> Witness 3, T.1570.

<sup>495</sup> Witness 3, T.1566, 1569-1570.

<sup>496</sup> Witness 3, T.1570.

<sup>497</sup> Witness 3, T.1570.

<sup>498</sup> Witness 3, T.1570-1571.

150. Fearing that he would be re-captured and returned to the Jablanica/Jabllanicë detention facility, Witness 3 moved from village to village,<sup>499</sup> eventually returning to the village of Jablanica/Jabllanicë, where he stayed at [REDACTED].<sup>500</sup>

151. Witness 6 confirmed that a man from Grabanica/Grabanicë—who escaped through the window of the room in which he was being detained—was brought to Jablanica/Jabllanicë in July 1998.<sup>501</sup> It is clear from this description that the person whom Witness 6 saw was Witness 3. Although Witness 6 indicated that this man from Grabanica/Grabanicë was not beaten, and that he escaped the detention facility on the same day that he arrived,<sup>502</sup> the Trial Chamber can reasonably rely on Witness 3's account of his own mistreatment. It is clear from Witness 6's evidence that he did not see the beating which Witness 3 suffered upon his arrival at the detention facility. Although Witness 6 indicated that he took food and water to the room where Witness 3 was held,<sup>503</sup> it is clear that Witness 6 did not enter that room. Furthermore, Witness 80 confirmed that he saw Witness 3 being beaten.<sup>504</sup> Finally, whilst Witness 6's evidence as to the amount of time Witness 3 spent in custody differs from Witness 3's account, this discrepancy is attributable to the impact which the passage of time has had on Witness 6's memory of a detainee with whom he had little contact.

152. Approximately 10 or 12 days after he had escaped from the Jablanica/Jabllanicë detention facility,<sup>505</sup> Witness 3 encountered **Brahimaj** outside a store in Jablanica/Jabllanicë.<sup>506</sup> Upon seeing Witness 3, **Brahimaj** swore at him, called him a traitor, and took him at gunpoint to his home.<sup>507</sup> There, **Brahimaj** said that Witness 3 had broken out of the "largest prison in Kosova", and then slapped Witness 3.<sup>508</sup> After accusing Witness 3 of agreeing to help Kuqi escape in return for 10,000 Deutschmarks,<sup>509</sup> **Brahimaj** took Witness 3 to the Jablanica/Jabllanicë

<sup>499</sup> Witness 3, T.1573-1574 (private).

<sup>500</sup> Witness 3, T.1574 (private).

<sup>501</sup> Witness 6, P84, T.5233, 5236-5237, 5334-5335.

<sup>502</sup> Witness 6, P84, T.5235-5238, 5336, 5389-5390.

<sup>503</sup> Witness 6, P84, T.5332-5333, 5335-5337.

<sup>504</sup> Witness 80, T.2352-2354.

<sup>505</sup> Witness 3, T.1669-1670.

<sup>506</sup> Witness 3, T.1576.

<sup>507</sup> Witness 3, T.1576.

<sup>508</sup> Witness 3, T.1576-1577.

<sup>509</sup> Witness 3, T.1577-1578.

detention facility and asked Krasniqi—who was still in detention—whether the accusation was true.<sup>510</sup> Krasniqi said it was not.<sup>511</sup>

153. Immediately thereafter, Witness 3 was taken to Kuqi's Mercedes and made to sit in the front seat.<sup>512</sup> One of the women who had beaten him while he was detained at the Jablanica/Jabllanicë detention facility was seated behind Witness 3.<sup>513</sup> She pressed a pistol against Witness 3's neck, threatening that "[i]f you move, you are dead."<sup>514</sup> Soon thereafter **Brahimaj** forced Witness 3 into the trunk of the car.<sup>515</sup> At one point after being put in the trunk, **Brahimaj** stopped the car, opened the trunk and staged a false execution.<sup>516</sup> Witness 3 thought he had been wounded because he felt pain.<sup>517</sup> Later, **Brahimaj** stopped the car, opened the trunk and kicked Witness 3.<sup>518</sup> Throughout this ordeal Witness 3 assumed that he was being taken to his death.<sup>519</sup>

154. **Brahimaj** ultimately drove Witness 3 to the KLA staff in Glodane/Gillogjan.<sup>520</sup> Witness 3 believed that **Brahimaj** had brought him there "[t]o be executed."<sup>521</sup> There **Brahimaj** handed Witness 3 over to a KLA soldier who took Witness 3 to a room in the Staff where the soldier proceeded to beat Witness 3 "[a]s hard as he could" with a piece of wood "for some ten, 15 minutes."<sup>522</sup> Witness 3 saw blood stains on a wall in this room.<sup>523</sup> Later, Witness 3 encountered **Haradinaj** who ultimately released him.<sup>524</sup>

155. Witness 3 testified that his "body suffers to this day from what happened at the time" of his detention in Jablanica/Jabllanicë.<sup>525</sup>

156. KLA soldiers, including **Brahimaj**, cruelly treated Witness 3. The beating at the Jablanica/Jabllanicë detention facility; the conditions of Witness 3's detention

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<sup>510</sup> Witness 3, T.1578.

<sup>511</sup> Witness 3, T.1578.

<sup>512</sup> Witness 3, T.1579.

<sup>513</sup> Witness 3, T.1577, 1579.

<sup>514</sup> Witness 3, T.1579.

<sup>515</sup> Witness 3, T.1580.

<sup>516</sup> Witness 3, T.1581.

<sup>517</sup> Witness 3, T.1581-1582.

<sup>518</sup> Witness 3, T.1582.

<sup>519</sup> Witness 3, T.1581.

<sup>520</sup> Witness 3, T.1582-1583.

<sup>521</sup> Witness 3, T.1586.

<sup>522</sup> Witness 3, T.1583-1585.

<sup>523</sup> Witness 3, T.1585.

<sup>524</sup> Witness 3, T.1586-1588.

<sup>525</sup> Witness 3, T.1602.

there, including the poor sanitary conditions and lack of food; the threats against Witness 3's life; the fact that Witness 3 was transported in the trunk of a car; the mock execution staged against him; and the severe beating which he received in Glodane/Gillogjan collectively and individually caused Witness 3 serious physical and mental suffering and injury. Due to the nature, intensity and continuity of the mistreatment, the perpetrators must have intended to cause Witness 3 such suffering and injury.

157. KLA soldiers, including **Brahimaj**, tortured Witness 3. They confined and beat Witness 3 as punishment for his perceived ties to Serbs, for withholding a weapon, for having broken out of the "biggest prison in Kosova", and for allegedly accepting 10,000 Deutschmarks from Kuqi to help him escape.

(b) Skender Kuqi

158. Around mid-July 1998, armed KLA soldiers wearing masks abducted Skender Kuqi, a Muslim Kosovar Albanian civilian, from Zahać/Zahaq, and took him to the detention facility in Jablanica/Jabllanicë in the trunk of his Mercedes-Benz car.<sup>526</sup> Kuqi told Witness 3 that Azem Veselli was among those who abducted him.<sup>527</sup>

159. **Brahimaj** told Kabashi that he believed Kuqi "was a big fish, meaning a big spy [...] he has worked for UBD, Yugoslavia secret service".<sup>528</sup> Witness 80 was at the detention facility when Kuqi arrived in the trunk of his car, he heard **Brahimaj** and his brother Nazmi accuse Kuqi "of being a collaborator of the Serbs."<sup>529</sup> As discussed above, Kuqi's name had appeared on a list of persons wanted by the KLA which had been distributed at a meeting involving KLA personnel on or around 12 July 1998.<sup>530</sup> Furthermore, the fact that Kuqi's brother Adem had been a police officer<sup>531</sup> aroused suspicion amongst the KLA. Following Kuqi's abduction, Adem went to a Serb police station in search of his brother.<sup>532</sup> On his return to KLA territory, KLA soldiers took

<sup>526</sup> Kuqi, P68, T.9990-9991, 9997-10002, 10005; Witness 6, P84, T.5231-5232, 5331-5332; C.Krasniqi, P52, T.5723; Witness 80, T.2354-2355; Witness 3, T.1539.

<sup>527</sup> Witness 3, T.1562-1563.

<sup>528</sup> Kabashi, P119, T.4255. *See also* Kabashi, P119, T.4257, 4259.

<sup>529</sup> Witness 80, T.2354-2355.

<sup>530</sup> Witness 17, P344 (under seal), paras.56-59; P342, T.7583-7586, 7693-7700; D146, pp.13-14. *See above*, p.20.

<sup>531</sup> Kuqi, P68, T.9990; C.Krasniqi, P52, T.5722.

<sup>532</sup> C.Krasniqi, P52, T.5722-5723.

Adem to KLA commander Cufë Krasniqi for interrogation and referred to Adem as “a suspicious person.”<sup>533</sup>

160. Once Kuqi was at the Jablanica/Jabllanicë detention facility, he was beaten by KLA soldiers including **Brahimaj** and his relatives Nazmi, Naser, Hamza and Myftar Brahimaj.<sup>534</sup> According to Witness 80, Myftar Brahimaj was the most active in the beating.<sup>535</sup> Witness 80 testified that after the beating, Kuqi “was in a very bad condition. It was a terrible sight to see.”<sup>536</sup> Kuqi was beaten until he lost consciousness.<sup>537</sup>

161. Clearly referring to Kuqi, Witness 6 stated that he saw a man whom he was told was from Zahać/Zahaq arrive at the detention facility in mid-July 1998 in the trunk of a Mercedes-Benz car.<sup>538</sup> When Witness 6 saw Kuqi lying on the floor of the room in which he was being held, his eyes were closed, and he “was all swollen” because of the beating which he had received.<sup>539</sup>

162. When Witness 3 first saw Kuqi in Jablanica/Jabllanicë, Kuqi “was black, bruised all over on one part of his face. [...] [and] [w]hen he breathed, he made a strong noise.”<sup>540</sup> Witness 3 saw Naser Brahimaj beat Kuqi “[a]t least five or six times a day.”<sup>541</sup> Kuqi “screamed because of the pain” he was in.<sup>542</sup>

163. Kuqi and Pal Krasniqi attempted to escape with Witness 3, but were captured and severely beaten by KLA soldiers, including Hamza Brahimaj, who then returned the two to the room where they had been held.<sup>543</sup> **Brahimaj**, Alush Agushi, Pjetër Shala *a.k.a.* Ujku,<sup>544</sup> Myftar Brahimaj and Bandash were present during the

<sup>533</sup> C.Krasniqi, P52, T.5722-5723.

<sup>534</sup> Witness 3, T.1552; Witness 6, P84, T.5232, 5235, 5337-5338; Witness 80, T.2355-2356. *See also* Witness 3, T.1571.

<sup>535</sup> Witness 80, T.2355.

<sup>536</sup> Witness 80, T.2356.

<sup>537</sup> Witness 80, T.2355.

<sup>538</sup> Witness 6, P84, 5206, 5231-5232, 5331-5333, 5340-5341, 5386, 5388-5389, 5391.

<sup>539</sup> Witness 6, P84, T.5337.

<sup>540</sup> Witness 3, T.1552.

<sup>541</sup> Witness 3, T.1552.

<sup>542</sup> Witness 3, T.1552.

<sup>543</sup> Witness 3, T.1571; Witness 6, P84, T.5236-5238, 5239-5240, 5388-5389. *See also* Witness 80, T.2356.

<sup>544</sup> Witness 80, T.2357. *See also* T.2351, 2643. *See also below*, para.187.

beating.<sup>545</sup> Kabashi saw Kuqi after his escape and said he “was bruised and swollen.”<sup>546</sup>

164. According to Tetaj, after learning of Kuqi’s abduction and detention in Jablanica/Jabllanicë, he contacted Faton Mehmetaj who told him to speak to **Haradinaj**.<sup>547</sup> After Tetaj informed **Haradinaj**, the two went to Jablanica/Jabllanicë to meet Nazmi Brahimaj.<sup>548</sup> Tetaj indicated that at this meeting **Haradinaj** ordered Nazmi Brahimaj to release Kuqi immediately as his detention was “damaging our cause.”<sup>549</sup> Nazmi Brahimaj responded that Kuqi tried to escape and was “slightly” injured as a result, but assured **Haradinaj** that Kuqi would be released on recovery.<sup>550</sup>

165. Because of the injuries which he suffered, Kuqi was taken to the hospital in Rznić/Irzniq on the orders of **Brahimaj**, his brother Nazmi and Myftar Brahimaj.<sup>551</sup> Witness 80 saw Kuqi being removed from the detention facility.<sup>552</sup> According to him, Kuqi’s body was “all bruised”, his clothes were torn and Witness 80 thought he could see Kuqi’s organs through an open wound.<sup>553</sup> In addition, Witness 80 explained that when he described in a previous statement to the Prosecution that Kuqi’s tongue was “hanging so far out from his mouth that it looked like the tongue of a cow”, this was his impression of Kuqi’s appearance.<sup>554</sup> Kuqi’s condition was so serious that Witness 80 thought he was already dead.<sup>555</sup>

166. **Haradinaj** was at the detention facility when Kuqi was being removed.<sup>556</sup> He saw the condition that Kuqi was in,<sup>557</sup> and would have known that Kuqi was not “slightly” injured as Nazmi Brahimaj had claimed.<sup>558</sup>

<sup>545</sup> Witness 80, T.2357.

<sup>546</sup> Kabashi, P120 (under seal), T.4257-4258.

<sup>547</sup> Tetaj, P75, T.3680.

<sup>548</sup> Tetaj, P75, T.3680-3681, 3778.

<sup>549</sup> Tetaj, P75, T.3681-3682.

<sup>550</sup> Tetaj, P75, T.3682.

<sup>551</sup> Kabashi, P120 (under seal), T.4257-4258; Witness 6, P84, T.5240, 5389-5390; Witness 80, T.2369-2370.

<sup>552</sup> Witness 80, T.2357, 2368-2370.

<sup>553</sup> Witness 80, T.2369, 2692-2693.

<sup>554</sup> Witness 80, T.2691-2696.

<sup>555</sup> Witness 80, T.2369.

<sup>556</sup> Witness 80, T.2374, 2379.

<sup>557</sup> Witness 80, T.2374, 2379.

<sup>558</sup> Tetaj, P75, T.3682.



167. Kuqi ultimately died of his injuries.<sup>559</sup> The KLA buried his body near the detention facility in Jablanica/Jabllanicë, but later exhumed and returned it to his family.<sup>560</sup> Tetaj was present and observed “an overall bruising of [Kuqi’s] body.”<sup>561</sup> The United Nations Interim Administration in Kosovo’s (“UNMIK”) Office of Missing Persons and Forensics (“OMPF”) exhumed Kuqi’s body in March 2004. Kuqi’s family members pointed out his grave and were certain of its location.<sup>562</sup> The autopsy report relating to Kuqi concluded that in the event that the multiple fractures suffered by Kuqi were inflicted before death, the pattern and location of these fractures would be consistent with a “compression of the chest caused by a blow, stomping or a similar force.”<sup>563</sup> This conclusion is consistent with the eye-witness evidence describing Kuqi’s mistreatment.<sup>564</sup>

168. KLA soldiers, including **Brahimaj** and his relatives Nazmi, Naser, Myftar and Hamza Brahimaj, cruelly treated Kuqi by beating him and confining him at the Jablanica/Jabllanicë detention facility in poor sanitary conditions. This caused Kuqi serious physical and mental suffering and injury. In light of the nature, severity and continuity of the mistreatment, the perpetrators must have intended to cause Kuqi such suffering and injury.

169. KLA soldiers, including **Brahimaj** and his relatives Nazmi, Naser, Myftar and Hamza Brahimaj, tortured Kuqi. They confined and mistreated Kuqi as punishment for being a perceived Serb collaborator.

170. KLA soldiers, including **Brahimaj** and his relatives Nazmi, Naser, Myftar and Hamza Brahimaj, murdered Kuqi. His death resulted from the mistreatment which he suffered while in KLA custody, which included severe beatings and a lack of timely medical care. In causing his death, the perpetrators acted, if not with direct intent, with at least indirect intent that the horrific mistreatment which Kuqi suffered would probably lead to his death.

<sup>559</sup> Tetaj, P75, T.3683, 3779-3780; Kabashi, P120 (under seal), T.4257-4258.

<sup>560</sup> Tetaj, P75, T.3683-3684, 3686-3688, 3780; P79.

<sup>561</sup> Tetaj, P75, T.3782. *See also* Tetaj, P75, T.3783, 3845.

<sup>562</sup> Sandhu, P487, T.10361-10367; P490, paras.11-13.

<sup>563</sup> P488, p.4.

<sup>564</sup> *See above*, paras.160-163, 165.

(c) Pal Krasniqi

171. Around 10 July 1998, Pal Krasniqi, a Catholic Kosovar Albanian,<sup>565</sup> and his friend Mahir Demaj, went to Jablanica/Jabllanicë to join the KLA.<sup>566</sup> En route, the Serbian police detained and beat Krasniqi and Demaj.<sup>567</sup> After their release, Krasniqi and Demaj continued on to Jablanica/Jabllanicë.<sup>568</sup> When they arrived in the village, Demaj was taken to an improvised hospital where he received treatment for the injuries inflicted by the Serbian police.<sup>569</sup> After his discharge, Demaj left Jablanica/Jabllanicë.<sup>570</sup> Krasniqi, on the other hand, remained in the village.<sup>571</sup>

172. A day after Kuqi was brought to the Jablanica/Jabllanicë detention facility, the KLA arrested Krasniqi because they suspected him of spying for the Serbian police.<sup>572</sup> The KLA detained Krasniqi in the same room in the Jablanica/Jabllanicë detention facility where Kuqi was being held.<sup>573</sup> KLA soldiers beat Krasniqi and Kuqi “continuously” with baseball bats.<sup>574</sup> To avoid further mistreatment, Krasniqi falsely admitted to spying for the Serbs.<sup>575</sup>

173. Witness 3 said that he had never seen “anyone in a worse condition” than Krasniqi and Kuqi.<sup>576</sup> Witness 6 stated that the two were “in a horrifying state.”<sup>577</sup> Krasniqi’s condition was such that he “couldn’t stand up”.<sup>578</sup> Krasniqi was also “swollen all over” his body.<sup>579</sup> During his detention, Krasniqi was left to relieve himself in his pants.<sup>580</sup>

174. Soon after being detained in the same room at the Jablanica/Jabllanicë detention facility, Witness 3 saw Naser Brahimaj beat Krasniqi on the head with a

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<sup>565</sup> Witness 6, P84, T.5238.

<sup>566</sup> D.Krasniqi, P50, T.4768-4770, 4774; Demaj, P24, pp.2 (para.4), 10 (para.2).

<sup>567</sup> Demaj, P24, p.2 (para.5); D.Krasniqi, P50, T.4770, 4774.

<sup>568</sup> Demaj, P24, p.4 (para.9).

<sup>569</sup> Demaj, P24, p.4 (para.10); D.Krasniqi, P50, T.4772-4773.

<sup>570</sup> Demaj, P24, p.5 (para.12).

<sup>571</sup> Demaj, P24, p.5 (para.14).

<sup>572</sup> Witness 3, T.1553, 1561-1562; Witness 6, P84, T.5334-5335; Kabashi, P119, T.4255-4256; D.Krasniqi, P51 (under seal), T.4792-4795.

<sup>573</sup> Witness 3, T.1545; Witness 6, P84, T.5334-5335.

<sup>574</sup> Witness 6, P84, T.5235, 5237, 5335; Witness 3, T.1545, 1550-1552; Kabashi, P119, T.4255-4256.

<sup>575</sup> Kabashi, P119, T.4256.

<sup>576</sup> Witness 3, T.1545.

<sup>577</sup> Witness 6, P84, T.5235.

<sup>578</sup> Witness 3, T.1551.

<sup>579</sup> Witness 3, T.1551.

<sup>580</sup> Witness 3, T.1551-1552.

baseball bat.<sup>581</sup> The force of the beating knocked Krasniqi unconscious.<sup>582</sup> Naser Brahimaj frequently beat Krasniqi.<sup>583</sup>

175. Krasniqi tried to escape with Witness 3 and Kuqi but was caught, beaten by Hamza Brahimaj and other KLA soldiers, then returned to the room where he had been held.<sup>584</sup> After the failed escape, Witness 6 saw Krasniqi lying on the floor of the room “spitting blood.”<sup>585</sup> Krasniqi’s body was “swollen” and was “all blue and black because of the beating”.<sup>586</sup> He could neither eat nor drink.<sup>587</sup> According to Witness 6, Krasniqi was “[a]s a person is before he dies”.<sup>588</sup>

176. Krasniqi was still imprisoned in the same room within the Jablanica/Jabllanicë detention facility roughly 10 to 12 days later when **Brahimaj** arrested Witness 3 and brought him back to the detention facility.<sup>589</sup> When Witness 6 was released from Jablanica/Jabllanicë on around 25 July 1998, Krasniqi was alive and still in detention.<sup>590</sup>

177. Sometime after Krasniqi’s abduction by the KLA in 1998, Krasniqi’s uncle travelled to Jablanica/Jabllanicë to inquire about his fate. He was told that Krasniqi “had been taken to Pejë”, which meant that he “disappeared, not to return ever again.”<sup>591</sup> Sometime after the war, Krasniqi’s father questioned Demaj about Krasniqi’s fate.<sup>592</sup> Demaj, who was scared, told Krasniqi’s father not to look for Krasniqi, because “[n]obody will dare to say anything about it.”<sup>593</sup>

178. Krasniqi’s remains (R-9)<sup>594</sup> were recovered on 11 September 1998 in the heart of KLA controlled territory,<sup>595</sup> at the Lake Radonjić canal, among the remains of eight other persons.<sup>596</sup> Bullet holes perforated the canal wall along which Krasniqi’s

<sup>581</sup> Witness 3, T.1549-1551.

<sup>582</sup> Witness 3, T.1551.

<sup>583</sup> Witness 3, T.1552-1553.

<sup>584</sup> Witness 6, P84, T.5236-5238, 5239-5240, 5388-5389.

<sup>585</sup> Witness 6, P84, T.5240-5241.

<sup>586</sup> Witness 6, P84, T.5240-5241.

<sup>587</sup> Witness 6, P84, T.5240-5241.

<sup>588</sup> Witness 6, P84, T.5240-5241.

<sup>589</sup> Witness 3, T.1669-1670, 1578.

<sup>590</sup> Witness 6, P84, T.5206, 5241; Witness 6, P85 (under seal), T.5253-5256; P91 (under seal).

<sup>591</sup> D.Krasniqi, P50, T.4822-4825.

<sup>592</sup> D.Krasniqi, P50, T.4772.

<sup>593</sup> D.Krasniqi, P50, T.4772.

<sup>594</sup> AF2-5.

<sup>595</sup> See above, para.4.

<sup>596</sup> Aleksandrić, P439, paras.1, 4, 6-9, 11-12, 34-44, 61-62, 121-126; P435; P437, p.2; Dunjić, P471, para.285; P486; P459, p.20; P460, p.3; P461, p.18; P478, p.2; P481, p.2.

remains were found.<sup>597</sup> His remains showed that he had suffered multiple fractures consistent with the eye-witness accounts of his beating.<sup>598</sup> An autopsy revealed that Krasniqi's death was caused by multiple gunshot injuries to the head, trunk and upper limbs.<sup>599</sup> A scarf "folded like a strip" measuring approximately 20 cm was found "in the area of [Krasniqi's] bones around the stomach; its free endings [...] tied in a knot."<sup>600</sup> The KLA must have executed Krasniqi.

179. KLA soldiers, including Naser and Hamza Brahimaj, cruelly treated Krasniqi by beating him at the Jablanica/Jabllanicë detention facility and confining him there in poor sanitary conditions. This caused Krasniqi serious physical and mental suffering and injury. In light of the nature, severity and continuity of Krasniqi's mistreatment, the perpetrators must have intended to cause Krasniqi such suffering and injury.

180. KLA soldiers tortured Krasniqi. They confined and beat him as punishment for being a suspected Serb spy.

181. The KLA murdered Krasniqi. Considering the severe mistreatment which the KLA meted out to Krasniqi, in whose custody he was last seen, the KLA must have intentionally killed Krasniqi. This is confirmed by the fact that his remains were found in KLA-controlled territory along a canal wall marked by bullet holes, and that a scarf had been tied in a knot around his stomach.

## ***6. Count 6***

182. Fadil Fazliu and Naser Lika were Kosovar Albanian civilians and LDK members from the village of Grabanica/Grabanicë.<sup>601</sup>

183. Sometime during the Serb attack against Grabanica/Grabanicë in May 1998, locals who had been defending the village, including Fazliu and Lika, withdrew from Grabanica/Grabanicë.<sup>602</sup> Lika and Fazliu went to Žabelj/Zhabel via Bokšić/Bokshiq, Catholic Glodane/Gllogjan and Jablanica/Jabllanicë.<sup>603</sup> **Brahimaj** and Alush Agushi

<sup>597</sup> Aleksandrić, P439, paras.61-62, 102; P461, pp.12, 15; P478, p.3.

<sup>598</sup> P484, pp.1-2, 6.

<sup>599</sup> AF2-5.

<sup>600</sup> P484, p.2.

<sup>601</sup> [REDACTED].

<sup>602</sup> [REDACTED].

<sup>603</sup> [REDACTED].

stopped them twice on their journey, first at the gorge in Catholic Glodane/Gllogjan, and then in Jablanica/Jabllanicë.<sup>604</sup>

184. According to [REDACTED], when Lika and Fazliu were stopped at the gorge, **Brahimaj** “was very angry, [and] very aggressive.”<sup>605</sup> **Brahimaj** threatened Lika and Fazliu stating that: “[t]here’s no place for you to go, and the persons who opens [*sic*] a door to you will suffer [...] they will suffer consequences from us.”<sup>606</sup> **Brahimaj** labelled Lika and Fazliu “traitors” who had “abandoned [their] country.”<sup>607</sup>

185. Having also fled Grabanica/Grabanicë during the Serb attack,<sup>608</sup> Witness 3 had a similar encounter with **Brahimaj** and Agushi midway between Bokšić/Bokshiq and Catholic Glodane/Gllogjan. According to Witness 3, **Brahimaj** “was angry that we had withdrawn, and he was swearing at us”; “[h]e said, [y]ou’re traitors. Why did you leave your positions? Only traitors leave their positions. They are traitors to their country.”<sup>609</sup> Kabashi, who fought with the KLA during the battle in and around Grabanica/Grabanicë,<sup>610</sup> corroborated the accounts given by Witness 3 [REDACTED]. Kabashi indicated that **Brahimaj** and Agushi were in Catholic Glodane/Gllogjan and that they asked villagers from Grabanica/Grabanicë: “[w]hy did you leave? Why did you flee?”<sup>611</sup> According to Kabashi, “[i]t was better to stay there and get killed than to flee.”<sup>612</sup>

186. When Lika and Fazliu were stopped in Jablanica/Jabllanicë, KLA soldier Shaqir Krasniqi had joined **Brahimaj** and Agushi.<sup>613</sup> In Jablanica/Jabllanicë, Lika and Fazliu were threatened “to hand in these weapons or we’ll fight with you.”<sup>614</sup> Their weapons were then “taken away by force.”<sup>615</sup>

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<sup>604</sup> [REDACTED].

<sup>605</sup> [REDACTED].

<sup>606</sup> [REDACTED].

<sup>607</sup> [REDACTED].

<sup>608</sup> Witness 3, T.1499-1500 (private), 1514-1515.

<sup>609</sup> Witness 3, T.1517 (private), 1518, 1600 (private), 1631 (private).

<sup>610</sup> Kabashi, P119, T.4198-4199.

<sup>611</sup> Kabashi, P119, T.4199-4202.

<sup>612</sup> Kabashi, P119, T.4200.

<sup>613</sup> [REDACTED].

<sup>614</sup> [REDACTED].

<sup>615</sup> [REDACTED].

187. From Jablanica/Jabllanicë, Lika, Fazliu and others went to the home of Tal Zeka in Žabelj/Zhabel.<sup>616</sup> Nazmi Brahimaj came to Žabel/Zhabel and tried to take Lika and Fazliu by force to Jablanica/Jabllanicë.<sup>617</sup> [REDACTED] after they spent two days at Tal Zeka's home, KLA soldiers, including Arbnor Zeneli and a soldier with the first name Pjetër and the nickname "Ujku", abducted Lika and Fazliu "by force", "violence", and "[u]nder threat of arms", and took them to the detention facility in Jablanica/Jabllanicë.<sup>618</sup> Witness 3, who was staying at Tal Zeka's home at the time, observed this incident, and corroborated the forcible abduction of Lika and Fazliu from Žabelj/Zhabel.<sup>619</sup> Witness 3 confirmed that Ujku was a PU official.<sup>620</sup> Ujku must be Pjetër Shala who confirmed that his nickname was Ujku,<sup>621</sup> and that he had been appointed by **Brahimaj** and others to the PU.<sup>622</sup>

188. In Jablanica/Jabllanicë, Lika and Fazliu encountered "20 or 30 [of their] co-villagers" from Grabanica/Grabanicë who had also "been taken there by force."<sup>623</sup> **Brahimaj** threatened the villagers, telling them to "go back to your village and fight."<sup>624</sup> The villagers were told that otherwise, they "had no place in Kosova."<sup>625</sup> Fazliu was beaten in Jablanica/Jabllanicë.<sup>626</sup> **Haradinaj** was present, and heard the threats directed at the villagers from Grabanica/Grabanicë by **Brahimaj**, his brother Nazmi, and other KLA soldiers.<sup>627</sup> **Balaj** was also present.<sup>628</sup> After about four hours,<sup>629</sup> Fazliu and Lika were released when their relatives and others intervened threatening "they would start fighting" if Lika and Fazliu were not released.<sup>630</sup>

189. In July 1998,<sup>631</sup> Lika was abducted in Bučane/Bucan by Hajdar Dula, who brought Lika to Jablanica/Jabllanicë in the trunk of a car.<sup>632</sup> While in the trunk, Lika's

<sup>616</sup> [REDACTED].

<sup>617</sup> [REDACTED].

<sup>618</sup> [REDACTED].

<sup>619</sup> Witness 3, T.1532-1535 (private), 1639-1640 (private).

<sup>620</sup> Witness 3, T.1533 (private).

<sup>621</sup> Shala, P69, T.9938.

<sup>622</sup> Shala, P69, T.9956-9962.

<sup>623</sup> [REDACTED].

<sup>624</sup> [REDACTED].

<sup>625</sup> [REDACTED].

<sup>626</sup> [REDACTED].

<sup>627</sup> [REDACTED].

<sup>628</sup> [REDACTED].

<sup>629</sup> [REDACTED].

<sup>630</sup> [REDACTED].

hands were tied with a piece of wire behind his back.<sup>633</sup> [REDACTED]<sup>634</sup> In addition to his membership in the LDK, a political party which the KLA “didn’t like”,<sup>635</sup> Lika was abducted, taken to Jablanica/Jabllanicë and mistreated on this occasion because he was suspected of having supported Serb forces during an attack against Českovo/Qeskove.<sup>636</sup> **Brahimaj** accused Lika of having ridden “on top of Serb tanks.”<sup>637</sup>

190. When Lika arrived in Jablanica/Jabllanicë, he was beaten by **Brahimaj**, Bandash and other “young” KLA soldiers.<sup>638</sup> In addition to **Balaj** and Agushi, Nazmi, Myftar, and Naser Brahimaj were present while Lika was beaten.<sup>639</sup> **Brahimaj** beat Lika with sticks and rubber objects.<sup>640</sup> [REDACTED] described **Balaj** as “very euphoric” while Lika was being beaten, **Balaj** was heard to say: “I am here only to kill people.”<sup>641</sup> Lika was so badly beaten that he lost consciousness.<sup>642</sup>

191. After being beaten, Lika was taken to the building with “a cellar”, and left in the cellar which was filled with water.<sup>643</sup> There was barbed wire and salt in the water.<sup>644</sup> Lika was occasionally taken out of the cellar, beaten up and then returned to the cellar.<sup>645</sup>

192. After spending three days in the cellar,<sup>646</sup> Lika began working in the kitchen of the detention facility.<sup>647</sup> Owing to the poor physical condition which he was in, Lika was unable to work properly.<sup>648</sup>

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<sup>631</sup> [REDACTED]. According to [REDACTED], Lika left the detention facility during the Serb attack in the area, witnesses have placed this attack as having taken place in August 1998 (*see* Zivanović, P110, T.9473-9480; P112, paras.98-99; Z.Stijović, T.604-605).

<sup>632</sup> [REDACTED].

<sup>633</sup> [REDACTED].

<sup>634</sup> [REDACTED].

<sup>635</sup> [REDACTED]. [REDACTED].

<sup>636</sup> [REDACTED].

<sup>637</sup> [REDACTED].

<sup>638</sup> [REDACTED].

<sup>639</sup> [REDACTED].

<sup>640</sup> [REDACTED].

<sup>641</sup> [REDACTED].

<sup>642</sup> [REDACTED].

<sup>643</sup> [REDACTED].

<sup>644</sup> [REDACTED].

<sup>645</sup> [REDACTED].

<sup>646</sup> [REDACTED].

<sup>647</sup> [REDACTED].

<sup>648</sup> [REDACTED].

193. Lika remained at the detention facility in Jablanica/Jabllanicë for about three weeks.<sup>649</sup> He managed to run away when Serb forces launched an attack against the area.<sup>650</sup>

194. Although Witness 6 testified that he could not remember seeing Lika at the detention facility,<sup>651</sup> this is explained by the passage of time, the number of people who crowded the detention facility at the time that Witness 6 and Lika were there,<sup>652</sup> and the fact that Witness 6 was not from the immediate area and had no prior relationship with Lika.<sup>653</sup> [REDACTED] confirmed that Lika and Witness 6 worked together in the kitchen at the detention facility.<sup>654</sup> Kabashi's evidence shows that he was aware that Lika was a detainee at the time that Kuqi was in custody.<sup>655</sup>

195. According to [REDACTED], Lika still suffers from the mistreatment which he experienced in Jablanica/Jabllanicë.<sup>656</sup>

196. KLA soldiers, including **Balaj**, **Brahimaj**, Arbnor Zeneli, Hajdar Dula and Pjetër Shala, cruelly treated Lika and Fazliu. Both victims were threatened, forcibly abducted, threatened again, and Fazliu was beaten. On another occasion, Lika was viciously beaten; held in a basement filled with water, salt and barbed wire; and forced to work despite the pain he was in owing to his mistreatment. Due to the nature, intensity and duration of the mistreatment suffered by the victims, the perpetrators must have acted intentionally.

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<sup>649</sup> [REDACTED].

<sup>650</sup> [REDACTED] Zivanović, P110, T.9473-9480; P112, paras.98-99; Z.Stijović, T.604-605.

<sup>651</sup> Witness 6, P85 (under seal), T.5368, 5381-5382, 5392-5394.

<sup>652</sup> Witness 6, P84, T.5246, 5360-5361.

<sup>653</sup> Witness 6, P85 (under seal), T.5393-5394.

<sup>654</sup> [REDACTED] D212 (under seal).

<sup>655</sup> Kabashi, P120 (under seal), T.4257-4258. [REDACTED].

<sup>656</sup> [REDACTED].



197. KLA soldiers, including **Balaj, Brahimaj**, Arbnor Zeneli, Hajdar Dula and Pjetër Shala, tortured Lika and Fazliu. Both victims were punished and/or discriminated against because they were deemed political opponents who were traitors for not defending Grabanica/Grabanicë during the Serb attack against the village. Lika was also punished because he was suspected of collaborating with the Serbian forces.

## VII. ACCUSED'S INDIVIDUAL CRIMINAL RESPONSIBILITY

### A. JCE

198. All three Accused are liable for the crimes pursuant to a JCE of the first category.<sup>657</sup> This form of liability requires (1) a plurality of persons, (2) who act pursuant to a common purpose involving the commission of a crime under the Statute and (3) the accused's contribution to the common criminal purpose.<sup>658</sup> The *mens rea* requires that the JCE members act with shared intent.<sup>659</sup>

#### *1. Plurality of persons*

199. **Haradinaj, Balaj, Brahimaj** and other KLA soldiers pursued the common purpose by mistreating perceived opponents in Jablanica/Jabllanicë. This sufficiently identifies the JCE members by reference to a group.<sup>660</sup>

#### *2. Common criminal purpose*

200. From at least April until late September 1998, **Haradinaj, Balaj, Brahimaj** and other KLA soldiers pursued the common purpose to consolidate KLA control over the Dukagjin zone by suppressing real or perceived opposition to the KLA. To achieve this aim they mistreated perceived opponents at the Jablanica/Jabllanicë barracks, which involved the commission of the crimes of cruel treatment, torture and murder under Article 3 of the Statute.<sup>661</sup>

<sup>657</sup> In light of *Haradinaj* AJ, para.51, the Prosecution does not seek a conviction for Brahimaj in relation to Count 3 (former Count 28) and Count 5 (former Count 32).

<sup>658</sup> *Tadić* AJ, para.227.

<sup>659</sup> *Tadić* AJ, para.228.

<sup>660</sup> See *Krajišnik* AJ, para.156; *Limaj* AJ, para.99; *Brdanin* AJ, para.430; *Stakić* AJ, para.69.

<sup>661</sup> See above, Section V; *Tadić* AJ, para.227; *Krajišnik* AJ, para.163; *Furundžija* AJ, para.119.

201. The Accused worked closely with each other and with other KLA soldiers in mistreating perceived opponents in Jablanica/Jabllanicë.<sup>662</sup> The co-operation between the Accused in relation to the crimes in Jablanica/Jabllanicë was facilitated by their strong personal relationships.<sup>663</sup>

202. In the alternative, **Brahimaj** and/or **Balaj** implemented the common criminal purpose in Jablanica/Jabllanicë in relation to one or more of the Counts charged in the Indictment together with other members of the Brahimaj family and other KLA soldiers.

203. **Brahimaj**'s brother Nazmi, a KLA commander in Jablanica/Jabllanicë, played a central role in the mistreatment of victims held at the barracks.<sup>664</sup> Other KLA members from the Brahimaj family in Jablanica/Jabllanicë including, Myftar, Hamza and Naser Brahimaj also participated in the mistreatment committed at the detention facility.<sup>665</sup> In addition to members of the Brahimaj family, KLA soldiers, including Alush Agushi *a.k.a.* Pipi or Mala,<sup>666</sup> Arbnor Zeneli,<sup>667</sup> Pjetër Shala *a.k.a.* Ujku<sup>668</sup> and Hajdar Dula were involved in abducting perceived opponents and taking them to Jablanica/Jabllanicë and/or mistreating them at the detention facility.<sup>669</sup>

### **3. Accused's contributions**

204. As described below, each Accused made a significant contribution to the common criminal purpose.

#### (a) **Haradinaj's contributions**

205. **Haradinaj** encouraged perpetrators to commit crimes at the detention facility in Jablanica/Jabllanicë, failed to prevent the mistreatment, enacted measures which assisted perpetrators in committing crimes and legitimised the operation of the detention facility. His conduct considered individually and/or cumulatively constituted a significant contribution to the common criminal purpose.

<sup>662</sup> See above, Sections III, V, VI.

<sup>663</sup> See above, Section III.

<sup>664</sup> See above, paras.107, 123, 125-126, 128, 133, 147, 159-160, 164, 166, 187-188, 190.

<sup>665</sup> See above, paras.125, 160, 162-163, 174-175, 190.

<sup>666</sup> Shala, P69, T.9955; Zyrapi, P160, para.31; D.Krasniqi, P50, T.4810; Witness 80, T.2372, 2402, 2406, 2417.

<sup>667</sup> Shala, P69, T.9955-9956.

<sup>668</sup> See above, paras.65, 187.

<sup>669</sup> See above, paras.163, 183-187, 189-190.

(i) Haradinaj encouraged perpetrators to commit crimes at the Jablanica/Jabllanicë detention facility

206. As discussed above,<sup>670</sup> well before he assumed formal command over the Dukagjin zone, **Haradinaj** was regarded as a person of authority by KLA soldiers throughout the zone, including by **Brahimaj**, **Balaj** and other KLA soldiers in Jablanica/Jabllanicë. Given the immense respect which KLA fighters in the Dukagjin zone had for him, **Haradinaj** encouraged perpetrators to mistreat detainees in Jablanica/Jabllanicë by endorsing and supporting the mistreatment committed there.<sup>671</sup>

207. As early as May 1998, **Haradinaj** knew that detainees were being mistreated in Jablanica/Jabllanicë. Despite his presence at the detention facility, he did not put an end to their mistreatment. **Haradinaj**'s attitude encouraged the perpetrators in Jablanica/Jabllanicë, including **Balaj** and **Brahimaj**, to mistreat perceived opponents.

208. [REDACTED] saw **Haradinaj** at the Jablanica/Jabllanicë detention facility as early as May 1998 [REDACTED].<sup>672</sup> [REDACTED].<sup>673</sup> On this occasion, in **Haradinaj**'s presence, **Brahimaj**, his brother Nazmi, and other KLA soldiers threatened a number of villagers from Grabanica/Grabanicë for having withdrawn from their village during the Serb attack against it.<sup>674</sup> **Balaj** was also present at the detention facility on this occasion.<sup>675</sup> At least one villager from Grabanica/Grabanicë, Fadil Fazliu, was beaten.<sup>676</sup>

209. When **Haradinaj** was at the detention facility in May 1998, it held perceived opponents who had been violently abducted, including the victims of Count 1.<sup>677</sup> The detention facility was in a small compound placing **Haradinaj** steps away from the detainees. The facility was also so notorious in the area that its existence was known

<sup>670</sup> See above, paras.6-13.

<sup>671</sup> See *Kvočka* AJ, para.195; *Milutinović* TJ, Vol.3, para.782. See also *Brdanin* AJ, para.273; *Aleksovski* TJ, para.87; *Kayishema* AJ, paras.201-202.

<sup>672</sup> See above, para.188.

<sup>673</sup> See above, paras.183-188.

<sup>674</sup> See above, para.188.

<sup>675</sup> See above, para.188.

<sup>676</sup> See above, para.188.

<sup>677</sup> In relation to the timing of the abduction of the Count 1 victims in the village of Grabanica/Grabanicë, see [REDACTED] Witness 66, P107 (under seal), T.8422-8423, 8432-8435; Witness 3, T.1596 (private). See also below, paras.211-212.

to common villagers<sup>678</sup> and to the Serbian authorities.<sup>679</sup> The nature of this facility could not have escaped **Haradinaj** particularly given his reputation for being a strong, dynamic and “hands-on” commander, with direct contact, authority and control over the zone and his subordinates.<sup>680</sup> The only reasonable conclusion to be drawn therefore is that **Haradinaj** was aware that detainees, including the Count 1 victims, were being held in Jablanica/Jabllanicë when he visited the facility in May 1998. **Haradinaj** also would have been aware of the condition these detainees were in. As Witness 80 commented in relation to events at the detention facility, “[**Haradinaj**] was the commander of that region, and therefore he went to the staff, and it’s impossible for him not to know what was going on.”<sup>681</sup>

210. The fact that **Haradinaj**, a person whom they held in high regard,<sup>682</sup> did nothing to assist the detainees, must have been understood by **Brahimaj, Balaj** and other KLA soldiers as an endorsement of the mistreatment. Some days after **Haradinaj**’s visit in May 1998, Witness 80 saw **Balaj, Brahimaj**, Nazmi Brahimaj and other KLA soldiers cruelly mistreat the Count 1 victims, subsequent to which, **Balaj** and **Brahimaj**, ordered their execution.<sup>683</sup> The perpetrators were encouraged by **Haradinaj**’s endorsement.

211. There can be no uncertainty that the Count 1 victims were executed after **Haradinaj**’s visit. [REDACTED],<sup>684</sup> [REDACTED].<sup>685</sup>

212. [REDACTED].<sup>686</sup> [REDACTED].<sup>687</sup> This was the occasion when [REDACTED] saw **Haradinaj** present at the detention facility.<sup>688</sup> [REDACTED].<sup>689</sup> [REDACTED]. The only reasonable interpretation [REDACTED] therefore, is that [REDACTED], he had already seen **Haradinaj** there.

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<sup>678</sup> See above, para.90.

<sup>679</sup> Z.Stijović, P121, para.55.

<sup>680</sup> See above, para.15.

<sup>681</sup> Witness 80, T.2421.

<sup>682</sup> See above, paras.9, 31-34, 37. See also above, 6-8, 10-13, 27, 29-30.

<sup>683</sup> [REDACTED].

<sup>684</sup> [REDACTED].

<sup>685</sup> [REDACTED].

<sup>686</sup> [REDACTED].

<sup>687</sup> [REDACTED].

<sup>688</sup> [REDACTED].

<sup>689</sup> [REDACTED].

213. **Haradinaj** also knew that detainees were still being detained and severely mistreated in Jablanica/Jabllanicë after assuming *de jure* command of the village on 23 June 1998. By this time **Haradinaj** maintained a greater presence in the village. This is reflected by the official meetings which **Haradinaj** convened in Jablanica/Jabllanicë on 23 June, 1 July and mid-July 1998.<sup>690</sup> It is also reflected by **Haradinaj**'s appointment of soldiers to serve in and around Jablanica/Jabllanicë, including a former commander of his staff in Glodane/Gllogjan who became responsible for KLA units in Jablanica/Jabllanicë.<sup>691</sup>

214. Furthermore, **Haradinaj** observed first-hand the brutality of the crimes committed at the detention facility. He saw Skender Kuqi (Count 5) being transferred from the detention facility to receive medical care after beatings left him in a critical condition.<sup>692</sup> At the time, other detainees were being held steps away, including Naser Lika (Count 6) and Pal Krasniqi (Count 5), who was so badly beaten that he was "as a person is before he dies".<sup>693</sup> **Haradinaj** was on the scene, yet did nothing to penalise the mortal beating of a detainee or secure the release of others at risk of suffering the same fate. Given the authority which he had, and the respect which he commanded,<sup>694</sup> **Haradinaj**'s conduct encouraged the perpetrators to keep detainees, including Krasniqi and Lika, in detention and ultimately kill Krasniqi.<sup>695</sup>

215. Knowing that crimes had been committed in Jablanica/Jabllanicë, **Haradinaj** nonetheless retained **Balaj**, **Brahimaj**, Nazmi Brahimaj and other KLA soldiers in positions which enabled them to implement the common criminal purpose. The support which **Haradinaj** offered these perpetrators, and their gratitude for it, is reflected in the minutes of the meeting of 20 August 1998 concerning the leadership of the Dukagjin zone. At this meeting, Nazmi Brahimaj opposed a proposal that **Haradinaj** be replaced as the Dukagjin zone commander.<sup>696</sup> In voicing his opposition, Nazmi Brahimaj praised **Haradinaj**'s leadership skills and his contribution to the liberation struggle.<sup>697</sup> Later in that meeting, knowing that they had

<sup>690</sup> See above, paras.36, 38.

<sup>691</sup> See above, para.38.

<sup>692</sup> See above, paras.165-166.

<sup>693</sup> Witness 6, P84, T.5240-5241. See above, paras.87 (eighth bullet point), 175-176, 189-193. [REDACTED].

<sup>694</sup> See above, paras.6-15, 27, 30.

<sup>695</sup> See above, paras.87 (eighth bullet point), 175-178, 189-193. [REDACTED].

<sup>696</sup> P279, pp.1-2. See above, para.41.

<sup>697</sup> P279, pp.1-2. See above, para.41.

been involved in criminal activity at the detention facility, **Haradinaj** praised the work of Nazmi Brahimaj and Alush Agushi.<sup>698</sup>

216. The praise offered by **Haradinaj** demonstrates that his earlier interventions on behalf of Kuqi and Witness 3 were not genuinely motivated by a concern for their well-being, as suggested by Tetaj and Witness 3.<sup>699</sup> In Kuqi's case, the evidence proves that **Haradinaj** went directly to Nazmi Brahimaj and ordered his release without further inquiry – such as why, how, where, when and under what authority Kuqi had been detained. **Haradinaj's** concern was that Kuqi's detention was “damaging our cause”. Furthermore, although Nazmi Brahimaj initially told **Haradinaj** that Kuqi was only “slightly” injured, **Haradinaj** would have known this was untrue when he later saw Kuqi's physical condition.<sup>700</sup> The fact that **Haradinaj** failed to take any measures against Nazmi Brahimaj, and instead later offered him his support, demonstrates **Haradinaj's** support for the violent acts being perpetrated at the detention facility.

217. Furthermore, in discussing **Haradinaj's** attitude towards detainees, Tetaj and Witness 3 sought to present a favourable image of **Haradinaj**. Their motivation to do so can be attributed to **Haradinaj's** immense popularity within the Kosovo Albanian community.<sup>701</sup> It can also be attributed to the well-documented context of fear in which witnesses provided evidence during the original trial and in these retrial proceedings.<sup>702</sup> The evidence given by Tetaj and Witness 3 concerning **Haradinaj's** attitude towards detainees should therefore be treated with caution.

218. The crimes which **Haradinaj** knew were occurring in Jablanica/Jabllanicë fit within a broader KLA practice aimed at targeting perceived opponents.<sup>703</sup> **Haradinaj** not only knew this, he supported and endorsed this broader practice. This is evident from the following factors:

<sup>698</sup> P279, p.3. *See above*, para.42

<sup>699</sup> *See* Tetaj, P75, T.3778; Witness 3, T.1678-1683 (partially confidential), 1686-1688.

<sup>700</sup> *See above*, paras.164-166.

<sup>701</sup> 20 July 2007 *Haradinaj* Provisional Release Decision, para.26. Rexhahmetaj, T.1097. *See also above*, paras.6-13.

<sup>702</sup> 8 December 2010 *Brahimaj* Provisional Release Decision, para.27; 8 December 2010 *Haradinaj* Provisional Release Decision, para.21; 10 September 2010 *Haradinaj* Provisional Release Decision, paras.35-36, 38-39; 10 September 2010 *Brahimaj* Provisional Release Decision, paras.34-35; *Haradinaj* AJ, paras.34-35, 37, 40; *Haradinaj* TJ, paras.6, 22; 20 July 2007 *Haradinaj* Provisional Release Decision, paras.24-25, 27.

<sup>703</sup> *See above*, Section IV.

- The KLA's violent methods were so notorious within the Dukagjin zone that common villagers and soldiers were familiar with euphemisms that served as KLA execution orders;<sup>704</sup>
- **Haradinaj** was in possession of lists of current or former MUP officers and alleged Albanian collaborators well before any of the incidents charged in the Indictment had occurred;<sup>705</sup>
- Beginning as early as April 1998, perceived opponents were physically mistreated in and around **Haradinaj's** command facility in Glodane/Gllogjan;<sup>706</sup>
- **Haradinaj** was responsible for the PU which was tasked with identifying and targeting perceived opponents;<sup>707</sup>
- **Haradinaj** worked closely with Faton Mehmetaj who was responsible for identifying and targeting perceived opponents;<sup>708</sup> and
- **Haradinaj** was the first to use physical violence against the four FARK soldiers at his Glodane/Gllogjan headquarters on 4 July 1998.<sup>709</sup> **Haradinaj's** involvement in this attack—carried out with **Balaj** and in front of a large group of KLA soldiers at his Glodane/Gllogjan headquarters<sup>710</sup>—demonstrated his approval of the use of violence and fear to eliminate perceived opposition to the KLA.

219. Beyond these factors, the evidence shows that **Haradinaj** fostered a culture of impunity in the Dukagjin zone which encouraged KLA soldiers to mistreat perceived opponents. Impunity reined to such an extent that Witness 17 “did not dare to raise” specific criminal allegations with **Haradinaj**.<sup>711</sup> According to Witness 17, “this was some kind of a taboo theme.”<sup>712</sup> Whilst Witness 17 “warned [**Haradinaj**] about

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<sup>704</sup> See above, para.48.

<sup>705</sup> See above, paras.29, 59.

<sup>706</sup> See above, paras.78-79, 81-83, 85.

<sup>707</sup> See above, paras.62-67 and below para.227.

<sup>708</sup> See above, paras.64-66. See also above, para.61.

<sup>709</sup> See above, paras.81-83.

<sup>710</sup> See above, para.82

<sup>711</sup> Witness 17, P342, T.7744-7745.

<sup>712</sup> Witness 17, P342, T.7744.

unsuitable KLA members,” he cautioned that “it was unsafe to discuss these issues directly with [**Haradinaj**].”<sup>713</sup>

(ii) **Haradinaj** failed to prevent the mistreatment at the Jablanica/Jabllanicë detention facility

220. **Haradinaj** also contributed to the common criminal purpose by omission, due to his failure to prevent the mistreatment at the Jablanica/Jabllanicë detention facility. From at least 23 June 1998 onwards, when he became the *de jure* commander of the Dukagjin zone,<sup>714</sup> **Haradinaj** was under a duty to prevent the mistreatment. As the commander of the zone, **Haradinaj** exercised authority over the operation of the detention facility and the KLA soldiers in Jablanica/Jabllanicë.<sup>715</sup> He thus had the duty<sup>716</sup> to protect the detainees.

221. He also had the ability to prevent the mistreatment. In his capacity as zone commander, **Haradinaj** took measures against KLA soldiers to increase discipline within the zone:<sup>717</sup>

- He discharged **Brahimaj** from his post as deputy zone commander on 5 July 1998 due to **Brahimaj**'s absences from the zone;<sup>718</sup> and
- He reprimanded a KLA soldier on 2 July 1998 for “leaving from [...] [the soldier's] duty”.<sup>719</sup>

**Haradinaj** also had the ability to secure the release of detainees held in Jablanica/Jabllanicë.<sup>720</sup>

222. Yet, despite his duty and ability, **Haradinaj** made no effort to stop the mistreatment at Jablanica/Jabllanicë, or caution, discipline or remove those responsible for it.

<sup>713</sup> Witness 17, P344 (under seal), para.91.

<sup>714</sup> See above, paras.13-15, 36, 38-40.

<sup>715</sup> See above, paras.13-15, 36, 38-39, 164.

<sup>716</sup> See e.g. *Blaškić* AJ, paras.663, 668; *Čelebići*, AJ, paras.379, 386; *Halilović* TJ, para.82; *Mrkšić* AJ, paras.70-73.

<sup>717</sup> P210; P211. See also P176, pp.2-3.

<sup>718</sup> P218. See also P211; P154, p.2.

<sup>719</sup> P210.

<sup>720</sup> See above, para.164.



223. **Haradinaj** did nothing after witnessing a detainee in critical condition being transferred from Jablanica/Jabllanicë.<sup>721</sup> Despite this alarming situation, he made no inquiries regarding this beating or the potential mistreatment of other detainees at the facility.<sup>722</sup>

224. **Haradinaj** received specific complaints concerning **Balaj**'s conduct,<sup>723</sup> and knew of **Balaj**'s violent behaviour given his close relationship with him.<sup>724</sup> **Balaj** even provided reports of his activities directly to **Haradinaj**. For example, around 9 July 1998, Witness 17 had a confrontation with **Balaj** in Rznić/Irznik. By the time Witness 17 raised this incident with **Haradinaj** a few days later, **Balaj** had already reported it to **Haradinaj**.<sup>725</sup> Rather than disciplining **Balaj**, or even simply removing **Balaj** from his post, **Haradinaj** praised and encouraged him.<sup>726</sup> **Haradinaj** demonstrated his support for **Balaj**'s violence against perceived enemies and opponents most clearly when he and **Balaj** attacked four FARK soldiers at his Glodane/Gllogjan headquarters on 4 July 1998.<sup>727</sup>

(iii) **Haradinaj** assisted the KLA's efforts to locate, identify and mistreat perceived opponents at the detention facility in Jablanica/Jabllanicë

225. It was the duty of every KLA soldier to report collaborators.<sup>728</sup> **Haradinaj** took measures to ensure this duty was observed.

226. **Haradinaj** implemented a requirement that a travel authorisation be secured when moving between villages.<sup>729</sup> This contributed to the targeting of perceived opponents by establishing KLA control over the movement of individuals. Establishing such control facilitated the KLA's ability to locate and detain perceived opponents, particularly those whose names appeared on the 'blacklists' handed to

<sup>721</sup> See above, paras.165-167, 214.

<sup>722</sup> See above, para.214.

<sup>723</sup> Witness 17, P344 (under seal), paras.40, 50, 109; P342, T.7572-7582; Tetaj, P75, T.3673-3675.

<sup>724</sup> See above, paras.29, 31-34, 36, 40, 81-85, 188.

<sup>725</sup> Witness 17, P344 (under seal), paras.40, 50; P342, T.7572-7576.

<sup>726</sup> See above, paras.33, 81-84, 208-212.

<sup>727</sup> See above, paras.81-83.

<sup>728</sup> C.Krasniqi, P54, para.87.

<sup>729</sup> P196; P240, p.3. See also Witness 76, P305, para.8; P260.

village guards.<sup>730</sup> Victims taken into custody at KLA control points include Witness 6 (Count 3) and Nenad Remištar (Count 4).<sup>731</sup>

227. **Haradinaj** was in charge of the PU. In May 1998, PU official Pjetër Shala *a.k.a.* Ujku was among those who forcibly arrested Lika and Fazliu (Count 6) in Žabelj/Zhabel and took them to Jablanica/Jabllanicë.<sup>732</sup> The two were accused of treachery for fleeing their village following a Serb attack against it.<sup>733</sup> At the meeting in Rznić/Irzniq on 21 June 1998—attended by **Brahimaj** and his brother Nazmi—**Haradinaj** discussed regulations which required the PU to identify and take measures against perceived KLA opponents.<sup>734</sup>

[REDACTED]

In accordance with these regulations, the PU was tasked by, and reported directly to, **Haradinaj**.<sup>735</sup> After the regulations were issued, a PU official threatened to kill Witness 3 (Count 5) unless he admitted to having supported the Serbian police.<sup>736</sup> **Haradinaj** confirmed his commitment to using the PU to target perceived opponents in his order to the PU to arrest a soldier who withdrew from the front-line during a military engagement on 2 August 1998.<sup>737</sup>

(iv) **Haradinaj**'s mobilisation order legitimised the targeting of perceived opponents at the detention facility in Jablanica/Jabllanicë

228. On 24 June 1998, **Haradinaj** issued a mobilisation order to local KLA headquarters and the “population”.<sup>738</sup> He referred to the need to “prevent any activities that go to the detriment of our war” and warned that “measures will be taken” including “isolation, removal of weapons and imprisonment [...] for any opposition to the order”.<sup>739</sup> The barracks in Jablanica/Jabllanicë were a major KLA

<sup>730</sup> P176, p.6. *See above*, paras.58-61.

<sup>731</sup> *See above*, paras.121, 133.

<sup>732</sup> *See above*, para.187.

<sup>733</sup> *See above*, para.188. *See also above*, paras.183-185.

<sup>734</sup> [REDACTED] P190, pp.1, 3.

<sup>735</sup> P349 (under seal), p.2.

<sup>736</sup> *See above*, para.148.

<sup>737</sup> Witness 17, P344 (under seal), para.89. *See also* P275.

<sup>738</sup> [REDACTED] P196. *See also* Witness 17, P342, T.7686-7687; P348 (under seal).

<sup>739</sup> [REDACTED] P196. *See also* Witness 17, P344 (under seal), para.63.

detention facility used to imprison perceived opponents of the KLA.<sup>740</sup> **Haradinaj**'s order legitimised the continued operation of this detention facility.

(b) **Balaj**'s contributions

229. **Balaj** actively participated in crimes committed at the Jablanica/Jabllanicë detention facility and supported and encouraged other KLA soldiers to commit crimes there. His conduct considered individually and/or cumulatively constituted a significant contribution to the common criminal purpose.

(i) **Balaj** actively participated in the crimes committed at the Jablanica/Jabllanicë detention facility

230. During the Indictment period, **Balaj** was involved in the mistreatment of detainees who were held at the detention facility in Jablanica/Jabllanicë.

231. **Balaj** ordered the execution of the victims of Count 1 when he directed KLA soldiers to prepare their papers for Drenica.<sup>741</sup> Immediately prior to that, he had actively participated in their mistreatment by brutally beating them, threatening them with death and cutting off the ear of one of the victims with a knife.<sup>742</sup>

232. Subsequently, while the victim of Count 6, Naser Lika, was being brutally beaten, **Balaj** threatened him, saying: "I am here only to kill people."<sup>743</sup>

233. [REDACTED] evidence of **Balaj**'s involvement in the mistreatment of detainees at Jablanica/Jabllanicë is corroborated by Kabashi who, as noted above, stated that when **Balaj** "came to the Jablanica headquarters. Anybody he found he would beat them."<sup>744</sup>

(ii) **Balaj** supported and encouraged other KLA soldiers to commit crimes in Jablanica/Jabllanicë

234. **Balaj** was present at the detention facility in Jablanica/Jabllanicë,<sup>745</sup> and held a position of authority and influence within the detention facility by virtue of his close

<sup>740</sup> See Witness 3, T.1577 (Brahimaj called the detention facility "the largest prison in Kosova.").

<sup>741</sup> See above, paras.108-110.

<sup>742</sup> See above, paras.106-107.

<sup>743</sup> See above, para.190.

<sup>744</sup> Kabashi, P119, T.4262.

<sup>745</sup> Witness 80, T.2421-2422; Witness 75, T.857, 913-915. See above, paras.17, 105-109, 188-191.

relationships with **Haradinaj** and **Brahimaj**.<sup>746</sup> Rather than using his authority and influence to protect prisoners, **Balaj** set an example that it was appropriate to brutally mistreat detainees by actively participating in the crimes against them.<sup>747</sup> This, in addition to **Balaj**'s failure to stop others from mistreating detainees, encouraged the perpetrators to continue committing crimes. For instance, as discussed above, **Balaj** was present when Lika was mistreated (Count 6),<sup>748</sup> and supported and encouraged the perpetrators who physically beat Lika through his "euphoric" behaviour and his threat to Lika.<sup>749</sup>

(c) **Brahimaj**'s contributions

235. **Brahimaj** ran the Jablanica/Jabllanicë detention facility, actively participated in all aspects of the crimes committed there, and supported and encouraged others to commit crimes. His conduct considered individually and/or cumulatively constituted a significant contribution to the common criminal purpose.

(i) **Brahimaj** ran the Jablanica/Jabllanicë detention facility

236. **Brahimaj** maintained a near constant presence at the Jablanica/Jabllanicë detention facility and was instrumental in the mistreatment of detainees there.<sup>750</sup> As the commander of Jablanica/Jabllanicë,<sup>751</sup> he ran the detention facility so that it functioned as a place of mistreatment.<sup>752</sup>

237. **Brahimaj** was superior to his brother Nazmi, although Nazmi also played a role at the detention facility in Jablanica/Jabllanicë.<sup>753</sup> After Nazmi replaced **Brahimaj** as **Haradinaj**'s deputy in the Operative Staff of the Dukagjin Plain on 5 July 1998,<sup>754</sup> **Brahimaj** continued to control the Jablanica/Jabllanicë detention facility and its prisoners.<sup>755</sup> Following his dismissal as the deputy zone commander,

<sup>746</sup> See above, paras. 28-29, 31-34, 36, 38, 40, 105-109, 187-191; Witness 75, T.913-915. See also Witness 80, T.2399.

<sup>747</sup> See above, paras.230-233.

<sup>748</sup> See above, para.232.

<sup>749</sup> See above, para.190.

<sup>750</sup> See above, paras.20-23, 27-28, 36, 87, 105-110, 117-118, 124-126, 128, 144-145, 148, 152-154, 158-163, 165, 176, 183-185, 187-192, 236-237.

<sup>751</sup> See above, paras.20-23, 27-28, 36.

<sup>752</sup> See above, Sections V, VI.

<sup>753</sup> P91 (under seal); Shala, P69, T.9947, 9954; Kabashi, P119, T.4264-4265; Witness 6, P84, T.5245. See also above, paras.20-23, 105-107, 123-126, 128-129, 133, 147, 159-162, 164-167, 187-191.

<sup>754</sup> P218; S.Çekaj, P4, para.23. See also P211.

<sup>755</sup> Witness 3, T.1598-1599. See above, paras.144-146, 148, 152-155, 158-163, 165, 176, 189-191.

**Brahimaj** retained his room at the Jablanica/Jabllanicë detention facility adjacent to a room where prisoners were held.<sup>756</sup>

(ii) **Brahimaj** actively participated in the crimes committed at the detention facility in Jablanica/Jabllanicë

238. **Brahimaj**'s active participation covered all aspects of the mistreatment suffered by detainees at the Jablanica/Jabllanicë detention facility. **Brahimaj**:

- Identified those to be labelled as perceived opponents, who were then detained and mistreated in Jablanica/Jabllanicë;<sup>757</sup>
- Ordered the arrest of and personally “arrested” and “convicted” detainees, and appropriated their property;<sup>758</sup>
- Viciously beat the victims of Counts 1, 3, 5 (Skender Kuqi), 6 (Naser Lika) and Jah Bushati;<sup>759</sup>
- Ordered and/or instigated the execution of the victims of Counts 1 and 2;<sup>760</sup> and
- Threatened and terrorised detainees and ordered others to beat them.<sup>761</sup>

As set out above,<sup>762</sup> **Brahimaj** cannot be convicted of Counts 3 and 5. However, his conduct in relation to these counts should be considered in assessing his *mens rea*, and his contribution to the common criminal purpose and/or the alternative modes of liability of planning and aiding and abetting.<sup>763</sup>

<sup>756</sup> See above, para.148.

<sup>757</sup> See above, paras.125, 148, 159, 183-185, 188, 189.

<sup>758</sup> See above, paras.128, 144-145, 152-154, 159-160, 187-189.

<sup>759</sup> See above, paras.87, 106-107, 124-126, 160-162, 190.

<sup>760</sup> See above, paras.108-110, 118.

<sup>761</sup> See above, paras.87, 105-110, 124-126, 148, 152-154, 160-162, 188-192.

<sup>762</sup> See above, fn.657.

<sup>763</sup> See below, paras.257, 265.

(iii) **Brahimaj** encouraged KLA soldiers to commit crimes in Jablanica/Jabllanicë

239. The Jablanica/Jabllanicë detention facility also doubled as a KLA barracks, which was populated by soldiers,<sup>764</sup> many of whom were young.<sup>765</sup> As a person of authority who maintained a near constant presence at the Jablanica/Jabllanicë detention facility,<sup>766</sup> **Brahimaj** encouraged KLA soldiers to commit crimes by:

- Running the detention facility in such a manner that detainees were held in terrible conditions and KLA soldiers could beat detainees at will;<sup>767</sup>
- Setting an example through his active commission of crimes;<sup>768</sup> and
- Standing by and watching as detainees were brutally mistreated by KLA soldiers at the detention facility.<sup>769</sup>

**4. Each Accused shared the intent to cruelly treat, torture and murder perceived opponents**

240. **Haradinaj, Balaj and Brahimaj** shared the intent to mistreat perceived opponents in Jablanica/Jabllanicë through the crimes of cruel treatment, torture and murder.<sup>770</sup>

241. Shared intent requires the state of mind that the crime(s) forming part of the common criminal objective should be carried out.<sup>771</sup> The commission of the(se) crime(s) must be the goal of the JCE members.<sup>772</sup>

<sup>764</sup> P152, p.1; P28, p.2; Witness 6, P84, T.5246, 5360.

<sup>765</sup> Witness 80, T.2415-2417.

<sup>766</sup> See above, para.237.

<sup>767</sup> See above, Sections V, VI, paras.236-237.

<sup>768</sup> See above, para.238.

<sup>769</sup> See above, paras.125, 163, 175.

<sup>770</sup> See e.g. *Krajišnik* AJ, paras.200, 706.

<sup>771</sup> *Krajišnik* AJ, paras.200, 707.

<sup>772</sup> *Brdanin* AJ, para.431; *Martić* AJ, para.172.

242. The shared intent of all three Accused can be inferred from their contributions to the common criminal purpose, their knowledge of the crimes, their close association, and the notorious context of violence in which they operated.<sup>773</sup>

243. In the alternative, **Brahimaj** shared the intent with other members of the Brahimaj family and other KLA soldiers and/or **Balaj**, in relation to one or more of the crimes charged in the Indictment.

**5. Alternatively, murder was at least a foreseeable consequence**

244. If murder did not form part of the common criminal purpose, it was a foreseeable consequence to the Accused, and they are liable for it pursuant to the third category of JCE.<sup>774</sup> In addition, to fully capture their criminal responsibility,<sup>775</sup> the Accused should be found liable for murder under Counts 1 and/or 2 pursuant to the alternative modes of liability set out below.<sup>776</sup>

245. Liability under the third category of JCE arises for crimes outside the common criminal purpose, but which are a natural and foreseeable consequence of its implementation.<sup>777</sup> It must further be foreseeable to the accused that such a crime might be perpetrated by one or more members of the group,<sup>778</sup> and the accused must willingly take the risk—that is, he must be aware that the crimes are a possible consequence of the execution of the common criminal purpose, and with that awareness, he must act in furtherance of the common criminal purpose.<sup>779</sup>

246. In light of the severe mistreatment and the brutal methods employed at the Jablanica/Jabllanicë detention facility, including the detention of perceived opponents in a water-filled basement,<sup>780</sup> it was foreseeable that detainees might be killed. Due to their knowledge of the horrid conditions and the nature of the mistreatment meted out at the Jablanica/Jabllanicë detention facility, the Accused were aware of the

<sup>773</sup> See above, Sections III, IV, paras.205-239.

<sup>774</sup> Brahimaj cannot be convicted of the murder charged under Count 5.

<sup>775</sup> Gacumbitsi AJ, para.61.

<sup>776</sup> See below, paras.248-266.

<sup>777</sup> Popović TJ, para.1021.

<sup>778</sup> Brđanin AJ, para.365; Kvočka AJ, para.86; Martić AJ, para.168; Stakić AJ, para.65; Vasiljević AJ, para.101; Krnojelac AJ, para.32.

<sup>779</sup> Stakić AJ, para.87; Brđanin AJ, paras.365, 411; Blaškić AJ, para.33; Vasiljević AJ, para.101; Martić AJ, para.83; Krnojelac AJ, para.32; Karadžić JCE III Foreseeability Decision, para.18.

<sup>780</sup> See above, Sections V, VI.

possibility that detainees could be killed and nevertheless continued to implement the common criminal purpose to mistreat perceived opponents.

## **B. Other modes of liability**

247. In addition,<sup>781</sup> or as an alternative, to their liability under JCE, **Haradinaj**, **Balaj** and **Brahimaj** are responsible for committing, ordering, instigating, planning and/or aiding and abetting the crimes charged under Counts 1, 2 and/or 6 of the Indictment.

### **1. Commission other than by JCE**

248. **Balaj** is responsible for committing cruel treatment, torture and murder in relation to Count 1. In addition, he and **Brahimaj** are responsible for committing cruel treatment and torture in relation to Count 6.

249. Committing is not limited to direct and physical perpetration; other conduct can constitute direct participation in the *actus reus* of the crime, provided that the conduct forms an integral part of the crime that is committed.<sup>782</sup> Physically carrying out the crime together with others also constitutes committing as a direct perpetrator.<sup>783</sup>

250. Through his conduct described above,<sup>784</sup> in particular by beating Zarić, Berisha and Bejta; threatening them with death; cutting off the ear of one of the victims; and ordering the execution of all three victims, **Balaj** intentionally committed cruel treatment and torture in relation to Count 1. His instruction to KLA soldiers to “prepare the papers for Drenica” formed an integral part of their murder.<sup>785</sup> The only reasonable inference is that through this instruction, which meant certain death for the victims, **Balaj** intended the crime and embraced it as his own and the KLA soldiers who executed the victims accepted **Balaj**’s authority.<sup>786</sup>

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<sup>781</sup> *Gacumbitsi* AJ, para.61.

<sup>782</sup> *See Seromba* AJ, para.161; *Gacumbitsi* AJ, para.60; *Ndindabahizi* AJ, para.123.

<sup>783</sup> *Limaj* TJ, paras.653, 664; *Lukić* TJ, paras.978-981, 989-991, 1025, 1038-1039; *Haradinaj* TJ, paras.395, 451.

<sup>784</sup> *See above*, paras.106-110, 231.

<sup>785</sup> *See above*, paras.48, 108-110, 231.

<sup>786</sup> *See Seromba* AJ, paras.161, 172.



251. In addition, through his conduct described above,<sup>787</sup> in particular by “euphoric[ally]” threatening to execute Naser Lika with the words “I never beat people, I am here to kill them”, **Balaj** intentionally committed cruel treatment and torture in relation to Count 6.

252. Through his conduct described above,<sup>788</sup> in particular, by repeatedly threatening Lika and Fadil Fazliu, accusing Lika of collaborating with Serb forces, and beating Lika while he was in detention, **Brahimaj** intentionally committed cruel treatment and torture in relation to Count 6.

## **2. Ordering and Instigating**

253. **Brahimaj** is responsible for ordering and instigating murder in relation to Counts 1 and 2.

254. The *actus reus* of “ordering” requires that a person in a position of authority instructs another person to commit an offence. **Brahimaj** held a position of authority *vis-à-vis* the physical perpetrators at the Jablanica/Jabllanicë detention facility.<sup>789</sup> A position of authority does not require a formal superior-subordinate relationship, it is sufficient that the accused hold a position of authority (whether *de jure*, *de facto* or implied) that would compel another person to commit a crime.<sup>790</sup>

255. Instigation is similar to ordering, but does not include the additional requirement that the accused must have authority over the person physically perpetrating the offence.<sup>791</sup> The *actus reus* of instigating requires that the accused prompts another person to commit an offence.<sup>792</sup> It is not necessary to prove that the crime would not have been perpetrated without the involvement of the accused. It is sufficient to demonstrate that, as with ordering, the instigation was a factor substantially contributing to the conduct of another person committing the crime.<sup>793</sup>

256. Through his conduct described above,<sup>794</sup> in particular through his instruction to KLA soldiers to execute the victims of Counts 1 and 2, **Brahimaj**, who was in a

<sup>787</sup> See above, paras.232, 234.

<sup>788</sup> See above, paras.183-185, 187-192, 238.

<sup>789</sup> See above, paras.20-23, 27-28, 36.

<sup>790</sup> *Boškoski* AJ, para.164; *Karera* AJ, para.211; *Semanza* AJ, para.361; *Limaj* TJ, para.515.

<sup>791</sup> See *Strugar* TJ, para.332.

<sup>792</sup> *Kordić* AJ, para.27.

<sup>793</sup> *Kordić* AJ, para.27; *Kamuhanda* AJ, para.75.

position of authority *vis-à-vis* other KLA soldiers in Jablanica/Jabllanicë,<sup>795</sup> instructed and prompted them to kill the victims of these counts. **Brahimaj**'s instructions substantially contributed to the physical perpetrator's criminal conduct,<sup>796</sup> and he acted with direct intent or with the awareness of the substantial likelihood that the crimes would be committed in the execution of his order or instigation.<sup>797</sup>

### ***3. Planning***

257. **Brahimaj** planned cruel treatment and torture (Count 6). Through his conduct described above,<sup>798</sup> in particular by running the detention facility which functioned to mistreat perceived opponents, **Brahimaj** designed the criminal conduct constituting torture and cruel treatment.<sup>799</sup> His conduct substantially contributed to the crimes.<sup>800</sup> **Brahimaj** acted with direct intent or with the awareness of the substantial likelihood that the crimes would be committed in the execution of the acts or omissions planned.<sup>801</sup>

### ***4. Aiding and abetting***

258. Each Accused is responsible for aiding and abetting cruel treatment, torture and murder as charged in Count 1, and cruel treatment and torture as charged in Count 6. **Brahimaj** is also responsible for aiding and abetting cruel treatment and murder as charged in Count 2. The conduct of the Accused considered individually and/or cumulatively had a substantial effect on the commission of the crimes.

259. As discussed above, **Haradinaj** was present at the detention facility when the victims of Count 1<sup>802</sup> and Lika<sup>803</sup> were detained there. Due to the nature of the facility, its reputation, and **Haradinaj**'s leadership style, he must have been aware that detainees, including the victims of Count 1 and Lika (Count 6), were in custody in Jablanica/Jabllanicë and that they had been mistreated.<sup>804</sup> Given the respect and

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<sup>794</sup> See above, paras.48, 108-110, 118, 238.

<sup>795</sup> See above, paras.20-23, 27-28, 36.

<sup>796</sup> See *Bošković* AJ, para.160; *Nahimana* AJ, para.492; *Strugar* TJ, para.332.

<sup>797</sup> See *Bošković* AJ, para.174.

<sup>798</sup> See above, paras.20-23, 27-28, 36, 148, 236-237, Sections V, VI.

<sup>799</sup> See *Milošević* AJ, para.268; *Kordić* AJ, para.26.

<sup>800</sup> See *Milošević* AJ, para.268; *Kordić* AJ, para.26.

<sup>801</sup> See *Milošević* AJ, para.268; *Kordić* AJ, paras.29, 31.

<sup>802</sup> See above, paras.208-209, 211-212, 183-188.

<sup>803</sup> See above, paras.188, 208, 213-214.

<sup>804</sup> See above, paras.209, 213, 218.

authority which **Haradinaj** enjoyed, **Haradinaj**'s non-intervention endorsed and supported the mistreatment which occurred in Jablanica/Jabllanicë.<sup>805</sup> This had a substantial effect on the commission of the crimes charged in Counts 1 and 6 by encouraging KLA soldiers, including **Balaj** and **Brahimaj**, to mistreat the detainees.

260. **Haradinaj** further assisted the commission of the crimes by failing to prevent the mistreatment at Jablanica/Jabllanicë. For the reasons set out above,<sup>806</sup> the Trial Chamber can infer that **Haradinaj** was aware that detainees, including Lika (Count 6), were being detained and severely mistreated in Jablanica/Jabllanicë after he assumed *de jure* command of the village. Although **Haradinaj** had the duty and the ability to put an end to the crimes committed there from at least 23 June 1998, he failed to do so.<sup>807</sup> This substantially facilitated the commission of the crimes in Jablanica/Jabllanicë.

261. Additionally, **Haradinaj** rendered practical assistance which substantially contributed to the commission of the crimes charged in Count 6 by assisting the KLA in their efforts to locate, identify and mistreat perceived opponents at the Jablanica/Jabllanicë detention facility. **Haradinaj** implemented a requirement that a travel authorisation be secured when moving between villagers.<sup>808</sup> This contributed to the targeting of perceived opponents by establishing KLA control over the movement of individuals.<sup>809</sup> **Haradinaj** was also in charge of the PU and formally imposed a duty on it to target perceived opponents.<sup>810</sup>

262. **Haradinaj**'s mobilisation order<sup>811</sup> further legitimised the targeting of perceived opponents. It also substantially assisted their mistreatment at the Jablanica/Jabllanicë detention facility, including the mistreatment suffered by Lika (Count 6).

263. In light of his position of command,<sup>812</sup> and his visits to Jablanica/Jabllanicë, **Haradinaj** was aware of the probability<sup>813</sup> that cruel treatment, torture and murder

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<sup>805</sup> See above, paras.210, 214.

<sup>806</sup> See above, paras.213-214, 218, 223.

<sup>807</sup> See above, paras.220-224.

<sup>808</sup> See above, para.226.

<sup>809</sup> See above, para.226.

<sup>810</sup> See above, para.227.

<sup>811</sup> See above, para.228.

<sup>812</sup> See above, paras.6-15, 27, 30, 35.

<sup>813</sup> *Mrkšić* AJ, paras.49, 159; *Simić* AJ, para.86.

would be committed and that his conduct would assist the commission of the crimes in Counts 1 and 6.

264. Through his conduct described above,<sup>814</sup> **Balaj** provided practical assistance, tacit approval, encouragement, and moral support which substantially contributed to the commission of the crimes charged in Counts 1 and 6. He actively participated in crimes committed at the Jablanica/Jabllanicë detention facility and supported and encouraged other KLA soldiers to commit crimes.

265. **Brahimaj** provided practical assistance, tacit approval, encouragement, and moral support which substantially contributed to the commission of the crimes charged in Counts 1, 2 and 6 through his conduct described above. **Brahimaj** ran the Jablanica/Jabllanicë detention facility, actively participated in all aspects of the crimes committed there, and supported and encouraged other KLA soldiers to commit crimes.<sup>815</sup>

266. In light of their presence in Jablanica/Jabllanicë,<sup>816</sup> **Balaj** and **Brahimaj** were aware of the probability<sup>817</sup> that cruel treatment, torture and murder would be committed and that their conduct would assist the commission of the crimes in Counts 1 and 6. **Brahimaj** possessed the same awareness in relation to the cruel treatment and murder charged in Count 2.

## VIII. CONCLUSION AND SENTENCING

267. From at least April until late September 1998, **Haradinaj**, **Balaj**, **Brahimaj** and other JCE members acted together to consolidate KLA control over the Dukagjin zone by suppressing real or perceived opposition to the KLA. To achieve this aim they cruelly treated, tortured and murdered perceived opponents.

268. Many people were detained in Jablanica/Jabllanicë during the relevant period. All the victims were perceived opponents. Most were taken there after being abducted. Some were put in a basement filled with water and held in inhumane

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<sup>814</sup> See above, paras.230-234.

<sup>815</sup> See above, paras.236-239.

<sup>816</sup> See above, paras.234, 236.

<sup>817</sup> *Mrkšić* AJ, paras.49, 159; *Simić* AJ, para.86.

conditions. They were interrogated and severely beaten. At least eight victims were murdered. At least 16 victims were cruelly treated and/or tortured. These crimes occurred during an armed conflict between the KLA and the armed forces of the FRY and the Republic of Serbia, and against a backdrop of violence by the KLA against its perceived opposition in the Dukagjin zone. The nexus between the armed conflict and the crimes—committed by members of the KLA during the conflict—is conclusive, as is the awareness of the Accused thereof.

269. **Haradinaj, Balaj** and **Brahimaj** played a key role in the implementation of the common criminal purpose. They used the Jablanica/Jabllanicë barracks as a detention facility to detain, cruelly treat, torture and murder perceived opponents.

270. All three Accused shared the intent to mistreat perceived opponents in Jablanica/Jabllanicë through the crimes of cruel treatment, torture and murder. In the alternative, if murder did not form part of the common criminal purpose, it was a foreseeable consequence to the Accused and they are liable for it pursuant to the third category of JCE. In addition,<sup>818</sup> or as an alternative, to their liability under JCE, the Accused are liable pursuant to the alternative modes of liability set out above.<sup>819</sup>

271. The only conclusion available from the totality of the evidence is that **Haradinaj, Balaj** and **Brahimaj** are guilty of murder, cruel treatment and torture as violations of the laws and customs of war.

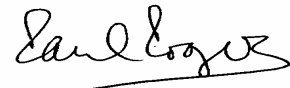
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<sup>818</sup> *Gacumbitsi* AJ, para.61.

<sup>819</sup> *See above*, paras.248-266.

272. These crimes against helpless civilians are deserving of significant punishment by this Tribunal. In order to give due consideration to the victims of these heinous crimes, and consistent with the sentencing practices of the Tribunal, the appropriate sentence is a single sentence of 20 years imprisonment for each Accused. In determining the appropriate sentence for **Brahimaj**, the Trial Chamber should take into account the term he has already served for his convictions under Counts 3 and 5.

Word Count: 26,434



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Paul Rogers  
Senior Trial Attorney

Dated this 11<sup>th</sup> day of June 2012  
At The Hague, The Netherlands

## Glossary

**Pleadings, Orders, Decisions etc. from Prosecutor v. Haradinaj et al.,  
Case No. IT-04-84bis**

Abbreviation used in Prosecution Pre-trial Brief	Full citation
AF1	Annex A to <i>Prosecutor v. Ramush Haradinaj et al.</i> , Joint Prosecution and Defence Submission on the Existence of an Armed conflict in Kosovo with Annex A, 19 November 2010
AF2-5	Annex to <i>Prosecutor v. Ramush Haradinaj et al.</i> , Joint Prosecution and Defence Submission on Agreed Facts with Annex, 2 November 2011
Indictment	Revised Fourth Amended Indictment, Public Appendix B to Submission of New Version of the Revised Fourth Amended Indictment, 9 November 2010

**Other ICTY authorities**

Abbreviation used in Prosecution Pre-Trial Brief	Full citation
<i>Aleksovski</i> TJ	<i>Prosecutor v. Zlatko Aleksovski</i> , Case No. IT-95-14/1-T, T.Ch., Judgement, 25 June 1999
<i>Blaškić</i> AJ	<i>Prosecutor v. Tihomir Blaškić</i> , Case No. IT-95-14-A, App.Ch., Judgement, 29 July 2004
<i>Boškoski</i> AJ	<i>Prosecutor v. Ljube Boškoski &amp; Johan Tarčulovski</i> , Case No. IT-04-82-A, App.Ch., Judgement, 19 May 2010
<i>Brdanin</i> AJ	<i>Prosecutor v. Radoslav Brdanin</i> , Case No. IT-99-36-A, App.Ch., Judgement, 3 April 2007
<i>Brdanin</i> TJ	<i>Prosecutor v. Radoslav Brdanin</i> , Case No. IT-99-36-T, T.Ch., Judgement, 1 September 2004
<i>Čelebići</i> AJ	<i>Prosecutor v. Zejnil Delalić, Zdravko Mucić, a.k.a. "Pavo", Hazim Delić &amp; Esad Landžo, a.k.a. "Zenga"</i> , Case No. IT-96-21-A, App.Ch., Judgement, 20 February 2001

<i>Furundžija</i> AJ	<i>Prosecutor v. Anto Furundžija</i> , Case No. IT-95-17/1-A, App.Ch., Judgement, 21 July 2000
<i>Galić</i> AJ	<i>Prosecutor v. Stanislav Galić</i> , Case No. IT-98-29-A, App.Ch., Judgement, 30 November 2006
<i>Halilović</i> TJ	<i>Prosecutor v. Sefer Halilović</i> , Case No. IT-01-48-T, T.Ch., Judgement, 16 November 2005
<i>Haradinaj</i> AJ	<i>Prosecutor v. Ramush Haradinaj, Idriz Balaj &amp; Lahi Brahimaj</i> , Case No. IT-04-84-A, App.Ch., Judgement, 19 July 2010
<i>Haradinaj</i> TJ	<i>Prosecutor v. Ramush Haradinaj, Idriz Balaj &amp; Lahi Brahimaj</i> , Case No. IT-04-84-T, T.Ch., Judgement, 3 April 2008
8 December 2010 <i>Brahimaj</i> Provisional Release Decision	<i>Prosecutor v. Haradinaj et al.</i> , Case No. IT-04-84bis-PT, T.Ch., Decision on Application for Temporary Provisional Release Filed by the Accused Lahi Brahimaj, 8 December 2010
8 December 2010 <i>Haradinaj</i> Provisional Release Decision	<i>Prosecutor v. Haradinaj et al.</i> , Case No. IT-04-84bis-PT, T.Ch., Decision on Ramush Haradinaj's Motion for Provisional Release, 8 December 2010
10 September 2010 <i>Brahimaj</i> Provisional Release Decision	<i>Prosecutor v. Haradinaj et al.</i> , Case No. IT-04-84bis-PT, T.Ch., Decision on Lahi Brahimaj's Motion for Provisional Release, 10 September 2010
10 September 2010 <i>Haradinaj</i> Provisional Release Decision	<i>Prosecutor v. Haradinaj et al.</i> , Case No. IT-04-84bis-PT, T.Ch., Decision on Ramush Haradinaj's Motion for Provisional Release, 10 September 2010
20 July 2007 <i>Haradinaj</i> Provisional Release Decision	<i>Prosecutor v. Haradinaj et al.</i> , Case No. IT-04-84-T, T.Ch., Decision on Motion on Behalf of Ramush Haradinaj for Provisional Release, 20 July 2007
<i>Karadžić</i> JCE III Foreseeability Decision	<i>Prosecutor v. Radovan Karadžić</i> , Case No. IT-95-5/18, App.Ch., Decision on Prosecution's Motion Appealing Trial Chamber's Decision on JCE III Foreseeability, 25 June 2009
<i>Kordić</i> AJ	<i>Prosecutor v. Dario Kordić &amp; Mario Čerkez</i> , Case No. IT-95-14/2-A, App.Ch., Judgement, 17 December 2004
<i>Krajišnik</i> AJ	<i>Prosecutor v. Momčilo Krajišnik</i> , Case No. IT-00-39-A, App.Ch., Judgement, 17 March 2009
<i>Krnojelac</i> AJ	<i>Prosecutor v. Milorad Krnojelac</i> , Case No. IT-97-25-A, App.Ch., Judgement, 17 September 2003



<i>Krnojelac</i> TJ	<i>Prosecutor v. Milorad Krnojelac</i> , Case No. IT-97-25-T, T.Ch., Judgement, 15 March 2002
<i>Kunarac</i> AJ	<i>Prosecutor v. Dragoljub Kunarac, Radimir Kovač &amp; Zoran Vuković</i> , Case No. IT-96-23 & IT-96-23/1-A, App.Ch., Judgement, 12 June 2002
<i>Kvočka</i> AJ	<i>Prosecutor v. Miroslav Kvočka, Mlađo Radić, Zoran Žigić &amp; Dragoljub Prcać</i> , Case No. IT-98-30/1-A, App.Ch., Judgement, 28 February 2005
<i>Limaj</i> AJ	<i>Prosecutor v. Fatmir Limaj, Haradin Bala &amp; Isak Musliu</i> , Case No. IT-03-66-A, App.Ch., Judgement, 27 September 2007
<i>Limaj</i> TJ	<i>Prosecutor v. Fatmir Limaj, Haradin Bala &amp; Isak Musliu</i> , Case No. IT-03-66-T, T.Ch., Judgement, 30 November 2005
<i>Lukić</i> TJ	<i>Prosecutor v. Milan Lukić &amp; Sredoje Lukić</i> , Case No. IT-98-32/1-T, T.Ch., Judgement, 20 July 2009
<i>Martić</i> AJ	<i>Prosecutor v. Milan Martić</i> , Case No. IT-95-11-A, App.Ch., Judgement, 8 October 2008
<i>Martić</i> TJ	<i>Prosecutor v. Milan Martić</i> , Case No. IT-95-11-T, T.Ch., Judgement, 12 June 2007
<i>Milošević</i> AJ	<i>Prosecutor v. Dragomir Milošević</i> , Case No. IT-98-29/1-A, App.Ch., Judgement, 12 November 2009
<i>Milutinović</i> TJ	<i>Prosecutor v. Milan Milutinović, Nikola Šainović, Dragoljub Ojdanić, Nebojša Pavković, Vladimir Lazarević and Sreten Lukić</i> , Case No. IT-05-87-T, T.Ch., Judgement, 26 February 2009
<i>Mrkšić</i> AJ	<i>Prosecutor v. Mile Mrkšić &amp; Veselin Šljivančanin</i> , Case No. IT-95-13/1-A, App.Ch., Judgement, 5 May 2009
<i>Mrkšić</i> TJ	<i>Prosecutor v. Mile Mrkšić, Miroslav Radić and Veselin Šljivančanin</i> , Case No. IT-95-13/1-T, T.Ch., Judgement, 27 September 2007
<i>Popović</i> TJ	<i>Prosecutor v. Vujadin Popović, Ljubiša Beara, Drago Nikolić, Ljubomir Borovčanin, Radivoje Miletić, Milan Gvero &amp; Vinko Pandurević</i> , Case No. IT-05-88-T, T.Ch., Judgement, 10 June 2010
<i>Simić</i> AJ	<i>Prosecutor v. Blagoje Simić</i> , Case No. IT-95-9-A, App.Ch., Judgement, 28 November 2006

<i>Simić</i> TJ	<i>Prosecutor v. Blagoje Simić, Miroslav Tadić &amp; Simo Zarić</i> , Case No. IT-95-9-T, T.Ch., Judgement, 17 October 2003
<i>Stakić</i> AJ	<i>Prosecutor v. Milomir Stakić</i> , Case No. IT-97-24-A, App.Ch., Judgement, 22 March 2006
<i>Strugar</i> AJ	<i>Prosecutor v. Pavle Strugar</i> , Case No. IT-01-42-A, App.Ch., Judgement, 17 July 2008
<i>Strugar</i> TJ	<i>Prosecutor v. Pavle Strugar</i> , Case No. IT-01-42-T, T.Ch., Judgement, 31 January 2005
<i>Tadić</i> AJ	<i>Prosecutor v. Duško Tadić</i> , Case No. IT-94-1-A, App.Ch., Judgement, 15 July 1999
<i>Tadić</i> Jurisdiction AD	<i>Prosecutor v. Duško Tadić a/k/a "Dule"</i> , Case No. IT-94-1-AR72, App.Ch., Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995
<i>Vasiljević</i> AJ	<i>Prosecutor v. Mitar Vasiljević</i> , Case No. IT-98-32-A, App.Ch., Judgement, 25 February 2004

**ICTR authorities**

<b>Abbreviation used in Prosecution Pre-trial Brief</b>	<b>Full citation</b>
<i>Gacumbitsi</i> AJ	<i>Sylvestre Gacumbitsi v. Prosecutor</i> , Case No. ICTR-2001-64-A, App.Ch., Judgement, 7 July 2006
<i>Kamuhanda</i> AJ	<i>Jean de Dieu Kamuhanda v. Prosecutor</i> , Case No. ICTR-99-54A-A, App.Ch., Judgement, 19 September 2005
<i>Karera</i> AJ	<i>François Karera v. Prosecutor</i> , Case No. ICTR-01-74-A, App.Ch., Judgement, 2 February 2009
<i>Kayishema</i> AJ	<i>Prosecutor v. Clément Kayishema &amp; Obed Ruzindana</i> , Case No. ICTR-95-1-A, App.Ch., Judgement (Reasons), 1 June 2001
<i>Nahimana</i> AJ	<i>Ferdinand Nahimana, Jean-Bosco Barayagwiza &amp; Hassan Ngeze v. Prosecutor</i> , Case No. ICTR-99-52-A, App.Ch., Judgement, 28 November 2007
<i>Ndindabahizi</i> AJ	<i>Emmanuel Ndindabahizi v. Prosecutor</i> , Case No. ICTR-01-71-A, App.Ch., Judgement, 16 January 2007

<i>Semanza</i> AJ	<i>Laurent Semanza v. Prosecutor</i> , Case No. ICTR-97-20-A, App.Ch., Judgement, 20 May 2005
<i>Seromba</i> AJ	<i>Prosecutor v. Athanase Seromba</i> , Case No. ICTR-2001-66-A, App.Ch., Judgement, 12 March 2008

**Other Abbreviations**

<b>Abbreviation used in Prosecution Pre-trial Brief</b>	<b>Full citation</b>
<i>a.k.a.</i>	Also known as
Common Article 3	Common Article 3 of the 1949 Geneva Conventions
DB	Serbian State Security Service
ECMM	European Community Monitor Mission
FARK	Forcat e Armatousa të Republikës së Kosovës – Armed Forces of the Republic of Kosovo
FRY	Federal Republic of Yugoslavia
ICRC	International Committee of the Red Cross
JCE	Joint Criminal Enterprise
JNA	Yugoslav People’s Army (Army of the Socialist Federal Republic of Yugoslavia)
JSO	<i>Jedinica za Specijalne Operacije</i> – Special Operations Unit, also known as Red Berets or “Frenki’s boys”
KLA	<i>Ushtria Çlirimtare e Kosovës (UÇK)</i> – Kosovo Liberation Army
LDK	<i>Lidhja Demokratike e Kosovës</i> – Democratic League of Kosovo
MUP	Serbian Ministry of the Interior Police
OMPF	UNMIK’s Office of Missing Persons and Forensics
PJP	<i>Psebnë Jedinice Policije</i> - Special Units of the Police
PrK	Priština Corps

PU	<i>Policia Ushtareke</i> - Military Police
SAJ	<i>Specijalna Anti-teroristička jedinica</i> - Special Anti-terrorist Unit
SPS	Serbian Socialist Party
Statute	Statute of the International Criminal Tribunal for the Former Yugoslavia established by the Security Council Resolution 827 (1993)
UNMIK	United Nations Interim Administration Mission in Kosovo
VJ	<i>Vojska Jugoslavije</i> - Army of the Federal Republic of Yugoslavia