

**UNITED
NATIONS**

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

Case No. IT-05-87-A
Date: 21 August 2009

IN THE APPEALS CHAMBER

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

Registrar: Mr. John Hocking

THE PROSECUTOR

v.

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

PUBLIC

**NOTICE OF FILING OF PUBLIC REDACTED VERSION OF
PROSECUTION APPEAL BRIEF**

The Office of the Prosecutor:

Mr. Peter Kremer QC

Counsel for the Accused:

Mr. Toma Fila and Mr. Vladimir Petrović for Nikola Šainović
Mr. Tomislav Višnjić and Mr. Peter Robinson for Dragoljub Ojdanić
Mr. John Ackerman and Mr. Aleksander Aleksić for Nebojša Pavković
Mr. Mihajlo Bakrač and Mr. Đuro Čepić for Vladimir Lazarević
Mr. Branko Lukić and Mr. Dragan Ivetić for Sreten Lukić

Case No. IT-05-87-A

THE PROSECUTOR

v.

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

PUBLIC

NOTICE OF FILING OF PUBLIC REDACTED VERSION OF
PROSECUTION APPEAL BRIEF

1. The Prosecution hereby files the public redacted version of its Appeal Brief.

Word Count: 12



Peter Kremer QC
Senior Appeals Counsel

Dated this 21st day of August 2009
At The Hague, The Netherlands

**UNITED
NATIONS**

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

Case No. IT-05-87-A
Date: 21 August 2009

IN THE APPEALS CHAMBER

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

Registrar: Mr. John Hocking

THE PROSECUTOR

v.

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

PUBLIC REDACTED VERSION

PROSECUTION APPEAL BRIEF

The Office of the Prosecutor:

Mr. Peter Kremer QC

Counsel for the Accused:

Mr. Toma Fila and Mr. Vladimir Petrović for Nikola Šainović
Mr. Tomislav Višnjić and Mr. Peter Robinson for Dragoljub Ojdanić
Mr. John Ackerman and Mr. Aleksander Aleksić for Nebojša Pavković
Mr. Mihajlo Bakrač and Mr. Đuro Čepić for Vladimir Lazarević
Mr. Branko Lukić and Mr. Dragan Ivetić for Sreten Lukić

I. OVERVIEW	1
II. GROUND ONE: THE CHAMBER ERRED IN ITS READING OF THE INDICTMENT WHEN IT FOUND THAT THE PERSECUTIONS COUNT DID NOT INCLUDE FORCIBLE TRANSFERS AND DEPORTATIONS	2
A. OVERVIEW	2
B. THE INDICTMENT PLED FORCIBLE TRANSFER AND DEPORTATION AS UNDERLYING ACTS OF PERSECUTIONS	3
C. THE DISCRIMINATORY FORCIBLE TRANSFER AND DEPORTATION OF THE KOSOVO ALBANIAN CIVILIAN POPULATION ALLEGED IN THE INDICTMENT WAS CONSISTENTLY PLED AND UNDERSTOOD THROUGHOUT THE PROCEEDINGS	5
1. The Prosecution consistently alleged the discriminatory forcible transfer and deportation of the Kosovo Albanian civilian population throughout the proceedings.....	6
2. The Chamber acknowledged the core of the Prosecution case was the discriminatory forcible transfer and deportation of the Kosovo Albanian civilian population.....	8
3. The Defence were fully aware that the core of the Prosecution case was the discriminatory forcible transfer and deportation of the Kosovo Albanian civilian population.....	8
D. THE ACCUSED DEFENDED AGAINST THE PROSECUTION CASE OF DISCRIMINATORY FORCIBLE TRANSFER AND DEPORTATION OF THE KOSOVO ALBANIAN CIVILIAN POPULATION THROUGHOUT THE TRIAL	9
E. RELIEF SOUGHT	10
1. Šainović, Pavković and Lukić should be convicted for committing persecutions by forcible transfer and deportation through their participation in the JCE	10
2. Ojdanić and Lazarević should be convicted for aiding and abetting persecutions by forcible transfer and deportation	11
III. GROUND TWO: THE CHAMBER ERRED IN ACQUITTING OJDANIĆ AND LAZAREVIĆ OF AIDING AND ABETTING MURDER. 13	
A. OVERVIEW	13
B. THE CHAMBER ERRED IN LAW WHEN IT ACQUITTED OJDANIĆ AND LAZAREVIĆ OF AIDING AND ABETTING MURDER	14
1. The Chamber imposed unnecessary legal requirements for the <i>mens rea</i> of aiding and abetting	14
2. Conclusion as to error of law	15
C. THE CHAMBER MADE THE FACTUAL FINDINGS NECESSARY TO CONVICT OJDANIĆ AND LAZAREVIĆ	15
1. Ojdanić is guilty of aiding and abetting murder	15
(a) Ojdanić substantially contributed to the murders	15
(b) Ojdanić was aware that it was likely that murders would be committed and that his acts would contribute to them.....	16
2. Lazarević is guilty of aiding and abetting murder	18
(a) Lazarević substantially contributed to the murders	18
(b) Lazarević was aware that it was likely that murders would be committed and that his acts would contribute to them	19
D. ERROR OF FACT AS TO OJDANIĆ AND LAZAREVIĆ	22

E. RELIEF SOUGHT	22
IV. GROUND THREE: THE CHAMBER ERRED IN FINDING THAT THE MENS REA FOR JCE III WAS NOT MET WITH RESPECT TO ŠAINOVIĆ AND LUKIĆ FOR SEXUAL ASSAULT AS PERSECUTIONS.....	22
A. OVERVIEW	22
B. LEGAL ERROR: THE CHAMBER ERRED IN ADOPTING AND APPLYING THE WRONG JCE III <i>MENS REA</i> STANDARD.....	24
C. THE CHAMBER’S FINDINGS AND TRIAL RECORD DEMONSTRATE BEYOND REASONABLE DOUBT THAT ŠAINOVIĆ AND LUKIĆ HAD THE REQUIRED <i>MENS REA</i> FOR JCE III WITH RESPECT TO THE PROVEN SEXUAL ASSAULTS.....	25
1. It was foreseeable to Šainović and Lukić that sexual assault crimes might be perpetrated in implementing the JCE.....	25
2. Despite awareness that sexual assault was a possible consequence of implementing the JCE, Šainović and Lukić willingly took that risk by participating in the JCE.....	29
D. RELIEF SOUGHT	31
V. GROUND FOUR: THE CHAMBER ERRED IN FAILING TO FIND THAT THE RAPES OF K31, K14 AND K62 WERE ACTS OF PERSECUTIONS.....	32
A. OVERVIEW	32
B. THE ONLY REASONABLE CONCLUSION ON THE EVIDENCE IS THAT THE RAPES OF K31 WERE ACTS OF PERSECUTIONS.....	33
C. THE ONLY REASONABLE CONCLUSION ON THE EVIDENCE IS THAT THE RAPE OF K14 WAS AN ACT OF PERSECUTIONS.....	35
D. THE ONLY REASONABLE CONCLUSION ON THE EVIDENCE IS THAT THE RAPES OF K62 WERE ACTS OF PERSECUTIONS.....	37
E. THE CHAMBER ERRED IN LAW IN FAILING TO ASSESS THE TOTALITY OF THE RELEVANT EVIDENCE TO DETERMINE THE EXISTENCE OF DISCRIMINATORY INTENT	38
F. RELIEF SOUGHT.....	39
VI. GROUND FIVE: THE CHAMBER ERRED IN FACT BY FAILING TO CONVICT OJDANIĆ AND LAZAREVIĆ FOR AIDING AND ABETTING DEPORTATION AND FORCIBLE TRANSFER IN PARTICULAR LOCATIONS	39
A. OVERVIEW	39
B. OJDANIĆ SHOULD HAVE BEEN CONVICTED FOR CRIMES IN BELEG.....	40
C. LAZAREVIĆ SHOULD HAVE BEEN CONVICTED FOR CRIMES IN SOJEVO/SOJEVA, STARO SELO AND MIROSAVLJE/MIROSALA.....	40
D. OJDANIĆ AND LAZAREVIĆ SHOULD HAVE BEEN CONVICTED FOR CRIMES IN ŽABARE/ZHABAR AND DUŠANOVO/DUSHANOVA.....	42
E. RELIEF SOUGHT	43
VII. GROUND SIX: THE CHAMBER ERRED IN IMPOSING MANIFESTLY INADEQUATE SENTENCES AND IN FAILING TO INDIVIDUALISE THE SENTENCES.....	44
A. OVERVIEW	44

B. THE SERIOUSNESS OF THE UNDERLYING CRIMES WARRANTS AN INCREASE IN EACH OF THE ACCUSED’S SENTENCES	45
1. Deportation and forcible transfer	47
(a) Priština/Prishtina.....	47
(b) Celina.....	48
(c) Korenica; the Reka/Caragoj valley	48
(d) Kačanik/Kaçanik town	49
(e) Dušanovo/Dushanova	49
(f) Kosovska Mitrovica/Mitrovica; Žabare/Zhabar	50
(g) Vučitrn/Vushtrria.....	50
2. Murder	50
(a) Suva Reka/Suhareka	51
(b) Belaja stream in Bela Crkva/Bellacërka	51
(c) Mala Kruša/Krusha e Vogël and Izbica	52
(d) Đakivoca/Gjakova	53
(e) Reka/Caragoj valley.....	53
(f) Dubrava/Lisnaja	54
3. Destruction of Religious Property	55
4. Sexual Assault.....	55
5. Conclusion regarding the seriousness of the crimes.....	56
C. THE ROLE AND DEGREE OF PARTICIPATION OF EACH ACCUSED WARRANTS AN INCREASE IN EACH OF THEIR SENTENCES	56
(a) JCE members	58
(i) Pavković.....	59
(ii) Šainović.....	60
(iii) Lukić	62
(b) Aiders and Abettors	64
(i) Lazarević	64
(ii) Ojdanić	65
D. RELIEF SOUGHT	66
RULE 111 DECLARATION	68
APPENDIX 1: EXHIBITS PERTAINING TO SEXUAL ASSAULT, BY INCIDENT	69
APPENDIX 2: LIST OF CRIMES FOR WHICH THE ACCUSED WERE CONVICTED	75
PROSECUTION GLOSSARY	77

I. OVERVIEW

1. The Prosecution's appeal argues that the Chamber failed to hold Nikola Šainović, Dragoljub Ojdanić, Nebojša Pavković, Vladimir Lazarević and Sreten Lukić fully accountable for their roles in the 1999 mass displacement of more than 700,000 Kosovo Albanian civilians and the murders, rapes and cultural destruction that accompanied the displacements.

2. The Chamber, by reading the Indictment too narrowly, erred in finding that these mass displacements – which were at the heart of the Prosecution's case – were not acts of persecutions (Ground One). The Chamber also erred in imposing manifestly inadequate sentences (Ground Six). Further, the Chamber erred in entering acquittals regarding specific crimes even as its own factual findings proved guilt. Specifically, the Chamber's own findings show:

- Ojdanić and Lazaravić are guilty of aiding and abetting murder (Ground Two);
- Šainović and Lukić possessed the *mens rea* for sexual assault (Ground Three);
- Pavković, Šainović and Lukić are guilty of the rapes of K31, K14 and K62, which were acts of persecutions (Ground Four); and
- Ojdanić and Lazarević are guilty for aiding and abetting deportation and forcible transfer in Beleg, Sojevo/Sojeva, Staro Selo, Mirosavlje/Mirosala, Žabare/Zhabar and Dušanovo/Dushanova (Ground Five).

As a result, Šainović, Ojdanić, Pavković, Lazarević and Lukić were not held fully accountable for their criminal conduct. The Prosecution asks the Appeals Chamber to correct these errors and to impose adequate sentences.

II. GROUND ONE: THE CHAMBER ERRED IN ITS READING OF THE INDICTMENT WHEN IT FOUND THAT THE PERSECUTIONS COUNT DID NOT INCLUDE FORCIBLE TRANSFERS AND DEPORTATIONS

A. Overview

3. Ethnic cleansing of the Kosovo Albanian population by forcible transfer and deportation formed the core of the Prosecution case. The Indictment pled this core case as persecutions by forcible transfer and deportation.¹ The testimony of a former VJ member who expelled Kosovo Albanian civilians in April 1999 exemplifies this core case:

[...] we expelled them all from the baby in the cradle to the elderly people in wheelchairs and that's the problem that I have today. [...] [REDACTED]²

4. The Chamber made extensive findings that more than 700,000 Kosovo Albanians were forcibly displaced within and outside Kosovo by the joint VJ-MUP forces on the basis of their ethnicity.³ Despite these findings, the Chamber failed to convict for persecutions by forcible transfer and deportation.⁴ The Chamber's failure is based on a narrow reading of the Indictment at Volume I, paragraph 12 of the Judgement, and in the Rule 98*bis* Decision,⁵ where it found that Count 5 (persecutions) did not include the acts of forcible transfer and deportation set out in paragraph 72 of the Indictment. The Chamber erred in law in taking this narrow approach. Had the Chamber read the Indictment as a whole, it would have found that the Indictment pled persecutions by these acts. The Chamber also had other Prosecution pleadings, such as the Prosecution Pre-Trial, Rule 65*ter* witness lists, which confirm that these acts were included in the persecutions count.

¹ Indictment, paras.25-32, 39(h), 44(e), 47(k), 49(g), 54(c), 59(e), 69(e), 72, 73, 77, 77(a), 79, 94, 96, 100.

² [REDACTED]; Judgement, Vol.II, para.1172.

³ Judgement, Vol.II, paras.1156, 1172, 1178; Vol.III, paras.45, 92, 94-95, 470, 624, 785, 922, 1134, 1172-1173; *see also* Vol.II, paras.48, 69, 230, 279, 286, 727-728, 795-796, 885, 888, 1150, 1159, 1164-1167, 1170, 1175-1177, 1181-1182, 1184-1185, 1189-1190, 1194-1195, 1200-1202, 1207, 1214-1215, 1221, 1225-1227, 1229-1230, 1233, 1239-1242, 1246-1247, 1250-1251, 1254, 1257, 1260.

5. The heart of the counts of deportation and forcible transfer of Kosovo Albanians (Counts 1 and 2) was that these crimes were committed against them because of their ethnicity. Moreover, the forcible displacement of the Kosovo Albanian civilian population to modify the ethnic balance of Kosovo was the common criminal purpose of the JCE.⁶ Thus, evidence that Kosovo Albanian civilians were forcibly displaced because of their ethnicity established both the common criminal purpose and the crimes themselves. The Accused recognised this case and defended against it throughout the trial.

6. The Chamber's factual findings support convictions for persecutions of the Kosovo Albanian population by forcible transfer and deportation. The Chamber's error of law invalidates its decision not to convict Šainović, Ojdanić, Pavković, Lazarević and Lukić for this count. The Chamber's failure to convict is also unjust, because it denies the correct legal qualification of the massive forcible displacement of the Kosovo Albanian population established by the Chamber's findings.⁷ The Appeals Chamber should correct this injustice by convicting Šainović, Ojdanić, Pavković, Lazarević and Lukić for persecutions by forcible transfer and deportation, a crime against humanity, and by increasing their sentences.

B. The Indictment pled forcible transfer and deportation as underlying acts of persecutions

7. An indictment must be read as a whole.⁸ Contrary to this well-established jurisprudence, the Chamber examined subparagraph 77(a) of the Indictment in isolation. It erred in law at Volume I, paragraph 12 of the Judgement, and in its Rule 98*bis* Decision,⁹ when it found that the reference to "800,000 Kosovo Albanians civilians" in paragraph 77(a) excluded the persons listed in paragraph 72, and that Count 5 excluded the forcible transfers and deportations described in paragraph 72. The Chamber's error rests on a narrow reading of the Indictment whereby it required

⁴ Judgement, Vol.III, paras.475-477, 630, 634-635, 788-790, 930, 934-935, 1138-1140, 1208-1212.

⁵ Judgement, Vol.I, para.12; T.12778-12779, 12783.

⁶ Judgement, Vol.III, para.95; *see also* Vol.III, paras.92, 94.

⁷ *See above*, fn.3.

⁸ *Mrkšić* AJ, para.138; *Simba* AJ, fn.158; *Halilović* AJ, para.86; *Gacumbitsi* AJ, para.123; *Semanza* AJ, para.90; *Rutaganda* AJ, para.304.

a specific reference to paragraph 72 be included in subparagraph 77(a).¹⁰ Such a reference was unnecessary because the allegation in subparagraph 77(a) of the forcible displacement of “approximately 800,000 Kosovo Albanian civilians” clearly included by internal cross-references the locations and municipalities described in paragraph 72.

8. Paragraph 77, in relevant parts, and subparagraph 77(a) read:

[The Accused] utilised the means and methods set forth in paragraphs 25 through 32 to execute a campaign of persecutions against the Kosovo Albanian population, including Kosovo Albanian civilians based on political, racial, or religious grounds. Each of the accused intended to discriminate against the Kosovo Albanian population on political, racial or religious grounds or was aware of the substantial likelihood that the forces of the FRY and Serbia would perpetrate the crimes set forth in paragraphs 25 through 32 against the Kosovo Albanian population on political, racial, or religious grounds [...] These persecutions included, but were not limited to, the following means:

a. The forcible transfer and deportation by forces of the FRY and Serbia of approximately 800,000 Kosovo Albanian civilians as described in paragraphs 25-32.

9. Subparagraph 77(a) expressly incorporates paragraphs 25 and 32 which allege:

25. Forces of the FRY and Serbia, in a deliberate and widespread or systematic manner, forcibly expelled and internally displaced hundreds of thousands of Kosovo Albanians from their homes across the entire province of Kosovo.¹¹ [...]

32. The crimes perpetrated in each of the municipalities and locations set forth below in paragraphs 71-77 followed a clear pattern [...] in order to achieve the common purpose.¹²

10. The cross-references in paragraph 77 and subparagraph 77(a) to the facts alleged in paragraphs 25–32 make plain that the reference to the 800,000 Kosovo

⁹ T.12778-12779, 12783.

¹⁰ Judgement, Vol.I, para.12, fn.7; T.12778-12779; *see also* T.5409-5410.

¹¹ Indictment, para.25.

¹² Indictment, para.32; *see also* Indictment, paras.19, 39(h), 44(e), 47(k), 49(g), 54(e), 59(e), 69(e), 79, 94, 96, 100.

Albanians in subparagraph 77(a) included the Kosovo Albanians forcibly transferred or deported from the specific municipalities and locations described in paragraph 72.

11. Further, subparagraph 77(a) has a direct cross-reference to paragraph 32, which itself incorporates paragraph 72.

12. Although a direct cross-reference to paragraph 72, as in subparagraphs 77(c) and 77(d), may have added more clarity, the Indictment did clearly plead the specific acts underlying persecutions by forcible transfer and deportation. The underlying acts of forcible transfer and deportation alleged in paragraph 72 are the only specific forcible transfers and deportations charged in the Indictment. The Indictment cannot be read otherwise. These acts focus solely on Kosovo Albanian victims and apply to Counts 1, 2 and 5. The Chamber's narrow reading of subparagraph 77(a) caused it to exclude forcible transfer and deportation crimes from Count 5 and not to convict for persecutions by forcible transfer and deportation.

C. The discriminatory forcible transfer and deportation of the Kosovo Albanian civilian population alleged in the Indictment was consistently pled and understood throughout the proceedings

13. The conduct of the Prosecution case as a whole made clear that the Prosecution relied upon the forcible transfers and deportations within paragraph 72 as persecutory acts. The Chamber raised a "technical" question regarding the pleading¹³ and later decided the forcible transfers and deportations were not included within the scope of the persecutions count by its Rule 98*bis* Decision.¹⁴ Whilst it may have been preferable for the Prosecution to answer this "technical" question explicitly, it was answered throughout the proceedings by the presentation of a clear and consistent core case that Kosovo Albanian civilians were forcibly displaced on discriminatory grounds. The core case was obvious to both the Chamber and the Defence.

¹³ T.5409-5410.

¹⁴ T.12778-12779, 12783.

1. The Prosecution consistently alleged the discriminatory forcible transfer and deportation of the Kosovo Albanian civilian population throughout the proceedings

14. The Prosecution Pre-Trial Brief described the core case found in the Indictment, namely that forcible transfers and deportations were underlying acts of persecutions. It stated:

2. The core allegation in this case is that the accused Milutinović, Šainović, Ojdanić, Pavković, Lazarević, Đorđević and Lukić are criminally liable for a campaign of ethnic cleansing in Kosovo. [...] [A]pproximately 600,000 to 800,000 ethnic Albanians in Kosovo (“Kosovo Albanians”) were expelled from their homes and deported. In addition, hundreds of thousands of Kosovo Albanians were expelled from their homes and internally displaced. This program of ethnic cleansing was carried out against Kosovo Albanians on account of their ethnicity and their religion.¹⁵

60. [The JCE] purpose was to be achieved through various means, including an organized campaign of persecution against Kosovo Albanians leading to the expulsion of a substantial portion of the Kosovo Albanian population from the territory of the province of Kosovo. The persecution and expulsion campaign was implemented through a widespread and/or systematic campaign of terror and violence against the Kosovo Albanian population which entailed deportations, forcible transfer, murders and other persecutory acts as the wanton destruction of Kosovo Albanian religious sites and the sexual assault on Kosovo Albanian women. These crimes enumerated in Counts 1 to 5 of the Indictment were within the object of the JCE.¹⁶

15. The plain meaning of the Indictment is further confirmed by the Prosecution Opening Statement¹⁷ and the Prosecution’s Rule 65*ter* witness lists. The Rule 65*ter* witness lists filed on 10 May 2006,¹⁸ [REDACTED]¹⁹ and [REDACTED]²⁰ provided notice by reference to paragraphs 72, 73 and 77 of the Indictment that many witnesses who were to testify about the deportations and forcible transfers (Counts 1 and 2) in specific municipalities would also testify about the discriminatory nature of these crimes.

¹⁵ Prosecution Pre-Trial Brief, para.2.

¹⁶ Prosecution Pre-Trial Brief, para.60, *see also* paras.38, 132-135, 218.

¹⁷ T.418, 448-450 (including the videotapes showing convoys of Kosovo Albanians fleeing Kosovo played during the Prosecution Opening Statement), 463-466; *see also* T.675-676, 9568.

¹⁸ Prosecution Rule 65*ter* Witness List of 10 May 2006, [REDACTED]

16. In addition, throughout the trial, the Prosecution made explicit references linking subparagraph 77(a) of the Indictment with paragraph 72, and with paragraphs 73 and 32, both of which also incorporate the allegations in paragraph 72. This linkage was pled before²¹ and after²² the Chamber's "technical" inquiry about the Indictment,²³ and after the Rule 98*bis* Decision.²⁴

17. In responding to the Original Accused Rule 98*bis* motions, the Prosecution reiterated its case of persecutions of the Kosovo Albanian civilian population by forcible transfer and deportation.²⁵ This approach was followed in its examination²⁶ and cross-examination²⁷ of witnesses throughout the trial, in its Prosecution Closing Brief²⁸ and during its closing argument, where the Prosecution reaffirmed that the persecutions count included the acts of forcible displacement pled in paragraph 72 of the Indictment.²⁹

¹⁹ [REDACTED]

²⁰ [REDACTED]

²¹ T.2121 (referring to witness' evidence relating to paragraphs 72(g) and 77(a)), 2266 (same as to paragraphs 72(g), 77(a) and 77(c)), 2418 (same as to paragraphs 72(m), 73, 75(i), 76 and 77), 3049 (same as to paragraphs 72(j), 73, 75 and 77), 3091 (same as to paragraphs 72(h), 73, 75(h) and 77), 3514 (same as to paragraphs 72(k), 73, 75(k), 76 and 77), 3771 (same as to paragraphs 72(d), 75(d) and 77), 3823 (same as to paragraphs 72(d), 73 and 77), 3866 (same as to paragraphs 72(d), 75(d), 77(a) and 77(b)), 4042 (same as to paragraphs 72(f), 73, 76 and 77), 4094 (same as to paragraphs 25-32, 72(a)(i), 77(a), 77(b) and 77(d)), 4138 (same as to paragraphs 25-32, 72(a)(i), 77(a), 77(b) and 77(d)), 4201 (same as to paragraphs 25-32, 72(a), 77(a) and 77(d)), 4229 (same as to paragraphs 25-32, 72(a), 77(a) and 77(d)), 4282 (same as to paragraphs 25-32, 72(a), 77(a) and 77(b)), 4412 (same as to paragraphs 72(e) and 77), 4443 (same as to paragraphs 72(f), 73 and 77), 4520 (same as to paragraphs 72(k), 75(k) and 77), 4528 (same as to paragraphs 25-32 and 77-100), 4650 (same as to paragraphs 20, 25-32, 72, 72(a), 72(a)(i), 75, 75(c), 77(a), 77(b) and 77(d)), 4885 (same as to paragraphs 72(e), 77 and 100).

²² T.5646 (referring to witness' evidence relating to paragraphs 25-32, 72(a), 72(a)(i), 77(a), 77(b) and 77(d)), 7063 (same as to paragraphs 72 and 77), 7460 (same as to paragraphs 25-32, 72(l), 76 and 77), 7540 (same as to paragraphs 72(b) and 77), [REDACTED]

²³ T.5409-5410.

²⁴ T.26788.

²⁵ T.12573, 12576, 12578-12580, 12584, 12655, 12694, 12720, 12724, 12732.

²⁶ See e.g. T.819, 2232, 3328-3329, [REDACTED], 4835-4836, 7802, 8112-8113, 8452, 8457-8458, 10517, 10520-10521, 11516.

²⁷ See e.g. T.14223, 14235, 16263-16265, 16430, 16437-16438, 16906, 19855, 19858, 19860-19861, [REDACTED], 20782.

²⁸ Prosecution Closing Brief, paras.11, 305, 307-313, 316-317, 351, 1099.

²⁹ T.26788; see also T.26791, 26898, 26908, 27412.

2. The Chamber acknowledged the core of the Prosecution case was the discriminatory forcible transfer and deportation of the Kosovo Albanian civilian population

18. During a pre-trial conference, the Presiding Judge recognised the core of the Prosecution case, describing it as follows:

This case would be seen as, at the very least, a case of ethnic manipulation, if it's not ethnic cleansing. So deportation and forcible transfer is an essential ingredient of the case.³⁰

19. Further, in its inquiry of 30 October 2006 the Chamber recognised that it may be taking a "technical" approach to the reading of the Indictment.³¹ It thus cannot have been confused or misled that paragraph 72 set out the factual basis for persecutions by forcible transfer and deportation. Even in its Judgement, the Chamber acknowledged:

The Prosecution case is that these thousands of Kosovo Albanians fled the province because of the violent and coercive actions of the forces of the FRY and Serbia, which engaged in a campaign of terror against the Kosovo Albanian population in order to expel them from their homes and force them across the borders with Albania and Macedonia.³²

3. The Defence were fully aware that the core of the Prosecution case was the discriminatory forcible transfer and deportation of the Kosovo Albanian civilian population

20. The Indictment, the Prosecution Pre-Trial Brief and the conduct of the Prosecution case fully informed the Defence of the Prosecution pleading persecutions by the forcible transfers and deportations listed in paragraph 72 of the Indictment. None of the Accused brought a preliminary motion alleging Count 5 as defective for

³⁰ T.368; *see also* Rule 98bis Decision, T.12787, 12795.

³¹ T.5410.

³² Judgement, Vol.II, para.1151; *see also* Vol.II, para.838; Vol.I, para.11; Vol.III, paras.7, 16 ("At the heart of the Prosecution case that each of the Accused committed various crimes by participation in a joint criminal enterprise is the claim that there was such an enterprise comprising various senior and powerful officials of the governments of both the FRY and Serbia and senior VJ and MUP officers who directed the VJ and MUP forces of the Federal Republic and the Republic in a campaign of terror and violence designed to forcibly displace members of the Albanian population of Kosovo with the aim of modifying the ethnic balance of the population in Kosovo to secure control of the province in the hands of the ethnic Serbs."), 410, 428, 506, 679, 820.

lack of specificity concerning the acts of forcible transfer and deportation against the Kosovo Albanian civilian population. Aside from a reference to the Rule 98bis Decision in their Closing Briefs by three of them,³³ none of the Accused raised this as an issue.

21. Two of the Original Accused even acknowledged they faced charges of persecutions “including forcible transfer and deportation”.³⁴ The Defence Rule 65ter witness lists show that even after the Rule 98bis Decision, the Accused knew they had to answer a case of persecutions against the Kosovo Albanian civilian population by forcible transfer and deportation. For example, [REDACTED]³⁵ Similarly, [REDACTED]³⁶

D. The Accused defended against the Prosecution case of discriminatory forcible transfer and deportation of the Kosovo Albanian civilian population throughout the trial

22. The Accused had to defend and defended against charges of persecutions by forcible transfer and deportation throughout the trial, including after the Rule 98bis Decision.

23. In order to meet the Prosecution case that the JCE was to modify the ethnic balance of Kosovo through forcibly transferring and deporting Kosovo Albanians, each Accused was required to address all the elements of persecutions by forcible transfer and deportation. Even after the Rule 98bis Decision, the Accused were required to address the discriminatory nature of these crimes and the specific and general evidence of forcible transfer and deportation of Kosovo Albanians. The Accused fully defended this case. No prejudice can therefore be asserted by the Defence in response to entering convictions for persecutions by forcible transfer and deportation.

³³ Lazarević Closing Brief, paras.476-480; Pavković Closing Brief, para.642 (where Pavković merely quotes the Rule 98bis Decision); Ojdanić Closing Brief, fn.939.

³⁴ Pavković Pre-Trial Brief, paras.8(b) and (c), 25; Milutinović Pre-Trial Brief, paras.8(b) and (c), 25.

³⁵ [REDACTED]

³⁶ [REDACTED] *See also below* para.24.

24. During the presentation of the Prosecution case, the Defence strategy³⁷ focused on the case of discriminatory forcible transfer and deportation of the Kosovo Albanian civilian population, and the Accused cross-examined Prosecution witnesses about these facts.³⁸ The Defence witnesses challenged the Prosecution case that a campaign of massive forcible transfer and deportation of Kosovo Albanians was carried out on discriminatory grounds in furtherance of the common criminal purpose.³⁹ Defence witnesses were called to address the Accused's alleged involvement in the forcible displacements of Kosovo Albanian civilians and their alleged prejudice against ethnic Kosovo Albanians.⁴⁰ This theme was forecast in their Opening Statements,⁴¹ continued through examination of Defence witnesses and cross-examination of Chamber's witnesses,⁴² in their Closing Briefs⁴³ and Closing Arguments.⁴⁴ Entering convictions for persecutions by forcible transfer and deportation would therefore not be unfair. To the contrary, it would correct the injustice caused by the Chamber's error.

E. Relief sought

1. Šainović, Pavković and Lukić should be convicted for committing persecutions by forcible transfer and deportation through their participation in the JCE

25. The common criminal purpose of the JCE to forcibly displace part of the Kosovo Albanian population to change the ethnic balance in Kosovo to ensure continued control by the FRY and Serbian authorities encompasses persecutions by

³⁷ See e.g. Šainović Pre-Trial Brief, para.42; Lazarević Pre-Trial Brief, paras.17, 51; T.1047-1048, 12383-12384, 12424, 12432, 12444, 12448-12449, 12451-12452, 12490, 12502, 12504, 12558.

³⁸ See e.g. T.1025-1026, 1034-1036, [REDACTED], 4715, 6988-6989, 7687, 8840, [REDACTED], 10265, 10269, 10597-10598.

³⁹ See above para.21.

⁴⁰ See e.g. T.14898-14899, 15028, 15318, 15895-15896, 16058-16059, 16442, 23129-23130.

⁴¹ See e.g. T. 489-490, 14801, 14804-14806.

⁴² See e.g. T.13856-13857, 14857, 15024, 15145, 15329, 15580-15581, 15760, 15827-15828, 16185, 16217-16218, 16312, 16404, 16803-16804, 16840, 16975, 18129, 19732-19733, 20662, 21044, 21958-21959, 21969-21970, 22858-22859, 23311-23312, 24346, 24999, 24816, 26497, 26731.

⁴³ See e.g. Lazarević Closing Brief, paras.222, 376, 379-386, 416, 470, 472, 483-484, 495-505, 514, 583, 845, 863; Ojdanić Closing Brief, paras.12-22, 28, 54-56, 60, 84-85, 123, 126, 149, 159, 165-166, 195, 197, 201, 203, 205-206, 214, 263, 411, 582; Pavković Closing Brief, paras.49, 57-60, 87 [REDACTED], 119, 359-360; Milutinović Closing Brief, paras.266, 271, 303; Šainović Closing Brief, paras.692, 870-874; Lukić Closing Brief, para.386. See also Judgement, Vol.I, para.1048; Vol.II, paras.138, 545, 715, 838, 973, 1175; Vol.III, paras.19, 50, 93, 436, 529, 609, 861.

⁴⁴ See e.g. T.27023, 27025, 27048, 27050, 27054, 27056, 27102-27103, 27114-27115, 27131, 27135-27136, 27138-27140, 27143, 27145-27146, 27151, 27154, 27158, 27228-27230, 27295, 27297-27298.

forcible transfer and deportation. Had the Chamber not erred by narrowly reading the Indictment, it would have found that the persecutions by forcible transfer and deportation formed an integral part of the JCE.

26. The Chamber found that Šainović, Pavković and Lukić shared the JCE intent.⁴⁵ They were found guilty under Counts 1 and 2 of the Indictment through their participation in the JCE for acts of deportations and forcible transfers listed in paragraph 72 of the Indictment.⁴⁶ As their intent to further the JCE encompasses the requisite discriminatory intent for persecutions through these acts, the Appeals Chamber should convict Šainović, Pavković and Lukić for committing persecutions by forcible transfer and deportation, as a crime against humanity (Count 5), for each municipality and location for which they were convicted of deportation and/or forcible transfer under Counts 1 and 2.

27. Their sentences should accordingly be increased in order to reflect the totality of their criminal conduct.

2. Ojdanić and Lazarević should be convicted for aiding and abetting persecutions by forcible transfer and deportation

28. Ojdanić and Lazarević were convicted under Counts 1 and 2 of the Indictment for aiding and abetting acts of deportation and forcible transfer listed in paragraph 72 of the Indictment.⁴⁷ As shown in Ground 5, Ojdanić and Lazarević should also have been convicted of deportation and forcible transfer under Counts 1 and 2 in relation to other municipalities and locations.⁴⁸

29. Convictions for aiding and abetting persecutions through these acts of forcible displacement also require evidence that they knew of the perpetrators' discriminatory intent.⁴⁹

30. The Chamber found that:

⁴⁵ Judgement, Vol.III, paras.466, 470, 772, 781, 785, 1117, 1130, 1134.

⁴⁶ Judgement, Vol.III, paras.475, 477, 788, 790, 1138, 1140, 1173, 1208, 1210, 1212.

⁴⁷ Judgement, Vol.III, paras.630, 635, 930, 935, 1173, 1209, 1211.

⁴⁸ See below Section VI (Ground Five).

⁴⁹ *Blagojević* AJ, para.127; *Simić* AJ, para.86; *Kvočka* AJ, para.439; *Krstić* AJ, paras.137, 140; *Vasiljević* AJ, paras.142-143; *Krnojelac* AJ, para.52.

The combination of Ojdanić's general knowledge of the widespread displacement of Kosovo Albanians in the course of VJ operations and his specific knowledge of the locations of those operations, including at most of the locations named in the Indictment, lead the Chamber to conclude that the only reasonable inference is that he knew of the campaign of terror, violence, and forcible displacement being carried out by VJ and MUP forces against Kosovo Albanians.⁵⁰

31. The Chamber also established that Ojdanić was aware of the broad discriminatory context of the conflict,⁵¹ and that by his failure to take effective measures against Pavković, he contributed to sustaining a culture of impunity surrounding the forcible displacement of the Kosovo Albanian population.⁵² These findings considered together with Ojdanić's knowledge of the commission of serious criminal offences against ethnic Albanians⁵³ and his close working relationship with JCE member Milošević⁵⁴ lead to the only reasonable inference that Ojdanić was aware that, when forcibly displaced, Kosovo Albanians were selectively targeted by the joint VJ-MUP forces, including the JCE members. He therefore had the requisite knowledge for aiding and abetting persecutions by forcible transfer and deportation. The Appeals Chamber should accordingly convict him for aiding and abetting persecutions by forcible transfer and deportation, a crime against humanity (Count 5), for each municipality and location for which he was and should have been convicted of deportation and/or forcible transfer under Counts 1 and 2.⁵⁵

32. Similarly, regarding Lazarević, the Chamber found that:

The combination of Lazarević's general knowledge of the widespread displacement of Kosovo Albanians in the course of VJ operations and his specific knowledge of the locations of those operations, including at most of the locations named in the Indictment, lead the Chamber to conclude that the only reasonable inference is that he knew of the campaign of terror, violence, and

⁵⁰ Judgement, Vol.III, para.625; *see also* Vol.III, paras.566-568, 570, 572-576, 583, 594-597, 609, 611, 616.

⁵¹ Judgement, Vol.III, para.625.

⁵² Judgement, Vol.III, para.627.

⁵³ Judgement, Vol.III, paras.583, 623, 1185.

⁵⁴ Judgement, Vol.III, paras.487, 497, 500-502, 530, 541, 557, 573, 576-577, 616, 625.

⁵⁵ *See below*, Section VI (Ground Five).

forcible displacement being carried out by VJ and MUP forces against Kosovo Albanians.⁵⁶

33. This knowledge must be considered together with his presence in Priština/Prishtina while the joint VJ-MUP forces forcibly displaced large numbers of Kosovo Albanians from the town.⁵⁷ His knowledge of the massive scale of the displacement of the Kosovo Albanian population,⁵⁸ and his awareness that his conduct would assist the implementation of the campaign to forcibly displace Kosovo Albanians⁵⁹ must also be taken into account. Finally, his close working relationship with JCE member Pavković is relevant.⁶⁰ These findings lead to the inescapable conclusion that Lazarević was aware that the joint VJ-MUP forces, including the JCE members, committed forcible displacements with discriminatory intent. The Appeals Chamber should therefore find Lazarević guilty for aiding and abetting persecutions by forcible transfer and deportation, a crime against humanity (Count 5), for each municipality and location for which he was and should have been convicted of deportation and/or forcible transfer under Counts 1 and 2 of the Indictment.⁶¹

34. The Appeals Chamber should increase the sentences of Ojdanić and Lazarević to reflect the totality of their criminal conduct.

III. GROUND TWO: THE CHAMBER ERRED IN ACQUITTING OJDANIĆ AND LAZAREVIĆ OF AIDING AND ABETTING MURDER

A. Overview

35. The Chamber made all the factual findings necessary to convict Ojdanić and Lazarević for aiding and abetting murders by joint VJ-MUP forces. These forces committed a mass murder in and around Korenica and Meja, Đakovica/Gjakova municipality on 27 April 1999⁶² and murdered two Kosovo Albanians in

⁵⁶ Judgement, Vol.III, para.924; *see also* Vol.III, paras.861, 917, 923, 925, 1173.

⁵⁷ Judgement, Vol.III, paras.838, 855, 917, 924.

⁵⁸ Judgement, Vol.III, paras.851, 855, 860, 924.

⁵⁹ Judgement, Vol.III, para.926.

⁶⁰ Judgement, Vol.III, paras.800, 838.

⁶¹ *See below* Section VI (Ground Five).

⁶² Judgement, Vol.II, para.1197, 236.

Dubrava/Lisnaja in Kačanik/Kaçanik municipality on 25 May 1999.⁶³ The Chamber found that the physical perpetrators caused and intended the deaths and targeted the victims with the intent to discriminate.⁶⁴ Ojdanić's and Lazarević's acts and omissions substantially contributed to these crimes committed by the VJ.⁶⁵

36. However, when considering the *mens rea* of Ojdanić and Lazarević, the Chamber erroneously sought evidence that they were aware of the precise crimes. The Chamber sought evidence that Ojdanić and Lazarević were aware that the principal perpetrators "were going into the specific crime sites [...] in order to commit killings." The Chamber needed only evidence of awareness of the likelihood that murders would be committed.⁶⁶ The Chamber erred in law, or alternatively, in fact, when it failed to convict Ojdanić and Lazarević for aiding and abetting murder as a crime against humanity (Count 3), as a violation of the laws or customs of war (Count 4) and as an underlying act of persecutions (Count 5).

B. The Chamber erred in law when it acquitted Ojdanić and Lazarević of aiding and abetting murder

1. The Chamber imposed unnecessary legal requirements for the *mens rea* of aiding and abetting

37. Although all facts necessary to convict Ojdanić and Lazarević for aiding and abetting murder were found to be proven beyond reasonable doubt, the Chamber concluded that "the mental element of aiding and abetting has not been established."⁶⁷ The Chamber concluded that, in order to convict, it needed proof that Ojdanić and Lazarević were aware that "VJ and MUP forces were going into the specific crime sites [...] in order to commit killings."⁶⁸

38. By requiring the awareness of the precise crimes, the Chamber applied too high a standard. The aider and abetter need not know "the precise crime that was intended or the one that was, in the event, committed."⁶⁹ As explained by the *Orić*

⁶³ Judgement, Vol.II, paras.1259, 1262.

⁶⁴ Judgement, Vol.II, paras.1197, 1198, 1262.

⁶⁵ See below.

⁶⁶ Judgement, Vol.III, paras.629, 928.

⁶⁷ Judgement, Vol.III, paras.629, 928.

⁶⁸ Judgement, Vol.III, paras.629, 928.

⁶⁹ See below fn.71.

Trial Chamber, the aider and abettor need not foresee “the place, time and number of the precise crimes.”⁷⁰ The *mens rea* for aiding and abetting is met if the aider and abetter “is aware that one of a number of crimes will probably be committed, and one of those crimes is in fact committed” and that his acts or omissions assist the commission of the crimes.⁷¹ In the Judgement, the Chamber cited to the applicable law on aiding and abetting,⁷² but did not properly apply the *mens rea* of aiding and abetting to Ojdanić and Lazarević.⁷³

2. Conclusion as to error of law

39. Ojdanić and Lazarević knew of VJ members murdering Kosovo Albanians.⁷⁴ This knowledge was sufficient to satisfy the *mens rea* requirement of aiding and abetting murder. Awareness of the precise crimes is not required. The Chamber erred in law when it required proof that Ojdanić and Lazarević were aware that the principal perpetrators “were going into the specific crime sites [...] in order to commit killings”⁷⁵ and when it failed to find that Ojdanić and Lazarević possessed the required *mens rea*.

C. The Chamber made the factual findings necessary to convict Ojdanić and Lazarević

1. Ojdanić is guilty of aiding and abetting murder

(a) Ojdanić substantially contributed to the murders

40. Ojdanić was the Chief of the General Staff with *de jure* and *de facto* power over the VJ forces in Kosovo.⁷⁶ He substantially contributed to the displacement crimes committed by the VJ in Korenica, Meja and Dubrava/Lisnaja⁷⁷ by providing

⁷⁰ Orić TJ, para.288.

⁷¹ Simić AJ, para.86. See also Mrkšić AJ, paras.49, 63; Blaškić AJ paras.45, 50; Nindabahizi AJ, para.122; Furundžija TJ, para.246; Blaškić TJ para.287 (both referred to in Blaškić AJ, fn.94), Brdanin TJ, para.272; Strugar TJ, para.350.

⁷² Judgement, Vol.III, paras.620, 921.

⁷³ The last two sentences of Simić AJ, para.86, discussed the limits of the *mens rea* requirement for aiding and abetting.

⁷⁴ Judgement, Vol.III, paras.629, 928. The next section sets out the findings that prove Ojdanić’s and Lazarević’s *mens rea* for aiding and abetting murder.

⁷⁵ Judgement, Vol.III, paras.629, 928.

⁷⁶ Judgement, Vol.III, para.625.

⁷⁷ Judgement, Vol.III, para.630.

practical assistance, encouragement, and moral support to his VJ forces who committed the crimes.⁷⁸ Ojdanić's contributions to the VJ displacement crimes were, at the same time, contributions to the murders committed as a result of the displacements.⁷⁹

(b) Ojdanić was aware that it was likely that murders would be committed and that his acts would contribute to them

41. Ojdanić was aware that it was likely⁸⁰ that the murders would be committed and that his acts and omissions would assist the commission of these crimes.⁸¹ Ojdanić knew of the campaign of terror, violence and forcible displacement carried out by the VJ and the MUP in 1998⁸² and that excessive use of force was likely once he ordered the VJ into Kosovo in 1999.⁸³ Ojdanić knew that it was likely that murders would be committed by the Priština Corps during joint VJ-MUP operations in 1999 and that his acts and omissions would assist in their commission. Ojdanić knew that a campaign of terror, violence, and forcible displacement was being carried out by joint VJ-MUP forces against Kosovo Albanians and that VJ members were killing Kosovo Albanians in some instances.⁸⁴

42. Through the VJ reporting system and other sources, Ojdanić obtained a thorough knowledge of the general events taking place in Kosovo in 1998.⁸⁵ In August 1998, Crosland informed Ojdanić about the use of excessive force by the VJ.⁸⁶ By late autumn 1998, Ojdanić knew that VJ and MUP violence in Kosovo had resulted in numerous murders. In late September/early October 1998, Ojdanić received specific information about murders of civilians in Gornje Obrinje/Abria e Epërme. This information alleged that the Priština Corps was operating in the area at the relevant time and was providing support fire for the MUP.⁸⁷ By 23 October 1998,

⁷⁸ Judgement, Vol.III, para.626.

⁷⁹ Judgement, Vol.III, paras.785, 1134; *see also* Vol.II, para.1178.

⁸⁰ In the jurisprudence "likely" is synonymous to "probably"; *Martić* TJ, para.79, fn.150.

⁸¹ *See above* fn.71.

⁸² Judgement, Vol.III, para.623.

⁸³ Judgement, Vol.III, para.623.

⁸⁴ Judgement, Vol.III, paras.625, 629.

⁸⁵ Judgement, Vol.III, para.541.

⁸⁶ Judgement, Vol.III, para.545.

⁸⁷ Judgement, Vol.III, para.543. Exh.P1440 (document dated 5 October 1998 signed by Pavković. Although on 5 October 1998, Pavković informed the General Staff that the VJ "acted in accordance with the spirit of the order on the application of the International Law of War", he did not

Ojdanić knew of UNSC Resolution 1199 expressing grave concerns about “the excessive and indiscriminate use of force” by the MUP and VJ which had resulted in “numerous civilian casualties and [...] the displacement of over 230,000 people from their homes”.⁸⁸ On 27 November 1998, Ojdanić asked to receive personally all reports by commands and units about “unusual events involving fatal consequences”.⁸⁹

43. During the Indictment period, Ojdanić continued to receive information about crimes including murders. Ojdanić received a 2 April 1999 press release reporting widespread crimes by Serb forces against Kosovo Albanian civilians including mass expulsions, systematic looting of Albanian businesses, shooting at civilians, mass graves and repeated death threats (“leave or be killed”).⁹⁰ During the 3 April 1999 Supreme Command briefing, Ojdanić received a report that VJ soldiers had committed criminal acts in Kosovo and that volunteers were involved in the killing of eight civilians.⁹¹ During April 1999, the Supreme Command Staff received information that widespread and serious crimes were being committed in Kosovo, including allegations of mass graves.⁹²

44. The only reasonable conclusion from the Chamber’s findings is that before the first mass murder involving the VJ on 27 April 1999,⁹³ Ojdanić was aware that it was likely that VJ forces in Kosovo would participate in murders as part of the forcible displacement campaign. After this mass murder, Ojdanić continued to receive more information about serious crimes. On 2 May 1999, he received ICTY Prosecutor Louise Arbour’s letter expressing grave concerns about serious IHL violations.⁹⁴ Two days later, he learned that the foreign press were reporting mass killings.⁹⁵ On 16 May

provide any information about the conduct of the MUP, other than that there was “unchecked information” that MUP units operating in Gornje Obrinje/Abria e Epërme had executed persons taken into custody (according to Pavković: “[t]his information was not about the massacre” in question)).

⁸⁸ Judgement, Vol.III, para.542.

⁸⁹ Judgement, Vol.III, para.546.

⁹⁰ Judgement, Vol.III, para.567, Exh.P2542.

⁹¹ Judgement, Vol.III, paras.551, 562 (volunteers were received into the ranks of the VJ in 1999).

⁹² Judgement, Vol.III, para.554. Under-reporting of crimes being committed by the VJ caused Ojdanić to order Vasiljević out of retirement on 27 April 1999. Ojdanić appointed Vasiljević as Deputy Head of the Security Administration and tasked him to investigate and report to the Supreme Command Staff about crimes being committed in Kosovo. Judgement, Vol.III, para.571.

⁹³ On the Korenica, Meja mass murder, *see* Judgement, Vol.II, para.1197.

⁹⁴ Judgement, Vol.III, para.556.

⁹⁵ Judgement, Vol.III, para.554.

1999, Ojdanić received information about the death of 8,000 civilians, 271 of which were killed in VJ controlled territory.⁹⁶ Notwithstanding Ojdanić's ever-growing knowledge of crimes, he continued to order the VJ to participate in the joint VJ-MUP operations in Kosovo where they continued to commit crimes against the Kosovo Albanians.⁹⁷

45. Ojdanić was not only aware that killings would likely be committed but also that they would be committed with discriminatory intent. Because he was aware of the discriminatory nature of the campaign of terror, violence, and forcible displacement against Kosovo Albanians,⁹⁸ he must have been aware that the murders committed during this campaign would likely be carried out with the same discriminatory intent.

46. Ojdanić knew that his acts and omissions would assist the commission of deportation and forcible transfer.⁹⁹ These same acts and omissions assisted the commission of all the VJ crimes committed during the campaign. Ojdanić was aware it was likely that murders would occur during the unlawful forced displacement of the Kosovo Albanian civilian population. The only reasonable conclusion is that he was aware his acts and omissions would assist the murders.

2. Lazarević is guilty of aiding and abetting murder

(a) Lazarević substantially contributed to the murders

47. Lazarević, Commander of the VJ Priština Corps, had *de jure* and *de facto* authority over the Corps and the power to plan its activities and operations in Kosovo during the campaign of forcible displacements.¹⁰⁰ He substantially contributed to the displacement crimes of the VJ¹⁰¹ in Korenica, Meja and Dubrava/Lisnaja,¹⁰² including by providing practical assistance, encouragement, and moral support.¹⁰³ Lazarević's

⁹⁶ Judgement, Vol.III, para.575. For further findings on knowledge *see* Judgement, Vol.III, paras.557, 559 (last sentence), 573 (third sentence), 558, 573 (first sentence), 576 (fourth sentence).

⁹⁷ Judgement, Vol.III, para.610.

⁹⁸ Judgement, Vol.III, para.625.

⁹⁹ Judgement, Vol.III, para.628.

¹⁰⁰ Judgement, Vol.III, paras.925, 926.

¹⁰¹ Judgement, Vol.III, paras.925-926.

¹⁰² Judgement, Vol.III, para.930.

¹⁰³ Judgement, Vol.III, para.925.

contributions to the displacements also constituted contributions to the murders, which were committed as a result of the displacements.¹⁰⁴

48. Lazarević's direct subordinates were involved in the Korenica/Meja massacre. The Priština Corps command had approved the operation in the course of which the massacre was committed.¹⁰⁵ The Priština Corps' 549th Motorised Brigade¹⁰⁶ was involved in the massacre.¹⁰⁷ Another of Lazarević's subordinate units, the 243rd Mechanised Brigade,¹⁰⁸ participated in the attack on Dubrava/Lisnaja and in the murders.¹⁰⁹

(b) Lazarević was aware that it was likely that murders would be committed and that his acts would contribute to them

49. Lazarević knew that murders were likely during joint VJ-MUP operations and that his acts and omissions would assist in their commission. He was aware that VJ members were killing Kosovo Albanians in some instances,¹¹⁰ that crimes against civilians were committed during VJ and MUP operations in 1998 and early 1999¹¹¹ and that from late March 1999, VJ and MUP carried out serious criminal acts and a campaign of terror, violence and forcible displacement against Kosovo Albanians. He knew that between 24 March and 2 April 1999 over 300,000 Kosovo Albanians had left for Albania.¹¹²

50. At the end of 1998, Lazarević knew from information from various sources that VJ and MUP violence in Kosovo had resulted in numerous murders. He received Priština Corps security department reports on a regular basis.¹¹³ During 1998, Lazarević closely followed events on the ground when the incidents of excessive or disproportionate force by VJ and MUP were occurring.¹¹⁴ As of July 1998 he knew

¹⁰⁴ Judgement, Vol.III, paras.785, 1134; *see also* Vol.II, para.1178.

¹⁰⁵ Judgement, Vol.II, para.228.

¹⁰⁶ Judgement, Vol.I, para.612 (the 549th Motorised Brigade belonged to the Priština Corps).

¹⁰⁷ Judgement, Vol.II, para.233; Judgement, Vol.II, para.201, read in conjunction with [REDACTED] Note: Exh.P2652, referred to in Vol.II, para.201, fn.558 is the public redacted version of [REDACTED].

¹⁰⁸ Judgement, Vol.I, para.612.

¹⁰⁹ Judgement, Vol.II, paras.1146, 1148.

¹¹⁰ Judgement, Vol.III, para.928.

¹¹¹ Judgement, Vol.III, para.923.

¹¹² Judgement, Vol.III, paras.923-924.

¹¹³ Judgement, Vol.III, paras.845, 818, 844.

¹¹⁴ Judgement, Vol.III, paras.807, 808.

that the Priština Corps might commit crimes in reaction to KLA provocations¹¹⁵ and that joint VJ-MUP action could result in “uncontrolled fire at [...] individuals not involved in combat operations.”¹¹⁶ He also knew of UNSC Resolution 1199 of 23 September 1998¹¹⁷ expressing grave concern that “the excessive and indiscriminate use of force” by the MUP and VJ had resulted in “numerous civilian casualties and [...] the displacement of over 230,000 people from their homes”.¹¹⁸ In October 1998 Lazarević learned of the VJ’s alleged involvement in the murders of civilians in Gornje Obrinje/Abria e Epërme.¹¹⁹ He was thus aware that murders of civilians were likely to occur if he ordered the VJ to operate in Kosovo in 1999.¹²⁰

51. During the indictment period, Lazarević continued to receive information about ongoing crimes including murders. He frequently carried out inspections in the field talking with various Priština Corps commanders.¹²¹ By March 1999, Lazarević knew of the operation in Žegra/Zhegra where VJ, MUP and irregular forces drove Kosovo Albanians away “by use of [among other things] killings”.¹²² He knew of the climate of terror created by the VJ and the MUP at his duty station Priština/Prishtina.¹²³

52. At the beginning of April 1999, Lazarević learned of the allegations about the massacre and the mass grave at Izbica¹²⁴ (the massacre had been carried out by the MUP¹²⁵ with whom the VJ, commanded by Lazarević, continued to cooperate).¹²⁶ He became aware of a press statement on mass expulsions, shooting at civilians, attacks on the population, mass graves and repeated death threats (to “leave or be killed”).¹²⁷ He also received 32 criminal reports including eight for murder.¹²⁸

¹¹⁵ Judgement, Vol.III, para.813.

¹¹⁶ Judgement, Vol.III, para.814.

¹¹⁷ Judgement, Vol.III, para.809.

¹¹⁸ Exh.P456.

¹¹⁹ Judgement, Vol.III, para.815.

¹²⁰ Judgement, Vol.III, para.923.

¹²¹ Judgement, Vol.III, para.840.

¹²² Judgement, Vol.II, para.944 (note that the killings at Žegra/Zhegra were not charged; Vol.II, para.949); Vol.III, para.854.

¹²³ Judgement, Vol.III, para.855.

¹²⁴ Judgement, Vol.II, paras.678-687; Vol.III, paras.879-880.

¹²⁵ Judgement, Vol.III, para.885.

¹²⁶ Judgement, Vol.III, para.925.

¹²⁷ Judgement, Vol.III, para.567; Exh.P2542.

¹²⁸ Judgement, Vol.III, paras.865, 846.

53. Throughout April and May 1999 he received more information about VJ involvement in killings. On 25 April 1999, he was warned of excessive VJ tactics.¹²⁹ Lazarević testified that by 26 April he knew that the Priština Corps' 252nd Armoured Brigade¹³⁰ allegedly executed approximately 20 civilians in Mali Alaš/Hallac i Vogël on 19 April 1999.¹³¹

54. In his 24 May 1999 report, Lazarević himself discussed MUP crimes including murders at mixed MUP/VJ military police checkpoints and warned about future crimes for which he did not want to be held responsible.¹³² Despite this awareness, Lazarević continued to approve joint VJ-MUP operations, including the operation on 25 May in Dubrava/Lisnaja, where forcible displacement and murder were committed.¹³³

55. The only reasonable conclusion from the Chamber's findings is that Lazarević was aware that murders were likely to be committed as a result of the forcible displacement of Kosovo Albanians by joint VJ-MUP forces well before the murders were committed on 27 April and 25 May 1999.

56. Lazarević was aware not only that killings would likely be committed but also that they would be committed with discriminatory intent. Because he was aware of the discriminatory nature of the campaign of terror, violence, and forcible displacement against Kosovo Albanians,¹³⁴ he must have been aware that the murders committed during this campaign would likely be carried out with the same discriminatory intent.

57. Lazarević knew that his acts and omissions would assist the commission of deportation and forcible transfer.¹³⁵ These same acts and omissions assisted the commission of all the VJ crimes committed during the campaign. Lazarević was aware it was likely that murders would occur during the unlawful forced displacement of the Kosovo Albanian civilian population. The only reasonable conclusion is that he was aware his acts and omissions would assist the murders.

¹²⁹ Judgement, Vol.III, para.852.

¹³⁰ Judgement, Vol.I, para.624.

¹³¹ Judgement, Vol.III, paras.872, 874, 878.

¹³² Judgement, Vol.III, para.848.

¹³³ Judgement, Vol.III, para.848.

¹³⁴ Judgement, Vol.III, para.924.

¹³⁵ Judgement, Vol.III, para.925.

D. Error of fact as to Ojdanić and Lazarević

58. In the alternative, if the Chamber based itself on the correct law and did not impose erroneously restrictive requirements, it erred in fact in paragraphs 629 and 928 of the Judgment by concluding Ojdanić and Lazarević were not guilty of aiding and abetting the murders. On the basis of the Chamber's findings discussed above, no reasonable trial chamber could have concluded that the mental element of aiding and abetting the murders charged under Counts 3, 4 and 5 had not been established. As demonstrated above, the facts found by the Chamber also satisfy the *actus reus* of aiding and abetting.

E. Relief sought

59. Ojdanić's and Lazarević's acts and omissions substantially contributed to the commission of murder. Both were aware that it was likely that murders would be committed and that their conduct would substantially contribute to them. They should be convicted for aiding and abetting the mass murders at Korenica and Meja, Đakovica/Gjakova municipality on 27 April 1999 and two murders in Dubrava/Lisnaja in Kačanik/Kaçanik municipality on 25 May 1999 under Counts 3, 4 and 5. Each of their sentences should be increased significantly.

IV. GROUND THREE: THE CHAMBER ERRED IN FINDING THAT THE *MENS REA* FOR JCE III WAS NOT MET WITH RESPECT TO ŠAINOVIĆ AND LUKIĆ FOR SEXUAL ASSAULT AS PERSECUTIONS

A. Overview

60. The Chamber erred in acquitting Šainović and Lukić of sexual assaults as acts of persecutions by applying the incorrect *mens rea* standard for JCE III liability. It found that it was not reasonably foreseeable that such crimes "would be committed" in implementing the JCE. Under the correct "possibility" legal standard, Šainović and Lukić should have been convicted of the proven sexual assaults as a form of persecutions.

61. Šainović and Lukić orchestrated and implemented the JCE through their leadership roles in the Joint Command, FRY Government and MUP. They used joint VJ-MUP forces to carry out the JCE's campaign to forcibly displace Kosovo Albanians and ensure continued FRY/Serbian control over Kosovo through violence and terror.¹³⁶ The Chamber found it proven beyond reasonable doubt that these forces sexually assaulted Kosovo Albanian women in three municipalities during door-to-door searches and while detaining women during the mass expulsions (“proven sexual assaults”).¹³⁷

62. When the JCE was implemented, Šainović and Lukić knew that joint VJ-MUP forces in carrying out operations in 1998 had committed violent crimes against Kosovo Albanian civilians, including the burning of villages, murder and rape. Šainović and Lukić knew this violence had caused the displacement of over 230,000 Kosovo Albanians, propelled by strong animosity between the ethnic groups. They nevertheless set out to displace Kosovo Albanians on a far greater scale, engaging the same joint VJ-MUP forces to directly target civilians using terror and violence. In so doing, Šainović and Lukić accepted the risk that sexual assaults might be committed with discriminatory intent as one of the forms of violence used by joint VJ-MUP forces to forcibly displace Kosovo Albanians.

63. Despite these factual findings, the Chamber erroneously acquitted Šainović and Lukić of sexual assault as persecutions. The Appeals Chamber should convict Šainović and Lukić of the proven sexual assaults as underlying acts of persecutions, and increase their sentences accordingly.

¹³⁶ Judgement, Vol.III, para.95.

¹³⁷ The Chamber found proven incidents of sexual assault in Beleg and Ćirez/Qirez to constitute persecutions. Judgement, Vol.II, paras.1187-1188, 1224; Vol.III, paras.472, 1135. It also found charged rapes in Priština/Prishtina to have been proven beyond reasonable doubt, but not with the discriminatory intent required to sustain convictions for persecutions. Judgement, Vol.II, para.1245. The Prosecution has challenged this latter finding in Ground 4 of its appeal. Should Ground Four succeed, the sexual assaults in Priština/Prishtina should also result in convictions under this Ground. For purposes of this ground of appeal, the phrase “proven sexual assaults” refers to those in Beleg and Ćirez/Qirez and the rapes in Priština/Prishtina.

B. Legal error: the Chamber erred in adopting and applying the wrong JCE III *mens rea* standard

64. The Chamber incorrectly required *mens rea* for JCE III crimes to be proven to a “probability” standard. It found that “it has to be reasonably foreseeable on the basis of the information available to the accused that the crime or underlying offence would be committed.”¹³⁸ The Chamber took its erroneous standard from the *Brdanin* Decision,¹³⁹ declining to follow the correct “possibility” standard in appellate jurisprudence after the *Brdanin* Decision.¹⁴⁰ After the Judgement, the Appeals Chamber re-affirmed the correctness of the “possibility” standard and rejected the applicability of the *Brdanin* Decision “probability” standard.¹⁴¹

65. The correct standard for JCE III *mens rea* requires that (i) it was foreseeable that the crimes “might” be perpetrated in carrying out the *actus reus* of the crimes forming part of the common purpose of the JCE and (ii) the accused willingly took that risk – that is, the accused, with the awareness that such a crime was a “possible” consequence of the implementation of the JCE, decided to participate in that enterprise.¹⁴²

66. By adopting and applying the wrong JCE III *mens rea* standard, the Chamber wrongfully acquitted Šainović and Lukić of the proven sexual assaults as persecutory acts, thereby invalidating the Judgement. To remedy this error, the Appeals Chamber should apply the correct law to find that Šainović and Lukić had the requisite *mens rea* and enter convictions for the sexual assaults as underlying acts of persecutions.

¹³⁸ Judgement, Vol.I, para.111. *See also* Vol.I, para.96; Vol.III, paras.469-473, 784-786, 1133-1136.

¹³⁹ The Chamber stated that it adopted this formulation of the Appeals Chamber, citing to the *Brdanin* AD, para.5 (to be convicted of a crime under JCE III, it must be “reasonably foreseeable” to the accused that the charged crime “would be committed”) and the *Martić* AJ, para.83. Judgement, Vol.I, para.111, fn.186. However, the cited paragraph from the *Martić* AJ clearly articulates the possibility standard, stating that the accused must willingly take the risk that the unplanned crime “might be committed”. *Martić* AJ, para.83. *See also* para.168.

¹⁴⁰ *See Karadžić* JCE III Foreseeability AD, paras.15, 17 and cases cited.

¹⁴¹ *Karadžić* JCE III Foreseeability AD, paras.15, 17-18.

¹⁴² *Karadžić* JCE III Foreseeability AD, paras.15, 17-18.

C. The Chamber's findings and trial record demonstrate beyond reasonable doubt that Šainović and Lukić had the required *mens rea* for JCE III with respect to the proven sexual assaults

67. Šainović and Lukić knew that joint VJ-MUP forces under their control had committed violent crimes, including sexual assault against Kosovo Albanian civilians before they implemented the JCE in 1998. This knowledge rendered foreseeable not only the murders and destruction of property, but also other violent crimes including sexual assault if the JCE were implemented. Despite this knowledge, Šainović and Lukić accepted the risk and implemented the JCE on a massive scale, using the same violent actors to forcibly displace the Kosovo Albanian civilian population. They should be convicted of the sexual assaults perpetrated in carrying out that objective.

1. It was foreseeable to Šainović and Lukić that sexual assault crimes might be perpetrated in implementing the JCE

68. In their leadership roles during 1998 and 1999, Šainović and Lukić gained substantial knowledge forecasting the possibility of sexual assaults during the ethnic cleansing campaign in 1999.¹⁴³ Šainović headed the Joint Command – which existed in the second half of 1998 and first half of 1999¹⁴⁴ – and had significant influence over the actions of joint VJ-MUP forces.¹⁴⁵ Šainović played a leading role during Joint Command meetings and exercised *de facto* authority in directing actions of the joint VJ-MUP forces in 1998¹⁴⁶ and 1999.¹⁴⁷ Lukić, as Head of the MUP Staff, played a central role in planning, organising, controlling and directing the work of MUP units in Kosovo, as well as coordinating and planning joint operations with the VJ.¹⁴⁸ Lukić also played a crucial role in the Joint Command, working closely with the VJ leadership to implement its directives through VJ-MUP coordinated activities.¹⁴⁹ At

¹⁴³ Judgement, Vol.III, paras.441-453, 456, 470-473 (Šainović); Vol.III, paras.1079-1086, 1090-1097, 1120, 1123-1127, 1134-1136 (Lukić).

¹⁴⁴ Judgement, Vol.III, para.300.

¹⁴⁵ Judgement, Vol.III, para.331.

¹⁴⁶ Judgement, Vol.III, paras.309, 427, 462. *See also* Vol.III, paras.315, 317 (accepting evidence that Šainović was Head of the Joint Command and was entrusted with the coordination of the military and the police), Vol.III, para.331.

¹⁴⁷ Judgement, Vol.III, paras.462, 464-465. *See also* Vol.III, paras.337, 356-357, 359; *below* Section VII.C.(a)(ii).

¹⁴⁸ Judgement, Vol.III, paras.1012, 1051.

¹⁴⁹ Judgement, Vol.III, paras.1032-1033, 1118; *see below* Section VII.C.(a)(iii).

Joint Command meetings he reported on MUP activities, including allegations of violent crimes.¹⁵⁰

69. In 1998, Šainović and Lukić oversaw and implemented joint VJ-MUP operations that caused the mass displacement of Kosovo Albanians from their homes, villages and towns.¹⁵¹ Šainović and Lukić were informed that joint VJ-MUP forces committed violent crimes against these vulnerable civilians including murder, sexual assault, and other mistreatment.¹⁵² They also knew of “the strong animosity between ethnic Serbs and Kosovo Albanians in Kosovo” and of “the context in which the forcible displacement took place”.¹⁵³ Their knowledge of the violent crimes committed during the 1998 campaign informed their implementation in 1999 of a more massive campaign deliberately aimed at displacing hundreds of thousands of Kosovo Albanians by force, Šainović and Lukić were also aware that sexual violence might be perpetrated by the same joint VJ-MUP forces with the intent to discriminate against the Kosovo Albanians as an ethnic group.

70. Through Joint Command meetings¹⁵⁴ and various reporting mechanisms¹⁵⁵ Šainović and Lukić were well-informed of crimes against the Kosovo Albanian civilian population. Joint Command participants regularly discussed the violent crimes committed by joint VJ-MUP forces, including the massive displacements,¹⁵⁶ burning of houses,¹⁵⁷ murder¹⁵⁸ and rape¹⁵⁹ of Kosovo Albanian civilians. Šainović and Lukić also knew that joint VJ-MUP operations they planned had caused a “humanitarian catastrophe”¹⁶⁰ and “refugee crisis”.¹⁶¹ Vulnerable Kosovo Albanians

¹⁵⁰ Judgement, Vol.III, paras.1024, 1031-1032, 1079.

¹⁵¹ Judgement, Vol.III, paras.443, 446, 456, 463, 1085, 1120.

¹⁵² See e.g. Judgement, Vol.I, paras.882-886, 900-919; Exh.P1468, p.37.

¹⁵³ Judgement, Vol.III, paras.470, 1134. The Chamber appropriately relied on this context in finding the murders and destruction of property to be foreseeable acts of persecutions. Judgement, Vol.III, paras.470, 473, 1134, 1136. It is equally relevant to assessing Šainović’s and Lukić’s *mens rea* for persecutions based on the sexual assaults. See also Vol.III, para.785 (concerning Pavković); See e.g. Report of the Secretary-General pursuant to Security Council Resolution 1820, UN Doc. S/2009/362 (15 July 2009), para.7 (Especially when perpetrated on discriminatory grounds, sexual violence “fuels insecurity and fear, which are among the main causes of displacement, internally and across borders”).

¹⁵⁴ Judgement, Vol.III, para.463 (Šainović); Vol.III, paras.1079-1081 (Lukić).

¹⁵⁵ Judgement, Vol.III, paras.294, 302-305, 335, 372-379, 445, 464, 1036 (Šainović); Vol.III, paras.976-982, 995, 1036, 1052, 1058-1059 (Lukić).

¹⁵⁶ Judgement, Vol.III, paras.442, 463 (Šainović); Vol.III, paras.1079, 1081 (Lukić).

¹⁵⁷ Judgement, Vol.III, para.441 (Šainović); Vol.III, para.1080 (Lukić).

¹⁵⁸ Judgement, Vol.III, para.441 (Šainović); Vol.III, paras.441, 1081 (Lukić); Exh.P1468, p.37.

¹⁵⁹ Exh.P1468, p.37.

¹⁶⁰ Judgement, Vol.III, para.442.

including women had inadequate protection making it foreseeable to them that violent crimes might be perpetrated against them.¹⁶²

71. The risk of violence increased when Šainović and Lukić used individuals with known histories of violent or criminal behaviour in the campaign to expel Kosovo Albanian civilians by force and fear. Šainović and Lukić knew of concerns about lack of proper training and the crimes committed by reservists, volunteers, and paramilitaries in 1998.¹⁶³ These groups were incorporated into the joint VJ-MUP forces for use in Kosovo in 1999.¹⁶⁴ They included fighters from the Bosnian and Croatian conflicts,¹⁶⁵ some of whom were known to have committed serious crimes.¹⁶⁶ These earlier concerns were proven justified by later reports about serious crimes, including rape, committed against Kosovo Albanian civilians in Kosovo by joint VJ-MUP forces.¹⁶⁷

72. Šainović and Lukić also learned from international observers in the field and members of the international community of widespread crimes perpetrated by joint VJ-MUP forces in Kosovo in 1998.¹⁶⁸ Šainović and Lukić learned that these crimes had caused the displacement of more than 230,000 Kosovo Albanian refugees that year.¹⁶⁹

¹⁶¹ Judgement, Vol.III, para.1079.

¹⁶² See *Krstić* AJ, para.149; *Krstić* TJ, para.616; *Kvočka* TJ, para.327.

¹⁶³ Šainović and Lukić attended Joint Command meetings in 1998 during which the use of reservists, volunteers, and paramilitaries was discussed. See Exh.P1468, pp.22-23, 26, 30, 40, 52, 101, 111 (Šainović only: p.155). See also pp.20, 109 (mentioning participation of “Legija”, commander of JSO and former member of Arkan’s Tigers); Judgement, Vol.I, para.686. This included concerns about lack of proper training and the commission of crimes. See Exh.P1468, pp.40, 52 (Šainović only: p.155). See also Judgement, Vol.I, paras.742-745; Vol.III, paras.997, 1122.

¹⁶⁴ Paramilitary groups were incorporated into MUP entities and deployed in Kosovo in early-1999. Judgement, Vol.I, para.731; Vol.III, para.575 (the “Scorpions” were incorporated into the SAJ in early-1999 and sent to Kosovo); Vol.I, paras.645, 687 (members of the “Scorpions”, “Grey Wolves”, and “Arkan’s Tigers” were attached to the JSO). See also Vol.I, para.742.

¹⁶⁵ Judgement, Vol.I, paras.686-687.

¹⁶⁶ Judgement, Vol.I, para.687. See also Vol.I, para.645. After some members of one unit executed a group of civilians, they were briefly withdrawn from Kosovo but approximately 15 days later were redeployed for “mopping-up” operations. Judgement, Vol.I, para.731.

¹⁶⁷ Judgement, Vol.I, para.741; Vol.III, paras.452, 464, 576, 578.

¹⁶⁸ Judgement, Vol.III, paras.385, 443, 445-447, 456, 463 (Šainović); Vol.III, paras.1043-1044, 1047, 1079, 1082-1086 (Lukić).

¹⁶⁹ Judgement, Vol.III, paras.443, 446, 456, 463 (Šainović); Vol.III, paras.1085, 1120 (Lukić).

73. During the forcible displacement of at least 700,000 Kosovo Albanians in 1999, joint VJ-MUP forces perpetrated sexual assaults and other violent crimes.¹⁷⁰ The 1999 campaign was carried out on a vastly larger scale than in 1998. This “campaign of terror and violence against the Kosovo Albanian civilian population”¹⁷¹ was highly coordinated and used the same violent tactics as joint VJ-MUP forces¹⁷² in 1998. In 1999, the joint VJ-MUP forces successfully emptied entire villages of Kosovo Albanians and forced them to Kosovo’s borders.¹⁷³

74. Under these circumstances, Šainović and Lukić must have foreseen that Kosovo Albanian civilians might be subjected to crimes of violence. That sexual violence might occur during the execution of this ethnic cleansing campaign is consistent with common sense and recent history in the former Yugoslavia,¹⁷⁴ and confirmed by the pattern of sexual violence throughout the municipalities in Kosovo.¹⁷⁵

75. Sexual assault was one of the crimes of violence committed against Kosovo Albanian civilians throughout 1998 and 1999 during joint VJ-MUP operations and the campaign to forcibly displace. Reports and allegations of sexual assaults in 1998 and 1999¹⁷⁶ confirm this. Although foreseeability – and not knowledge – of sexual assaults is all that is required to establish JCE III liability,¹⁷⁷ Šainović and Lukić must

¹⁷⁰ Judgement, Vol.II, para.1178.

¹⁷¹ Judgement, Vol.III, paras.473, 1136.

¹⁷² See e.g. Judgement, Vol.I, paras.881, 886, 894, 912; Vol.III, paras.1082-1083.

¹⁷³ See Judgement, Vol.II, paras.1156-1178.

¹⁷⁴ See Judgement, Partially Dissenting Opinion of Judge Chowhan, Vol.III, p.481. The notorious commission of rape and sexual violence as part of ethnic cleansing campaigns by Serb forces in Bosnia and Croatia several years earlier was common knowledge. The widespread perpetration of sexual violence in this context formed an integral part of the Final Report of Commission of Expertise set up by UNSC Resolution 780 and the Secretary-General’s Report on “Rape and Abuse of Women in the Territory of the Former Yugoslavia”, referenced in the Judgement. See Judgement, Vol.I, para.184; Final Report of the Commission of Experts Established Pursuant to Security Council Resolution 780 (1992), UN Doc. S/1994/674, Annex II (Volume I, 31 May 1995), Annex IX (Volume V, 28 December 1994); Report of the Secretary-General on Rape and Abuse of Women in the Territory of the Former Yugoslavia, UN Doc. E/CN.4/1994/5 (30 June 1993).

¹⁷⁵ In addition to the proven sexual assaults, for example, in Dečani/Dečan, police officers and soldiers told women to undress to be searched, and made them return to the field carrying their clothes. Judgement, Vol.II, para.60. In Krasimirovac/Krasimirovc village near Ćirez/Qirez, a VJ volunteer “took away” women from refugee columns. Judgement, Vol.II, para.644; Exhs.4D171; 5D726; 6D1260, p.3. See generally Judgement, Vol.II, para.1178; Exhs.P385, pp.4-6; P388, p.1; 6D614, p.39; Appendix I.

¹⁷⁶ See Appendix I, exhibits and related findings pertaining to reports and allegations of rape and sexual assault by joint VJ-MUP forces in 1998 and 1999.

¹⁷⁷ See e.g. *Krstić* AJ, para.150 (To establish JCE III liability, the Chamber need not conclude that the accused “was actually aware that those other criminal acts were being committed; it was sufficient that their occurrence was foreseeable to him and that those other crimes did in fact occur.”).

have been aware that their troops were committing sexual assault. They coordinated the joint VJ-MUP actions throughout Kosovo and received regular and detailed information about events on the ground.¹⁷⁸

76. Given Šainović's and Lukić's knowledge at the relevant time, the Appeals Chamber should find that in implementing the JCE they were aware that sexual assaults might be committed against Kosovo Albanian civilians

2. Despite awareness that sexual assault was a possible consequence of implementing the JCE, Šainović and Lukić willingly took that risk by participating in the JCE

77. As discussed above, even before the implementation of the JCE, Šainović and Lukić knew that in carrying out joint operations in 1998 joint VJ-MUP forces had committed violent crimes including rape against Kosovo Albanian civilians.¹⁷⁹ They nevertheless decided to participate in a JCE to forcibly displace these Kosovo Albanian civilians on a far greater scale and to accomplish this through violence and terror using the same joint VJ-MUP forces.¹⁸⁰ Rather than taking any precautions to protect the civilian population, they incorporated paramilitary groups and armed Serb civilians into MUP and VJ structures and deployed them in early 1999.¹⁸¹ Šainović and Lukić chose means to implement the JCE that increased the vulnerability of Kosovo Albanian civilians to sexual violence, including separating women from men¹⁸² and detaining them before transport out of Kosovo.¹⁸³ As joint VJ-MUP forces violently expelled Kosovo Albanians village by village, the infliction of violence on the female Kosovo Albanian civilian population was virtually inevitable.

78. Šainović's and Lukić's awareness of the possibility of violent crimes and the vulnerability of the Kosovo Albanian refugees continued throughout the execution of

¹⁷⁸ See above paras.68-69, 71; below, para.77.

¹⁷⁹ See above, paras.68, 71.

¹⁸⁰ See above, paras.70, 72.

¹⁸¹ See above, para.70; Judgement, Vol.I, paras.774-776, 787-788.

¹⁸² See e.g. Judgement, Vol.II, paras.1156, 1161, 1164, 1166, 1170.

¹⁸³ See e.g. Judgement, Vol.II, paras.635, 855-864, 1158, 1164, 1166, 1184-1185.

the JCE in 1999.¹⁸⁴ They received regular updates on the recurrence of forcible displacement and violent crimes,¹⁸⁵ which included murder¹⁸⁶ and rape of civilians.¹⁸⁷

79. Moreover, Šainović and Lukić witnessed first-hand the impact of the forced displacements carried out in implementing the JCE. Šainović travelled to Kosovo regularly during the period when the majority of the indicted crimes occurred.¹⁸⁸ He was in Priština/Prishtina on 29 March and 4 April 1999, when massive expulsions were taking place there.¹⁸⁹ Lukić was based at the MUP Staff Headquarters in Priština/Prishtina.¹⁹⁰ An atmosphere of fear and chaos prevailed as thousands of Kosovo Albanians were expelled from Priština/Prishtina. Joint VJ-MUP forces searched houses individually and forced Kosovo Albanians out,¹⁹¹ herded them towards the train station,¹⁹² and terrorised them with threats, beatings and gunfire as they moved in confined columns.¹⁹³ The insecurity and vulnerability of the Kosovo Albanian civilian population was obvious.

80. The proven sexual assaults followed the predictable pattern of violence and terror designed to forcibly displace the Kosovo Albanian civilian population.¹⁹⁴ In March and April 1999, joint VJ-MUP forces detained displaced Kosovo Albanian women and girls in Beleg and Ćirez/Qirez, and selected groups of them for gang-rape

¹⁸⁴ Judgement, Vol.III, paras.445, 448-450, 452, 464 (Šainović); Vol.III, paras.1032, 1090, 1097, 1123, 1134, 1136 (Lukić).

¹⁸⁵ Judgement, Vol.III, paras.445, 450-452, 464 (Šainović); Vol.III, paras.1090-1094, 1097, 1123-1124 (Lukić).

¹⁸⁶ Judgement, Vol.III, paras.445, 470-471, 1091-1093, 1123, 1134.

¹⁸⁷ See Judgement, Vol.III, paras.472, 1093, 1135. See also Exh.6D1260, p.3 (24 April 1999 MUP Staff report signed by Lukić describing rapes of displaced persons perpetrated on 22-23 April 1999); Exh.6D1261, p.4 (25 April 1999 MUP Staff report signed by Lukić noting attempted rape on 23 April 1999); Appendix 1. Lukić directed heads of SUPs to collect information on the most serious crimes, including rapes, and send this data to MUP Staff twice a month. Judgement, Vol.III, para.1093; Exh.6D874, pp.1-2. Lukić in turn reported to Šainović on events in Kosovo. Judgement, Vol.III, paras.445, 464.

¹⁸⁸ Judgement, Vol.III, para.449.

¹⁸⁹ Judgement, Vol.III, para.449.

¹⁹⁰ Judgement, Vol.I, para.690; Vol.III, paras.961-962, 1000. See also Vol.III, para.1053, fns.2639-2641; Exh.P948, pp.18-19, 84-86; Exh.P1989, p.1.

¹⁹¹ Judgement, Vol.II, paras.839-843, 847-852, 885, 887-888. During one such search, VJ or MUP members raped K62 in her apartment. She later heard that many other women in Priština/Prishtina at that time had suffered the same fate. Judgement, Vol.II, paras.852, 875, 889. See also above para.80; below Section V (Ground Four).

¹⁹² Judgement, Vol.II, paras.844, 849-850, 852, 854-858, 885.

¹⁹³ Judgement, Vol.II, paras.841-844, 846, 848-850, 853, 885.

¹⁹⁴ The Chamber properly considered this context in establishing the *mens rea* for persecutions based on murder and destruction of or damage to religious property. See Judgement, Vol.III, paras.470, 473, 1134, 1136.

and other forms of sexual assault before forcing them out of Kosovo.¹⁹⁵ They killed eight of the women from Ćirez/Qirez by throwing into wells.¹⁹⁶ In Priština/Prishtina, VJ and MUP personnel raped three women “in the course of the operation to remove large numbers of Kosovo Albanians” from the town,¹⁹⁷ during door-to-door expulsions and while detaining them.¹⁹⁸ The proven sexual assaults were committed with the intent to discriminate against the Kosovo Albanians as an ethnic group.¹⁹⁹

81. In implementing and continuing to participate in the JCE through a campaign of terror and violence against the Kosovo Albanian civilian population²⁰⁰ despite all they knew before and throughout the implementation of the JCE, Šainović and Lukić willingly took the risk that sexual assaults with discriminatory intent might occur against Kosovo Albanians.

D. Relief sought

82. In applying the incorrect standard for JCE III *mens rea*, the Chamber erroneously acquitted Šainović and Lukić of the proven sexual assaults as acts of persecutions. The Chamber’s findings and trial record demonstrate beyond reasonable doubt that it was foreseeable to Šainović and Lukić that sexual assault crimes might be perpetrated with discriminatory intent against ethnic Kosovo Albanian in implementing the JCE, and that they willingly took the risk to carry out the forcible displacement of Kosovo Albanians with the awareness that sexual assaults were possible in its implementation. They should be convicted for committing persecutions by sexual assault as a crime against humanity (Count 5) and their sentences increased accordingly.

¹⁹⁵ Judgement, Vol.II, paras.61-63, 65, 68, 628-632, 635, 689, 1158, 1164. *See also below* Section VII.B.4.

¹⁹⁶ Judgement, Vol.II, paras.689, 1164.

¹⁹⁷ Judgement, Vol.II, paras.889, 1244.

¹⁹⁸ Judgement, Vol.II, para.875 (K62); Vol.II, paras.876-878 (K14); Vol.II, paras.879-880 (K31).

¹⁹⁹ Judgement, Vol.I, paras.1187-1188, 1224; *See also below* Section V (Ground Four).

²⁰⁰ Judgement, Vol.III, paras.473, 1136.

V. GROUND FOUR: THE CHAMBER ERRED IN FAILING TO FIND THAT THE RAPES OF K31, K14 AND K62 WERE ACTS OF PERSECUTIONS

A. Overview

83. The Chamber erred in fact and in law when it failed to find that K31, K14 and K62 were raped with discriminatory intent. Instead, the Chamber held that the Prosecution failed to adduce “any evidence” from which such intent could be inferred.²⁰¹ This finding is manifestly unreasonable because it ignores substantial evidence that leads to only one reasonable conclusion – that K31, K14 and K62 were raped by joint VJ-MUP forces because they were Kosovo Albanian.

84. While the requisite discriminatory intent for the crime of persecutions “cannot be inferred directly from the general discriminatory nature of an attack characterised as a crime against humanity,” discriminatory intent “may be inferred from the context of the attack, provided it is substantiated by the surrounding circumstances of the crime.”²⁰² Had the Chamber evaluated the evidence with regard to both the general context of the attack during which the rapes were committed, as well as the immediate surrounding circumstances of the rapes themselves, it would have found that the rapes were committed with discriminatory intent.

85. The rapes of K31, K14 and K62 were committed during an “operation to remove large numbers of Kosovo Albanians from Priština/Prishtina town.”²⁰³ This operation “was carried out in an organised manner, utilising forces and resources under the control of the FRY and Serbian governmental authorities, including the VJ, the police, and the rail service.”²⁰⁴ The Kosovo Albanians in Priština/Prishtina town “were driven out of their homes by the words and actions of the VJ and MUP forces, and other armed forces operating with them.”²⁰⁵

²⁰¹ Judgement, Vol.II, para.1245.

²⁰² *Naletilić* AJ, para.129 (citing *Kvočka* AJ, para.366; *Krnjelac* AJ, para.184; *Blaškić* AJ, para.164).

²⁰³ Judgement, Vol.II, para.889.

²⁰⁴ Judgement, Vol.II, para.888.

²⁰⁵ Judgement, Vol.II, para.887.

86. Many Kosovo Albanians in Priština/Prishtina were “directly evicted from their homes by VJ, MUP, and other armed forces, while others left due to the prevailing atmosphere of fear in the town caused by the violent evictions of their neighbours, and by threats, killings, beatings, and other acts of intimidation carried out by these forces.”²⁰⁶ The rapes of K31, K14 and K62 constitute examples of such “other acts of intimidation” committed by joint VJ-MUP forces in their discriminatory effort to expel the Kosovo Albanian population from Priština/Prishtina town. As discussed below, this discriminatory intent is further substantiated by the specific circumstances surrounding each of the rapes.

B. The only reasonable conclusion on the evidence is that the rapes of K31 were acts of persecutions

87. The only reasonable conclusion on the totality of the evidence is that K31 was raped with discriminatory intent. The Chamber erred (1) in failing to give sufficient weight to the evidence of the surrounding circumstances of K31’s rapes, namely her expulsion from her village and detention with other exclusively Kosovo Albanian women; (2) in failing to assess the evidence in the broader context of the discriminatory attack against the Kosovo Albanian civilian population of Priština/Prishtina; and (3) by ignoring direct evidence of discriminatory intent – one rapist made derogatory comments against Albanians immediately after he raped K31.

88. On 25 May 1999, joint VJ-MUP forces attacked K31’s village of Dubrava/Lisnaja with the intention of illegally deporting its Kosovo Albanian residents to Macedonia.²⁰⁷ [REDACTED] both civilians, were murdered by the Serb forces during the course of this attack;²⁰⁸ the Chamber concluded that the physical perpetrators targeted them “because of their ethnicity,”²⁰⁹ correctly taking into account the broader discriminatory context and circumstances in which the murders were committed. Accordingly, the Chamber found that these murders were a form of persecutions.²¹⁰

²⁰⁶ Judgement, Vol.II, para.885.

²⁰⁷ Judgement, Vol.II, paras.1259-1261.

²⁰⁸ [REDACTED]

²⁰⁹ Judgement, Vol.II, paras.1149, 1262.

²¹⁰ Judgement, Vol.II, para.1262.

89. K31, who was 17 at the time, [REDACTED]²¹¹ [REDACTED]²¹² [REDACTED]²¹³ Soldiers then took K31 and her brother to the hospital in Priština/Prishtina.²¹⁴

90. It was not an easy ride. On the way there, [REDACTED]²¹⁵ [REDACTED]²¹⁶ [REDACTED]²¹⁷ This soldier continued to sexually assault [REDACTED] K31 all the way to Priština/Prishtina; [REDACTED]²¹⁸ [REDACTED]²¹⁹

91. Upon arrival at the Priština/Prishtina hospital, the soldiers forcibly separated K31 from her injured brother and locked her in a dark basement room with 10 to 15 other young women, all of whom were Kosovo Albanian.²²⁰ [REDACTED]²²¹ Twenty minutes after she had been locked in the basement, an armed soldier selected K31 from amongst the detainees and took her to another room where she was drugged and brutally raped several times by three different soldiers.²²² [REDACTED]²²³

92. Like the murdered relatives from her village, K31 was subjected to a violent crime on the basis of her ethnicity. Her detention and rapes did not occur in isolation or in a neutral setting; these acts were an integral part of a larger series of discriminatory events. Throughout, K31 was targeted for expulsion, detention, and rape because she was Kosovo Albanian. Her village was targeted as part of the violent campaign by joint VJ-MUP forces to expel Kosovo Albanians from Priština/Prishtina,²²⁴ which itself formed part of a widespread and systematic attack against Kosovo Albanians in at least 13 municipalities.²²⁵ She was tied up, assaulted, and taken by Serb soldiers to the hospital because she was Kosovo Albanian. Like all

211 [REDACTED]
 212 [REDACTED]
 213 [REDACTED]
 214 [REDACTED] Judgement, Vol.II, para.879.
 215 [REDACTED]
 216 [REDACTED]
 217 [REDACTED]
 218 Judgement, Vol.II, para.879; [REDACTED]
 219 [REDACTED]
 220 Judgement Vol.II, para.880; [REDACTED]
 221 [REDACTED]
 222 [REDACTED] Judgement, Vol.II, paras.880, 889.
 223 [REDACTED]
 224 Judgement, Vol II, paras.889, 1167.
 225 Judgement, Vol.II, para.1240.

the other women in the basement room of the hospital, she was detained there because she was a Kosovo Albanian woman and available for rape by Serb soldiers for the same reason. The Chamber erred by artificially removing K31's rapes from both the immediate circumstances of her transport to and detention at the hospital, as well as the broader context of the campaign to expel Kosovo Albanians from Priština/Prishtina, of which the acts of violence committed against K31 on 25 May 1999 formed a part.

93. In addition, the Chamber ignored direct evidence of her rapist's discriminatory intent – [REDACTED] Having found K31 to be both credible and reliable,²²⁶ the Chamber had no reason to ignore this unchallenged evidence. Nonetheless, the Chamber never mentions this key portion of K31's evidence anywhere in its Judgement. Faced with direct evidence of discriminatory intent, coupled with compelling evidence regarding the discriminatory context and circumstances surrounding K31's rapes, no reasonable trier of fact could conclude that there was no evidence from which such intent could be inferred.²²⁷ Indeed, had the Chamber properly assessed the totality of the evidence, it would have reached the only reasonable conclusion: that K31 was raped with discriminatory intent, qualifying the rapes as acts of persecutions.

C. The only reasonable conclusion on the evidence is that the rape of K14 was an act of persecutions

94. The Chamber made the same mistake when considering K14's rape. The evidence demonstrates that K14's rape was committed with discriminatory intent. In late May 1999, a group of policemen came to the home of K14, who was in her mid-teens at the time.²²⁸ These policemen were wearing blue and green camouflage uniforms with blue ribbons tied on their right arms.²²⁹ [REDACTED]²³⁰ [REDACTED]²³¹ [REDACTED]²³²

²²⁶ Judgement, Vol.II, paras.1009, 1144.

²²⁷ *But see* Judgement, Vol.II, para.1245.

²²⁸ Judgement, Vol.II, paras.876-877.

²²⁹ Judgement, Vol.II, para.877.

²³⁰ [REDACTED]

²³¹ [REDACTED]

²³² [REDACTED]

95. The next morning – a Friday – two of the policemen returned as promised with a local person known to K14 who was also wearing a police uniform.²³³ All three men spoke Serbian and two of them spoke a bit of Albanian.²³⁴ K14 and her sister were forcibly taken by these policemen to a car parked outside, however K14's sister was ultimately allowed to return to the house [REDACTED]²³⁵ K14 was put in the back seat of the car with one of the policemen – [REDACTED] – who hit her on the hip with the butt of his gun.²³⁶ He also slapped her face, bit her on the neck and drugged her by spraying a clear liquid on her face and neck.²³⁷

96. The policemen took K14 to the Hotel Bozhur,²³⁸ [REDACTED]²³⁹ [REDACTED]²⁴⁰ Upon arrival, the policemen took K14 through the basement up to a room on the second floor of the hotel.²⁴¹ There, one of the policemen [REDACTED] raped her.²⁴² Afterwards, [REDACTED] told K14 that he would not let the other policemen into the room if she promised to come back on Monday and bring her sister for his friend.²⁴³ During the car ride back to K14's house, [REDACTED] repeatedly reminded K14 to return on Monday.²⁴⁴ In the two days following K14's rape, [REDACTED] and the other policeman who had accompanied him previously continued their intimidation of K14, driving past her house numerous times while honking the car horn.²⁴⁵ Their acts of intimidation had the desired effect – at 4:00 a.m. the following Monday, K14 and her family fled Priština/Prishtina on foot.²⁴⁶

97. The only reasonable conclusion based on the totality of the evidence – including both the overall context of the operation to rid Priština/Prishtina of its ethnic Albanian population and the specific circumstances of K14's rape – is that her rapist

²³³ Judgement, Vol.II, para.877.

²³⁴ Judgement, Vol.II, para.877.

²³⁵ Judgement, Vol.II, para.877; [REDACTED]

²³⁶ Judgement, Vol.II, para.877; [REDACTED]

²³⁷ Judgement, Vol.II, para.877.

²³⁸ Judgement, Vol.II, para.878.

²³⁹ Exh.P2644 (K14 *Milošević* testimony), T.1429 (noting that “there were lots of Albanians waiting” at the Hotel Bozhur on 21 May 1999); Exh.P2643, p.5 (noting that Albanians were waiting in line at the Hotel Bozhur on 21 May 1999).

²⁴⁰ [REDACTED]

²⁴¹ Judgement, Vol.II, para.878; [REDACTED]

²⁴² Judgement, Vol.II, para.878; [REDACTED]

²⁴³ Judgement, Vol.II, para.878.

²⁴⁴ Judgement, Vol.II, para.878.

²⁴⁵ Judgement, Vol.II, para.878.

acted with discriminatory intent. The policemen targeted K14's house the day before the rape because it was inhabited by ethnic Albanians, [REDACTED] The policemen who returned the next day did so with the intention of taking K14 to the Hotel Bozhur – [REDACTED] These policemen continued to intimidate K14 following the rape, requiring that she return two days later for further rapes and then driving by her house on numerous occasions in the interval as an ominous reminder of her fate if she dared to stay in Priština/Prishtina. K14 and her family fled.

98. The specific circumstances of K14's rape make clear that this act of violence did not simply occur by chance; it was part and parcel of this discriminatory campaign to expel ethnic Albanians from Kosovo in general and from Priština/Prishtina in particular. Viewed in its proper context and taking account of all the relevant circumstances specific to this act of violence and intimidation, K14's rape can only be understood as an act of persecutions. No reasonable trier of fact could have found otherwise.

D. The only reasonable conclusion on the evidence is that the rapes of K62 were acts of persecutions

99. The circumstances of K62's rapes also demonstrate that they were committed with discriminatory intent and qualify as acts of persecutions. On 1 April 1999, K62 was home alone when three men arrived at her home wearing green camouflage uniforms with hats and masks on their faces.²⁴⁷ These men were either VJ or MUP personnel.²⁴⁸ Upon arrival, the men asked if there were KLA in the house.²⁴⁹ Two of the men then started searching the apartment, while the third man pushed K62 to the floor and raped her.²⁵⁰ A second man then raped her as well, and the third man raped her by putting his penis in her mouth.²⁵¹ After the men left, K62 managed to contact her husband (K63) with the help of a neighbour. He returned home immediately.²⁵² Upon his return, K63 saw armed police in the immediate vicinity of his apartment

²⁴⁶ Judgement, Vol.II, para.878.

²⁴⁷ Judgement, Vol.II, para.875.

²⁴⁸ Judgement, Vol.II, para.889.

²⁴⁹ Exh.P2443, para.30.

²⁵⁰ Judgement, Vol.II, para.875.

²⁵¹ Judgement, Vol.II, para.875.

²⁵² Judgement, Vol.II, para.875.

expelling Albanians, telling them “they must leave Kosovo and calling them names.”²⁵³ The area was filled with Serb police and paramilitaries.²⁵⁴ K62 and her husband stayed in their home for two more nights; they were forcibly expelled from their home on 3 April 1999.²⁵⁵

100. K62’s rapes occurred in the immediate context of Kosovo Albanians being expelled from her neighbourhood by joint VJ-MUP forces. The perpetrators came to her home specifically looking for and targeting ethnic Albanians.²⁵⁶ This was not a simple crime of opportunity committed in isolation; it was an act of violence and intimidation that formed part of a specific discriminatory operation targeting K62’s neighbourhood, as well as the broader campaign to expel ethnic Albanians from Kosovo. Under these circumstances, there is no reasonable doubt that K62’s rapes were committed with the required discriminatory intent to constitute acts of persecutions.

E. The Chamber erred in law in failing to assess the totality of the relevant evidence to determine the existence of discriminatory intent

101. Further, or in the alternative, the Chamber erred in law in evaluating the rapes of K31, K14 and K62 in isolation and thus considering only a sub-set of the relevant evidence. Faced with the significant body of evidence detailed above, the Chamber erred in law in concluding that the Prosecution “failed to bring any evidence in these three cases from which such intent can be inferred.”²⁵⁷ Reaching this conclusion despite the totality of the available evidence demonstrates that the Chamber unduly limited the scope of evidence it deemed relevant to its determination of discriminatory intent for the rapes.

102. As the Appeals Chamber has repeatedly held, the evidence relevant to a determination of discriminatory intent goes beyond the isolated facts of the crimes

²⁵³ Exh.P2443, para.28.
²⁵⁴ Exh.P2443, para.29.
²⁵⁵ Judgement, Vol.II, para.875.
²⁵⁶ Exh.P2443, para.30.
²⁵⁷ Judgement, Vol.II, para.1245.

and includes evidence relating to the context and circumstances in which the crimes occurred.²⁵⁸

103. Had the Chamber applied the correct legal standard by evaluating the totality of the relevant evidence, it would have found that the rapes of K31, K14 and K62 were committed with the intent to discriminate against Kosovo Albanians and, thus, were acts of persecutions.

F. Relief sought

104. To correct these errors, the Appeals Chamber should: (a) find that the rapes of K31, K14 and K62 were committed with discriminatory intent; (b) convict Pavković, Šainović²⁵⁹ and Lukić²⁶⁰ for these rapes as persecutions, a crime against humanity, under Count 5 of the Indictment; and (c) increase their sentences.

VI. GROUND FIVE: THE CHAMBER ERRED IN FACT BY FAILING TO CONVICT OJDANIĆ AND LAZAREVIĆ FOR AIDING AND ABETTING DEPORTATION AND FORCIBLE TRANSFER IN PARTICULAR LOCATIONS

A. Overview

105. In Volume III of the Judgement, the Chamber acquitted Ojdanić and/or Lazarević for the ethnic cleansing in Beleg, Sojevo/Sojeva, Miroslavlje/Mirosala, Staro Selo, Žabare/Zhabar and Dušanovo/Dushanova on the basis that the MUP acted alone. However, in Volume II, the Chamber found that the VJ had also participated in the ethnic cleansing of these locations. Moreover, in Volume III, the Chamber convicted Ojdanić for crimes in some of these locations because the VJ participated, yet acquitted Lazarević for these same crimes due to the VJ's supposed lack of participation, and vice versa. The Judgement offers no explanation for these inconsistent findings and acquittals. The Chamber erred in failing to apply its own

²⁵⁸ See e.g. *Krnojelac* AJ, paras.184-186; *Blaškić* AJ, para.164; *Kvočka* AJ, para.460; *Naletilić* AJ, para.129.

²⁵⁹ Depending on the outcome of the Prosecution's appeal under Ground Three (see Section IV).

²⁶⁰ Depending on the outcome of the Prosecution's appeal under Ground Three (see Section IV).

findings on VJ participation to convict Ojdanić and Lazarević for deportation and forcible transfer in all these locations.

B. Ojdanić should have been convicted for crimes in Beleg

106. Ojdanić's acquittal of aiding and abetting displacement crimes in Beleg, Dečani/Deçan municipality, was based upon the Chamber's failure to apply its own factual findings in Volume II. At paragraphs 68 and 69 of Volume II it concluded after full evaluation of the evidence that the VJ had been involved in expelling Kosovo Albanians from Beleg. In Volume III, at paragraph 632, however, the Chamber failed to apply this conclusion, incorrectly assuming that the VJ was not involved in the Beleg crimes.

107. The Chamber found that VJ forces worked together with MUP personnel to expel Kosovo Albanians from Beleg.²⁶¹ Upon their arrival on 28 March 1999, members of both forces engaged in beatings, detentions and the seizure of identity documents.²⁶² Two days later, the VJ and MUP organised a convoy of Kosovo Albanians villagers to Albania.²⁶³ The Chamber concluded that these acts constituted the crimes of deportation and forcible transfer.²⁶⁴

108. The Chamber convicted Lazarević of aiding and abetting the crimes in Beleg based on these findings.²⁶⁵ However, it acquitted Ojdanić on the basis that these crimes did not involve the VJ.²⁶⁶ Ojdanić controlled the VJ troops in question.²⁶⁷ He was criminally responsible for the VJ crimes in Beleg. The Chamber erred in failing to convict him.

C. Lazarević should have been convicted for crimes in Sojevo/Sojeva, Staro Selo and Miroslavlje/Mirosala

109. The Chamber made a similar error at Volume III, paragraph 932 in acquitting Lazarević for aiding and abetting deportation and forcible transfer in Sojevo/Sojeva,

²⁶¹ Judgement, Vol.II, paras.68-69, 1158.

²⁶² Judgement, Vol.II, paras.54-60.

²⁶³ Judgement, Vol.II, paras.65-67.

²⁶⁴ Judgement, Vol.II, paras.1184-1186.

²⁶⁵ Judgement, Vol.III, para.930.

²⁶⁶ Judgement, Vol.III, para.632.

Staro Selo and Mirosavlje/Mirosala in Uroševac/Ferizaj municipality for lack of VJ participation while convicting Ojdanić based on VJ participation.

110. The Chamber found that members of the joint VJ-MUP forces were deployed in and around the village of Sojevo/Sojeva in early April 1999.²⁶⁸ They set houses on fire and killed residents, thereby expelling Kosovo Albanians from the village.²⁶⁹ Also in early April, VJ volunteers entered Staro Selo, killed at least three people,²⁷⁰ and “created a coercive environment” that caused the villagers to flee.²⁷¹ Finally, on 8 April 1999, VJ troops entered Mirosavlje/Mirosala by tank, causing the residents to flee.²⁷² The Chamber concluded that the VJ had committed the crimes of deportation and forcible transfer in each of these villages.²⁷³

111. Based on its findings of VJ participation, the Chamber convicted Ojdanić for aiding and abetting deportation and forcible transfer from the villages within Uroševac/Ferizaj municipality.²⁷⁴ The Chamber failed to enter similar convictions for Lazarević based on these findings because it mistakenly assumed that the crimes in these villages involved MUP forces only.²⁷⁵

112. Regarding Staro Selo, the Chamber even forecast in a footnote that it would convict Lazarević for crimes in that location. It stated:

In respect of the crimes listed below, for which Lazarević is being convicted, the Chamber is satisfied that members of the Priština Corps or VJ units subordinated to the Priština Corps at the time were involved in their commission. In relation to Staro Selo in Uroševac/Ferizaj, the Chamber notes that VJ volunteers were involved [...] and] that these volunteers [...] were under the jurisdiction of the Priština Corps at the relevant time.²⁷⁶

²⁶⁷ Because Ojdanić controlled all VJ forces, Judgement, Vol.III, paras.485, 487, 625, he exercised authority over the VJ troops in Beleg.

²⁶⁸ Judgement, Vol.II, para.998.

²⁶⁹ Judgement, Vol.II, paras.960-976, 998-999, 1169.

²⁷⁰ Judgement, Vol.II, paras.985-996, 1002, 1169.

²⁷¹ Judgement, Vol.II, para.1250.

²⁷² Judgement, Vol.II, paras.981-984, 1001, 1169.

²⁷³ Judgement, Vol.II, paras.1250-1252.

²⁷⁴ Judgement, Vol.III, para.630.

²⁷⁵ Judgement, Vol.III, para.932.

²⁷⁶ Judgement, Vol.III, para.925, fn.2326.

Only seven paragraphs later, the Chamber acquitted Lazarević.²⁷⁷

113. Lazarević controlled the Priština Corps, including the troops in question.²⁷⁸ The Chamber made the findings necessary to convict Lazarević for all three villages but did not enter the convictions. The mistake requires correction.

**D. Ojdanić and Lazarević should have been convicted for crimes in
Žabare/Zhabar and Dušanovo/Dushanova**

114. In Volume II, the Chamber made numerous findings that the VJ participated in crimes in Žabare/Zhabar in Kosovska Mitrovica/Mitrovica municipality and Dušanovo/Dushanova in Prizren municipality. The Chamber overlooked these findings in Volume III, paragraphs 632 and 932 when acquitting Ojdanić and Lazarević of aiding and abetting deportation and forcible transfer for these locations.

115. Joint VJ-MUP forces expelled large numbers of Kosovo Albanians from Žabare/Zhabar and nearby villages to Albania in mid-April 1999.²⁷⁹ The Chamber concluded that the VJ had committed deportation and forcible transfer in Žabare/Zhabar.²⁸⁰

116. The VJ and MUP worked together to expel Kosovo Albanians from Dušanovo/Dushanova to Albania on 28 March 1999. According to the Chamber, “MUP and VJ forces worked together to effect this expulsion and to direct the population to the border.”²⁸¹ During the expulsion process, members of the joint VJ-

²⁷⁷ Judgement, Vol.III, para.932.

²⁷⁸ As previously noted, the Chamber found that troops under Lazarević’s control participated in crimes in Staro Selo. *See above* para.112. The Chamber further found that troops from the 243rd Mechanised Brigade were involved in the crimes in Sojevo/Sojeva. Judgement, Vol.II, para.999. The 243rd Mechanised Brigade was part of the Priština Corps and thus subject to Lazarević’s authority. Judgement, Vol.I, para.612; Vol.III, para.819. As for Mirosavlje/Mirosala, it was within the zone of responsibility of the 243rd Mechanised Brigade. Judgement, Vol.I, para.618; Vol.II, paras.956, 959. The 252nd Tactical Group, which was resubordinated to the Priština Corps in 1999, Vol.I, para.624, was also active in Mirosavlje/Mirosala. *See* Exh.P1971, p.4; Exh.P1615, p.70.

²⁷⁹ Judgement, Vol.II, paras.711-729, 1165.

²⁸⁰ Judgement, Vol.II, paras.1229-1231.

²⁸¹ Judgement, Vol.II, para.286.

MUP forces beat people and set fire to houses.²⁸² Extensive evidence supported the Chamber's finding of VJ participation.²⁸³

117. However, in reaching its legal findings with respect to Dušanovo/Dushanova, the Chamber only cited MUP involvement in the crimes of deportation and forcible transfer for this location.²⁸⁴ As in the other legal findings, the Chamber was mistaken when it failed to apply its factual findings on VJ participation.²⁸⁵

118. Even though the Chamber had recorded its factual findings of VJ participation in the crimes in Žabare/Zhabar and Dušanovo/Dushanova, it failed to convict Ojdanić and Lazarević at Volume III, paragraphs 632 and 932 because it erroneously assumed that the VJ was not involved. Ojdanić and Lazarević controlled the VJ troops who had participated in the crimes.²⁸⁶ The Chamber's errors led to Ojdanić's and Lazarević's acquittals for the crimes in these locations.²⁸⁷

E. Relief sought

119. As shown by the above discussion, no reasonable trial chamber would have acquitted Ojdanić for the crimes in Beleg, Lazarević for the crimes in Sojevo/Sojeva, Mirosavlje/Mirosala, and Staro Selo, and both of them for the crimes in Žabare/Zhabar and Dušanovo/Dushanova if it had considered its own evidentiary findings on the participation of the VJ in those crimes. The acquittals should be set aside. The Appeals Chamber should convict Ojdanić and Lazarević for aiding and abetting deportation (Count 1) and other inhuman acts (forcible transfer) (Count 2) in these locations and increase their sentences accordingly.

²⁸² Judgement, Vol.II, paras.269-286, 1162.

²⁸³ Exh.P2378, e-court pp.13-14 (cited in Judgement, Vol.II, fns.739-744, 746-747); Krasniqi, T.4923 (cited in Vol.II, fn.741), T.4930 (cited in Vol.II, fns.743, 746); Exh.P2514, p.9 (cited in Vol.II, fns.748-752, 754-755); Kryeziu, T.7549 (cited in Vol.II, fn.754), T.7567 (cited in Vol.II, fn.753), T.7570 (cited in Vol.II, fn.755); Exh.P2575, p.8 (cited in Vol.II, fn.762); Exh.6D1004, p.4 (cited in Vol.II, fn.763); Glončak, T.21121-21123 (cited in Vol.II, fns.762, 764). *See also* Kryeziu, T.7546, 7558, 7562, 7564.

²⁸⁴ Judgement, Vol.II, paras.1201-1203.

²⁸⁵ Judgement, Vol.II, paras.273-279.

²⁸⁶ Ojdanić had authority over all VJ forces, Judgement, Vol.III, paras.485, 487, 625, including those involved in the crimes in Dušanovo/Dushanova and Žabare/Zhabar. Similarly, Lazarević controlled the 549th Motorised Brigade of the Priština Corps, Judgement, Vol.I, para.612, which was involved in the crimes in Dušanovo/Dushanova. Vol.II, paras.246, 279. He also exercised authority over the 58th Light Infantry Brigade, Judgement, Vol.I, para.612, which was active in Žabare/Zhabar. Vol.II, para.699; Savić, T.20983-20984 (cited in Vol.II, fn.1733). *See also* Exh.6D1489, p.2; Exh.3D853, p.4; Exh.P1615, p.149; Exh.3D875, p.14.

²⁸⁷ Judgement, Vol.III, paras.632, 932.

VII. GROUND SIX: THE CHAMBER ERRED IN IMPOSING MANIFESTLY INADEQUATE SENTENCES AND IN FAILING TO INDIVIDUALISE THE SENTENCES

A. Overview

120. In 1999 an enormous humanitarian catastrophe involving a substantial portion of the Kosovo Albanian civilian population arose through the criminal actions of Pavković, Šainović, Lukić, Lazarević and Ojdanić. Their crimes were exceptional in scale, cruelty and brutality. Their criminal campaign was systematic, pre-meditated and prolonged. It outraged the international community. Hundreds of thousands of Kosovo Albanian civilians became refugees after joint VJ-MUP forces forced them from their homes and robbed them of their livelihoods. Hundreds of them were murdered, leaving hundreds more bereaved and suffering. Countless victims bear the physical and emotional scars of their mistreatment. For some, the emotional scars of their savage rape will never heal.

121. The crimes were carried out under the senior political, military and police leadership of Pavković, Šainović, Lukić, Lazarević and Ojdanić. They breached not only their responsibility to protect the Kosovo Albanian civilian population but also their obligations under international criminal law. Each Accused received a sentence entirely disproportionate to the gravity of the crimes committed. Neither the seriousness of the crimes nor the Accused's role and degree of participation in them are reflected adequately in their sentences. The vulnerability of the victims and the impact of the crimes on them are not properly considered. The imposition of identical sentences for each JCE member and each aider and abettor fails to "individualise the penalties to fit the circumstances of the accused and the gravity of the crime."²⁸⁸ The Chamber failed to properly assess the gravity of each of their crimes.²⁸⁹

122. The litmus test for imposing an appropriate sentence²⁹⁰ involves consideration of both the seriousness of *each* of the underlying crimes and the role and degree of

²⁸⁸ *Naletilić* AJ, para.593. See also *Mrkšić* AJ, para.375; *Čelebići* AJ, para.717.

²⁸⁹ Judgement, Vol.III, paras.1177-1205.

²⁹⁰ *Mrkšić* AJ, para.375 (quoting *Čelebići* TJ, para.1225).

participation of *each* Accused.²⁹¹ The sentences fail the litmus test. 22 years imprisonment for Pavković, Šainović and Lukić and 15 years imprisonment for Ojdanić and Lazarević are manifestly inadequate and disproportionate to the gravity of the crimes for which each of these men was convicted.

123. These errors require the intervention of the Appeals Chamber to substantially increase the sentences of each Accused.

B. The seriousness of the underlying crimes warrants an increase in each of the Accused's sentences

124. Mandatory factors to consider when assessing the seriousness of the crimes include the discriminatory nature of the crimes, the vulnerability of the victims, the consequences of the crime on the victims, and the effects of the crime on the relatives of the victims.²⁹² The Chamber's cursory analysis of the gravity of the forcible displacements is insufficient to determine how the Chamber assessed the impact of these crimes on the hundreds of thousands of victims and their families and how they took this impact into account in relation to each Accused.²⁹³

125. The Chamber also completely failed to address these factors when sentencing in relation to the seriousness of the murders, sexual assaults, religious destruction and persecutions. Instead, it merely noted that the Accused were responsible for crimes that included "hundreds of murders, several sexual assaults, and the forcible transfer and deportation of hundreds of thousands of people."²⁹⁴

126. On the other hand, the Chamber's factual findings²⁹⁵ in Volume II of its Judgement relating to the crimes record the impact on their victims of these many serious and grave crimes. Hundreds of thousands of lives were devastated. Innumerable ethnic Albanians in Kosovo had their homes demolished, their families torn apart and their livelihoods destroyed. They were stripped of their identities and dignity. They were persecuted through the destruction of their mosques, through murder and through rape.

²⁹¹ *Mrkšić* AJ, paras.375, 400; *Čelebići* AJ, para.741.

²⁹² *Blaškić* AJ, para.683.

²⁹³ Judgement, Vol.III, paras.1171-1176.

²⁹⁴ Judgement, Vol.III, para.1172.

²⁹⁵ *See e.g.* Judgement, Vol.II, paras.1156, 1178.

127. Integral to the widespread campaign to modify the ethnic balance of Kosovo was the commission of acts of violence and terror victimising hundreds of thousands of Kosovo Albanians. The crimes of deportation and forcible transfer occurred in 13 municipalities in Kosovo, covering most of the province. Kosovo Albanians were forced to flee for their lives as a result of the violence of the joint VJ-MUP forces, including killings, assaults, and arson.²⁹⁶ For example 1,300 Kosovo Albanians were driven from Žegra/Zhegra at the end of March 1999²⁹⁷ “by the use of threats, beatings and killings, creating a climate of fear”.²⁹⁸

128. Between the end of March and beginning of June 1999, the deliberate criminal actions of the joint VJ-MUP forces caused the departure of at least 700,000 Kosovo Albanians from Kosovo.²⁹⁹ Criminal actions included forcibly removing them from their homes and the looting and deliberate destruction of their property. The terrorisation of the Kosovo Albanian civilian population was systematic.³⁰⁰ The random and indiscriminate violence to civilians and their property exacerbated the already tense situation in Kosovo.³⁰¹

129. The discriminatory cruelty of the campaign affected even members of the VJ perpetrating the crimes. One witness stated: “all of us who took part in that operation, found it, if I can say, unpleasant to expel women, children, elderly persons and invalids. I know the KLA pretty well and I've not seen a single woman of 70 years old or a child or anybody in the KLA, people like that cannot be fighters and terrorists. Or people in wheelchairs. But we expelled them all from the baby in the cradle to the elderly people in wheelchairs and that's the problem that I have today.”³⁰²

130. At the heart of all the crimes lies ethnic discrimination. Instead of finding that the Accused’s crimes were made more serious because of their discriminatory nature, the Chamber erred in making no reference to this when determining the sentences of each Accused.³⁰³ Failure to sufficiently consider the seriousness of these crimes

²⁹⁶ See below, paras.132-142.

²⁹⁷ Judgement, Vol.II, paras.924-926.

²⁹⁸ Judgement, Vol.II, para.944.

²⁹⁹ Judgement, Vol.II, para.1178.

³⁰⁰ Judgement, Vol.II, para.1178.

³⁰¹ Judgement, Vol.II, para.1178.

³⁰² Judgement, Vol.II, para.1172 (*quoting* K73, [REDACTED]).

³⁰³ Judgement, Vol.III, paras.1169-1205.

requires the Appeals Chamber to intervene to correct this error and thereby to significantly increase the sentences of each Accused.

131. The crimes committed during this ethnic cleansing campaign had a devastating effect on the lives and livelihoods of the Kosovo Albanian victims as demonstrated by the following examples.

1. Deportation and forcible transfer

(a) Priština/Prishtina

132. In Priština/Prishtina town heavily armed joint VJ-MUP forces went from house to house and expelled all Kosovo Albanians they found.³⁰⁴ They attacked and destroyed Kosovo Albanian houses, offices and shops, sometimes with bombs or other explosive devices.³⁰⁵ Kosovo Albanians who tried to stay were beaten. In one case an 80-year-old man died from the injuries he received.³⁰⁶ Those expelled were abused and threatened.³⁰⁷

133. The joint VJ-MUP forces forced the Kosovo Albanians to the train station, where thousands were packed together and forced to wait.³⁰⁸ The police then “herded [Kosovo Albanians] ‘like cattle’” onto the trains.³⁰⁹ The cars were so crowded that it was difficult to breathe.³¹⁰ The overloaded trains were bound for the border, where police and soldiers directed them into Macedonia.³¹¹ At stops along the way VJ and MUP personnel surrounded the train abusing and threatening to kill those on board.³¹² When the trains arrived at the border, thousands of people were forced to cross on foot at gunpoint.³¹³ The “words and actions of the VJ and MUP forces, and other armed forces operating with them” forced thousands from their homes.³¹⁴

³⁰⁴ Judgement, Vol.II, paras.847-848.
³⁰⁵ Judgement, Vol.II, paras.818, 823, 825, 829.
³⁰⁶ Judgement, Vol.II, para.840.
³⁰⁷ Judgement, Vol.II, paras.841-843.
³⁰⁸ Judgement, Vol.II, paras.854, 857-858.
³⁰⁹ Judgement, Vol.II, para.856.
³¹⁰ Judgement, Vol.II, para.854.
³¹¹ Judgement, Vol.II, paras.856, 859-861.
³¹² Judgement, Vol.II, para.859.
³¹³ Judgement, Vol.II, para.861.
³¹⁴ Judgement, Vol.II, para.887.

134. Once the Kosovo Albanian homes were empty, VJ or MUP members moved in.³¹⁵

(b) Celina

135. Celina village was home to some 2000-2,500 Kosovo Albanians.³¹⁶ Joint VJ-MUP forces created an “atmosphere of terror” intensified by the killing of some villagers.³¹⁷

Mixed VJ and MUP forces [...] entered the village and looted and set fire to houses. The villagers consequently fled out of fear. Many fled to the woods. Some villagers were assaulted and killed [...] MUP officers went to the woods where villagers were hiding and separated the men from the women. Many were beaten and robbed of their valuables and identification documents. Men were forced at gunpoint to go to Prizren and were further assaulted by police on the way. They were then forced to [leave for] Albania.³¹⁸

136. Agim Jemini told how soldiers entered his home compound and seized his father, mother, uncle, and two other relatives. As he hid, he watched as the soldiers gunned down those he loved, and then used flame-throwers to burn every house in the village that would burn.³¹⁹ Throughout the day he heard the sounds of automatic weapons and the screams of men, women, and children.³²⁰ Many villagers finally fled out of fear to the woods.³²¹ He fled to another village in Kosovo, Zrze/Xërxa.³²²

(c) Korenica; the Reka/Caragoj valley

137. In Korenica, joint VJ-MUP forces expelled residents in a similarly brutal manner as part of a wider operation in the Reka/Caragoj valley. Soldiers and police entered Lizane Malaj’s home, detained her husband, brother, son and nephews, and then ordered Malaj to go to Albania.³²³ “When she and other women were about 50 metres from the house, she heard multiple shots coming from the direction of the

³¹⁵ Judgement, Vol.II, paras.823, 831-832.

³¹⁶ Judgement, Vol.II, para.303.

³¹⁷ Judgement, Vol.II, para.335.

³¹⁸ Judgement, Vol.II, para.334.

³¹⁹ Judgement, Vol.II, paras.321-322.

³²⁰ Judgement, Vol.II, para.322.

³²¹ Judgement, Vol.II, para.334.

³²² Judgement, Vol.II, para.322.

³²³ Judgement, Vol.II, para.194.

house and her son crying, and she looked back to see her house in flames.”³²⁴ She struggled to go back but was prevented by the police.³²⁵ She thereafter joined a convoy of 300-400 people fleeing Korenica who “were told that they had to leave Kosovo or they would be executed.”³²⁶ When she returned from Albania to her village in July 1999, she “found her house ‘completely burnt.’”³²⁷

138. The Reka/Caragoj valley operation involved the expulsion of hundreds of Kosovo Albanian civilians from their homes, which were then set alight and destroyed.³²⁸ Those displaced were mistreated and were stripped of their personal identification documents of those victims displaced.³²⁹

(d) Kaçanik/Kaçanik town

139. In Kačanik/Kaçanik town the police and military fired randomly on civilian houses with rifles and a rocket launcher.³³⁰ The next day MUP forces expelled several hundred Kosovo Albanians or caused them to leave the village because of their actions.³³¹

(e) Dušanovo/Dushanova

140. On 28 March 1999, in the Dušanovo/Dushanova part of Prizren town, a large number of Kosovo Albanians were violently expelled.³³² Around 4,000-5,000 people in vehicles and on foot formed a convoy and were mistreated along the way towards the Albanian border.³³³ In the course of these expulsions, “people were beaten, threatened, and robbed, and houses were set on fire.”³³⁴

We were not given any time to pack. They were throwing us out into the yard. A policeman hit me a few times on the back with his rifle butt. He stuck the nozzle into the side of my head and said that if I said anything he would kill me. They said that NATO was

³²⁴ Judgement, Vol.II, para.194.
³²⁵ Judgement, Vol.II, para.194.
³²⁶ Judgement, Vol.II, para.225.
³²⁷ Judgement, Vol.II, para.225.
³²⁸ Judgement, Vol.II, para.229.
³²⁹ Judgement, Vol.II, para.230.
³³⁰ Judgement, Vol.II, para.1091.
³³¹ Judgement, Vol.II, para.1099.
³³² Judgement, Vol.II, paras.286, 1201.
³³³ Judgement, Vol.II, paras.274, 286.
³³⁴ Judgement, Vol.II, para.1201.

bombing them and that they were going to throw us out of Kosova or else massacre us. The same thing was happening in almost every house in the neighbourhood. [...] At my house, I saw my wife and all of my family being beaten up.³³⁵

(f) Kosovska Mitrovica/Mitrovica; Žabare/Zhabar

141. In Kosovska Mitrovica/Mitrovica, the deportation and forcible transfer that occurred was of an even larger scale. As NATO air strikes began, MUP forces “expelled thousands of Kosovo Albanians from parts of the town.”³³⁶ On 28 March 1999, an estimated 70,000 people were forced to leave their homes in Kosovska Mitrovica/Mitrovica town.³³⁷ In mid-April 1999, large numbers of Kosovo Albanians from Žabare/Zhabar and nearby villages, along with others who had been staying there, were also expelled by joint VJ-MUP forces and forced to leave Kosovo.³³⁸ Many were “forced to walk to the border without food or water for several days” and were “robbed and mistreated by the police and other uniformed forces acting with them.”³³⁹ Their homes were burned and looted.³⁴⁰

(g) Vučitrn/Vushtrria

142. In Vučitrn/Vushtrria town numbers of Kosovo Albanians were expelled by MUP forces. Their homes, shops and a town mosque were burnt down.³⁴¹

2. Murder

143. The joint VJ-MUP forces murdered many ethnic Albanians when implementing the plan to rid Kosovo of a major part of its ethnic Albanian population. As described more specifically below, the Chamber found that over 600 murders were committed in the course of the ethnic cleansing campaign. Murder helped create an atmosphere of terror and fear causing those who witnessed or heard of these brutal

³³⁵ Exh.P2378, p.13. The Chamber found that there was “no reason to doubt [the witness] evidence that the police forced him and his family to leave and mistreated them.” Judgement, Vol.II, para.273.

³³⁶ Judgement, Vol.II, para.727.

³³⁷ Judgement, Vol.II, para.705.

³³⁸ Judgement, Vol.II, para.728.

³³⁹ Judgement, Vol.II, para.729.

³⁴⁰ Judgement, Vol.II, para.728.

³⁴¹ Judgement, Vol.II, paras.1232-1234.

events to flee Kosovo. Murder thus facilitated the mass deportations and forcible transfers.

(a) Suva Reka/Suhareka

144. In Suva Reka/Suhareka, mass deportations and forcible transfers³⁴² were accompanied and facilitated by the brutal murders of 45 members of the same family on 26 March 1999.³⁴³ Thirty-seven of them were killed when the police ordered them into a local pizzeria and told them to sit down. They then shot and threw grenades at them.³⁴⁴ Police then entered, lifted the bodies and began “checking whether anyone was still alive and shooting them.”³⁴⁵ They killed men, women, children, and even a ten-month-old baby.³⁴⁶ Three people managed to survive.³⁴⁷ One, Shyrete Berisha, described her terror:

I was lying on my stomach. I was pretending I was dead because when they thought somebody was alive, when they were lifting them up, they shot them. Even my son, when they lifted him up, they saw that he was alive, they shot him there and then.³⁴⁸

145. She was left with “wounds all over [her] body.”³⁴⁹ Her back and stomach remain “full of shrapnels, small pieces of grenades [...]”³⁵⁰

(b) Belaja stream in Bela Crkva/Bellacërka

146. The 59 murders by MUP forces³⁵¹ at the Belaje stream in Bela Crkva/Bellacërka were similar in brutality and scale to the pizzeria massacre in Suva Reka/Suhareka. On 25 March 1999, VJ tanks entered Bela Crkva/Bellacërka and joint VJ-MUP forces started to shoot at the village, forcing inhabitants to flee.³⁵² Hundreds fled along the Belaja stream, where MUP forces killed at least 10 people, including

³⁴² Judgement, Vol.II, paras.546, 1216.
³⁴³ Judgement, Vol.II, paras.535, 537, 1214-1215.
³⁴⁴ Judgement, Vol.II, paras.493-494, 535, 537-542.
³⁴⁵ Judgement, Vol.II, para.494.
³⁴⁶ Judgement, Vol.II, paras.491, 539.
³⁴⁷ Judgement, Vol.II, para.494.
³⁴⁸ Shyrete Berisha, T.3903.
³⁴⁹ Shyrete Berisha, T.3908.
³⁵⁰ Shyrete Berisha, T.3908.
³⁵¹ Judgement, Vol.II, para.382.
³⁵² Judgement, Vol.II, para.380.

women and children.³⁵³ Police then ordered the remaining villagers at the streambed to split into three groups.³⁵⁴ One group, consisting of women and children, was ordered to leave in the direction of Zrze/Xërxa.³⁵⁵ The other two groups were robbed of their valuables, forced into the stream and shot, killing at least 42 men.³⁵⁶ One survivor described the carnage the police left behind:

Once I was sure there were no sounds coming from anywhere around me, I got up. I saw many of the men who had been killed had suffered horrible injuries from the sustained gunfire. There were those who had their heads burst open, others had their limbs blown off and some of the bodies had had their faces horribly torn apart. There was a lot of blood and many bits of skull and brain in the stream.³⁵⁷

147. Later, the same policemen killed seven other people near the stream.³⁵⁸

(c) Mala Kruša/Krusha e Vogël and Izbica

148. MUP forces committed large-scale massacres in Mala Kruša/Krusha e Vogël and Izbica. In Mala Kruša/Krusha e Vogël they rounded up at least 111 men – including teenagers, the mentally and physically disabled and the elderly, assaulted and robbed them of their valuables and identity documents, then escorted them to an empty barn and shot them through the windows.³⁵⁹ Almost all the men inside were killed, with MUP forces setting fire to their bodies afterwards.³⁶⁰ Mehmet Krasniqi, a survivor, recalled the horror: “[m]any were still alive and screaming” when police threw hay on them and set them on fire, burning them alive.³⁶¹

149. In Izbica, over 100 men were separated from women and children gathered in a field.³⁶² The men were divided into two groups, each led in a different direction for a few hundred metres, after which they were told to stop by MUP forces who then

³⁵³ Judgement, Vol.II, para.381.

³⁵⁴ Judgement, Vol.II, para.382.

³⁵⁵ Judgement, Vol.II, para.382.

³⁵⁶ Judgement, Vol.II, paras.382, 1211.

³⁵⁷ Exh.P2331, p.5.

³⁵⁸ Judgement, Vol.II, paras.382, 1211.

³⁵⁹ Judgement, Vol.II, para.432.

³⁶⁰ Judgement, Vol.II, paras.413, 432.

³⁶¹ Exh.P2341, p.9.

³⁶² Judgement, Vol.II, para.679.

shot them.³⁶³ Approximately 89 mostly elderly men were murdered.³⁶⁴ In addition to the men murdered in these two groups, four other elderly people were murdered in the field by MUP forces.³⁶⁵

(d) Đakivoca/Gjakova

150. Murders also accompanied the deportations and forcible transfers in Đakivoca/Gjakova. Around 2:00 a.m. on 2 April 1999 in Đakovica/Gjakova town, a vehicle broke through the gate of the Vejsa compound on Miloš Gilić/Millosh Giliq Street in the Ćerim/Qerim district.³⁶⁶ Six Serb policemen entered the building and asked the group of approximately 20 people in the basement (all were women and children except one) if they were with the KLA, which they denied.³⁶⁷ The police then ordered the group out of the basement and into the Vejsa house where they started shooting them, spraying bullets across the room.³⁶⁸ The house was later set on fire by MUP forces.³⁶⁹ In total, 20 people were killed by shooting and burning in the Vejsa compound.³⁷⁰

(e) Reka/Caragoj valley

151. On 27 and 28 April 1999, joint VJ-MUP forces engaged in a major operation throughout the Reka/Caragoj valley.³⁷¹ As part of this operation, attacks in and around Meja and Korenica occurred, which involved the killing of at least 287 Kosovo Albanians.³⁷² Members of the joint VJ-MUP forces entered the courtyard of the Markaj family compound in Korenica and ordered its occupants outside.³⁷³ These forces separated the men from the women, ordered the women to leave, and then shot the men.³⁷⁴ Eight men were killed; all were civilians.³⁷⁵

³⁶³ Judgement, Vol.II, paras.580-582, 679, 686-687.

³⁶⁴ Judgement, Vol.II, paras.578, 679, 681.

³⁶⁵ Judgement, Vol.II, paras.679, 687.

³⁶⁶ Judgement, Vol.II, para.131.

³⁶⁷ Judgement, Vol.II, para.132.

³⁶⁸ Judgement, Vol.II, paras.132-133.

³⁶⁹ Judgement, Vol.II, para.148.

³⁷⁰ Judgement, Vol.II, paras.134, 148.

³⁷¹ Judgement, Vol.II, para.165.

³⁷² Judgement, Vol.II, para.216.

³⁷³ Judgement, Vol.II, paras.192, 233.

³⁷⁴ Judgement, Vol.II, para.192.

³⁷⁵ Judgement, Vol.II, para.233.

152. Similarly, at around 7:30 a.m. on 27 April 1999, members of the VJ-MUP forces surrounded the house of Lizane Malaj in Korenica and entered the courtyard.³⁷⁶ They ordered the men in the house on the ground and told the women to leave and go to Albania.³⁷⁷ They then shot the men, killing five, and set the house on fire.³⁷⁸ None of the men killed were engaged in combat at the time.³⁷⁹

153. Also on 27 April 1999, joint VJ-MUP forces entered the village of Meja.³⁸⁰ There, members of the MUP machine-gunned to death seven men at the bridge over the Travna River.³⁸¹ Twenty bodies were seen at a checkpoint near the Hasanaj meadow, and another 11 bodies around 700 metres from this checkpoint.³⁸² In addition, at a checkpoint on the road between Korenica and Đakovica/Gjakova town, MUP forces selected at least three unidentified men and took them to a compound where they were killed.³⁸³

154. The killings in Korenica and Meja were “indicative of a far greater massacre that occurred as a part of the Reka/Caragoj valley operation carried out by VJ and MUP personnel [...] which resulted in the killing of at least 287 Kosovo Albanians.”³⁸⁴ Many of those killed were civilians or *hors de combat* at the time of their killing.³⁸⁵

(f) Dubrava/Lisnaja

155. On 5 May 1999, two civilians were also killed by joint VJ-MUP forces in Dubrava/Lisnaja.³⁸⁶ MUP forces killed three people travelling in a convoy near Gornja Sudimlja/Studimja e Epërme on 2 and 3 May 1999.³⁸⁷

³⁷⁶ Judgement, Vol.II, paras.194, 233.
³⁷⁷ Judgement, Vol.II, para.194.
³⁷⁸ Judgement, Vol.II, paras.194, 233.
³⁷⁹ Judgement, Vol.II, para.233.
³⁸⁰ Judgement, Vol.II, para.234.
³⁸¹ Judgement, Vol.II, paras.203, 234.
³⁸² Judgement, Vol.II, para.235.
³⁸³ Judgement, Vol.II, para.235.
³⁸⁴ Judgement, Vol.II, para.236.
³⁸⁵ Judgement, Vol.II, para.236.
³⁸⁶ Judgement, Vol.II, paras.1148-1149.
³⁸⁷ Judgement, Vol.II, paras.1235-1237.

3. Destruction of Religious Property

156. On 28 March 1999, MUP forces set off an explosion in the minaret of a mosque in Suva Reka/Suhareka during the Muslim holiday of Bajram.³⁸⁸ The mosque was targeted because it was a Muslim religious building.³⁸⁹ Similar mosque destructions occurred in Celina (on 28 March 1999 by MUP forces using explosives),³⁹⁰ in Vlaštica/Llashtica (on 6 April 1999 when VJ forces and locals wearing police uniforms burned a mosque),³⁹¹ and in Vučitrn/Vushtrria (in late March 1999 when MUP forces burned and bulldozed the Market Mosque).³⁹² All four mosques were damaged with the intent to discriminate against Kosovo Albanians as an ethnic group.³⁹³

4. Sexual Assault

157. In Dečani/Deçan, at least 4 women were sexually assaulted while detained.³⁹⁴ The women were kept in the dark when members of the joint VJ-MUP forces asked for “‘girls’ for cleaning”.³⁹⁵ They used torch lights to identify the younger girls and took them away for lengthy periods of time throughout the night.³⁹⁶

158. K20’s terrifying account describes what happened.³⁹⁷ She was taken into a cold blackened bathroom with no windows or doors³⁹⁸ and systematically raped by several men. [REDACTED]³⁹⁹ He then [REDACTED] raped her while a police officer stood in the doorway, occasionally illuminating the scene with a torch.⁴⁰⁰ After one rapist finished, another had prepared to begin. The police officer guarded the entrance to the bathroom, letting in one soldier at a time in turn.⁴⁰¹ In total, four men

388 Judgement, Vol.II, paras.508-509, 549.
 389 Judgement, Vol.II, para.1218.
 390 Judgement, Vol.II, para.390.
 391 Judgement, Vol.II, paras.937, 1249.
 392 Judgement, Vol.II, paras.746, 1234.
 393 Judgement, Vol.II, paras.1209, 1218, 1234, 1249.
 394 Judgement, Vol.II, paras.61-65, 1188.
 395 Judgement, Vol.II, para.61.
 396 Judgement, Vol.II, paras.61-64.
 397 Judgement, Vol.II, para.64; Exh.P2669; [REDACTED]
 398 Exh.P2669, p.5.
 399 [REDACTED]
 400 Judgement, Vol.II, para.64; Exh.P2669, p.5; [REDACTED]
 401 Exh.P2669, p.5; [REDACTED]

raped K20 for about four hours.⁴⁰² At one point her suffering was such that she begged one of her tormentors to kill her instead of letting her be raped again.⁴⁰³ Afterwards, the rapes left K20 traumatised and in such physical pain she could not sit; when she was released she sought medical treatment for her physical and psychological injuries.⁴⁰⁴

159. Approximately 20 young women and girls were selected and taken out like K20 that night in Dečani/Dečan. At least 3 in addition to K20 were sexually assaulted.⁴⁰⁵ Similar events took place in Ćirez/Qirez where four detained women were sexually assaulted, two of them subsequently being thrown into wells along with six other women, where they all drowned.⁴⁰⁶

5. Conclusion regarding the seriousness of the crimes

160. The Chamber failed to take full account of the seriousness of the crimes and their impact on the victims when determining the appropriate sentence for each Accused. The Chamber failed to properly take into account the systematic nature of the crimes, the vulnerability of the victims and the extensive physical and psychological impact of the crimes on the victims.

C. The role and degree of participation of each Accused warrants an increase in each of their sentences

161. In assessing the gravity of the crimes the role and degree of participation of each Accused is an important consideration.⁴⁰⁷ In its “degree of participation” analysis, the Chamber limited its focus to the legal form of responsibility through which the Accused were convicted. The Chamber stated that “[t]he forms of responsibility in respect of each Accused have been taken into account in the

⁴⁰² Judgement, Vol.II, para.64; Exh.P2669, p.5.

⁴⁰³ [REDACTED]

⁴⁰⁴ Exh.P2669, pp.5-6.

⁴⁰⁵ Judgement, Vol.II, paras.62-64.

⁴⁰⁶ Judgement, Vol.II, paras.622-645, 689, 1224.

⁴⁰⁷ Judgement, Vol.III. para.1147; *see also Mrkšić* AJ, para.400.

determination of his sentence.”⁴⁰⁸ No further explanation is given. The Chamber did not discuss the role and degree of each Accused in determining sentence.

162. As such, the Chamber erred in law by failing to identify and consider the role and degree of participation of each Accused in assessing their criminal conduct. This error contributed to inadequate and non-differentiated sentences among those Accused convicted under the same form of responsibility.⁴⁰⁹

163. When individualising their sentences, the Chamber was required to consider fully each Accused’s specific role and degree of participation in the crimes. The Chamber failed to do so.

164. Each Accused used his high-level senior position of authority to advance this broad campaign of violence and terror against the Kosovo Albanian population. The Chamber asked itself whether “there was concerted action by such senior officials and officers to engage the might of the state against a section of its own citizens” in order to achieve the forcible displacement of Kosovo Albanians and so modify the ethnic balance of Kosovo to ensure control of the province by ethnic Serbs.⁴¹⁰ The Chamber answered its question affirmatively when it convicted Šainović, Pavković and Lukić as members of a JCE to modify the ethnic balance towards equality and “cow the Kosovo Albanians into submission”⁴¹¹ and convicted Ojdanić and Lazarević of aiding and abetting many of the underlying crimes.

165. The magnitude of the crimes, their exceptional cruelty and brutality, together with the systematic and willing contributions of the Accused demonstrates the manifest inadequacy of the sentences imposed on them. The sentences ignore the fact that the actions of the Accused victimised hundreds of thousands of people in a short time. This was made possible by their high level of planning and organisation. The abuse of their high positions of authority aggravates their criminal conduct.

⁴⁰⁸ Judgement, Vol.III, para.1175. The only other reference to the role of the Accused appears in the Chamber’s separate evaluation of their abuse of authority as an aggravating feature. Judgement, Vol.III, paras.1180, 1185, 1190, 1195, 1201.

⁴⁰⁹ See Judgement, Vol.III, para.1205.

⁴¹⁰ Judgement, Vol.III, para.16.

⁴¹¹ Judgement, Vol.III, para.95.

166. The Chamber failed to properly exercise its discretion to ensure individualised sentences that adequately reflect the role and degree of participation of each Accused. The specific role and degree of participation of each Accused is addressed below. A listing of the crimes for which each Accused was convicted is provided in Appendix 2.

(a) JCE members

167. The Chamber convicted FRY Deputy Prime Minister Šainović, Col-General Pavković (Commander of the VJ 3rd Army), and Lt-General Lukić⁴¹² (Head of MUP Staff)⁴¹³ under Article 7(1) as JCE members for committing crimes of deportation, forcible transfer, murder, and persecutions.

168. Pavković, Šainović and Lukić shared the intent to retain FRY and Serbian control over Kosovo through a widespread and systematic campaign of terror and violence against the Kosovo Albanian population whereby this population was to be forcibly displaced both within and outside of Kosovo.⁴¹⁴ The common purpose of this JCE was to displace a sufficient portion of the Kosovo Albanian population to tip the demographic balance within Kosovo toward ethnic equality and to cow the Kosovo Albanians into submission.⁴¹⁵

169. The magnitude of this criminal enterprise and the gravity of their shared intent are demonstrated by the number of Kosovo Albanians that had to be forcibly displaced outside Kosovo in order to approach equal numbers of ethnic Albanians and Serbs within Kosovo. In 1991 the population of ethnic Albanians within Kosovo was estimated at 1,655,294⁴¹⁶ whilst the population of ethnic Serbs and Montenegrins was estimated at 234,425.⁴¹⁷ The enterprise succeeded in that at least 700,000 Kosovo Albanians were forced to leave Kosovo between March and June 1999 as a result of the deliberate actions of the forces of the FRY and Serbia⁴¹⁸ under the control of the JCE members. This number of forcible displacements proves the intended scale of the JCE members' common criminal purpose. Moreover, these massive expulsions were

⁴¹² See Judgement, Vol.III, para.945 (concerning his appointment).

⁴¹³ See Judgement, Vol.III, para.1018 (concerning the use of this term).

⁴¹⁴ Judgement, Vol.III, para.95.

⁴¹⁵ Judgement, Vol.III, para.95.

⁴¹⁶ Exh.P1893; Judgement, Vol.III, para.69.

⁴¹⁷ Exh.P1893; Judgement, Vol.III, para.68.

achieved rapidly and had a devastating effect on the lives of nearly one half of the Kosovo Albanian population. To achieve this intended result, the JCE members acted with pre-meditation and used careful and constant planning. They accepted that the Kosovo Albanian population was likely to be subjected to murder, rape and violence.

170. In addition, the JCE members cynically used the NATO bombing as a device to pursue their criminal ends. The NATO bombing “provided an opportunity to the members of the joint criminal enterprise – an opportunity for which they had been waiting and for which they had been prepared by moving additional forces to Kosovo and by the arming and disarming process described above – to deal a heavy blow to the KLA and to displace, both within and without Kosovo, enough Kosovo Albanians to change the ethnic balance in Kosovo and maintain control over the province. And now this could all be done with plausible deniability because it could be blamed not only upon the KLA, but upon NATO as well.”⁴¹⁹

(i) Pavković

171. In imposing a 22-year sentence on Pavković, the Chamber failed to properly consider his primary role in the campaign that resulted in the mass deportation of Kosovo Albanians.⁴²⁰ He exerted “major influence on the planning of actions”,⁴²¹ mobilised and commanded the troops during operations,⁴²² did not take seriously the crimes of forces under his control and failed to take effective measures in relation to the perpetrators of those crimes.⁴²³

172. As Commander of the Priština Corps in 1998 and as a prominent member of the Joint Command, Pavković used his influence and his direct access to Milošević to promote his aggressive strategy of increasing VJ activity in Kosovo (together with that of the MUP) despite its unconstitutionality.⁴²⁴ To achieve this goal, he went beyond his normal duties, by-passing the VJ chain of command and contravening his

⁴¹⁸ Judgement, Vol.II, para.1178.

⁴¹⁹ Judgement, Vol.III, para.92.

⁴²⁰ See e.g. Judgement, Vol.III, paras.665, 710.

⁴²¹ Judgement, Vol.III, para.710.

⁴²² Judgement, Vol.III, para.782.

⁴²³ Judgement, Vol.III, para.782.

⁴²⁴ Judgement, Vol.III, para.665.

direct superior's orders.⁴²⁵ The consequent clashes between him and his superiors (Perišić and Samardžić) resulted in their removal and in Pavković's promotion to Commander of the 3rd Army.⁴²⁶ Despite the incendiary situation on the ground, he was enthusiastically involved in the process of providing weapons to the non-Albanian population while disarming the Kosovo Albanians.⁴²⁷

173. As Commander of the 3rd Army in 1999, Pavković continued to work closely with Slobodan Milošević.⁴²⁸ He had command and control of the VJ forces in Kosovo throughout the period when the crimes were committed.⁴²⁹ His actions breached the October Agreements⁴³⁰ and caused VJ units to be engaged in the operations that resulted in crimes.⁴³¹

174. Once informed of the crimes, Pavković under-reported them and artificially minimised his subordinates' involvement.⁴³² In doing so, he contributed to an environment of impunity, which encouraged the commission of further crimes by his forces.⁴³³

175. Pavković intended to forcibly displace a large part of the Kosovo Albanian population and thereby change the ethnic balance in the province.⁴³⁴ He knew that his positive participation in the criminal plan was so important that by withholding it he could have impeded and even prevented tragic crimes from occurring.⁴³⁵

(ii) Šainović

176. The 22-year sentence imposed on Šainović also does not reflect his role and degree of participation in the crimes. As the person that Milošević used to orchestrate the events in Kosovo,⁴³⁶ Šainović was one of the most crucial members of the joint

⁴²⁵ Judgement, Vol.III, para.665.

⁴²⁶ Judgement, Vol.III, para.665. *See also* Judgement, Vol.III, paras.642-664, 778.

⁴²⁷ Judgement, Vol.III, paras.666-669, 779.

⁴²⁸ Judgement, Vol.III, para.710.

⁴²⁹ Judgement, Vol.III, paras.684, 773, 783.

⁴³⁰ Judgement, Vol.III, para.690.

⁴³¹ Judgement, Vol.III, para.698.

⁴³² Judgement, Vol.III, paras.753, 776-777, 782.

⁴³³ Judgement, Vol.III, paras.753, 776-777, 782.

⁴³⁴ Judgement, Vol.III, paras.95, 778.

⁴³⁵ Judgement, Vol.III, para.780.

⁴³⁶ Judgement, Vol.III, para.467.

criminal enterprise that forcibly displaced more than 700,000 Kosovo Albanians and dramatically altered the ethnic balance in the province.⁴³⁷

177. As Deputy Prime Minister of the FRY responsible for foreign policy and international relations,⁴³⁸ Šainović was one of Slobodan Milošević's closest and most trusted associates in 1998 and 1999.⁴³⁹ Šainović was a powerful official, who not only relayed information to Milošević and conveyed his orders to Kosovo, but who also had a great deal of influence and power over the events in the province and was empowered to make decisions.⁴⁴⁰ Šainović served as leader of the Joint Command.⁴⁴¹ Following the 21 July 1998 Joint Command meeting during which the "Plan for Combating Terrorism" was adopted, Šainović met almost daily in Priština/Priština with VJ and MUP representatives (such as Pavković and Lukić).⁴⁴² Šainović took on a leadership role during these Joint Command meetings, overseeing the meetings and frequently directing the group.⁴⁴³ Šainović exercised *de facto* authority in directing actions of the VJ and/or MUP,⁴⁴⁴ and politically co-ordinated their activities in Kosovo in 1998.⁴⁴⁵

178. In 1999, Šainović was Milošević's political representative in Kosovo (the most senior and influential member of the delegation at Rambouillet)⁴⁴⁶ and continued liaising not only with the VJ and MUP, but also with KVM⁴⁴⁷ personnel. As the Chairman of the Commission for Co-operation with the KVM, Šainović was able to continue to exert influence over Pavković and Lukić without interruption, from 1998 to 1999.⁴⁴⁸ Šainović participated in a campaign of threats to the personal safety of

⁴³⁷ Judgement, Vol.II, para.1178; Vol.III, paras.466-467.

⁴³⁸ Judgement, Vol.III, para.290.

⁴³⁹ Judgement, Vol.III, para.427.

⁴⁴⁰ Judgement, Vol.III, para.299.

⁴⁴¹ Judgement, Vol.III, para.331.

⁴⁴² Judgement, Vol.III, paras.304, 306.

⁴⁴³ Judgement, Vol.III, para.309.

⁴⁴⁴ Judgement, Vol.III, para.309.

⁴⁴⁵ Judgement, Vol.III, para.331.

⁴⁴⁶ Judgement, Vol.III, para.409.

⁴⁴⁷ On 16 October 1998, the FRY Government signed an agreement with the OSCE for the establishment of the KVM. The purpose of the KVM mission was to ensure compliance by all parties with Security Council Resolution 1199 through various mechanisms. *See* Judgement, Vol.I, para.334.

⁴⁴⁸ Judgement, Vol.III, para.401.

LDK leader Ibrahim Rugova and his associates, rather than attempting to negotiate a genuine solution to the situation in Kosovo.⁴⁴⁹

179. Šainović continued to exercise his extensive *de facto* powers over both the VJ and the MUP forces in Kosovo in 1999. The Joint Command remained in existence in 1999 and co-ordinated a number of actions in Kosovo.⁴⁵⁰ Šainović's role as the liaison between the VJ and the MUP on the one hand and Milošević on the other continued and he attended meetings with VJ and MUP officials in Belgrade and Kosovo.⁴⁵¹ At such meetings, Šainović made proposals, gave suggestions, and issued instructions to both Pavković and Lukić and thus to the VJ and the MUP respectively.⁴⁵² He was the crucial link between Milošević, who was in Belgrade, and the VJ and MUP units operating in Kosovo.⁴⁵³ As the political co-ordinator of civilian and military forces in Kosovo,⁴⁵⁴ Šainović had *de facto* and *de jure* authority⁴⁵⁵ and decision-making power with respect to the province.⁴⁵⁶

180. Šainović intended to forcibly displace a large portion of the Kosovo Albanian population, both within and without Kosovo, and thereby change the ethnic balance in the province to ensure continued control by the FRY and Serbian authorities.⁴⁵⁷ He intentionally contributed to this criminal plan and was one of the JCE's most crucial members.⁴⁵⁸ Though he was not convicted for the sexual assault crimes, the 22-year sentence imposed does not reflect his role and degree of participation in the crimes for which he was convicted.

(iii) Lukić

181. The 22-year sentence imposed by the Chamber on Lukić does not reflect his role and degree of participation in the crimes. As head of the MUP Staff in Priština/Prishtina, Lukić was the *de facto* commander of the MUP in Kosovo at the

⁴⁴⁹ Judgement, Vol.III, para.417.

⁴⁵⁰ Judgement, Vol.III, para.337.

⁴⁵¹ Judgement, Vol.III, para.337.

⁴⁵² Judgement, Vol.III, para.462; *see also* Judgement, Vol.III, paras.341, 346-348, 355-359.

⁴⁵³ Judgement, Vol.III, para.462.

⁴⁵⁴ Judgement, Vol.III, para.462.

⁴⁵⁵ Judgement, Vol.III, para.465.

⁴⁵⁶ Judgement, Vol.III, para.427.

⁴⁵⁷ Judgement, Vol.III, para.466.

⁴⁵⁸ Judgement, Vol.III, para.467.

time they committed the above-described crimes.⁴⁵⁹ Lukić, who presented himself as the Chief of Police in Kosovo to international observers,⁴⁶⁰ played a central role in planning, organising, and controlling the work of MUP units in Kosovo, as well as coordinating the actions of the joint VJ-MUP forces.⁴⁶¹

182. Lukić was a crucial member of the Joint Command in both 1998 and 1999. He participated, often as the only representative from the MUP, in Joint Command meetings, reporting on the MUP's activities and playing a senior and central role in co-ordinating joint VJ-MUP actions.⁴⁶² Aside from his participation in the Joint Command, Lukić was present at many meetings with senior VJ and MUP officials, along with political leaders, where he reported on the situation in Kosovo and was involved in the planning of further operations.⁴⁶³

183. Despite his awareness of the commission of crimes during inter-ethnic clashes,⁴⁶⁴ Lukić was actively involved in disarming the Kosovo Albanian population, and arming the non-Albanian population through the establishment of RPOs over which he exercised authority.⁴⁶⁵

184. Lukić played a central role in ensuring that the MUP's day-to-day operations were conducted in accordance with the plans he helped formulate in Belgrade.⁴⁶⁶ He played a central role in co-ordinating the exchange of information between the MUP forces in Kosovo and the MUP headquarters in Belgrade.⁴⁶⁷

185. As an important JCE member, Lukić was the bridge between the policy-makers in Belgrade and those on the ground in Kosovo.⁴⁶⁸ Through his direct involvement in the planning process, he ensured that the JCE plan to forcibly displace the Kosovo Albanian population was properly implemented on the ground.⁴⁶⁹ Though he was not convicted for the sexual assault crimes, the 22-year sentence imposed does

⁴⁵⁹ Judgement, Vol.III, paras.1051, 1118.

⁴⁶⁰ Judgement, Vol.III, para.1048.

⁴⁶¹ Judgement, Vol.III, paras.945, 1012-1013, 1050-1051.

⁴⁶² Judgement, Vol.III, paras.1032-1033.

⁴⁶³ Judgement, Vol.III, paras.1034, 1118.

⁴⁶⁴ Judgement, Vol.III, para.1121.

⁴⁶⁵ Judgement, Vol.III, paras.1067, 1121.

⁴⁶⁶ Judgement, Vol.III, para.1051.

⁴⁶⁷ Judgement, Vol.III, para.1059.

⁴⁶⁸ Judgement, Vol.III, para.1131.

⁴⁶⁹ Judgement, Vol.III, paras.1130-1132.

not reflect his role and degree of participation in the crimes for which he was convicted.

(b) Aiders and Abettors

186. The Chamber convicted Chief of the VJ General Staff Ojdanić⁴⁷⁰ and Commander of the Priština Corps Lazarević⁴⁷¹ under Article 7(1) for aiding and abetting deportation and forcible transfer in nine municipalities, encompassing 19 towns and villages.

187. Both Ojdanić and Lazarević knew of the campaign of terror, violence and forcible displacement being carried out by VJ and MUP forces against Kosovo Albanians.⁴⁷² Instead of using their influential command positions to stop or even substantially impede these discriminatory crimes, they each knowingly provided substantial practical assistance, encouragement, and moral support to the VJ forces engaging in the forcible displacement of Kosovo Albanians in co-ordinated action with the MUP.⁴⁷³ As a result, while Ojdanić and Lazarević may not have shared the intent of the JCE members to engage in the JCE's common criminal purpose, they knowingly, actively and substantially contributed to ensuring its success through their active conduct or their omissions.

(i) Lazarević

188. As Commander of the Priština Corps, Lazarević exercised control over every member of the Corps in Kosovo, as well as every member of the military territorial detachments in Kosovo.⁴⁷⁴ He was present in Kosovo on the ““front-line”” throughout the VJ's campaign of forcible displacement.⁴⁷⁵ He participated in the planning and execution of operations conducted by the VJ acting alone or with the MUP forces.⁴⁷⁶

⁴⁷⁰ Judgement, Vol.III, para.478 (referring to Ojdanić's title from 24 November 1998 to February 2000). From 1 July 1996 until 24 November 1998, Ojdanić served as Deputy Chief of the VJ General Staff. *See* Judgement, Vol.III, para.478.

⁴⁷¹ Judgement, Vol.III, para.1195.

⁴⁷² Judgement, Vol.III, paras.625, 924.

⁴⁷³ Judgement, Vol.III, paras.626, 925.

⁴⁷⁴ Judgement, Vol.III, para.819.

⁴⁷⁵ Judgement, Vol.III, para.924.

⁴⁷⁶ Judgement, Vol.III, para.925.

189. Lazarević issued several important orders that resulted in the VJ operating in the crimes sites where many of the forcible displacements occurred.⁴⁷⁷ For example, in Pirane/Pirana, he drafted orders that resulted in a large-scale operation entailing over 1,000 soldiers, 21 tanks, howitzers, and anti-aircraft weaponry.⁴⁷⁸ His visits to units in the field, including units involved in crimes, boosted those soldiers' morale.⁴⁷⁹ He deliberately failed to take adequate steps to prosecute Priština Corps members' crimes of forcible displacement knowing that this failure enabled the VJ forces to continue their campaign of terror, violence and displacement.⁴⁸⁰

(ii) Ojdanić

190. Ojdanić was the highest ranking military officer in the VJ, with *de jure* and *de facto* authority over all VJ forces, including all VJ units in Kosovo.⁴⁸¹ Indeed, his "primary function [...] was to command the VJ."⁴⁸²

191. Using these powers of command, Ojdanić issued orders before and during the NATO campaign for the VJ to carry out operations throughout Kosovo, including to support the MUP.⁴⁸³ Through these orders, the VJ was sent to locations in which crimes were committed.⁴⁸⁴ He also furnished VJ forces with military equipment including weaponry used in the crimes.⁴⁸⁵ He helped to arm the non-Albanian population in Kosovo and ordered their engagement in 1999.⁴⁸⁶

192. Once he set these operations in motion, Ojdanić repeatedly failed to take steps to address his subordinates' crimes that arose from these activities, despite his awareness of their criminal conduct.⁴⁸⁷ Like Lazarević, he knew of the VJ's forcible displacement of Kosovo Albanians in several sites for which the Chamber found him responsible, including Peć/Peja town, Pirane/Pirana, Đakovica/Gjakova town, Prilepnica/Përlepnica, Sojevo/Sojeva, Celina, Turićevac/Turiçec, and

⁴⁷⁷ Judgement, Vol.III, para.925.
⁴⁷⁸ Judgement, Vol.III, para.854.
⁴⁷⁹ Judgement, Vol.III, para.925.
⁴⁸⁰ Judgement, Vol.III, paras.870, 925.
⁴⁸¹ Judgement, Vol.III, paras.485, 487.
⁴⁸² Judgement, Vol.III, para.485.
⁴⁸³ Judgement, Vol.III, para.538.
⁴⁸⁴ Judgement, Vol.III, para.626.
⁴⁸⁵ Judgement, Vol.III, para.626.
⁴⁸⁶ Judgement, Vol.III, para.626.
⁴⁸⁷ Judgement, Vol.III, paras.609-611.

Priština/Prishtina town.⁴⁸⁸ Nevertheless, he failed to take any specific actions with respect to these crimes.⁴⁸⁹

193. In addition Ojdanić failed to adequately address the under-reporting of crimes, including by refusing to discipline Pavković for this breach.⁴⁹⁰ In doing so, he played an important role in “sustaining the culture of impunity surrounding the forcible displacement of the Kosovo Albanian population.”⁴⁹¹

D. Relief sought

194. Those who set out to destroy whole communities because of their ethnicity, who desire and achieve the forced removal of hundreds of thousands of people from their homes and livelihoods, and who are prepared to accept that those people may be beaten, raped or murdered in the course of their removal deserve the severest punishment this Tribunal can give. Those that aid and abet such crimes must expect similar treatment.

195. In *Martić*, the Appeals Chamber upheld a sentence of 35 years imprisonment⁴⁹² for Martić’s conviction as a JCE member for widespread and systematic crimes involving forcible transfer and deportation, murder, beatings and crimes against property between 1991 and 1995.

196. In *Brdanin*, the Appeals Chamber imposed a sentence of 30 years⁴⁹³ imprisonment for aiding and abetting: multiple episodes of torture in six different locations in June and July 1992; wanton destruction of cities, towns and villages, or devastation not justified by military necessity in 10 municipalities;⁴⁹⁴ destruction or wilful damage done to religious institutions;⁴⁹⁵ wilful killings during and immediately after attacks by Bosnian Serb forces on the non-Serb population;⁴⁹⁶ persecutions;⁴⁹⁷

⁴⁸⁸ Judgement, Vol.III, paras.596-597.

⁴⁸⁹ Judgement, Vol.III, paras.596-597.

⁴⁹⁰ Judgement, Vol.III, paras.599-602, 627.

⁴⁹¹ Judgement, Vol.III, para.627.

⁴⁹² *Martić* AJ, para.354.

⁴⁹³ *Brdanin* AJ, para.506.

⁴⁹⁴ *Brdanin* AJ, paras.503-504.

⁴⁹⁵ *Brdanin* AJ, para.351.

⁴⁹⁶ *Brdanin* AJ, paras.229, 239-240.

⁴⁹⁷ *Brdanin* AJ, paras.290, 297, 303.

deportation and forcible transfer.⁴⁹⁸ The indictment period covered 1 April 1992 to 31 December 1992.⁴⁹⁹

197. The crimes of *Martić* and *Brdanin* are comparable in scale and gravity to the underlying crimes and the modes of liability of these Accused. Both judgements show that the appropriate sentences for the crimes committed by Pavković, Šainović and Lukić, and aided and abetted by Ojdanić and Lazarević significantly exceed the sentences of 22 years for the JCE members and 15 years for the aiders and abettors imposed by the Chamber here.

198. The Appeals Chamber should quash these sentences and impose sentences that fully demonstrate that crimes of this type and magnitude will not be tolerated by the international community. The sentences must correspond to the gravity of the crimes and the Accused's leadership roles in them. These sentences are manifestly inadequate and fall well outside the range of sentences available in this case. A clear message must be sent to those who perpetrate crimes on this scale, or who aid and abet them that the International Criminal Judiciary will punish their criminal conduct with its most severe sentences. The sentences imposed on these Accused for their crimes neither properly punish them, nor serve as a sufficient deterrent to others tempted to engage in the wholesale violent displacement, abuse, rape and murder of the ethnic community of an entire region.

Word Count: 22,097



Peter Kremer QC
Senior Appeals Counsel

Dated this 21st day of August 2009
At The Hague, The Netherlands

⁴⁹⁸ *Brdanin* AJ, paras.304, 320.

⁴⁹⁹ *Brdanin* TJ, paras.14-19.

RULE 111 DECLARATION

The Prosecutor will exercise due diligence to comply with his continuing Rule 68 disclosure obligations during the appeal stage of this case. As of the date of this filing, the Prosecutor has disclosed, or is in the process of disclosing, to the Accused all material under Rule 68(i) which has come into his actual knowledge and, in addition, has made available to them collections of relevant material held by the Prosecutor.



Peter Kremer QC
Senior Appeals Counsel

APPENDIX 1: EXHIBITS PERTAINING TO SEXUAL ASSAULT, BY INCIDENT

Date	Location	Perpetrator(s)	Victim(s)	Summary of incident	Exhibit and page numbers	Judgement findings, citations
2 Mar. 1998	Čirez/Qirez	Serbian Police and Army	Ahmeti family women	Allegations that the women of the Ahmeti family were raped after being separated from the men.	P02377, p.6	Judgement, Vol.I, para.851, fn.2236
March 1998	Srbica /Skenderaj	Serb paramilitaries	Young women from village thought to support KLA	200 people were being held in a factory by the forces; young women were separated from the group and assaulted.	P00385, p.5	
4 May 1998	Dobra Voda in Jagodina area	MUP member, Staniša Jakovljević	Jana Branković	While conducting an interview with her, Jakovljević forced Branković to do an indecent act and adultery.	6D01333.E, p.5	
2 Aug. 1998	Malishevo/Malisheva			Reported during Joint Command meeting of 02/08/1998 that three persons were being investigated in Malishevo/Malisheva, one of whom was giving a statement that he committed murder and rape.	P01468, p.37	Judgement, Vol.I, paras.882, 886 (joint VJ-MUP action in Malishevo/Malisheva in August 1998 resulted in the displacement of thousands of Kosovo Albanians)
September 1998	Gornje Obrinje/Abria e Epërme	Yugoslav forces	Albanian civilians	HRW report published in Feb. 1999 included unconfirmed allegations that two Albanian girls were raped before being murdered in Gornje Obrinje in September 1998.	Exh.P441, p.49	Judgement, Vol.I, para.900 (report was widely disseminated to media and government organisations, including FRY & Serbian presidencies, VJ and MUP)
October 1998	Ljebusa	Serb paramilitary police	15-year-old Albanian girl	After she was abducted, the victim was released scratched, weeping, and with her hair cut off (an offence against	P00385, p.5	Judgement, Vol.I, paras.902, 907, 912 (describing joint VJ-MUP operation in Gornje Obrinje/Abria e Epërme in September 1998)

Date	Location	Perpetrator(s)	Victim(s)	Summary of incident	Exhibit and page numbers	Judgement findings, citations
November 1998	Town near Peć/Peja	Three masked policemen	Two Kosovo Albanians	honour). Family then fled Kosovo. Two women raped by 3 masked policemen, after which family fled Kosovo.	P00385, pp.5-6	
April 1999		Seven VJ volunteers in Priština Corps		Volunteers detained for crimes including rape and murder.	P00490.E, p.1; P01938.E, p.2	Judgement, Vol.III, para.748, fn.1906, para.785, fn.1988 (citing to P1938 for criminal activity of seven Priština Corps volunteers, including murder and rape) <i>See also</i> Vol.I, para.645, fns.1653-1654; Vol.III, para.551, fn.1259, para.722, fn.1798, para.775, fn.1975 (citing to P1938 for crimes of volunteers and paramilitaries generally)
16 Apr. 1999	Crnojjevo/ Crmjane village in Đakovica/ Gjakova municipality	VJ members, Milan Tomić and Dejan Marinković, Milovan Trifunović	Merljinda Nezirri, underage Hasima Beriša (Albanian civilians)	Soldiers singled out the victims from a group of refugees, blindfolded them and tied their hands, led them to another room where they beat them and threatened mutilation unless they took off their clothes. They raped one victim and attempted to rape the other.	P00830, pp.5-6; P00845, p.2; P00954.E, pp.42-43; P00955.E, pp.16-17; P00962, pp.15-16; P01011.E, pp.167-168; 3D00589, p.1; 3D01110, pp.368-369; 4D00171.E, pp.5-6; 4D00513, p.1; 5D00726.E, pp.5-6; 5D00889.E, p.1;	Judgement, Vol.I, para.542, fn.1337 (citing to 5D1148, 5D889); Vol.III, para.552, fn.1263 (citing to 3D589, 4D513), para.726, fn.1814 (citing to 4D513), para.847, fn.2152 (citing to 5D1148) Exhs.P830, P845, P954, P955, P962, cited generally for failure to adequately prosecute these crimes

¹ See Judgement, Vol.II, para.483; *Prosecutor v. Milutinović et al.*, Case No. IT-05-87-T, Decision on Lukić Motion for Reconsideration of Trial Chamber's Decision on Motion for Admission of Documents from Bar Table and Decision on Defence Request for Extension of Time for Filing of Final Trial Briefs, 2 July 2008 ("Decision of 2 July 2008"), p.22.

Date	Location	Perpetrator(s)	Victim(s)	Summary of incident	Exhibit and page numbers	Judgement findings, citations
21 Apr. 1999	Suva Reka/Suhareka	Serbian security forces	Two ethnic Albanian refugees	Serb forces held many women captive in various houses; victims were selected from the group and led to another house. The incidents were separate, but in both cases, security forces watched their colleagues sexually assault the victims, and participated in intimidating them.	5D00890.E, pp.2-3; 5D01148.E, p.1; 5D01396.E, p.3; 6D00614.E, p.17, para.11 (admitted through Zlatković, 14 April 2008 ¹) P00388, p.1; P02228, e-court p.22 (regarding HRW “Kosovo Flashes” generally). See Abrahams, 13 July 2006, T.819-822 (original report disseminated in April 1999 included core rape allegations)	
22-23 Apr. 1999	Grebnik village, Klina municipality	Two men, one in military uniform	Špresa Eljšani, Đezida Eljšani, Hana Bajraktari	The men abducted the women from a group of displaced persons and then raped them.	6D01260.E, p.3 (MUP Staff Report signed by Lukić)	
23 Apr. 1999	Kosovska Vitina	VJ members, Nebojša Conić and Milan Đurašković/Milovan Đurašević	Silvija Novićević	Attempted to rape victim and threatened use of weapons.	P00830.E, p.6; P00845.E, p.2; P00954.E, p.23; P00955.E, p.18; 3D01110, p.561; 4D00174.E, p.2 (same as 5D00382.E, p.2)	Judgement, Vol.III, para.725, fn.1809 (citing to 4D174 regarding “alleged improprieties” by brigade members) Exhs.P830, P845, P954, P955, cited generally for failure to adequately prosecute these crimes
2 May 1999	Studime e Poshteme	Serb paramilitaries	Wife of Shukri Gerxhaliu	Paramilitaries threatened to rape wife unless she paid them.	P02257.E, p.4; P02258, e-court p.5	
30 Apr. 1999		MUP reservist, Momčilo	Emrija Ismajli	MUP reservist detained for indecent assault against Kosovo Albanian	P01693, p.7 (MUP Staff Report	Judgement, Vol.III, para.1135, fn.2839

Date	Location	Perpetrator(s)	Victim(s)	Summary of incident	Exhibit and page numbers	Judgement findings, citations
1 May 1999	Osek Hlija	Jovanović VJ member, Zoran Vukadinović	Andelina Dočaj	woman. Vukadinović entered victim's house and attempted to rape her. Two other soldiers sat in the living room with the other family members and eventually warned Vukadinović to leave.	signed by Lukić P01086.E, p.43; 3D00038.E, pp.1-2	
by 8 May 1999	Šipovo	VJ members	Albanian civilian	Around 08/05/1999, Vasiljević met in Belgrade with Deputy Head of Priština Corps' Security Service, and learned that some members of the Corps had committed crimes against the civilian population: a rape and the killing of two civilians of Albanian ethnicity.	3D01116.E, p.215, para.355	
25 May 1999		MUP members	Albanian civilians	MUP members committed serious crimes against the Albanian population, including murder and rape.	P01459, paras.3-4 (Pavković report)	Judgement, Vol.III, para.785, fn.1989
May 1999	Prizren	VJ members/ volunteers Zeljko Jokić and Vlatko Krsmanović	Afrodita Bunjaka / Afrora Bunjaku, underage Zana Dora (Turkish nationality)	After being stranded in town because of air strikes, the men began drinking. Pretending be policemen searching for KLA members, Jokić and Krsmanović abused residents and took away several women and raped/committed unnatural acts against them.	P00830.E, p.4; P00845, p.2; P00954.E, p.61; P00955.E, p.18 P00962, p.16; 3D01110, pp.387, 561; 4D00398.E, p.1; 5D01351.E, pp.1-2; [REDACTED]	Judgement, Vol.I, para.543, fn.1344 (citing P962, [REDACTED]), para.543, fn.1345 (citing 5D1351) Exhs.P830, P845, P954, P955 cited generally for failure to adequately prosecute these crimes
27-28 May 1999	Near Glogovac	VJ member/ reservist Tomislav Milenković	Milana Šukrija / Šukrija Milaću (refugee)	Soldier singled out victim from a column of Albanian refugees near mosque and brought her back to the unit camp, where he hit her and raped her repeatedly.	P00830.E, p.5; P00845.E, p.2; P00955, p.16 P01011.E, p.167; 3D01110, p.559; 4D00171.E, p.5	Exhs.P830, P845, 4D1110 cited generally for failure to adequately prosecute these crimes

Date	Location	Perpetrator(s)	Victim(s)	Summary of incident	Exhibit and page numbers	Judgement findings, citations
31 May 1999	Dubrava Istok	Srboljub Sedlarević, Vojislav Theodorović (armed Serbian civilians) and Rajčić Ivan	Ramaj Ganimeta, Ramaj Špresa (Albanian women)	After maltreating her family members, three masked and armed men brought the victims from their house to a meadow and raped them.	6D00614.E, p.39, para.102 (admitted through Pantić, 2 April 2008 ²); 6D01604.E, p.10, para.39	
During the NATO conflict, 1999	Gjakove (Ošek and Gergoc villages)	VJ members/reservists		Witness (Nike Peraj) heard of two cases of rape in named villages, but states that VJ commanders did not order the rapes which were isolated cases.	P02253, p.3, para.15; P02248, e-court p.29, para.12	Judgement, Vol.I, para.786, fn.2052 (referring to P02253, para.15 for “serious crimes” committed by VJ reservists)
During the war, 1999	Gnjilane/Gjilan sector	VJ member/volunteer Nebojša Stojković		Accused of committing murder, rape, and theft throughout the war.	4D00171, p.7	
Period of NATO bombing, 1999	Kosovo	Yugoslav soldiers, Serbian police, paramilitaries	Ethnic Albanians	Rape and sexual violence were components of coordinated campaign to expel large numbers of ethnic Albanians from Kosovo. Rapes of ethnic Albanians were not rare and isolated acts committed by individual Serbian or Yugoslav forces, but rather were instruments to terrorize the civilian population, extort money from families, and push people to flee their homes. In total, HRW found credible accounts of 96 cases of sexual assault by Yugoslav soldiers, Serbian police, or	P02228, e-court pp.6-7, 24	

² See Judgement, Vol.II, para.483; Decision of 2 July 2008, p.21.

Date	Location	Perpetrator(s)	Victim(s)	Summary of incident	Exhibit and page numbers	Judgement findings, citations
				paramilitaries during the period of NATO bombing.		

APPENDIX 2: LIST OF CRIMES FOR WHICH THE ACCUSED WERE CONVICTED

1. Šainović, Pavković and Lukić were convicted under Article 7(1) as JCE members for committing the following crimes:

- Deportation and other inhumane acts (forcible transfer) as crimes against humanity in Peć/Peja town, Beleg, Đakovica/Gjakova town, Korenica, Dobroša/Dobrosh, Ramoc, Meja, other villages in the Reka/Carogoj area, Pirane/Pirana, Dušanovo/Dushanova, Celina, Suva Reka/Suhareka town, Turićevac/Turiçec, Izbica, Tušilje/Tushila, Ćirez/Qirez, Kosovska Mitrovica/Mitrovica town, Žabare/Zhabar, Vučiturn/Vushtrria town (forcible transfer conviction only), near Gornja Sudimlja/Studimja e Epërme, Priština/Prishtina town, Žegra/Zhegra, Vladovo/Lladova, Prilepnica/ Përlepnicë, Sojevo/Sojeva, Mirosavlje/Mirosala, Staro Selo, Kotlina/Kotllina, Kačanik/Kaçanik, Dubrava/Lisnaja;
- Murder and persecutions (murder) as crimes against humanity and murder as a violation of the laws and customs of war in Đakovica/Gjakova town, Korenica, Meja, Bela Crkva/Bellacërka, Mala Kruša/Krusha e Vogël, Suva Reka/Suhareka, Izbica, near Gornja Sudimlja/Studimja e Epërma, and Dubrava/Lisnaja; and
- Persecutions (destruction of or damage to religious property) as a crime against humanity in Celina, Suva Reka/Suhareka, and Vlačica/Vlaštica.¹

2. In addition, Pavković was also convicted for persecutions as a crime against humanity for the sexual assaults of eight young women in Beleg and Ćirez/Qirez.²

3. Ojdanić and Lazarević were convicted under Article 7(1) for aiding and abetting deportation and forcible transfer in nine municipalities, encompassing 19 towns and villages. Specifically, they were both convicted for crimes in Peć/Peja town, Đakovica/Gjakova town, Korenica, Dobroš/Dobrosh, Ramoc, Meja, other

¹ Judgement, Vol.III, paras.475, 788, 1138.

² Judgement, Vol III, para.788; Vol.II, paras.68, 689.

villages in the Reka/Caragoj valley, Pirane/Pirana, Celina, Turićevac/Turićec, Izbica, Tušilje/Tushila, Ćirez/Qirez, Priština/Prishtina town, Žegra/Zhegra, Vladovo/Lladova, Prilepnica/Përlepnică, Kotlina/Kotllina, Kačanik/Kaçanik, and Dubrava/Lisnaja.³

4. Ojdanić was also separately convicted for deportation and forcible transfer in Sojevo/Sojeva, Mirosavlje/Mirosala, and Staro Selo,⁴ while Lazarević was separately convicted for these crimes in Beleg.⁵ They were not convicted for aiding and abetting murder, religious destruction or sexual assault.

³ Judgement, Vol.III, paras.630, 930.

⁴ Judgement, Vol.III, para.630.

⁵ Judgement, Vol.III, para.930.

PROSECUTION GLOSSARY

Pleadings, Orders, Decisions etc from Prosecutor v. Šainović et al., Case No. IT-05-87-A

Abbreviation used in Appeal	Full citation
Appeals Chamber	Appeals Chamber in <i>Prosecutor v. Šainović et al.</i> , Case No. IT-05-87-A
Chamber	Trial Chamber in <i>Prosecutor v. Milutinović et al.</i> , Case No. IT-05-87-T
Decision of 2 July	Decision on Lukić Motion for Reconsideration of Trial Chamber's Decision on Motion for Admission of Documents from Bar Table and Decision on Defence Request for Extension of Time for Filing of Final Trial Briefs, <i>Prosecutor v. Milutinović et al.</i> , Case No. IT-05-87-T, 2 July 2008.
Indictment	Third Amended Joinder Indictment, <i>Prosecutor v. Milutinović et al.</i> , Case No. IT-05-87-PT, 21 June 2006
Judgement	Judgement, <i>Prosecutor v. Milutinović et al.</i> , Case No. IT-05-87-T, T.Ch., 26 February 2009
Lazarević Closing Brief	Vladimir Lazarević's Final Trial Brief, <i>Prosecutor v. Milutinović et al.</i> , Case No. IT-05-87-PT, 29 July 2008 (public redacted)
[REDACTED]	[REDACTED]
Lazarević Pre-Trial Brief	General Vladimir Lazarević's Pre-Trial Brief pursuant to Rule 65ter (F), <i>Prosecutor v. Milutinović et al.</i> , Case No. IT-05-87-PT, 6 June 2006
Lukić Closing Brief	Motion to Replace Public Redacted Version of Final Trial Brief, Corrigendum Sreten Lukić's Final Defense Trial Brief, <i>Prosecutor v. Milutinović et al.</i> , Case No. IT-05-87-PT, 7 August 2008
Milutinović Closing Brief	Mr. Milan Milutinović's Final Written Submissions pursuant to Rule 86, <i>Prosecutor v. Milutinović et al.</i> , Case No. IT-05-87-PT, 15 July 2008
Milutinović Pre-Trial Brief	Defence Pre-Trial Brief filed on Behalf of Mr. Milan Milutinović pursuant to Rule 65ter (F), <i>Prosecutor v. Milutinović et al.</i> , Case No. IT-05-87-PT, 6 June 2006
Ojdanić Closing Brief	General Dragoljub Ojdanić's Closing Brief, <i>Prosecutor v.</i>

Abbreviation used in Appeal	Full citation
	<i>Milutinović et al.</i> , Case No. IT-05-87-PT, 29 July 2008
[REDACTED]	[REDACTED]
Pavković Closing Brief	Public Redacted Final Brief of Nebojša Pavković, <i>Prosecutor v. Milutinović et al.</i> , Case No. IT-05-87-PT, 28 July 2008
Pavković Pre-Trial Brief	Defence Pre-Trial Brief filed on Behalf of Mr. Nebojša Pavković pursuant to Rule 65ter (F), <i>Prosecutor v. Milutinović et al.</i> , Case No. IT-05-87-PT, 6 June 2006
Prosecution Closing Brief	Public Redacted Final Trial Brief, <i>Prosecutor v. Milutinović et al.</i> , Case No. IT-05-87-PT, 28 July 2008
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
Prosecution Pre-Trial Brief	Prosecutor's Pre-Trial Brief Pursuant to Rule 65ter (E) (i), <i>Prosecutor v. Milutinović et al.</i> , Case No. IT-05-87-PT, 10 May 2006
Prosecution Rule 65ter Witness List of 10 May 2006, [REDACTED]	Prosecution's Submissions Pursuant to Rule 65ter(E) with <u>Confidential</u> Annex A and Annexes B and C, [REDACTED]
Rule 98bis Decision	<i>Prosecutor v. Milutinović et al.</i> , Case No. IT-05-87-T, 18 May 2007, T.12771-12808
Šainović Closing Brief	Defence Submission Final Trial Brief, <i>Prosecutor v. Milutinović et al.</i> , Case No. IT-05-87-PT, 29 July 2006 (public redacted)
Šainović Pre-Trial Brief	Defence Pre-Trial Brief, <i>Prosecutor v. Milutinović et al.</i> , Case No. IT-05-87-PT, 6 June 2006

Other ICTY authorities

Abbreviation used in Appeal	Full citation
Čelebići AJ	<i>Prosecutor v. Zejnil Delalić, Zdravko Mucić, a.k.a. "Pavo", Hazim Delić & Esad Landžo, a.k.a. "Zenga"</i> , Case No. IT-96-21-A, App.Ch., Judgement, 20 February 2001
Čelebići TJ	<i>Prosecutor v. Zejnil Delalić, Zdravko Mucić, a.k.a. "Pavo", Hazim Delić & Esad Landžo, a.k.a. "Zenga"</i> , Case No. IT-96-21-T, T.Ch., Judgement, 16 November 1998
Blaškić AJ	<i>Prosecutor v. Tihomir Blaškić</i> , Case No. IT-95-14-A, App.Ch.,

Abbreviation used in Appeal	Full citation
	Judgement, 29 July 2004
<i>Blaškić</i> TJ	<i>Prosecutor v. Tihomir Blaškić</i> , Case No. IT-95-14-T, T. Ch., Judgement, 3 March 2000
<i>Blagojević</i> AJ	<i>Prosecutor v. Vidoje Blagojević & Dragan Jokić</i> , Case No. IT-02-60-A, App.Ch., Judgement, 9 May 2007
<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>Brdanin</i> AD or “ <i>Brdanin</i> Decision”	<i>Prosecutor v. Radoslav Brdanin</i> , Case No. IT-99-36-AR73.10, App.Ch., Decision on Interlocutory Appeal, 19 March 2004
<i>Furundžija</i> TJ	<i>Prosecutor v. Anto Furundžija</i> , Case No. IT-95-17/1-T, T.Ch., Judgement, 10 December 1998
<i>Halilović</i> AJ	<i>Prosecutor v. Sefer Halilović</i> , Case No. IT-01-48-A, App.Ch., Judgement, 16 October 2007
<i>Karadžić</i> JCE III Foreseeability AD	<i>Prosecutor v. Radovan Karadžić</i> , Case No. IT-95-5/18-AR72.4, App.Ch., Decision on Prosecution’s Motion Appealing Trial Chamber’s Decision on JCE III Foreseeability, 25 June 2009
<i>Krnojelac</i> AJ	<i>Prosecutor v. Milorad Krnojelac</i> , Case No. IT-97-25-A, App.Ch., Judgement, 17 September 2003
<i>Krstić</i> AJ	<i>Prosecutor v. Radislav Krstić</i> , Case No. IT-98-33-A, App.Ch., Judgement, 19 April 2004
<i>Krstić</i> TJ	<i>Prosecutor v. Radislav Krstić</i> , Case No. IT-98-33-T, T.Ch., Judgement, 2 August 2001
<i>Kvočka</i> AJ	<i>Prosecutor v. Miroslav Kvočka, Milojica Kos, Mlado Radić, Zoran Žigić & Dragoljub Prcać</i> , Case No. IT-98-30/1-A, App.Ch., Judgement, 28 February 2005
<i>Kvočka</i> TJ	<i>Prosecutor v. Miroslav Kvočka, Milojica Kos, Mlado Radić, Zoran Žigić & Dragoljub Prcać</i> , Case No. IT-98-30/1-T, T.Ch., Judgement, 2 November 2001
<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.,

Abbreviation used in Appeal	Full citation
	Judgement, 12 June 2007
<i>Mrkšić</i> AJ	<i>Prosecutor v. Mile Mrkšić & Veselin Šljivančanin</i> , Case No. IT-95-13/1-A, App.Ch., Judgement, 5 May 2009
<i>Naletilić</i> AJ	<i>Prosecutor v. Mladen Naletilić & Vinko Martinović</i> , Case No. IT-98-34- A, App.Ch., Judgement, 3 May 2006
<i>Orić</i> TJ	<i>Prosecutor v. Naser Orić</i> , Case No. IT-03-68-T, T.Ch., Judgement, 30 June 2006
<i>Simić</i> AJ	<i>Prosecutor v. Blagoje Simić</i> , Case No. IT-95-9-A, App.Ch., Judgement, 28 November 2006
<i>Vasiljević</i> AJ	<i>Prosecutor v. Mitar Vasiljević</i> , Case No. IT-98-32-A, App.Ch., Judgement, 25 February 2004

ICTR authorities

Abbreviation used in Appeal	Full citation
<i>Gacumbitsi</i> AJ	<i>Prosecutor v Sylvestre Gacumbitsi</i> , Case No. ICTR-2001-64-A, App.Ch., Judgement, 7 July 2006
<i>Ndindabahizi</i> AJ	<i>Prosecutor v Emmanuel Ndindabahizi</i> , Case No. ICTR-01-71-A, App.Ch., Judgement, 16 January 2007
<i>Rutaganda</i> AJ	<i>Prosecutor v Georges Anderson Nderubumwe Rutaganda</i> , Case No. ICTR-96-3-A, App.Ch., Judgement, 26 May 2003
<i>Semanza</i> AD	<i>Laurent Semanza v. Prosecutor</i> , Case No. ICTR-97-20-A, App.Ch., Decision, 31 May 2000
<i>Semanza</i> AJ	<i>Prosecutor v. Laurent Semanza</i> , Case No. ICTR-97-20-A, App.Ch., Judgement, 20 May 2003
<i>Simba</i> AJ	<i>Prosecutor v. Aloys Simba</i> , Case No. ICTR-01-76-A, App.Ch., 27 November 2007

Other Abbreviations

Abbreviation used in Appeal	Full citation
Accused	Nikola Šainović, Dragoljub Ojdanić, Nebojša Pavković, Vladimir Lazarević, Sreten Lukić
Exh.	Exhibit
Exhs.	Exhibits
fn.	Footnote
fns.	Footnotes
FRY	Federal Republic of Yugoslavia
ICTR	International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other such Violations Committed in the Territory of Neighbouring States between 1 January 1994 and 31 December 1994

Abbreviation used in Appeal	Full citation
ICTY	International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991
IHL	International Humanitarian Law
JCE	Joint Criminal Enterprise
JCE III	Extended form of JCE
Joint VJ-MUP forces	All forces of the FRY and Serbia – including VJ, MUP and collaborating forces – found by the Chamber to have participated in the commission of crimes. (<i>See</i> Judgement, Vol.I, para.746 (describing VJ, MUP and other forces under the control of FRY/Serbian state authorities operating in Kosovo). <i>See generally</i> Judgement, Section VI.A.)
JSO	Special Operations Unit of the MUP State Security Department (<i>Jedinica za Specijalne Operacije</i>)
KLA	Kosovo Liberation Army (<i>Ushtria Çlirimtare e Kosovës</i>)
KVM	Kosovo Verification Mission
LDK	Democratic League of Kosovo (<i>Lidhja Demokratike e Kosovës</i>)
MUP	Serbian Ministry of the Interior Police (<i>Ministarstvo Unutrašnjih Poslova</i>)
NATO	North Atlantic Treaty Organization
Original Accused	Milan Milutinović, Nikola Šainović, Dragoljub Ojdanić, Nebojša Pavković, Vladimir Lazarević, Sreten Lukić
OSCE	Organisation for Security and Co-operation in Europe
p.	page
para.	paragraph
paras.	paragraphs
pp.	pages
RPO	Reserve Police Detachments or Reserve Police Squads (<i>Rezervna Policijska Odelenja</i>)

Abbreviation used in Appeal	Full citation
SAJ	Special Anti-Terrorist Units of the MUP (<i>Specijalna Antiteroristička Jedinica</i>)
SUP	Secretary of Internal Affairs (<i>Sekretarijat Unutrašnjih Poslova</i>)
T.	Trial Transcript
UNSC	United Nations Security Council
VJ	Army of Yugoslavia (<i>Vojska Jugoslavije</i>)