

**UNITED  
NATIONS**



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

Case No. IT-05-87-PT

Date: 10 May 2006

**Before:** Judge Patrick Robinson, Presiding  
Judge O-Gon Kwon  
Judge Iain Bonomy

**Registrar:** Mr. Hans Holthuis

**PROSECUTOR**

v.

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

**PROSECUTION'S PRE-TRIAL BRIEF  
PURSUANT TO RULE 65ter(E)(i)**

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## I. INTRODUCTION

### A. Procedural History

1. Pursuant to Rule 65ter(E)(i) of the Rules of Procedure and Evidence ("Rules") and the order of the Pre-Trial Judge of 5 April 2006<sup>1</sup>, the Prosecutor submits this Pre-Trial Brief which sets forth the Prosecution case and addresses the relevant factual and legal issues. The accused Dragoljub Ojdanić<sup>2</sup> and Nikola Šainović<sup>3</sup> have agreed to certain matters, which are set out in Annex A and B to this Pre-Trial Brief.<sup>4</sup> At the time this brief was filed, the Prosecutor had not yet received any response of the other accused with regard to potential agreed facts. The Prosecution thus acknowledges and draws to the attention of the Trial Chamber that all other matters in this case are in dispute. All references in this document to the Indictment refer to the Second Amended Joinder Indictment, submitted on 5 April 2006 and which is pending confirmation. The Prosecution is filing, contemporaneously with this Pre-Trial Brief, the other documents required by Rule 65ter(E).

### B. The Indictment

#### 1. The charges

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. The campaign was the result of a common plan, design or purpose to modify the ethnic balance in Kosovo in order to ensure continued Serbian control over the province. The crimes charged in the Indictment were the result of the implementation of the plan between 1 January and 20 June 1999. During this period approximately 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. As a part of this campaign, forces of the Federal Republic of Yugoslavia ("FRY") and Republic of Serbia ("Serbia") engaged in a campaign of terror and violence, including murders, sexual assaults, beatings, robbery, looting and other physical and psychological abuse of Kosovo Albanians, as well

<sup>1</sup> *Prosecutor v. Milutinović et. al.*, Case No. IT-05-87-PT, Pre-Trial Order and Appended Work Plan, 5 April 2006.

<sup>2</sup> See Letter of the Ojdanić Defence to the Prosecution, dated 29 January 2003.

<sup>3</sup> See Letter of the Šainović Defence to the Prosecution, dated 9 May 2004. The Šainović Defence had first declined to identify agreed facts on the basis of the indictment and proposed to develop their own approach. Per letter dated 16 January 2004, they offered a set of proposed agreed facts to the Prosecution. As stated by the Prosecution in the Status Conference on 21 January 2003 and further explained in a letter to the Milutinović Defence dated 9 February 2003, the proposed facts were irrelevant to the case and partly contentious and thus not acceptable for agreement by the Prosecution. Per letter dated 9 May 2004, the Šainović Defence offered a new set of facts based on the indictment which the Prosecution agrees on as set out in Annex B.

<sup>4</sup> No such agreement has been reached on any point with the accused Milan Milutinović.

as the destruction of Kosovo Albanian homes and cultural and religious sites between mid-March and 20 June 1999.

3. During the period between 1 January and 20 June 1999, a state of armed conflict existed between the Kosovo Liberation Army ("KLA") on the one hand, and the forces of the FRY and Serbia, on the other. These forces of the FRY and Serbia included the Army of Yugoslavia ("VJ"), the forces of the Ministry of Internal Affairs of Serbia ("MUP"), local defence forces in Kosovo, as well as other associated forces. In addition, from 24 March to 20 June 1999, a state of armed conflict existed between the forces of the FRY and Serbia, on the one hand, and NATO, on the other. The crimes committed in Kosovo for which the accused are charged were committed by forces of the FRY and Serbia.

2. The relationship with case IT-02-54-T and indictment IT-03-70-I

4. The accused Milutinović, Šainović and Ojdanić were originally indicted together with Slobodan Milošević and Vladimir Stojiljković under case no. IT-99-37. Stojiljković died on 13 April 2002. After Slobodan Milošević was arrested and transferred to the Tribunal, it was decided that he should be tried separately for allegations concerning Kosovo, Croatia and Bosnia-Herzegovina under case no. IT-02-54. In case no. IT-02-54, the Prosecution in 2002 and 2003 presented its case with regard to Kosovo and the Accused appeared to have closed his Defence case for the Kosovo case component in early 2006. The trial unexpectedly ended without a judgment due to the sudden death of Slobodan Milošević. Due to the identity of the crime-base charges in IT-02-54 and the instant case and the subordination and proximity of the accused in this case to Slobodan Milošević, much of the evidence adduced by the Prosecution in IT-02-54 will be led once more in this trial.

5. The accused Payković, Lazarević, Đorđević and Lukić were initially indicted under case no. IT-03-70-I. On 18 November 2003, the Prosecution filed a Motion for Joinder with case no. IT-99-37-PT. By decision of 4 December 2003, the Trial Chamber found the Joinder Motion to have been prematurely filed and denied it without prejudice and with the right of the Prosecution to apply again when any of the accused of case no. IT-03-70-I appeared before the Tribunal. After the accused Lazarević was transferred to the Tribunal in February 2005, the Prosecution re-submitted its application for joinder of the two cases on 5 April 2005. By decision of the Trial Chamber issued

on 8 July 2005, the joinder of case nos. IT-99-37 and IT-03-70 was granted, and the instant case no. IT-05-87 was assigned.<sup>5</sup>

## II. THE PROSECUTION CASE

### A. Widespread or systematic attack on the civilian population

#### 1. The law on Article 5 of the Statute

6. In order for a crime to amount to a crime against humanity under Article 5 of the Statute, the following elements must be met: (1) there must be an attack, (2) the acts of the perpetrator must be part of the attack, (3) the attack must be directed against any civilian population, (4) the attack must be widespread or systematic, and (5) the perpetrator must know that there is an attack on the civilian population and know that his acts comprise part of the attack.<sup>6</sup> In addition, Article 5 of the Statute imposes a jurisdictional requirement: that the crimes are “committed in armed conflict.”<sup>7</sup> The attack on any civilian population and armed conflict are separate notions.<sup>8</sup>

7. In relation to the element of the “civilian population”, it is sufficient to show that enough individuals were targeted in the course of the attack or that they were targeted in such a way as to satisfy the Chamber that the attack was in fact directed against a civilian “population”, rather than against a limited and randomly selected number of individuals.<sup>9</sup> The presence of members of resistance groups or former combatants, who have laid down their arms, within a population does not alter its “civilian” character.<sup>10</sup> In case of doubt as to whether a person is a civilian, that person shall be considered to be a civilian.<sup>11</sup>

8. The phrase “directed against” means that the civilian population must be the primary object of the attack.<sup>12</sup> The Appeals Chamber has listed the following factors to be taken into account by a Trial Chamber when deciding whether an attack was “directed against” a civilian population: the means and methods used in the course of the attack, the status of the victims, their number, the

<sup>5</sup> *Prosecutor v. Milutinović et. al.*, Case No. IT-99-37-PT & IT-03-70-PT, Decision on Prosecution Motion for Joinder, 8 July 2005.

<sup>6</sup> *Prosecutor v. Blaškić*, Case No. IT-95-14-A, Appeal Chamber Judgement, 29 July 2004 (“*Blaškić* Appeal Judgement”), para. 124; *Prosecutor v. Kordić and Cerkez*, Judgement, Appeals Chamber, 17 December 2004, paras. 99, 100 (“*Kordić* Appeal Judgement”).

<sup>7</sup> See *infra* paras. 16, 24-28.

<sup>8</sup> *Ibid.*, para. 86. See also, *Prosecutor v. Tadić*, Case No. IT-94-1-A, Appeal Chamber Judgement, 15 July 1999, paras. 248-51 (“*Tadić* Appeal Judgement”).

<sup>9</sup> *Ibid.*, para. 90.

<sup>10</sup> *Blaškić* Appeal Judgement, paras. 113-15, (the number of soldiers as well as whether the soldiers are on leave are factors to take into consideration in determining whether the presence of soldiers within a civilian population deprives it of its civilian character).

<sup>11</sup> Additional Protocol I, Art. 50 (3). See *Blaškić* Appeal Judgement, para. 113.

discriminatory nature of the attack, the nature of the crimes committed in its course, the resistance to the assailants at the time, and the extent to which the attacking force may be said to have complied or attempted to comply with the precautionary requirements of the laws of war.<sup>13</sup>

9. The attack must be either widespread or systematic.<sup>14</sup> “Widespread” refers to the large-scale nature of the attack and the number of victims. “Systematic” refers to the organised nature of the acts of violence and the improbability of their random occurrence.<sup>15</sup> An assessment of what constitutes a widespread or systematic attack is generally a relative exercise in that it depends upon the civilian population which is being attacked. According to the Appeals Chamber, the consequences of the attack upon the targeted population, the number of victims, the nature of the acts, the possible participation of officials or authorities, or any identifiable patterns of crimes can be taken into account as factors in the determination of whether an attack satisfies either or both requirements of a widespread or systematic attack.<sup>16</sup> A plan or policy is not a legal element of a crime against humanity.<sup>17</sup>

10. The acts of an accused constitute part of an attack when they are objectively part of the attack, coupled with the knowledge on the part of the accused that there is an attack on the civilian population and that his acts are part thereof.<sup>18</sup> A crime would only be regarded as an “isolated act”, as opposed to part of the attack, when it is so far removed from the attack that, having considered the context and circumstances in which it was committed, it cannot reasonably be said to have been part of the attack.<sup>19</sup>

11. As to the *mens rea* required for responsibility under Article 5, the accused need not have knowledge of the details of the attack on the civilian population. It suffices that he knows that there is an attack on the civilian population and that he takes the risk that his acts are part of this attack.<sup>20</sup> The motives of the accused for taking part in the attack are irrelevant and the accused need not share the purpose or goal behind the attack. It is the attack, not the acts of the accused, which must be directed against the civilian population.<sup>21</sup>

<sup>12</sup> *Prosecutor v. Kunarac*, Case No. IT-26-23 & 23/1, Appeal Chamber Judgement, 12 June 2002, , para. 91 (“*Kunarac* Appeal Judgement”).

<sup>13</sup> *Id.*

<sup>14</sup> *Ibid.*, para. 93.

<sup>15</sup> *Ibid.*, para. 94.

<sup>16</sup> *Ibid.*, para. 95.

<sup>17</sup> *Blaškić* Appeal Judgement, paras. 100 and 120.

<sup>18</sup> *Kunarac* Appeal Judgement, para. 99.

<sup>19</sup> *Ibid.*, para. 100.

<sup>20</sup> *Ibid.*, para. 102.

<sup>21</sup> *Ibid.*, para. 103.

## 2. The facts

### (a) The widespread nature of the attack

12. The evidence will show that a widespread and systematic attack on the Kosovo Albanian civilian population was carried out at the time relevant to the Indictment.

13. Villages were attacked by the forces of FRY and Serbia throughout the entire province of Kosovo. Witnesses from many different municipalities and villages throughout the entire territory of Kosovo will testify as to how the Kosovo Albanian civilian population in their respective villages were mistreated, killed and expelled.<sup>22</sup> This evidence will demonstrate the large-scale nature of the mistreatment, killing and expulsion of the Kosovo Albanian civilian population and the high number of victims.<sup>23</sup>

### (b) The systematic character of the attack

14. The attack on the individual villages throughout the entire province of Kosovo was conducted in a systematic way by the forces of FRY and Serbia. Witnesses from many different municipalities and villages will testify about the shelling of their villages, the burning of their houses, the killing of their livestock, the mistreatment and killing of men, women, children and the elderly and expulsion of all villagers.<sup>24</sup> These expected testimonies will reveal a unique and clear pattern of crimes committed against the Kosovo Albanian civilian population and demonstrate that this constant repetition of similar criminal conduct during the period relevant to the Indictment was not accidental.

<sup>22</sup> See the summaries of expected testimony of the following witnesses for the individual municipalities: Xhemajl Beqiri, Shukri Buja, Ian Hendrie, Imer Imeri, Helena Ranta, Nesret Shabani (Račak – Štimlje-Shtime); Hamide Fondaj, Osman Kuci, Halit Berisha, Hysni Berisha and Shyrete Berisha (Suva Reka-Suharekë); Emin Kabashi, K 14, Nazilie Bala (Pristina-Prishtinë); Bajram Bucaliu and Florim Elmi Krasniqi (Uroševac-Ferizaj); Reshit Salihi, Sabri Popaj, Isuf Zhuniqi (Orahovac-Rahovec); Rahim Latifi, Halil Morina, Rexhep Krasniqi and Hysni Kryeziu (Prizren); Liri Loshi, Mustafa Draga, Milazim Thaci, Sadik Januzi, Hadije Fazliu, K 24, Xhevahire Rrahmani (Srbica-Skenderaj); Lirij Imeraj and Sofije Imeraj (Padalište-Padalishte-Istok/Istog municipality); Musa Krasniqi, Milaim Cekaj, and Gani Bacaj (Dubrava-Dubravë Prison-Istok/Istog municipality); Ndrec Konaj and K 50 (Peć-Pejë); Aferdita Hajrizi, K 15, Muharem Demiraj (Kosovska Mitrovica-Mitrovicë); Hani Hoxha, Behar Haxhiavdija, Ismet Haxhiavdija, Witness K13, Fuad Haxhibeqiri, Merfidete Selmani, Nike Peraj and Martin Pnishi (Đakovica-Gjakovë); Hazbi Loku, Isa Raka, Sejdi Lami and Fadil Vishi, Muharrem Dashi (Kačanik); K 20, Fetije Vishaj and Mehmet Mazrekaj (Dečani-Dečan); Abdylhaqim Shaqiri and Qamil Shabani (Gnjilane/Gjilan); Sabit Kadriu, Shukri Gerxhaliu and Fedrije Hxafa (Vucitren-Yushtrri).

<sup>23</sup> Patrick Ball, Frederik Abrahams, Sandra Mitchell, a Representative of an International Humanitarian Organisation, Dr. Erik Baccard, William Fulton, Inge Joaqim, an DNA expert and a Representative of the International Commission for Missing Persons, are expected to provide an overview with regard to the individual crime sites as well as with regard to the individual crimes (deportation, sexual assault, murder) concerned. Further, see the expected testimonies of all witnesses named in footnote 22 which paint a clear and concise picture of systematic attacks on all villages, following the same pattern of conduct.

<sup>24</sup> See footnote 22.

(c) Civilian population

15. The attack was directed against the Kosovo Albanian civilian population as such, and not against only a limited number of individuals, namely, KLA fighters. Kosovo Albanian civilians, including women, children and elderly villagers, were systematically mistreated, killed and expelled from their villages. It was the Kosovo Albanian civilian population, and not the KLA, which was the primary, and by no means incidental, target of this attack.<sup>25</sup>

**B. Armed conflict<sup>26</sup> - Article 3 of the Statute**1. The law on armed conflict(a) Armed conflict

16. For the Tribunal to have jurisdiction under Article 3 of the Statute, it is required that the crimes were committed during an armed conflict. The Appeals Chamber in *Prosecutor v. Tadic* held that "an armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State."<sup>27</sup> The above is the relevant test to be applied by the Trial Chamber when determining whether an armed conflict existed in Kosovo at all times relevant to the Indictment for the purposes of establishing jurisdiction over crimes charged pursuant to Article 3 and 5 of the Statute.

17. Additional Protocol II and the Commentaries to the Geneva Conventions may provide guidance in the definition of the legal elements constituting "armed conflict".<sup>28</sup> Additional Protocol II applies to armed conflicts "which take place in the territory of a High Contracting party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol."<sup>29</sup> By way of a

<sup>25</sup> See the witnesses named in footnotes 22 and 23 above who are expected to testify to this aspect of the case.

<sup>26</sup> The following witnesses are expected to testify to aspects that will prove that an armed conflict existed at all times relevant to the indictment: Fred Abrahams, Veton Surroi, John Crosland, Phil Coe, Sabit Kadriu, Martin Prnishi, Klaus Naumann, Shukri Buja, Loshi Liri, Karol Drewienkiewicz, J. Maisonneuve, Richard Ciaglinski, Milazim Thaqi, K6, Ratimir Tanic, Gani Baqaj, Ali Hoti, Ibrahim Rugova, Wolfgang Petritsch, K5, Paddy Ashdown, William Walker, Emin Kabashi, K14, K25, Adnan Merovci. See also Exhibits 3.005, 4.001, 4.008, 4.012, 4.013, 4.363, 4.364, 4.366, 4.367, 4.368, 4.370, 4.372, 5.303, 2.1.1 to 2.1.36, 2.10.1 to 2.10.7, 4.316, 5.360, 5.030, 5.376, 4.084, 4.048, 2.12.1 to 2.12.28, 4.017, 4.271, 4.273, 4.005, 4.004, 4.231, 4.242, 4.272, 4.274, 4.307, 4.253, 4.277, 4.258, 4.276, 4.275, 4.304, 4.278, 4.305, 4.279, 4.283, 4.252, 4.284, 4.280, 4.285, 4.259, 4.055, 4.266, 2.1.20, 2.1.18, 2.1.33, 2.1.21, 2.1.22, 4.286.

<sup>27</sup> *Prosecutor v. Duško Tadic*, Appeals Chamber, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, Case No. IT-94-I-AR72, 2 October 1995, para. 70.

<sup>28</sup> *Prosecutor v. Milošević*, Case No. IT-02-54-T, Decision on Motion for Judgement of Acquittal, 16 June 2004, para. 19.

<sup>29</sup> Additional Protocol II, Art. 1(1).

definition in the negative, Protocol II further provides that the Protocol “shall not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts.”<sup>30</sup>

18. The Trial Chamber in *Prosecutor v. Delalić et. al.* held, in relation to internal armed conflicts, that “in order to distinguish from cases of civil unrest or terrorist activities, the emphasis is on the protracted extent of the armed violence and the extent of organisation of the parties involved.”<sup>31</sup> The protracted extent of armed violence appears to primarily imply a time element. Additional criteria, such as the intensity of the clashes, the number of forces engaged on both sides, the number of victims, the extent of destruction, the sophistication of weapons used, and the nature of the operations conducted, may be taken into account by a Trial Chamber when deciding whether the armed violence exerted is to be classified as “protracted”.

19. The non-governmental group need not have the same structure as an army but needs to function in certain respects as the armed forces of the State. For example, Additional Protocol II includes the requirement of being “under responsible command” as a necessary feature for armed groups to come within the scope of the Protocol.<sup>32</sup>

20. Finally, it is noted that the Appeals Chamber has held that “[t]he state of armed conflict is not limited to the areas of actual military combat but exists across the entire territory under the control of the warring parties.”<sup>33</sup>

(b) Nexus between the crime and the armed conflict

21. In the *Tadić* Jurisdiction Decision, the Appeals Chamber stated that to amount to a war crime the offences had to be “closely related” to the armed conflict, but it did not spell out the nature of the required relation. In the *Kunarac* Appeal Judgement, the Appeals Chamber endorsed

<sup>30</sup> Additional Protocol II, Art. 1(2).

<sup>31</sup> *Prosecutor v. Zejnil Delalić, Zdravko Mucić, Hazim Delić and Esad Landžo*, Case No. IT-96-21-T, Trial Chamber Judgement, 16 November 1998, para. 184 (“*Čelebići* Trial Judgement”).

<sup>32</sup> As members of armed groups are qualified as combatants rather than civilians (see Article 50 of Additional Protocol I, read in conjunction with Article 48), it is also instructive to look at Article 43 of Additional Protocol I (“Armed Forces” and Article 4(A)(2) of the Third Geneva Convention. In defining “armed forces”, Article 43(1) of Additional Protocol I provides: “The armed forces of a Party to a conflict consist of all organized armed forces, groups and units which are under a command responsible for the conduct of its subordinates, even if that Party is represented by a government or an authority not recognized by an adverse Party. Such armed forces shall be subject to an internal disciplinary system which, *inter alia*, shall enforce compliance with the rules of international law applicable in armed conflict.”

The Third Geneva Convention, Art. 4(A)(2) sets out four criteria that must be fulfilled in order for members of a militia or organized resistance movement to qualify as prisoners of war: (a) That of being commanded by a person responsible for his subordinates; (b) That of having a fixed distinctive sign recognisable at a distance; (c) That of carrying arms openly; and (d) That of conducting their operations in accordance with the laws and customs of war. See also, Additional Protocol II, Art. 1(1).

<sup>33</sup> *Kunarac* Appeal Judgement, para. 64.

the same standard. It held that what ultimately distinguishes a war crime from a purely domestic offence is that a war crime is shaped by or dependent upon the environment – the armed conflict – in which it is committed. It need not have been planned or supported by some form of policy. The armed conflict need not have been causal to the commission of the crime, but the existence of an armed conflict must, at a minimum, have played a substantial part in the perpetrator's ability to commit it, his decision to commit it, the manner in which it was committed or the purpose for which it was committed. Hence, if the accused acted in furtherance of or under the guise of the armed conflict, it would be sufficient to conclude that his acts were closely related to the armed conflict.<sup>34</sup>

22. In determining whether or not the act in question is sufficiently related to the armed conflict, the Trial Chamber may take into account, *inter alia*, the following factors: the fact that the perpetrator is a combatant, the fact that the victim is a non-combatant, the fact that the victim is a member of the opposing party, the fact that the act may be said to serve the ultimate goal of a military campaign, and the fact that the crime is committed as part of or in the context of the perpetrator's official duties.<sup>35</sup>

23. As explained in the *Rutaganda* Appeal Judgement, the expression "under the guise of the armed conflict" does not mean simply "at the same time as an armed conflict" and/or "in any circumstances created in part by the armed conflict".<sup>36</sup> For example, if a non-combatant takes advantage of the lessened effectiveness of the police in conditions of disorder created by an armed conflict to murder a neighbour he has hated for years, that would not, without more, constitute a war crime under Article 4 of the Statute. By contrast, the accused in *Kunarac*, for example, were combatants who took advantage of their positions of military authority to rape individuals whose displacement was an express goal of the military campaign in which they took part.<sup>37</sup>

## 2. The facts demonstrating the existence of an armed conflict

24. An armed conflict between the KLA and armed forces of the FRY and Serbia existed on the territory of Kosovo from at least spring 1998 through all times relevant to the indictment. In addition, from 24 March 1999 to 20 June 1999, a state of armed conflict existed between the forces of the FRY and Serbia and NATO.

<sup>34</sup> *Kunarac* Appeal Judgement, para. 58.

<sup>35</sup> *Kunarac* Appeal Judgement, para. 59.

<sup>36</sup> *Prosecutor v. Rutaganda*, Case No. ICTR-96-3-A, Appeal Chamber Judgement, 26 May 2003, para. 570 ("Rutaganda Appeal Judgement").

<sup>37</sup> *Rutaganda* Appeal Judgement, para. 570.



25. The KLA was established to conduct an armed struggle against the Serbian authorities. At least from spring 1998 onwards, the KLA was a well-organised military force with a formal structure, a clear chain of command and a set of rules.<sup>38</sup> The KLA was organised into seven zones of responsibility and had commanders and deputy commanders in charge of each of these zones. Within the command of the operational zones, the KLA had branches. The KLA had a logistics unit responsible for supplying the entire KLA with food, clothes and weapons. There existed a KLA military police and a KLA intelligence service. The KLA General Command consisted of a General Commander, a Deputy Commander, a Chief of Main Headquarters, a Director of Political Issues, a Director of Police Issues, a Director of Civilian Administration, a Director of Operational Issues and a Director of Information Services.<sup>39</sup> The KLA also possessed outward symbols of authority in the form of uniforms, weapons, KLA emblems, logos and its own flag.<sup>40</sup> From 1995 to May 1999, the KLA grew from a handful of men to having between 10,000 and 20,000 fighters.<sup>41</sup>

26. Forces of the FRY and Serbia consisted principally of the VJ and MUP, over which the accused exercised both *de jure* and *de facto* control as set out in paragraphs 147 to 169 and 175 to 201.

27. In mid-1996, the KLA began launching attacks that were primarily directed at Serbian police forces.<sup>42</sup> In early 1998, the conflict intensified between the KLA and the forces of the FRY and Serbia and gained a new dimension. Between early 1998 and 24 March 1999, armed clashes between the KLA and the forces of the FRY and Serbia occurred continuously throughout various areas of Kosovo.<sup>43</sup> The KLA conducted operations, *inter alia*, in Junik, Dečani, Mališevo, Orahovac, Istok, Obilic, and Shallska Bajgora throughout 1998. The KLA controlled certain territories in Kosovo at certain times throughout the period relevant to the indictment.<sup>44</sup> The KLA soldiers were equipped with automatic rifles, mortars and grenade launchers.<sup>45</sup> The forces of the FRY and Serbia responded by engaging in a campaign of persecutions directed against Kosovo Albanian civilians, using automatic weapons, armoured personnel carriers, helicopters and tanks.<sup>46</sup>

<sup>38</sup> See the witness summaries of expected testimony of Shukri Buja, Ratimir Tanic, Frederick Abrahams, Ibrahim Rugova, Karol Drewienkiewicz, Paddy Ashdown, J. Maisonneuve, Veton Surroi, Adnan Merovci. See also, Exhibits 4.048, 3.005, 4.363, 4.249.

<sup>39</sup> Shukri Buja.

<sup>40</sup> Gani Baqaj, Liri Loshi, Shukri Buja, John Crosland, Drewienkiewicz, Paddy Ashdown, K14.

<sup>41</sup> K6, Ratimir Tanic, Liri Loshi, Shukri Buja, Richard Ciagliniski, Radomir Markovic.

<sup>42</sup> K6 and Exhibit 4.048.

<sup>43</sup> Fred Abrahams, Veton Surroi, Ratimir Tanic, John Crosland, Sabit Kadriu, Ali Hoti, Loshi Liri, Martin Pnishi, Shukri Buja, Klaus Naumann, Karol Drewienkiewicz, J. Maisonneuve, Richard Ciagliniski, Milazim Thaci.

<sup>44</sup> Regarding the KLA military activities, see the witness summaries of K6, Karol Drewienkiewicz, J. Maisonneuve, Richard Ciagliniski, John Crosland, Ali Hoti, Adnan Merovci, Emin Kabashi, Sabit Kadriu. K6 and K25 are expected to testify as to the KLA exercising control over different parts of the territory of Kosovo at different times. See also Exhibits 5.373, 5.422, 5.376, 5.360, 4.249.

<sup>45</sup> Shukri Buja, Fred Abrahams, John Crosland.

<sup>46</sup> Ratimir Tanic, Martin Pnishi, John Crosland, K6. Exhibits 4.051, 4.048, 4.047.

This campaign of persecutions included the shelling of predominantly Kosovo Albanian towns and villages, widespread destruction of property, and expulsions and killings of the civilian population from areas in which the KLA was active.<sup>47</sup>

28. Many residents fled the territory as a result of the fighting and destruction or were forced to move to other areas within Kosovo. The United Nations estimates that by mid-October 1998, over 298,000 persons, roughly fifteen percent of the population, had been internally displaced within Kosovo or had left the province.<sup>48</sup>

### **C. The crimes committed**

#### **1. Summary**

29. The evidence will show that the attacks on the individual municipalities were carried out almost exclusively against ethnic Albanians, demonstrating their persecutory and discriminatory nature. The attacks were prefaced, accompanied, or followed by the deliberate destruction of religious and cultural monuments of value to the Muslim ethnic Albanian community in Kosovo, as well as the destruction, burning and plundering of the homes and businesses of ethnic Albanians in Kosovo. Many of the murders alleged in the Indictment also occurred concurrently with the campaign of deportation and/or forcible transfer. The attacks were marked by the forces of the FRY and Serbia frequent use of ethnic slurs, such as *Šiptar*<sup>49</sup>, directed against ethnic Albanians and of other statements making it clear that the attackers were motivated by an ethnic prejudice against Muslim ethnic Albanians.

#### **2. The law on the underlying crimes**

##### **(a) Deportation pursuant to Article 5(d) of the Statute**

30. The Appeals Chamber has recently defined the elements of deportation in the following way:

<sup>47</sup> Exhibit 4.048.

<sup>48</sup> Exhibits 4.066, 4.067. See also the summary of the expected testimony of the representative of an international humanitarian organisation. In response to the intensifying conflict, the United Nations Security Council ("UNSC") passed Resolution 1160 in March 1998 "condemning the use of excessive force by Serbian police forces against civilians and peaceful demonstrators in Kosovo," and imposed an arms embargo on the FRY. Six months later the UNSC passed Resolution 1199 (1998) which stated that "the deterioration of the situation in Kosovo, Federal Republic of Yugoslavia, constitutes a threat to peace and security in the region." The UNSC demanded that all parties cease hostilities and that "the security forces used for civilian repression" be withdrawn. According to Exhibit 4.084 about 200,000 to 300,000 Albanians were driven from their homes between April and September 1998.

<sup>49</sup> Derogatory term for Albanian.

Štetić *actus reus* of deportation is the forced displacement of persons by expulsion or other forms of coercion from the area in which they are lawfully present, across a *de jure* state border or, in certain circumstances, a *de facto* border, without grounds permitted under international law. The Appeals Chamber considers that the *mens rea* of the offence does not require that the perpetrator intend to displace the individual across the border on a permanent basis.<sup>50</sup>

31. The definition of deportation requires that the displacement of persons be forced, carried out by expulsion or other forms of coercion such that the displacement is involuntary in nature in that the relevant persons have no genuine choice in their displacement. Factors other than force itself may render an act involuntary, such as taking advantage of coercive circumstances.<sup>51</sup>

(i) (ii) Forcible transfer pursuant to Article 5(i) of the Statute

32. Article 5(i) of the Statute is a residual clause, applicable to acts that do not fall within any other sub-clause of Article 5 and representing the same degree of gravity as the enumerated crimes.<sup>52</sup> The crime of deportation satisfies those requirements.<sup>53</sup>

33. The elements of forcible transfer are similar to those of deportation set out above at paragraph 30, with the significant exception that forcible transfer may take place both within and across national boundaries.<sup>54</sup> As with deportation, the accused need not intend to transfer on a permanent basis but rather only on a non-provisional basis.<sup>55</sup>

34. The jurisprudence of the tribunal has not explicitly dealt with the definition of “force” in the context of forcible transfer under Article 5(i) of the Statute. The Prosecution’s position is that what renders a transfer forcible under Article 5(i) is the same as what renders deportations forced, set out in paragraph 31 above. In the context of dealing with charges of unlawful transfer and persecution under Articles 2(g) and 5(h) of the Statute respectively, the Trial Chamber in *Prosecutor v. Naletilić and Martinović*, found that forcible transfer is the “movement of individuals under duress from where they reside to a place that is not of their choosing.”<sup>56</sup> There seems to be no reason why the

<sup>50</sup> *Prosecutor v. Stakić*, Case No. IT-97-24-A, Appeal Chamber Judgement, 22 March 2006, para. 278 (“*Stakić* Appeal Judgement”).

<sup>51</sup> *Stakić* Appeal Judgement, para. 279.

<sup>52</sup> *Kordić* Appeal Judgement, para. 117.

<sup>53</sup> *Stakić* Appeal Judgement, para. 317.

<sup>54</sup> *Stakić* Appeal Judgement, para. 317 and *Prosecutor v. Krnojelac*, Case No. IT-97-25-A, Appeal Chamber Judgement, 17 September 2003, para. 222 (“*Krnojelac* Appeal Judgement”).

<sup>55</sup> *Stakić* Appeal Judgement, para. 317.

<sup>56</sup> *Prosecutor v. Naletilić*, Case No. IT-98-34-T, Trial Chamber Judgement, 31 March 2003, para. 519 (“*Naletilić* Trial Judgement”). See also, *Prosecutor v. Blagojević and Jokić*, Case No. IT-02-60-T, Trial Chamber Judgement, 17 January 2005, paras. 595 and 629 (“*Blagojević and Jokić* Trial Judgement”), which defined “forcible transfer”, whether for the purposes of an underlying act of persecution or other inhumane acts, as the “forced displacement of individuals from

same definition of force would not also apply when forcible transfer is charged as “other inhumane acts” under Article 5(i) of the Statute. Moreover, it seems that the Appeals Chamber in *Prosecutor v. Stakić* applied the same definition of force when dealing with forcible transfer as charged under Article 5(i) of the Statute as an “other inhumane act”, as when the forcible transfer was charged under Article 2(g) of the Statute as an “unlawful deportation”.<sup>57</sup>

### (c) Murder

35. The elements of the crime of murder under Article 3 of the Statute are:

#### **i. Actus Reus**

- (a) The death of a victim taking no active part in the hostilities;
- (b) the death was the result of an act or omission of the accused or of one or more persons for whom the accused is criminally responsible;

#### **ii. Mens Rea**

The accused, or the person or persons for whom he is criminally responsible, intend:

- (a) to kill the victim; or
- (b) to wilfully cause serious bodily harm which the perpetrator should reasonably have known might lead to death.<sup>58</sup>

36. The Tribunal jurisprudence has established that the elements for murder under Article 5(a) are the same as for murder under Article 3 and wilful killing under Article 2(a) of the Statute.<sup>59</sup>

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the area in which they are lawfully present without grounds permitted under international law.” It further found the required *mens rea* to be that the perpetrator intended to remove the victims, which implies that they should not return; that victims subsequently return to the area by their own volition does not have any impact on the criminal responsibility. *Ibid.*, para. 601.

<sup>57</sup> The Appeals Chamber in the *Stakić* case does not appear to distinguish between the elements of forcible transfer under Article 2(g) and Article 5(i) when it applied the law to the facts and corrected an error by the Trial Chamber regarding forcible transfer as “other inhuman acts” under Article 5(i) of the Statute. *Stakić* Appeal Judgement, paras. 317-21.

<sup>58</sup> *Prosecutor v. Kvočka*, Case No. IT-98-30/1-A, Appeal Chamber Judgement, 28 February 2005, para. 261, (“*Kvočka* Appeal Judgement”). Note that in *Prosecutor v. Limaj*, Judgement, IT-03-66-T, 30 November 2005, para. 241 and *Prosecutor v. Strugar*, Judgement, IT-01-42-T, 31 January 2005, para. 236. The Trial Chambers have held that the indirect intent requirement is the intent to commit the act or omission in the knowledge that death is a probable consequence of the act or omission.

<sup>59</sup> See *Čelebići* Trial Judgement, para. 422.; *Prosecutor v. Krnojelac*, Case No. IT-97-25, Trial Chamber Judgement, 15 March 2002, para. 323 (“*Krnojelac* Trial Judgement”).

(d) Persecutions on political, racial and religious grounds pursuant to Article 5(h) of the Statute

37. The elements of persecution under Article 5(h) of the Statute are:<sup>60</sup>

**i. Actus Reus**

An act or omission which discriminates in fact and denies or infringes upon a fundamental right laid down in international customary or treaty law.

**ii. Mens Rea**

Intent to discriminate on racial, religious or political grounds.

38. The discriminatory acts or omissions may include those enumerated in other sub-clauses of Article 5 or other acts or omissions of equal gravity to those listed in Article 5.<sup>61</sup> It is not required that each separate act or omission should amount to a violation of international law. The acts or omissions may be of the same gravity as the other crimes against humanity listed under Article 5 *either separately or combined*.<sup>62</sup> The Trial Chambers and the Appeals Chamber have already found that forcible transfer and deportation,<sup>63</sup> murder,<sup>64</sup> sexual assault,<sup>65</sup> and wanton destruction or damage of religious sites<sup>66</sup> may amount to persecution pursuant to Article 5(h) of the Statute, all requisite elements being met.<sup>67</sup>

39. The Appeals Chamber in *Krnjelac* held that, “discriminatory intent may be inferred from such a context as long as, in view of the facts of the case, circumstances surrounding the commission of the alleged acts substantiate the existence of such intent.”<sup>68</sup>

<sup>60</sup> *Krnjelac* Appeal Judgement, para. 185; *Blaškić* Appeal Judgement, para. 131; *Stakić* Appeal Judgement, para. 327.

<sup>61</sup> See, e.g., *Kordić and Čerkez* Appeal Judgement, para. 671; *Blaškić* Appeal Judgement, para. 135.

<sup>62</sup> *Blaškić* Appeal Judgement, para. 135; *Krnjelac* Trial Judgement, para. 434; Separate Opinion of Judge Shahabuddeen, *Krnjelac* Appeal Judgement, para. 7.

<sup>63</sup> *Krnjelac* Appeal Judgement, paras. 221-222.

<sup>64</sup> *Tadić* Trial Judgement, para. 717; *Prosecutor v. Kupreškić*, Case No. IT-95-16, Trial Chamber Judgement, 14 January 2000, para. 604 (“*Kupreškić* Trial Judgement”); *Prosecutor v. Blaškić*, Case No. IT-95-14, Trial Chamber Judgement, 3 March 2000, para. 220 (“*Blaškić* Trial Judgement”); *Prosecutor v. Kvočka*, Case No. IT-98-30/1, Trial Chamber Judgement, 2 November 2001, para. 186 (“*Kvočka* Trial Judgement”).

<sup>65</sup> In the *Stakić* Trial Judgement, the Trial Chamber held that not only rape but also any other sexual assault falling short of actual penetration is punishable and may constitute a persecutory act; *Prosecutor v. Stakić*, Case No. IT-97-24-T, Trial Chamber Judgement, 31 July 2003, para. 757 (“*Stakić* Trial Judgement”). See also the *Kvočka* Trial Judgement, para. 186, referring to *Prosecutor v. Krstić*, Case No. IT-98-33-T, Trial Chamber Judgement, 2 August 2001, paras. 617-618 (“*Krstić* Trial Judgement”).

<sup>66</sup> *Blaškić* Trial Judgement, para. 227; *Prosecutor v. Kordić*, Case No. IT-95-14/2, Trial Chamber Judgement, 26 February 2001, para. 206 (*Kordić* Trial Judgement); *Stakić* Trial Judgement, paras. 766-767.

<sup>67</sup> Those are some of the underlying acts which are, *inter alia*, charged as persecution in this case; see paras. 67-68 of the Indictment.

<sup>68</sup> *Krnjelac* Appeal Judgement, para. 184. The Appeals Chamber illustrated this finding by stating that, for instance, the systematic nature of the crimes committed against a racial or religious group and the general attitude of the

40. The Trial Chamber in *Stakić* held that in cases where the accused is not alleged to be the direct perpetrator of the crime but rather is removed from the actual crime-scene by being, for instance, a political leader, the requirement of proof of the “discriminatory intent of both the accused and the acting individuals to all the single acts committed would lead to an unjustifiable protection of superiors and would run counter to the meaning, spirit and purpose of the Statute of this International Tribunal.” The *Stakić* Trial Chamber concluded, therefore, that in cases of “indirect perpetratorship”, proof is required “only of the general discriminatory intent of the indirect perpetrator in relation to the attack committed by the direct perpetrators/actors” and that “(e)ven if the direct perpetrator/actor did not act with a discriminatory intent, this, as such, does not exclude the fact that the same act may be considered part of a discriminatory attack if only the indirect perpetrator had the discriminatory intent.”<sup>69</sup> The Appeals Chamber accepted this analysis.<sup>70</sup>

### 3. The facts in regard to the individual crime sites<sup>71</sup>

41. The Prosecution alleges that this campaign of deportation and/or forcible transfer, sexual assault, murder and destruction of property and religious sites was conducted systematically throughout various municipalities. The allegations concerning deportation, forcible transfer, murder, sexual assault and wanton destruction of religious sites have been set out in very detailed manner in the Indictment<sup>72</sup>. The Prosecution incorporates the allegations set out in paragraphs 72, 73, 75, and 77 of the Indictment by reference into this section. The following part of the Pre-trial brief illustrates the alleged crimes on a municipality-by-municipality basis:

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offence’s alleged perpetrator as seen through his behaviour may serve as circumstances which may be taken into consideration; *id.*

<sup>69</sup> *Stakić* Trial Judgement, paras. 742-743.

<sup>70</sup> *Stakić* Appeal Judgement, para. 329.

<sup>71</sup> The Prosecution intends to call Patrick Ball, Frederik Abrahams, Sandra Mitchell, a Representative of an International Humanitarian Organisation, Dr. Erik Baccard, William Fulton, Inge Joaqim, an DNA expert and a Representative of the International Commission for Missing Persons to provide an overview with regard to the individual crime sites as well as with regard to the individual crimes (deportation, sexual assault, murder) concerned.

<sup>72</sup> See paras 72a. to 72m. (deportation and sexual violence), paras. 75a. to 75k. (murder), 77d. (destruction). See also Exhibits 1.001, 1.005, 1.007-1.049, 1.051 (deportation in general), 3.001-3.008 (sexual assault in general) and 5.859-5.865, 5.867-5.877, 5.880-5.883, and 5.886-5.914 (destruction of buildings in general).

(a) Raçak (Štimlje/Shtime municipality)<sup>73</sup>

42. On or about 15 January 1999, in the early morning hours, the village of Raçak was shelled by forces of the FRY and Serbia.<sup>74</sup> Villagers, who attempted to flee from the forces of the FRY and Serbia who entered the village, were shot.<sup>75</sup> A group of approximately 25 men attempting to hide in a building were discovered, beaten, verbally abused and their ID cards were removed.<sup>76</sup> They were then ordered to climb a nearby hill to a ravine, where they were shot and killed by forces of the FRY and Serbia positioned on the hill.<sup>77</sup> Altogether, the forces of the FRY and Serbia killed approximately 45 Kosovo Albanian civilians in and around Raçak.<sup>78</sup>

(b) Suva Reka/Suharekë<sup>79</sup>

43. Suva Reka/Suharekë and its environs were subjected to attacks by FRY and Serb forces from about 20 March 1999 onwards.<sup>80</sup> The attacks comprised expulsions,<sup>81</sup> destruction of houses and a mosque,<sup>82</sup> and killings. On or about 26 March 1999, forces of the FRY and Serbia killed at least 44 civilians in Suva Reka/Suharekë and seriously wounded others.<sup>83</sup> On 1 April 1999, displaced Kosovo Albanians who had gathered near Belanica/Bellanicë were forced to flee toward the Albanian border after the village was shelled.<sup>84</sup>

(c) Priština/Prishtinë<sup>85</sup>

44. Beginning on or about 24 March 1999 and continuing through the end of May 1999, Serbian police forced the Kosovo Albanians in the city of Priština/Prishtinë and in surrounding

<sup>73</sup> The allegations are laid down in detail in para. 75a. and Schedule A of the Indictment. See the summaries of expected testimony of Xhemajl Beqiri, Shukri Buja, Ian Hendrie, Imer Imeri, Helena Ranta, Nesret Shabani; and Exhibits 2.1.1 - 2.1.36.

<sup>74</sup> Nesret Shabani and Xhemajl Beqiri.

<sup>75</sup> Xhemajl Beqiri will testify that three of his relatives were shot and killed during the attack on the village. He will also testify that he saw the bodies of two villagers on the road after hearing gunfire and people screaming, and that later when he and other villagers were trying to escape from the forces of the FRY and Serbia they were shot at.

<sup>76</sup> Imer Imeri and Nesret Shabani.

<sup>77</sup> *Ibid.*

<sup>78</sup> Imer Imeri and Nesret Shabani will identify the victims and testify that they were all civilians. Ian Hendrie will testify about seeing bodies throughout Raçak on 16 January 1999. The bodies of 40 of the victims were examined and autopsied by the European Union Forensic Team (hereinafter "Finnish Forensic Team"). The Prosecution intends to tender the reports of the Finnish Forensic Team (Exhibits 2.1.9-2.1.11) and to call Helena Ranta who was the leader of the team.

<sup>79</sup> The allegations are laid out in detail in paras. 72d., 75d., 77d. and Schedule D of the Indictment. See the summaries of Hamide Fondaj, Osman Kuci, Halit Berisha, Hysni Berisha and Shyrete Berisha and Exhibits 2.4.1-2.4.63, 3.007, 5.479, 5.818, 5.846.

<sup>80</sup> Hamide Fondaj, Shyrete Berisha.

<sup>81</sup> Osman Kuci.

<sup>82</sup> The Prosecution anticipates that Hysni Berisha will testify as to houses set on fire. With regard to the damage to the mosque, see the statement of Halit Berisha.

<sup>83</sup> Shyrete Berisha.

<sup>84</sup> Hamide Fondaj is expected to testify that the village became overcrowded with displaced persons.

villages of the municipality<sup>86</sup> to leave, killing a number of people in the process<sup>87</sup> and sexually assaulting several women.<sup>88</sup> Hundreds of ethnic Albanians were loaded onto overcrowded trains or buses where they had their identification papers taken from them. After getting off the trains, forces of the FRY and Serbia told the Kosovo Albanians to walk along the tracks into Macedonia.<sup>89</sup>

(d) Uroševac/Ferizaj<sup>90</sup>

45. During the period between 24 March and 14 April 1999, forces of the FRY and Serbia shelled and attacked villages, including Biba/Bibe,<sup>91</sup> Muhadžer Prelez/Prelez i Muhaxherëve, Raka/Rakaj and Staro Selo,<sup>92</sup> Papaz and Sojevo/Sojevë,<sup>93</sup> Varoš Selo/Varosh and Miroslavlje/Mirosalë,<sup>94</sup> expelling their inhabitants and killing a number of residents. In Uroševac/Ferizaj, most of the expelled Kosovo Albanians boarded trains or buses which carried them to the Macedonia border crossing at Đeneral Janković/Hani i Elezit<sup>95</sup> where Serb forces directed them to walk on the railroad tracks to the border.<sup>96</sup> At the border, FRY and Serb forces confiscated their personal documents.

(e) Orahovac/Rahovec municipality<sup>97</sup>

46. On 25 March 1999, the villages of Celina/Celinë and Bela Crkva/Bellacërkë were shelled<sup>98</sup>, looted and pillaged<sup>99</sup> and houses were burned.<sup>100</sup> Among the several hundred residents of Bela Crkva/Bellacërkë who had fled, at least 12 persons including 10 women and children were killed<sup>101</sup> and approximately 65 men and boys were shot.<sup>102</sup> On 26 March 1999, approximately 105 Kosovo

<sup>85</sup> The allegations are laid down in detail in paras. 72g, 72g.(i), 77d. of the Indictment. See the summaries of Emin Kabashi, K14, Nazilie Bala and Exhibits 1.017, 1.026, 1.038.

<sup>86</sup> K14 and Nazilie Bala, among others, are expected to testify about what happened to Kosovo Albanians in the areas surrounding Priština/Prishtinë.

<sup>87</sup> Emin Kabashi, Nazilie Bala.

<sup>88</sup> K14 is expected to testify in this regard.

<sup>89</sup> Nazilie Bala, Emin Kabashi.

<sup>90</sup> The allegations are laid down in detail in para. 72j of the Indictment. See the summaries of Bajram Bucaliu and Florim Elmi Krasniqi and Exhibits 1.005, 1.029, 1.045, 1.047.

<sup>91</sup> Bedri Hyseni.

<sup>92</sup> Bajram Bucaliu.

<sup>93</sup> Florim Elmi Krasniqi.

<sup>94</sup> Florim Elmi Krasniqi.

<sup>95</sup> Florim Elmi Krasniqi.

<sup>96</sup> *Ibid.*

<sup>97</sup> The details of the attack are laid out in paras 72a. and 72a.(i), 75b. and 75c. and 77d. and Schedules B and C of the Indictment. See the summaries of Reshit Salihi, Sabri Popaj, Isuf Zhuniqi, and Exhibits 1.020, 1.033, 1.049 and 2.21-2.210, 2.3.1-2.3.15, 5.458.

<sup>98</sup> Sabri Popaj, Isuf Zhuniqi.

<sup>99</sup> Reshit Salihi.

<sup>100</sup> Isuf Zhuniqi, among others, will testify about this.

<sup>101</sup> Sabri Popaj, Isuf Zhuniqi.

<sup>102</sup> *Ibid.*



Albanian men and boys were murdered in the village of Mala Kruša/Krusë e Vogel.<sup>103</sup> On 28 March 1999, thousands of civilians hiding in the forest were marched to a nearby village, the men were separated from the women and then beaten, robbed, and their identity documents seized.<sup>104</sup> The men were then taken by bus to Zur/Zhur and eventually forced to walk to Albania.<sup>105</sup> Similar attacks were conducted against surrounding villages.<sup>106</sup> Those who survived headed for the Albanian border where all their identification papers were taken from them.<sup>107</sup> Several mosques were destroyed, including the mosques of Celina/Celinë and Bela Crkva/Bellacërkë<sup>108</sup>, Brestovac/Brestovc, Velika Kruša/Krushë e Madhe and others.<sup>109</sup>

(f) Prizren<sup>110</sup>

47. On 25 March 1999, the village of Pirane was surrounded and shelled,<sup>111</sup> a number of the residents were killed and houses and the mosque<sup>112</sup> were burnt. Similar attacks concerned surrounding towns and villages, such as Landovica/Landovice<sup>113</sup> and the area of Srbica/Sërbica.<sup>114</sup> From 28 March 1999, Kosovo Albanian residents of the city of Prizren were forced to join convoys travelling on foot to the Albanian border, where FRY and Serbian forces seized their personal documents.<sup>115</sup>

(g) Srbica/Skenderaj<sup>116</sup>

48. On 25 March 1999, forces of the FRY and Serbia attacked and destroyed several villages in Srbica/Skenderaj municipality, including Vojnike/Vocnjak, Leocina/Lecine, Kladernica/Klladernicë, Turicevac/Turiçec and Izbica/Izbicë by shelling and burning.<sup>117</sup> The attack comprised the destruction of buildings, including the mosque in the centre of the village of Cirez/Qirez,<sup>118</sup> sexual

<sup>103</sup> Mehmet Avdyli, Lufti Ramadani.

<sup>104</sup> Reshit Salihi.

<sup>105</sup> Reshit Salihi.

<sup>106</sup> Sabri Popaj, Isuf Zhuniqi.

<sup>107</sup> Sabri Popaj, Reshit Salihi.

<sup>108</sup> Sabri Popaj and Exhibits 2.21-2.210.

<sup>109</sup> Sabri Popaj, Abdullah Salihu and Exhibits 5.812, 5.814, 5.815, 5.813, 5.831.

<sup>110</sup> The details of the attack are laid out in paras. 72b. and 75d. of the Indictment. See the summaries of Rahim Latifi, Halil Morina, Rexhep Krasniqi and Hysni Kryeziu.

<sup>111</sup> Rahim Latifi.

<sup>112</sup> Halil Morina and Exhibits 5.816, 5.842.

<sup>113</sup> Halil Morina is expected to testify that the mosque of this village was destroyed as well, Exhibit 5.842.

<sup>114</sup> Halil Morina.

<sup>115</sup> Rexhep Krasniqi.

<sup>116</sup> The allegations are laid down in detail in paras. 72c., 75f. and 77d. and Schedule F of the Indictment. See the summaries of witnesses Liri Loshi, Mustafa Draga, Milazin Thaci, Sadik Januzi, Hadije Fazliu, K24, Xhevahire Rrahmani and Exhibits 1.022, 1.043, 2.7.1-2.7.43, 3.002-3.003, 5.817, 5.840.

<sup>117</sup> Mustafa Draga (Vojnike/Vocnjak); Sadik Januzi (Leocina/Lecine); Sadik Januzi (Kladernica/Klladernicë); Hadije Fazliu (Turicevac/Turiçec); Sadik Januzi and Mustafa Draga (Izbica/Izbicë).

<sup>118</sup> Abdullah Salihu and Exhibits 5.817, 5.840.

assault of women and girls<sup>119</sup> and murder. On 28 March 1999, the forces of the FRY and Serbia also fired upon groups of men from the village of Izbica/Izbicë in the Srbica/Skenderaj municipality, killing at least 116 Kosovo Albanian men<sup>120</sup> and other civilians.<sup>121</sup> The women and children were forcibly moved as a group towards Klina/Klinë, Dakovica/Gjakovë and eventually to the Albanian border.<sup>122</sup>

(h) Padalište/Padalishte<sup>123</sup> and Dubrava/Dubravë Prison<sup>124</sup> (Istok/Istog municipality)<sup>125</sup>

49. In the morning hours of 26 March 1999, FRY and Serb forces attacked the village of Padalište/Padalishte (Istok/Istog municipality)<sup>126</sup>, killing 20 Kosovo Albanians.<sup>127</sup>

50. In the same municipality, on or about 22 May 1999, in the early morning hours the inmates, in the Dubrava/Dubravë Prison complex were ordered to gather on the sports field for transfer to the prison in Niš, Serbia.<sup>128</sup> After hundreds of prisoners had gathered fire was opened on them from the watchtower, from holes in the perimeter wall and from gun emplacements beyond the wall and hand grenades were thrown over the wall. Afterwards prisoners who had sought safety in various places in the prisons were attacked.<sup>129</sup> Altogether, at least 50 prisoners were killed.

(i) Pec/Pejë<sup>130</sup>

51. On 27 and 28 March 1999, FRY and Serb forces expelled the Kosovo Albanian residents from Pec/Pejë.<sup>131</sup> A number of people were shot and houses were set on fire.<sup>132</sup> The residents were directed toward the Albanian border where, prior to crossing the border, they were ordered to turn their identification papers over to forces of the FRY and Serbia.<sup>133</sup>

<sup>119</sup> K24, Xhevahire Rrahmani.

<sup>120</sup> Milazim Thaqi, Mustafa Draga, Loshi Liri.

<sup>121</sup> Mustafa Draga.

<sup>122</sup> Hadije Fazliu.

<sup>123</sup> The allegations are laid down in detail in para. 75e. and Schedule E of the Indictment. See the summaries of Lirij Imeraj and Sofije Imeraj; and Exhibits 2.6.1-2.6.15.

<sup>124</sup> The allegations are laid down in detail in para. 75j. and Schedule J of the Indictment. See the summaries of Musa Krasniqi, Milaim Cekaj, and Gani Bacaj; and Exhibits 2.11.1-2.11.13.

<sup>125</sup> Exhibit 1.018.

<sup>126</sup> Lirij Imeraj, Sofije Imeraj. Lirij Imeraj will also testify that villagers who attempted to flee were shot at.

<sup>127</sup> Lirij Imeraj will testify about the murder of eight members of her family and of other villagers in a nearby streambed. Sofije Imeraj will testify about the murder of her father, brother and uncle.

<sup>128</sup> Musa Krasniqi, Milaim Cekaj and Gani Bacaj.

<sup>129</sup> *Ibid.* Many prisoners were killed, others wounded. The following day, forces of the FRY and Serbia threw grenades and shot into the drains, sewers, buildings and basements, killing and wounding many additional prisoners who had sought refuge in those locations after the events of the previous day. Musa Krasniqi and Milaim Cekaj are expected to testify about these events.

<sup>130</sup> The allegations are laid down in detail in para. 72e. of the indictment. See the summaries of Ndrec Konaj and K50, and Exhibits 1.013, 1.024, 1.036.

<sup>131</sup> Ndrec Konaj.

<sup>132</sup> K50 is expected to testify that he saw houses and businesses being burned by the FRY and Serb forces.

<sup>133</sup> K50, Ndrec Konaj.

(j) Kosovska Mitrovica/Mitrovicë<sup>134</sup>

52. During late March and continuing through the middle of April 1999, forces of the FRY and Serbia expelled residents of the town of Kosovska Mitrovica/Mitrovicë. Some houses and at least one mosque<sup>135</sup> were set on fire, women were sexually assaulted and Kosovo Albanians were robbed of their valuables.<sup>136</sup> Other villages in the Kosovska Mitrovica/Mitrovicë municipality were subjected to a similar fate. The Kosovo Albanian residents of the municipality were forced to join convoys going to the Albanian border where they were robbed of valuables and stripped of their identity documents.<sup>137</sup>

(k) Đakovica/Gjakovë<sup>138</sup>

53. From late March through early May 1999, Kosovo Albanian residents of the town of Đakovica/Gjakovë—as well as countless Kosovo Albanian refugees seeking shelter there from other areas—were forced to leave by forces of the FRY and Serbia.<sup>139</sup> On 24 March 1999, the old mosque in Rogovo/Rogovë<sup>140</sup> and the old historic quarter of Đakovica/Gjakovë, which included the bazaar, the Hadum Mosque and adjoining Islamic Library, were targeted by the FRY and Serb forces for destruction.<sup>141</sup> On the evening of 1 April the Qerim district was attacked. Forces of the FRY and Serbia entered houses, killed the occupants and set the houses on fire. At 157 Milos Gilic/Milosh Gilic Street 20 Kosovo Albanians, 19 of whom were women and children, were killed.<sup>142</sup> During the period from 2 to 4 April 1999, thousands of Kosovo Albanians living in the town of Đakovica/Gjakovë and neighbouring villages joined a large convoy and fled to Albania.<sup>143</sup> Forces of the FRY and Serbia directed the people along pre-arranged routes, and at checkpoints along the way most Kosovo Albanians had their identification papers and license plates seized.<sup>144</sup>

<sup>134</sup> The allegations are laid down in detail in paras. 72f. and 77d. of the Indictment. See the summaries of Aferdita Hajrizi, K15, Muharem Demiraj and Exhibits 1.016, 1.025, 1.037, 5.819, 5.841.

<sup>135</sup> Exhibits 5.819, 5.841.

<sup>136</sup> The Prosecution expects Aferdita Hajrizi and Muharem Demiraj to testify about the expulsion. See the summary of K15 with regard to sexual assaults.

<sup>137</sup> Muharem Demiraj.

<sup>138</sup> The allegations are laid down in detail in paras. 72h., 72h.(i), 72h.(ii) and 75g and 75h. and Schedules G and H of the Indictment. See the summaries of Hani Hoxha, Behar Haxhiavdija, Ismet Haxhiavdija, Witness K13, Fuad Haxhibeqiri, Merfidete Selmani, Nike Peraj and Martin Pnishi and Exhibits 1.007, 1.014, 1.027, 1.039, 2.8.1-2.8.47, 2.9.1-2.9.37, 5.707.

<sup>139</sup> Fuad Haxhibeqiri, *inter alia*, will testify about the large number of refugees who flooded into the town by March 1999 to escape deliberate shelling by forces of the FRY and Serbia.

<sup>140</sup> Sabri Popaj and Exhibits 5.823, 5.845.

<sup>141</sup> The Prosecution anticipates that Sabri Popaj will testify about the destruction of this religious and cultural property. See also the summary of Fuad Haxhibeqiri. See also Exhibits 5.823, 5.845.

<sup>142</sup> Witness K13, a child survivor of this attack, will testify about what happened to this family. See also the summaries of expected testimony of Behar Haxhiavdija and Ismet Haxhiavdija. See also Exhibits 2.8.1-2.8.47.

<sup>143</sup> Merfidete Selmani, Fuad Haxhibeqiri, Hani Hoxha.

<sup>144</sup> Merfidete Selmani, Hani Hoxha and Nike Peraj.

54. In addition, during late March and April 1999, forces of the FRY and Serbia forcibly expelled the Kosovo Albanian residents of many villages in the Đakovica/Gjakovë municipality, including the villages of Dobroš/Dobrosh, Korenica/Korenicë and Meja/Mejë.<sup>145</sup> On or about the early morning hours of 27 April 1999, forces of the FRY and Serbia launched a massive attack against the Carragojs, Erenik and Trava Valleys (Đakovica/Gjakovë municipality), including the remaining residents of the aforementioned villages, in order to drive the population out of the area.<sup>146</sup> In Meja/Mejë, Korenica/Korenicë, Meja Orize/Orize and Jahoc/ Jahoc a large number of Kosovo Albanian civilian males were separated from the mass of fleeing villagers and summarily executed.<sup>147</sup> The survivors were forced to join convoys crossing into Albania, after their identity documents had been seized.<sup>148</sup>

(l) Kaçanik<sup>149</sup>

55. Between March and May 1999, forces of the FRY and Serbia attacked villages in the Kačanik municipality, including Slatina/Sllatinë, the hamlet of Vata<sup>150</sup>, Dubrava/Lisnaje<sup>151</sup> and the town of Kačanik itself. This attack resulted in the destruction of houses and religious sites including the mosques of Kotlina/Kotlinë and Ivaja/Ivajë<sup>152</sup> and in the deaths of more than one hundred civilians.<sup>153</sup> Most of the survivors from this area fled to Macedonia.<sup>154</sup>

(m) Deçani/Deçan<sup>155</sup>

56. On or about 29 March 1999, forces of the FRY and Serbia surrounded and attacked the village of Beleg, and other surrounding villages in the Deçani/Deçan municipality,<sup>156</sup> expelling

<sup>145</sup> Merfidete Selmani and Martin Pnishi will describe what occurred in Dobrosh/Dobros village and Meja/Mejë village respectively. For the ethnic cleansing in Korenica/Korenicë, see the summary of Sladan Marković.

<sup>146</sup> The Prosecution will call two VJ soldiers who will describe this operation; Nike Peraj and Sladan Marković.

<sup>147</sup> The largest number of murders occurred in Meja/Mejë. Merfidete Selmani, Martin Pnishi and Sladan Marković will testify about the abduction and execution of men here. Merfidete Selmani will also testify about the summary execution of civilians in Meja, Orize/Orize; Martin Pnishi will testify about the execution of civilians in Jahoc/ Jahoc; and Sladan Marković will testify to seeing bodies on the side of the road near the entrance to Korenica/Korenicë. ). See also Exhibits 2.9.1.-2.9.37.

<sup>148</sup> Hani Hoxha, Merfidete Selmani and Nike Peraj.

<sup>149</sup> The allegations are laid down in detail in paras. 72k., 72k(i), 72k(ii), 72k(iii), 72k(iv) and 75k, 75k(i), 75k(ii), 75k(iii), 75k(iv), and Schedule K of the Indictment. See the summaries of Hazbi Loku, Isa Raka, Sejdi Lami and Fadil Vishi, Muharrem Dashi and Exhibits 1.030, 2.12.1-2.12.29, 5.825-5.826.

<sup>150</sup> Sejdi Lami.

<sup>151</sup> Fadil Vishi.

<sup>152</sup> Hazbi Loku is expected to testify regarding destruction of the mosque in Ivaja/Ivajë. See also Exhibit 5.826.

<sup>153</sup> Hazbi Loku will testify about the events that occurred in Kotlina/Kotlinë where at least 17 people were killed; Sejdi Lami will testify about the events that occurred in Slatina/Sllatinë where at least 13 people were killed; Muharrem Dashi will testify about the events at Stagovo/Stagovë where at least 12 persons killed; Fadil Vishi will testify about the events that at Dubrava/Lisnaje where at least eight civilians died; and Isa Raka will testify about the attack on Kačanik. See also Exhibits 2.12.7-2.12.29.

<sup>154</sup> Sejdi Lami, Isa Raka.

<sup>155</sup> The allegations are laid down in detail in para. 72l. of the Indictment. See the summaries of K20, Fetije Vishaj and Mehmet Mazrekaj and Exhibits 1.031, 1.041.

about 300 men, women and children. Women and children were separated and at least three of the women were sexually assaulted.<sup>157</sup> The next day, forces of the FRY and Serbia told the villagers to leave the village in trucks and tractors and go to Albania.

(n) Gnjilane/Gjilan municipality<sup>158</sup>

57. On 13 April 1999, residents of Prilepnica/Përlepnice were expelled and forced to leave in a convoy.<sup>159</sup> The convoy passed through surrounding villages which were mostly empty with burning houses in many of these villages.<sup>160</sup> Kosovo Albanians in other villages in Gnjilane/Gjilan municipality, such as Žegra/Zhegër, Nosalje/Nosalë,<sup>161</sup> were also forced from their homes and many sought shelter in the village of Donja Stubla/Stubëlle E Poshtme, located in the Vitina municipality,<sup>162</sup> before they were made to travel under police escort to Macedonia. When they reached the border with Macedonia, forces of the FRY and Serbia confiscated their identification papers.<sup>163</sup>

(o) Vucitrn/Vushtrri<sup>164</sup>

58. On 2 May 1999, an area comprised of a number of villages north-east of the town of Vucitrn/Vushtrri, including Skrovna/Skromë, Slakovce/Sllakofc, Cecelija/Ceceli and Gornja Sudimlja/Studime e Epërme was attacked.<sup>165</sup> The villagers, as well as persons previously displaced from other communities in the Vucitrn/Vushtrri municipality, were forced to form a convoy of more than 20,000 people travelling on the "Studime Gorge" road, in the direction of the town of Vucitrn/Vushtrri.<sup>166</sup> Forces of the FRY and Serbia harassed, beat and robbed these Kosovo

<sup>156</sup> K20 is expected to testify about the attack on Beleg. See the summary of expected testimony of Mehmet Mazrekaj with regard to attacks on the villages Drenoc, Llocane, Hullaj, Pobergje, Sllup and Carrabreg. Fetije Vishaj is expected to testify about the attack on the village Isniq.

<sup>157</sup> K20, one of these sexual assault victims, is expected to testify. Fetije Vishaj is anticipated to testify about sexual assaults that took place in the village of Isniq, in the municipality of Decane.

<sup>158</sup> The allegations are laid down in detail in paragraph 72i. and 77d. of the Indictment. See the summaries of Abdylhaqim Shaqiri and Qamil Shabani and Exhibits 1.028, 1.040, 5.872.

<sup>159</sup> The villagers had been previously kicked out of the village on 6 April 1999, but were allowed to return the following day. When they did so, they discovered that at least one house had been burned down and many others had been damaged. See the summary of the expected testimony of Abdylhaqim Shaqiri.

<sup>160</sup> *Ibid.* See also the statement of Abdulhaqim Shaqiri and Exhibit 5.824, 5.837, 5.847 with regard to the destruction of the mosque.

<sup>161</sup> Qamil Shabani will testify about the attacks on Žegra/Zhegër and Nosalje/Nosalë.

<sup>162</sup> Qamil Shabani.

<sup>163</sup> Qamil Shabani.

<sup>164</sup> The allegations are laid down in detail in paras. 72m., 75j., 77d. and Schedule I of the Indictment. See the summaries of expected testimony of Sabit Kadriu, Shukri Gerxhaliu and Fedrije Hxafa and Exhibits 1.012, 1.032, 1.042, 1.052, 2.10.1-2.10.7, 5.260, 5.262, 5.263, 5.359, 5.621, 5.671, 5.683, 5.827, 5.838, 5.875.

<sup>165</sup> Shukri Gerxhaliu and Sabit Kadriu. Sabit Kadriu is expected to testify about the burning of homes and destruction of the old mosque and the historic neighbourhood in Vucitrn.

<sup>166</sup> Sabit Kadriu, Shukri Gerxhaliu and Fedrije Hxafa.

Albanians and killed approximately 104 of them.<sup>167</sup> On or about 3 May 1999, forces of the FRY and Serbia separated Kosovo Albanian men of military age from women, children and the elderly.<sup>168</sup> While the Kosovo Albanian women, children and elderly were directed to travel to Albania<sup>169</sup>, hundreds of Kosovo Albanian men of military age were taken to the village of Smrekovrica/Smrakoncë, where they were detained at a prison.<sup>170</sup> After several weeks of detention in inhumane conditions where they were subjected to beatings, torture and murder, many of these Kosovo Albanian men were transported to the village of Zur/Zhur, near the Albanian border, and forced to cross the border into Albania.<sup>171</sup>

#### **D. The JCE**

59. The accused participated in a joint criminal enterprise (JCE) the purpose of which was to modify the ethnic balance in Kosovo by criminal means in order to ensure continued Serbian control over the province.

60. This 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. Alternatively, the crimes enumerated in Counts 3 to 5 of the Indictment were natural and foreseeable consequences of the JCE, and the accused and other members of the JCE were aware that such crimes were the likely outcome of the JCE.

61. The members of the JCE included the accused Milan Milutinović, Nikola Šainović, Dragoljub Ojdanić, Nebojša Pavković, Vladimir Lazarević, Streten Lukić, and Vlastimir Đorđević, together with Slobodan Milošević, Vlajko Stojiljković, Radomir Marković, Obrad Stevanović, Dragan Ilić and others.

<sup>167</sup> *Ibid.*

<sup>168</sup> Sabit Kadriu, Fedrije Xhafa.

<sup>169</sup> Fedrije Xhafa and Shukri Gerxhaliu.

<sup>170</sup> Sabit Kadriu who was detained there, is expected to testify.

<sup>171</sup> *Ibid.*

(a) Evidence of the plan to maintain Serb control over Kosovo by altering the demographic balance

(i) Historical and political background of the plan

62. Although Serbs are the minority population in Kosovo,<sup>172</sup> many Serbs consider Kosovo to be central to their culture and polity and an integral part of Serbia. Serbs trace the beginnings of their political and religious history to medieval Kosovo and refer to many historic and contemporary grievances to legitimise their claims to Kosovo.<sup>173</sup>

63. During the 1980s, one principal grievance of Serbian nationalist circles was that the 1974 SFRY Constitution,<sup>174</sup> which gave Kosovo substantial autonomy,<sup>175</sup> weakened Serbia, and left Kosovo Serbs vulnerable to discrimination by a government in Kosovo that was dominated by ethnic Albanians.<sup>176</sup> Serbs felt that Kosovo Albanians dominated most Kosovo institutions,<sup>177</sup> and complained about discrimination against them by the province's Kosovo Albanian-led government.<sup>178</sup> The notorious 1986 Memorandum, which originated from the Serbian Academy of Science and Art, spoke of a "*physical, political, judicial and cultural genocide of the Serbian population in Kosovo and Metohija*".<sup>179</sup>

64. Throughout the 1980s, there had been a steady emigration of ethnic Serbs from Kosovo, at the same time that there was growth in the ethnic Albanian population.<sup>180</sup> At the beginning of the 1990s, Yugoslav official sources observed that the Albanian political and family practices appeared to be aimed at a *conscious demographic expansion with the aim of facilitating the achievement of particular ethnic objectives*.<sup>181</sup>

<sup>172</sup> Kosovo Albanians constitute Kosovo's majority population. In the 1981 census, the total population of Kosovo was approximately 1,585,000, of which 1,227,000 (77%) were Albanians and 210,000 (13%) were Serbs. Only estimates for Kosovo's 1991 population are available, because Kosovo Albanians boycotted the census administered during that year. A reasonable estimate of Kosovo's population during the time period relevant to this Indictment is between 1,800,000 and 2,100,000; approximately 85-90% were Kosovo Albanians and 5-10% were Serbs. Exhibit 5.375 (1992 Official Gazette) and Patrick Ball, Exhibit 5.539.

<sup>173</sup> Exhibit 4.048.

<sup>174</sup> The 1974 SFRY Constitution provided for devolution of power from the country's central government in Belgrade to its six constituent republics: Serbia, Croatia, Macedonia, Montenegro, Slovenia and Bosnia and Herzegovina. Serbia included two autonomous provinces – Kosovo and Vojvodina; Exhibit 5.892.

<sup>175</sup> Within Serbia, the provinces of Kosovo and Vojvodina were given substantial autonomy, to include control of school systems, the judiciary, the police, and other institutions. These provinces were also given their own assemblies and were represented in the SFRY's Assembly, its Constitutional Court, and its Presidency; Exhibit 5.892.

<sup>176</sup> Exhibits 4.048, 5.1004.

<sup>177</sup> Exhibits 4.048, 5.1004.

<sup>178</sup> Exhibits 4.048, 5.1004.

<sup>179</sup> Exhibit 4.437.

<sup>180</sup> Exhibit 4.048.

<sup>181</sup> Exhibit 4.437.

65. By the early 1990's, the preservation of Serbian control of Kosovo had become quintessential to Serbian policy. One of the key components of Slobodan Milošević's rise to power was his ability to convince the Serbian public that he could retain control over the region.<sup>182</sup> According to Zoran Lilić, the former president of the FRY, Milošević believed that his political career would come to an abrupt end if the Serbian people thought he was bending to any ethnic Albanian demands. Milošević was not alone in this belief; the containment and rolling back of any aspirations by the Kosovo Albanians for independence - or even a regaining of their status as per the 1974 constitution - became a widely accepted and established common goal for all major political forces in Serbia.<sup>183</sup> The Serbian political leadership under Milošević opted for a two-tier strategy to further this goal. First, through legislative means it sought to bring Kosovo under its direct control. Second, through changing of the demographic structure, the elite wanted to consolidate grip over the province in ethnic Serbian hands.<sup>184</sup>

a. Legislative changes

66. In 1988, Slobodan Milošević proposed changes to Serbia's constitution that eventually abrogated Kosovo's autonomy and brought it under tighter Serbian control.<sup>185</sup> Revoking the autonomous status of Kosovo permitted Serbia to take complete control of Kosovo's police and courts as well as its educational, social and economic policy.<sup>186</sup> In early 1989, the Serbian Assembly amended Serbia's Constitution to strip Kosovo of most of its autonomy, including its control of the province's police, schools, economic policy, and choice of official language, as well as its veto powers over further changes to the Constitution of Serbia.<sup>187</sup>

67. On 23 March 1989, despite rigged voting procedures and tanks positioned outside the assembly building in order to intimidate members of the assembly, the assembly's Serb president declared that the amendments to the Serbian constitution had been passed.<sup>188</sup> On 28 March 1989, the Serbian Assembly approved the constitutional changes.<sup>189</sup> The suppression of Kosovo's autonomy by temporary measures was implemented pursuant to the Law on the Procedure to Be

<sup>182</sup> Zoran Lilić.

<sup>183</sup> Exhibit 5.1004.

<sup>184</sup> Exhibit 5.1004.

<sup>185</sup> Exhibits 4.048, 5.1004. These proposals provoked demonstrations by Kosovo Albanians, who increasingly began calling for Kosovo's full independence from the FRY. Exhibit 4.048. Simultaneously, Serb demonstrators and political commentators called for bringing Kosovo under tighter Serbian Rule, Exhibit 5.1004. On 17 November 1988, high-ranking Kosovo Albanian political figures were dismissed from their positions within the provincial leadership and were replaced by appointees loyal to Milošević.

<sup>186</sup> The formal revocation of Kosovo's autonomy was implemented through the following laws of the Socialist Republic of Serbia: Exhibits 5.901, 5.902, 5.903, 5.904, 5.909, 5.910.

<sup>187</sup> Exhibits 4.048, 5.895.

<sup>188</sup> Exhibits 4.048, 5.1004.

<sup>189</sup> Exhibits 4.048, 5.896.



Followed by Republican Organs in Special Circumstances.<sup>190</sup> On 28 September 1990, the Serbian Assembly passed a new constitution that revoked the autonomous status of both Kosovo and Vojvodina.<sup>191</sup> Kosovo Albanians vehemently protested against these measures.<sup>192</sup>

68. The SFRY/FRY and Serbian authorities showed no intention of addressing the grievances of their Albanian citizens. To the contrary, as President of the Socialist Party of Serbia (SPS),<sup>193</sup> the dominant political party of the SFRY/FRY and Serbia, Slobodan Milošević used the SPS majority in the federal and republic assemblies to pass legislation in furtherance of nationalist policies in Kosovo<sup>194</sup> and relied on loyal members chosen from among the SPS main board – including Milutinović and Šainović – to implement his policies in Kosovo. As powerful SPS members, Milošević, Milutinović and Šainović were able to exercise effective control over political officials who implemented their policies in Kosovo.<sup>195</sup>

b. Attempted demographic changes

69. The Serbian political leadership was convinced that the ethnic demographic balance in Kosovo needed to be altered, in order to retain political control over the province. The discriminatory laws passed following the revocation of the autonomous status of Kosovo included restrictions on the conveyance of residential property interests from ethnic Serbs to ethnic Albanians.<sup>196</sup> Likewise, economic assistance programs were offered to ethnic Serbs from outside Kosovo to encourage them to move to Kosovo.<sup>197</sup>

70. On 22 March 1990, the Serbian Assembly adopted a "programme for the establishment of peace, liberty, democracy and prosperity in the autonomous province of Kosovo."<sup>198</sup> Those Kosovo Albanians who wanted to retain their employment within state institutions often would have to sign a declaration that amounted to a loyalty oath towards Serbia.<sup>199</sup> The international community harboured great concerns about the discriminatory character of the new laws that followed the adoption of this programme.<sup>200</sup>

<sup>190</sup> Exhibits 5.898, 5.899.

<sup>191</sup> Exhibit 4.048.

<sup>192</sup> Massive demonstrations by Kosovo Albanians ensued, and the Serbian police used force to repress them. Exhibit 4.048.

<sup>193</sup> The SPS was the successor to the League of Communists of Serbia, and Milošević became its President when it was established in July 1990.

<sup>194</sup> Exhibit 5.1004.

<sup>195</sup> Ratomir Tanić; Ivan Kristan.

<sup>196</sup> Exhibit 4.048.

<sup>197</sup> Exhibits 4.048; 4.463.

<sup>198</sup> Exhibits 4.423, 4.048.

<sup>199</sup> Exhibit 4.424

<sup>200</sup> Exhibit 4.423.

71. The intent of such measures was to alter the demographic balance in Kosovo in favour of Serbs by increasing the Serb population directly, and by creating a more favourable climate in Kosovo for Serbs at the expense of ethnic Albanians. Despite these efforts, by 1997 it was becoming evident that measures to increase the Serb population would be insufficient to reverse the changing demographics of Kosovo. A 1998 proposal from the SPS provincial board of Kosovo, which was addressing current issues in the province, claimed that over 400,000 inhabitants of Kosovo were actually emigrants from Albania and their descendants, and they should be dealt with in accordance with international law. In fact, this was a disguised proposal to deport these citizens to Albania.<sup>201</sup>

(ii) Early development of the JCE prior to 1999 and the NATO bombing campaign

a. Statements showing that Serbs were prepared to commit crimes in Kosovo if needed to change the demographic balance

72. Steps were taken to lay the foundations of the JCE prior to the indictment period. A threat to destroy Albanian villages in Kosovo existed as early as late 1997.<sup>202</sup> One witness was told in late 1997 of the existence of a plan to destroy ethnic Albanian villages – a plan referred to as “*spržena zemlja*” meaning “scorched earth” – by senior members of the State Security Service (RDB).<sup>203</sup>

73. At the 16<sup>th</sup> session of the SPS main board held on 10 June 1998, Milomir Minić, in the presence of Milutinović, Šainović and Milošević, gave a speech concerning the situation in Kosovo and measures to be taken. He stated: “The number of Serbs and Montegrins in Kosovo and Metohija must remain the same today and must grow tomorrow. This would be the only lasting and real defence of Kosovo and Metohija, in terms of national and state interests.”<sup>204</sup>

74. In early June 1998, a meeting called by Milošević took place in the Beli Dvor Palace in Belgrade. It was coordinated by Milutinović, and attended by the political, military, and security elite of the FRY and Serbia, including Pavković, Šainović, Lukić, and Đorđević, as well as Momčilo Perisić, Aleksandar Dimitrijević, Dušan Samardžić, Momir Bulatović, Obrad Stevanović, Jovica Stanišić and Radomir Marković. The security situation in Đakovica, a KLA “stronghold” in Kosovo, was discussed, as well as what should be done in case of further escalation of the situation in Kosovo.<sup>205</sup> The attendees rapidly divided into two camps. One, led by Jovica Stanišić of the

<sup>201</sup> Exhibit 4.035.

<sup>202</sup> Veton Surroi.

<sup>203</sup> Baton Haxhiu.

<sup>204</sup> Exhibit 5.031

<sup>205</sup> Zoran Lilić.

RDB of the MUP, General Perišić, the Chief of the General Staff of the VJ, VJ General Aleksandr Dimitrijević and Zoran Lilić who advocated a political solution. The second faction, led by the accused Šainović and Stojiljković, argued in favour of a military solution. At one point during this meeting and in the presence of the accused, Stojiljković stated that Kosovo Albanians causing problems around the village of Ponosevac in Đakovica should be killed.<sup>206</sup>

75. At a meeting in October 1998, NATO Supreme Allied Commander Europe General Wesley Clark met with Vlastimir Đorđević and Sreten Lukić to discuss MUP deployments in Kosovo.<sup>207</sup> Clark raised concerns about the level of destruction in Kosovo and the displacing of 350,000 - 400,000 persons as a result of efforts to eliminate a small number of KLA members. Đorđević's reply was: "We were within two weeks of killing them all. Why did you stop us?"<sup>208</sup>

76. During another meeting in October 1998, Milošević told NATO representatives that a "solution for Kosovo will be found in spring 1999. The solution will be the same as Drenica 1945/46. We got them together and we shot them."<sup>209</sup> Milan Milutinović, Nikola Šainović, Vlastimir Đorđević, and others were present throughout or during parts of this meeting.<sup>210</sup> At this meeting, Šainović said that a balance between Serbs and Albanians in Kosovo had to be achieved. He expressed concern that the reproduction rate of Kosovo Albanians was higher than that of the Serbs.<sup>211</sup>

77. During this time period, Milošević was telling interlocutors that Kosovo Albanians numbered no more than 900,000 to one million – a figure some 700,000 to 800,000 lower than the true Kosovo Albanian population.<sup>212</sup> At a meeting in October 1998, Milošević insisted to the Head of the KVM Mission, William Walker, that Kosovo Albanians actually constituted less than 50% of the entire Kosovo population.<sup>213</sup>

78. At negotiations held in early 1999 at Rambouillet, a member of the Serbian delegation, Vladimir Štambuk, a representative from the Yugoslav Party of the Left (*Jugoslavenska udružena levica - JUL*), when discussing various alternatives to the Kosovo conflict with international diplomats, stated: "If NATO bombs fall, there will be a massacre in Kosovo". This was understood by the international diplomat to mean that a NATO attack would result in the massacre of the

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<sup>206</sup> Zoran Lilić

<sup>207</sup> Exhibit 4.439.

<sup>208</sup> Rule 70 witness.

<sup>209</sup> Klaus Naumann.

<sup>210</sup> Klaus Naumann, Exhibits 4.438, 4.096.

<sup>211</sup> Klaus Naumann.

<sup>212</sup> At a JUL reception in July 1997 Milošević was talking about showing that there are less than one million Albanians. He also said that the number of Albanians should be reduced and terrorism dealt with before political negotiations. He did not go as far as to say Albanians should be expelled. However, he tolerated others saying just that; Ratomir Tanić.

Albanian population by Serbian forces. Vladimir Štambuk stated this as if it were an unequivocal fact, and the international diplomat was shocked by this statement.<sup>214</sup> Shortly after the Rambouillet talks had collapsed at a Serbia Radical Party (SRS) rally in Zemun, Vojislav Šešelj, the deputy Prime Minister of Serbia, stated that "If NATO bombs us, we Serbs will suffer casualties...but there will be no Albanians left in Kosovo".<sup>215</sup>

79. Shortly before the NATO bombing campaign started, high ranking VJ officers, including Pavković and Lazarević, visited the 72<sup>nd</sup> Special Brigade at the Army Barracks called Kosovski Junaka in an effort to boost the troops' morale. Amongst others, Pavković gave a speech during which he said that as soon as the first NATO bomb falls on Kosovo, they would have to "clean their back from Albanians" which was understood by a witness to mean getting rid of all Albanians. Pavković went on to say that after that they would not have to think about Albanians any longer but could concentrate on their fight against NATO.<sup>216</sup>

b. Arming of ethnic Serbs and disarming of ethnic Albanians

80. Beginning no later than 1998 and continuing into the Indictment period, members of the JCE and those implementing the criminal plan ordered the arming of the ethnic Serb and Montenegrin population in Kosovo.<sup>217</sup> Weapons for Civil Defence units in Kosovo were provided by the VJ 3<sup>rd</sup> Army and stored in various VJ facilities for distribution.<sup>218</sup> The arming of civilians was carried out under the authority of the Ministry of Defence (the "MOD") and with the involvement of municipal politicians.<sup>219</sup> The VJ and the MUP also mobilised ethnic Serbs and Montenegrins into reserve forces.<sup>220</sup>

81. On 26 June 1998, an order from the Priština Corps to arm and train village defence units in Kosovo was issued to address "the aggravated political and security situation in Kosovo and Metohija, and to defend and protect the citizens from the *Šiptar* terrorist groups".<sup>221</sup> A regular operations report of the Priština Military District to the 3<sup>rd</sup> Army, dated 27 June 1998, also refers to the organisation of ethnic Serb and Montenegrins into village defence groups.<sup>222</sup> In July 1998,

<sup>213</sup> William Walker.

<sup>214</sup> Wolfgang Petritsch.

<sup>215</sup> Exhibit 4.596

<sup>216</sup> K73.

<sup>217</sup> Exhibits 4.048; 5.621; 5.448, Behar Haxhiavdija, Izmet Haxhiavdija, Shukri Aliu.

<sup>218</sup> Exhibit 5.360 Tab 18.

<sup>219</sup> Exhibit 5.360, Tab 21.

<sup>220</sup> Exhibits 5.095; 5.346; Milan Milanović.

<sup>221</sup> Exhibit 5.448

<sup>222</sup> Exhibit 5.160

Lukić directed SUP chiefs to update their reserve police units records to support their defence plans. While the VJ provided weapons,<sup>223</sup> the MUP thus incorporated volunteers into their reserve units in order to defend settlements. Joint Command orders issued in 1999 show that these armed civilian units were not only authorised by the Joint Command but that the Joint Command could also order their deployment and cooperation with the Priština Corps and the MUP.<sup>224</sup>

82. In a parallel process, a programme run by the MOD and the MUP with VJ involvement was started in order to disarm the ethnic Albanian population.<sup>225</sup> Members of the MUP collected weapons from the Albanian population throughout various municipalities.<sup>226</sup> The result of these processes was an increasingly vulnerable ethnic Albanian civilian population.

c. Creation of administration and co-ordination bodies in Kosovo

83. Other significant steps taken in 1998 in order to lay the foundations of the JCE included the establishment of mechanisms to co-ordinate the various forces of the FRY and Serbia in Kosovo. At a 10 June 1998 SPS main board meeting, at which Milan Milutinović, Nikola Šainović, Milomir Minić, the President of the FRY Parliament's Chamber of Citizens, Zoran Anđelković, the Serbian Minister for Youth and Sports, Dušan Matković, a vice President of the SPS and other SPS main board members were present, Slobodan Milošević decided that a "*political co-ordination body for Kosovo and Metohija*" should be created. This co-ordination body, Milošević decided, was to have Milomir Minić at its helm and include Zoran Anđelković and Dušan Matković.<sup>227</sup> It soon expanded to include military and police members and was subsequently referred to as the Joint Command.

84. The Joint Command, which played a central role in coordinating the activities of the VJ and the MUP and civil affairs in Kosovo, was thus established by Milošević on an *ad hoc* basis at the 10 June 1998 SPS meeting. The Joint Command was first headed by Milomir Minić before Šainović became its head.<sup>228</sup> Therefore it was led by politicians from the Federal Yugoslav level, despite repeated assertions by Milošević and others that Kosovo was an internal matter of Serbia, not the FRY.<sup>229</sup> The creation of the Joint Command at a party main board meeting was outside of both FRY and Serbian law. It was outside the competency of a political party in Serbia to create a quasi government body, especially as it gained authority over security matters through the inclusion of VJ

<sup>223</sup> Exhibit 5.1159.

<sup>224</sup> Exhibit 5.360, Tab 176.

<sup>225</sup> Exhibit 5.229.

<sup>226</sup> Exhibit 5.360 Tabs 19, 14, 67.

<sup>227</sup> Exhibit 5.031.

<sup>228</sup> Zoran Lilić; Ratomir Tanić; For the details on the Joint Command, see also section Joint Command For Kosovo and Metohija of this Brief.

<sup>229</sup> Wolfgang Petritsch.

and MUP members. The establishment of the Joint Command is nowhere reflected in either the official records of the Republic of Serbia or those of the Federal Republic of Yugoslavia.

85. Also in June 1998, the MUP Staff in Kosovo – a body which had already existed since 1994 – was extended, bringing together the RDB and RJB in one headquarters in Kosovo. Lukić became Head of this body.<sup>230</sup> Finally, in September 1998, without having previously debated the concept, the Serbian National Assembly then established a "Temporary Executive Council for Kosovo and Metohija" (TEC) and at the same session appointed Zoran Anđelković, the Serbian Minister for Youth and Sports and a high ranking member of the SPS, as its President.<sup>231</sup>

86. Between summer 1998 and 23 March 1999, meetings of the Joint Command and meetings of the TEC were held within the same premises in Priština. TEC President Anđelković and Head of the MUP Staff Lukić were at the same time amongst the members of the Joint Command<sup>232</sup> attending Joint Command meetings, while members of the Joint Command, namely Lukić, Pavković and Lazarević, attended at least one session of the TEC where they reported about the military and police situation in the field.<sup>233</sup> Constant information flow and detailed co-ordination between all three organs was thus guaranteed.<sup>234</sup> With the *ad hoc* establishment of the Joint Command and the TEC and the extension of the MUP Staff, the necessary instruments for a total control of all military, police and civilian aspects of life in Kosovo were thus provided for by members of the JCE by no later than summer and autumn 1998. That those instruments would indeed be played according to the plan of the JCE members was ensured by putting them under the direct authority of key JCE members like Šainović, Lukić, and Anđelković.

d. The 1998 operations of the VJ and MUP and the use of indiscriminate and excessive force

87. The KLA was established in approximately 1996 to conduct an armed struggle against the Serbian authorities. From that time through to June 1999, the KLA was the principal Kosovo Albanian organised, armed group conducting operations against the forces of the FRY and Serbia.<sup>235</sup>

<sup>230</sup> Exhibit 5.373, Tab 108.

<sup>231</sup> Exhibits 4.580, 4.523, 4.524.

<sup>232</sup> Exhibit 4.564.

<sup>233</sup> Exhibit 5.226.

<sup>234</sup> Exhibit 5.222.

<sup>235</sup> John Crosland, Paddy Ashdown, Fred Abrahams.

88. In mid-1996 and throughout 1997, the KLA began launching attacks primarily directed at Serbian police forces and at Albanians loyal to the Serbian authorities.<sup>236</sup> During this period, the KLA consisted of only a small group of people who were poorly armed and disorganised with its leadership abroad.<sup>237</sup> It was only in 1998 that they grew to a group of several thousand members and became more active.<sup>238</sup>

89. In early 1998, the conflict intensified between the KLA and the forces of the FRY and Serbia.<sup>239</sup> Between late February and early March 1998, Serbian forces reacted to KLA provocations not by attacking military targets but rather by attacking three villages in the Drenica region, Donji Pekaz, Ćirez and Likošane. This region had by then become a KLA stronghold.<sup>240</sup> More than 80 Kosovo Albanians were killed during these brutal operations, among them 24 women and children. During the police attack on the family compound of a local KLA leader, Adem Jashari, in Prekaz, around 50 people were killed, including women and children, and most of Jashari's family.<sup>241</sup> Around Easter 1998, a VJ tank unit razed Dečani to the ground.<sup>242</sup> Between May and June 1998, further operations were carried out.<sup>243</sup> All anti-terrorist operations were characterised by the use of indiscriminate and excessive force against the villagers, with no distinction made between combatants and civilians, and the wanton destruction of Kosovo Albanian houses.<sup>244</sup>

90. In June 1998, a guidance document from the VJ General Staff was issued to specify how VJ units should conduct operations against the KLA.<sup>245</sup> The common theme that was first used in 1998 and later also applied in 1999, was that attacks against villages typically involved the VJ establishing a cordon and providing fire support with tanks or artillery while the MUP special units entered on foot.<sup>246</sup> International diplomats noted joint operations of VJ, SAJ and PJP units taking place and causing heavy destruction in various villages, including Junik, Dulje, and Blace around 28 and 29 July 1998. By mid-July 1998, the KLA held up to 50 % of the territory of Kosovo, including three of the four main access roads.<sup>247</sup> This situation triggered a heavy summer clearing offensive, starting in July and continuing until late September 1998.<sup>248</sup> In the course of this offensive, Serb forces, including the VJ, MUP, and MUP special units, engaged in co-ordinated

<sup>236</sup> Exhibit 4.048; K6; Fred Abrahams.

<sup>237</sup> Ratimir Tanić.

<sup>238</sup> Ratimir Tanić; Fred Abrahams.

<sup>239</sup> Exhibits 4.047; 4.048; 4.051.

<sup>240</sup> John Crosland.

<sup>241</sup> Sabit Kadriu; Exhibits 4.047, 4.084.

<sup>242</sup> Ratimir Tanić.

<sup>243</sup> Paddy Ashdown, John Crosland; Exhibits 5.1142, 5.247.

<sup>244</sup> Sabit Kadriu, Fred Abrahams, Exhibits 4.047, 4.084.

<sup>245</sup> Exhibit 5.030.

<sup>246</sup> Exhibits 5.360, 5.373; John Crosland, J. Maisonneuve.

<sup>247</sup> John Crosland.

<sup>248</sup> K64.

attacks on ethnic Albanian villages across large swathes of Kosovo, expelling ethnic Albanians from their homes, killing civilians, and looting and destroying property.<sup>249</sup>

91. In early August 1998, operations were conducted in the areas of Dreniça, Junik and Jablanica. International diplomats travelling the road between Priština and Peć in September 1998 observed destroyed hamlets with uninhabited houses, burnt property and dead cattle.<sup>250</sup> Further down the Peć-Djakovića road, they saw destroyed and deserted villages, in particular in Dečani and Prilep.<sup>251</sup> While approaching Suva Reka in Orahovac municipality, the group passed hills where every village was ablaze while Serb forces were continuing shelling with mortars.<sup>252</sup>

92. By the end of September 1998, about half of the villages in Dečani/Dečan had been totally or partially destroyed.<sup>253</sup> Serb forces concentrated on central Drenica, an area where fierce fighting between the KLA and the Serb forces had taken place. In Joint Command minutes dated 25 September 1998, Pavković reported that “the operation in the area of Gornje Dobrinje and Dornje Obrinje is finished”, and that resistance was strong. The minutes further stated that the clearing would continue the following day.<sup>254</sup> On 26 September 1998, in the course of the “clearing” operation in Gornje Dobrinje/Dobrinja e Epërm, 21 members of the Delijaj family, including women and children, were killed in and around the family compound. Five of the children killed were between the ages of eighteen months and nine years, while the invalid family patriarch, aged 94, died in the burning family home.<sup>255</sup> That day, Human Rights Watch investigators observed a convoy of 47 armoured vehicles and sixteen supply vehicles, including numerous tanks, heavy artillery, anti-aircraft guns and APC’s, leaving Drenica a few miles west of Glogovac. Visiting the crime scene at the Delijaj family compound on 29 September 1998 and interviewing the survivors of the attack, Human Rights Watch gathered detailed witness testimony on what happened during the attack on 26 September. Members of the MUP, the SAJ, the JSO and VJ were identified by witnesses as the perpetrators of the attack.<sup>256</sup>

93. This use of excessive and indiscriminate force against entire villages throughout Kosovo resulted in a massive wave of Kosovar refugees and displaced persons in 1998. In March 1998, the UNHCR estimated the total of displaced persons at 28,000.<sup>257</sup> A report of the UN Secretary General, issued in September 1998 pursuant to SC resolution 1160 (1998), referred to 600 to 700

<sup>249</sup> John Crosland, Fred Abrahams.

<sup>250</sup> Paddy Ashdown.

<sup>251</sup> Paddy Ashdown, John Crosland.

<sup>252</sup> Paddy Ashdown.

<sup>253</sup> Paddy Ashdown.

<sup>254</sup> Exhibit 5.501

<sup>255</sup> Fred Abrahams; Exhibits 4.048, 4.051.

<sup>256</sup> Fred Abrahams; Exhibit 4.051.

<sup>257</sup> Rule 70 witness.



civilians killed and 230,000 displaced since March.<sup>258</sup> By the end of October 1998, the figures reported by UNHCR stated that 285,000 persons had been displaced, either internally or in countries close to or neighbouring Kosovo, as a result of the ongoing military operations.<sup>259</sup> Before the NATO campaign started, by 23 March 1999, these numbers had risen to 349,000 displaced Kosovo Albanians, of which 260,000 were internally displaced persons remaining in Kosovo.<sup>260</sup>

94. By the end of 1998, the forces of the FRY and Serbia were in place to accomplish the objectives of the JCE. The Serb forces active in the so-called anti-terrorist operations in Kosovo between February and September 1998 included the VJ and the MUP, as well as MUP special units. PJP members were deployed for operations throughout the province from early spring onwards.<sup>261</sup> International observers also saw SAJ units operating in concert with the PJP.<sup>262</sup> In May 1998, a unit of approximately 200 men made up of armed civilians, JSO officers and State Security, led by Milorad Ulemek, known as "Legija", took over Dubrava prison. Between May and October 1998, Frenki Simatović and Jovića Stanišić visited them on several occasions. Before the JSO takeover, the Minister of Justice, Janković, informed the regular prison staff that Prime Minister Marjanović had ordered the takeover. During the period that the JSO unit was deployed at the prison, the regular prison staff was neither allowed to enter the prison compound nor to talk about their presence at this detention facility.<sup>263</sup>

95. At least from mid-May 1998 onwards, the VJ was extensively committed to combat operations on the borders of and within Kosovo. By this time, a forward command post of the Priština Corps had been established, while a 3<sup>rd</sup> Army forward command post was set up at the end of July 1998.<sup>264</sup> Reports by brigades submitted to the Priština Corps on joint VJ-MUP operations during 25 July and 6 August 1998 demonstrate the extensive involvement of the VJ in combat operations over large portions of Kosovo.<sup>265</sup> Finally, as early as April 1998, the local defence concept of using armed non-Albanians to defend villages and other structures was formalised by order of the MOD.<sup>266</sup> Meetings of the Joint Command, coordinating these joint forces and operations, were held on an almost daily basis between July and October 1998.<sup>267</sup>

<sup>258</sup> Exhibit 4.066.

<sup>259</sup> Rule 70 witness.

<sup>260</sup> Rule 70 witness.

<sup>261</sup> K25.

<sup>262</sup> John Crosland.

<sup>263</sup> K70.

<sup>264</sup> Exhibit 5.1134.

<sup>265</sup> Phil Co. Exhibit 5.1134.

<sup>266</sup> Exhibit 5.286.

<sup>267</sup> Exhibit 5.501.

96. From early 1998, the members of the JCE were made aware that the VJ and the MUP were using indiscriminate and excessive force against the civilian population during their military offensives. In March 1998, Milutinović called officials of the MUP to brief him about the Jashari incident because it caused, in Milutinović's own words in a later statement, "an even bigger noise than Račak" at that time. He received an account of what had happened from the MUP.<sup>268</sup>

97. Security Council Resolution 1160, adopted on 31 March 1998, explicitly condemned "the use of excessive force by Serbian police forces against civilians and peaceful demonstrators in Kosovo", urged the Office of the Prosecutor of the Tribunal "to begin gathering information related to the violence in Kosovo" and noted "that the authorities of the Federal Republic of Yugoslavia have an obligation to cooperate with the Tribunal".<sup>269</sup> In June, a report of the Secretary General pursuant to this resolution noted that, since mid-May, there had been an increase in civilian casualties and the use of force against civilians by the forces of the FRY and Serbia.<sup>270</sup>

98. At a meeting between members of the Albanian political leadership and Milošević in the White Palace on 15 May 1998, the Albanian delegation complained about human rights violations against the Albanian population, in particular the killing of the Jashari family. Milošević displayed a very detailed knowledge about the police operation led in Prekaz but refused the accusation of police brutality with the simple statement that it would be insane to think that the police would kill women and children. A witness who was part of the Albanian delegation felt that Milošević just brushed aside all their concerns in this regard.<sup>271</sup>

99. At the 16 June SPS Main board meeting, chaired by Milošević and attended by Milutinović, Šainović and Stojiljković, allegations of crimes having been committed in Kosovo in 1998 by Serb forces were discussed within the SPS leadership. SPS member Živković gave a speech stating that local as well as international media allegations of expulsions, ethnic cleansing, burning of houses and mass graves would only show "the handwriting of foreign companies that are again imposing stories about alleged refugees, alleged ethnic cleansing, burning houses and mass graves". He told the SPS Main board meeting attendees: "This media campaign is fuelled by the dirtiest lies published primarily by the Albanian-language media in Kosovo and Metohija, and especially Albanian television in Tirana, but also by a number of dailies and weeklies printed here in Belgrade and a number of electronic media organisations broadcasting their programmes right here in Belgrade." Živković demanded in conclusion that the judiciary should deal with the Albanian and local Belgrade press which was raising these allegations. It was however not demanded by anyone

<sup>268</sup> Exhibit 4.219.

<sup>269</sup> Exhibit 4.066.

<sup>270</sup> Exhibit 4.067.

present at that meeting that the allegations against the Serb forces should be investigated by the Serb judicial organs. Milošević, in his concluding remarks to this SPS session, supported this attitude of denial stating that when he was asked by "foreigners" why civilian objects in Kosovo were fired at he told them that houses from which there was no shooting towards the police would not be attacked.<sup>272</sup>

100. KDOM and other international observers noted multiple incidents of excessive and indiscriminate use of force by the VJ and Serbian MUP members in Kosovo and brought these incidents to the attention of Milošević and Ojdanić.<sup>273</sup> In the midst of the summer clearance operation, on 20 July 1998, Human Rights Watch sent correspondence to the MUP, the VJ and the Serbian Secretary for Information, seeking information and responses to a number of concerns raised in a Human Rights Watch report which was later published in October 1998. No response was ever received from the Serb authorities.<sup>274</sup>

101. Between 22 July and 30 October 1998, the Joint Command met on an almost daily basis with the accused Šainović, Lukić, Đorđević and Pavković being present and discussing joint operations and refugee numbers in detail, thereby showing that they were fully aware of the situation on the ground during this time.<sup>275</sup>

102. At a briefing in August 1998, Ojdanić<sup>276</sup> stated that force would be met with force in Kosovo. When an international observer pointed out to him that he had seen four hours of direct and indirect firing at the villages Junik, Prilep, Rznice and Glodjane creating security and humanitarian problems, Ojdanić did not dispute that.<sup>277</sup>

103. At a meeting with Milošević in October 1998, at which Šainović and Milutinović were both present, witnesses warned them about the need to withdraw excess forces from Kosovo and to end the disproportionate use of force against the civilian population there.<sup>278</sup> In November and December 1998, there were more reports of violations, many of which were triggered by the KLA, but with the Serb forces reacting disproportionately against civilians.<sup>279</sup> Milošević, Milutinović and Šainović took no action in response to this report, failing to either direct the VJ and MUP to

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<sup>271</sup> Veton Surroi.

<sup>272</sup> Exhibit 4.383.

<sup>273</sup> John Crosland, Paddy Ashdown.

<sup>274</sup> Fred Abrahams.

<sup>275</sup> Exhibit 5.501.

<sup>276</sup> Then Deputy Chief of the General Staff.

<sup>277</sup> John Crosland.

<sup>278</sup> Klaus Naumann.

<sup>279</sup> Exhibit 4.123, Klaus Naumann, Karol Drewienkiewicz.

exercise restraint, or to reconfigure them to better meet the challenges posed by the KLA in the densely-populated Kosovo region.

e. Breach of peace building measures in October 1998 Agreements

104. On 23 September 1998, the UN Security Council adopted Resolution 1199, acting under Chapter VII of the Charter and calling for an immediate cease-fire in Kosovo, an international presence to monitor it and the withdrawal of "security forces used for civilian repression".<sup>280</sup> In an attempt to defuse tensions in Kosovo, U.S. envoy Richard Holbrooke negotiated an accord with Milošević in October 1998, pursuant to which several agreements ("October Agreements") were signed by representatives of the FRY, Serbia, NATO, the OSCE and the Kosovo Diplomatic Observer Mission (KDOM).<sup>281</sup> The lead negotiators and signatories included Šainović, Milutinović, Đorđević, and others whose true intent was to implement the objectives of the JCE. These agreements provided for, *inter alia*, the partial withdrawal of forces of the FRY and Serbia from Kosovo, a limitation on the introduction of additional forces and equipment into the area, and the deployment of unarmed OSCE KVM verifiers.<sup>282</sup>

105. In December 1998 a NATO representative met with Ojdanić in order to ascertain that Ojdanić understood the obligations Yugoslavia had accepted in October of the same year. Šainović was also present. By this time, NATO already had indications that the FRY was not honouring its obligations and was deploying additional military and police forces to Kosovo.<sup>283</sup> Additionally, General Pavković and Sreten Lukić, or their designees, met with KVM liaisons during this period, who reminded them of their obligations.<sup>284</sup>

106. Since mid-February 1999 FRY and Serb forces had visibly been reinforcing units in Kosovo in direct contravention of the October Agreements and deploying troops at the border with Kosovo.<sup>285</sup> By early March there was an obvious build-up of VJ and MUP forces, including elements of two brigades.<sup>286</sup> This increase in troop strength was ordered by the SDC, and implemented by Generals Ojdanić, Pavković, and Lazarević.<sup>287</sup> An early February 1999 meeting of the TEC of Kosovo discussed the need to be ready for a war.<sup>288</sup> In addition, the Federal MOD

<sup>280</sup> Exhibit 4.067.

<sup>281</sup> Exhibits 4.004, 4.005, 4.050, 4.065, 4.273.

<sup>282</sup> Exhibits 4.004, 4.005, 4.050, 4.065, 4.273.

<sup>283</sup> Exhibit 4.439, Klaus Naumann.

<sup>284</sup> Richard Cigagliniski, Karol Drewienkiewicz.

<sup>285</sup> John Crosland.

<sup>286</sup> John Crosland.

<sup>287</sup> Exhibit 5.472, 5.718, 5.506, 5.719, 5.722, 5.975.

<sup>288</sup> Exhibit 5.218.

ordered the activation of Civilian Protection Staffs on 22 February 1999.<sup>289</sup> The order was signed by Geza Farkaš, who was rewarded a month later with a promotion to head of the Security Administration of the VJ.<sup>290</sup> By the time the KVM withdrew, on 20 March 1999, forces of the FRY and Serbia had commenced operations directed against the civilian population.<sup>291</sup> Additional indications of preparations by the FRY and Serb leadership, driven by the decisions of members of the JCE, to employ FRY and Serb forces on large-scale operations in Kosovo in early 1999 are provided by various witnesses.<sup>292</sup>

107. OSCE KVM verifiers and KDOM observers noted many violations of the above agreements, and many instances of excessive and indiscriminate use of force by police and military forces, during the OSCE KVM's deployment in Kosovo from November 1998 to 20 March 1999.<sup>293</sup> OSCE KVM officials reported these incidents to FRY and Serbian authorities, including Sreten Lukić and Nikola Šainović.<sup>294</sup>

108. In one such incident, on 15 January 1999, some 45 unarmed Kosovo Albanians were murdered in the village of Račak in the municipality of Štimlje.<sup>295</sup> Throughout the remaining period before the state of war was declared on 24 March 1999, the security situation continued to deteriorate with disproportionate responses by FRY and Serb forces to KLA provocations.<sup>296</sup> By the middle of February some 276,500 persons were internally displaced in Kosovo and tens of thousands of them had left the province.<sup>297</sup> At the beginning of March, KVM members observed the deployment of FRY troops outside their barracks, ammunition columns coming in and a greater number of MUP forces, with higher quality equipment than previously observed, arriving in Kosovo.<sup>298</sup>

f. Removal and replacement of senior officials

109. The use of the VJ outside of the chain of command in anti-terrorist operations in Kosovo in 1998 and the attempts to centralize command of police and military met resistance from some senior officers in both the VJ and the MUP.<sup>299</sup> Many of these unwilling senior officers were removed by Milošević, aided by Milutinović and Šainović, and systematically replaced by

<sup>289</sup> Exhibit 5.321.

<sup>290</sup> Exhibit 4.414, Ratimir Tanić.

<sup>291</sup> Exhibits 4.017, 5.360, 5.373, Knut Vollebaek, Richard Ciaglinski.

<sup>292</sup> Exhibit 5.360; Phil Coe, Richard Ciaglinski, Karol Drewienkiwicz.

<sup>293</sup> J. Maisonneuve, John Crosland.

<sup>294</sup> Richard Ciaglinski, Karol Drewienkiwicz, J. Maisonneuve.

<sup>295</sup> The Račak evidence is set out *supra* in para. 42.

<sup>296</sup> Exhibit 4.017; Drewienkiwicz, Knut Vollebaek.

<sup>297</sup> Exhibit 4.351.

<sup>298</sup> Richard Ciaglinski; Karol Drewienkiwicz.

individuals who would collaborate with them to implement the objectives of the JCE. Accordingly, in 1998, the accused were strategically placed by Milošević in leading positions within the VJ or MUP, respectively, and/or became members of crucial co-ordination bodies as like the Joint Command. Ojdanić, Pavković, Lazarević and Lukić were promoted into key positions in the VJ and MUP and the latter three became members of the Joint Command which was headed by their co-accused Šainović.

110. Within the VJ, there was strong resistance at senior levels to the use of the VJ in Kosovo outside of the normal chain of command. This resistance was led by the then Chief of the General Staff of the VJ, General Perišić.<sup>300</sup> Other senior officers sharing his view were General Samardžić, the commander of the 3rd Army, and General Dimitrijević, the head of the Security Administration of the VJ.<sup>301</sup> The resistance of these experienced senior officers constituted a significant obstacle to the objectives of the JCE. These Generals wanted the VJ to be used in Kosovo in accordance with FRY law. They were concerned about potential international repercussions, and were dissatisfied with the way the Joint Command acted.<sup>302</sup>

111. In October, 1998 this resistance came to a head and General Samardžić, then- commander of the 3<sup>rd</sup> Army, refused to implement Milošević's order to form rapid intervention battle groups consisting of combined VJ and MUP troops and equipped with helicopters. General Pavković, at the time the commander of the Priština Corps, sent a strongly-worded letter to Samardžić reminding him that they had been flatly ordered to form the groups, and warning him that failing to re-orient the army in the direction Milošević had asked for could have serious consequences on the ground.<sup>303</sup>

112. In order to eliminate these obstacles to the JCE, Milošević and Milutinović removed these dissenting voices in the VJ and MUP from their key positions and replaced them with individuals who would join, were already members of, or would otherwise implement the JCE. The removal of VJ Generals was done on the basis of a decision by the FRY President but prior to that such decisions, removals, reassignments, retirements, and promotions of General Officers were discussed at sessions of the Supreme Defence Council (the "SDC") attended by Milošević and Milutinović.<sup>304</sup>

A new clause in the SDC rules introduced on 23 March 1999 made decision by consensus by the

<sup>299</sup> Zoran Lilić

<sup>300</sup> Exhibit 4.332; Klaus Naumann; Ratimir Tanić; Karol Drewienkiewicz.

<sup>301</sup> John Crosland.

<sup>302</sup> Exhibits 4.332, 5.614

<sup>303</sup> Exhibit 5.472

<sup>304</sup> Exhibits 5.003, 5.615.

SDC mandatory with regard to career issues concerning VJ officers at the General rank. The SDC considered recommendations on such personnel issues made by the Chief of the General Staff.<sup>305</sup>

113. In November 1998, Perišić was removed from the position of Chief of the General Staff of the VJ, and replaced by Ojdanić. Also, in December 1998, Samardžić was reassigned to a position in the MOD and Pavković was promoted to replace him as Commander of the 3<sup>rd</sup> Army.<sup>306</sup> Prosecution witnesses will testify that Pavković had already demonstrated in 1998 his loyalty to Milošević and his commitment to the JCE.<sup>307</sup> Lazarević replaced Pavković as head of the Priština Corps.<sup>308</sup>

114. On 11 May 1998, Lukić was appointed head of the MUP Staff in Priština for a one- year term by a decision signed by his co-accused Đorđević. In June 1998, the MUP Staff was expanded, bringing the RDB and RJB together in one headquarters in Kosovo..<sup>309</sup>

115. Within the MUP also, there was resistance to the objectives of the JCE – or at least resistance to the methods by which those objectives would be realised, insofar as those methods were reflected in the operations conducted in 1998. The head of the RDB, Jovica Stanišić, and his deputy Zoran Mijatović, objected to the means of addressing the KLA that were being applied in Kosovo.<sup>310</sup>

116. In October 1998, Stanišić and his deputy Mijatović were dismissed as head and deputy head, respectively, of the RDB and replaced by Radomir Marković and Nikola Čurčić, respectively.<sup>311</sup> In November 1998, Milutinović passed a decree promoting Marković and Čurčić to Colonel-General and Major-General, respectively.<sup>312</sup>

117. In March 1999, shortly before the ethnic cleansing campaign in Kosovo began, Dimitrijević was removed from his position as head of the Security Administration of the VJ, and was replaced by General Geza Farkaš.<sup>313</sup> Under the Law on the VJ, the removal of Dimitrijević and the

<sup>305</sup> Exhibit 5.777.

<sup>306</sup> Exhibits 4.417 and 4.415.

<sup>307</sup> Ratomir Tanić; Zoran Lilić, Radomir Marković..

<sup>308</sup> Exhibits 5.023, 5.315.

<sup>309</sup> Exhibits 5.360, 5.373

<sup>310</sup> Zoran Lilić, Ratomir Tanić

<sup>311</sup> Radomir Marković.

<sup>312</sup> Exhibit 5.317.

<sup>313</sup> Exhibit 4.414, Ratomir Tanić.

appointment of Farkaš would have been authorised by Milošević.<sup>314</sup> Given existing practices, it is also likely that Ojdanić and Milutinović would have been involved in this decision.<sup>315</sup>

(iii) The implementation of the JCE in 1999

118. By October 1998 the JCE members, troops, and control structures were in place. By the end of the year, continuing into early 1999, numerous steps had been taken to implement the JCE's objectives. Early in the year, the crimes in Račak took place. The beginning of 1999 was also marked by a number of important political events, notably the rupture of negotiations with the Kosovo Albanians and the obstruction of international efforts to find a peaceful solution to the situation in Kosovo at a conference at *Chateau de Rambouillet* in France, which shows that the Serbian leadership had decided to use force to resolve the situation in Kosovo.

119. Simultaneously with these steps, comprehensive plans for an offensive in Kosovo were being made. The true intent of the 1999 offensive – the change of the ethnic balance in Kosovo – was disguised under the rubric of a plan to combat terrorism and prepare for a NATO attack. Statements by several centrally placed persons in early 1999 shows that this is indeed the case. Further, the scale of the crimes, the number of victims, and pervasive pattern of deporation, killing, looting and destruction from the outset of the offensive, show that the crimes can only have been part of the JCE. This is further supported by the fact that the same heavy-handed tactics that had resulted in so many crimes in 1998 were used during the offensive; the same units were being deployed without any attempt being made at redeploying or breaking up units that had been involved in crimes in 1998, commanding officers remained in place and were even promoted, and persons and units that were known to have committed crimes during the wars in Bosnia and Croatia were deployed in Kosovo. Moreover, no adequate steps to investigate and punish those responsible for the crimes committed were taken. On the contrary, efforts were made to obstruct investigations and conceal the commission of the crimes that had been committed. The only reasonable inference from these facts is that the crimes indeed were part of the spring offensive, not incidental to the stated objectives of stopping terrorism and preparing for an invasion.

a. Obstruction of negotiations with Kosovo Albanians

120. Despite initially successful efforts by Ibrahim Rugova to unite the Kosovo Albanians behind a policy of peaceful resistance, and the international community's efforts at bringing peace, Šainović, Milutinović and Milošević – and others on their behalf – failed to support, or deliberately

<sup>314</sup> Exhibit 5.003.

<sup>315</sup> Exhibit 5.019.



undermined, efforts at negotiating a peaceful resolution to the crisis in Kosovo.<sup>316</sup> The refusal to seriously negotiate had the effect of further empowering radical elements of Kosovo Albanian society, in particular the KLA, and provoking an armed conflict.<sup>317</sup>

118. Representatives of the international community continued with their efforts to mediate between Kosovo Albanian and Serb representatives. These efforts included shuttle negotiations conducted under the auspices of U.S. envoy Christopher Hill, European Union envoy Wolfgang Petritsch, and Russian envoy Boris Mayorsky and further attempts by the international community to bring the parties together for meaningful negotiations. Against the backdrop of an escalation of violence in Kosovo, the Contact Group in London, on 29 January 1999, issued a statement in which it strongly condemned the massacre at Račak, urged the parties to comply with UN Security Council Resolutions 1160 (1998), 1199 (1998) and 1203 (1998) and at the same time summoned the parties for further negotiations to Rambouillet in France. The basis for these negotiations, as the Contact Group made clear, would have to be the principles it had set out previously. The parties would thus during their negotiations refine the draft proposals presented earlier by Hill, Petritsch and Mayorsky, which contained elements of substantial autonomy for Kosovo.<sup>318</sup>

119. The Rambouillet talks were opened by French President Jacques Chirac on 6 February 1999 and proceeded under the co-chairmanship of the French and British Ministers of Foreign Affairs. During the course of the negotiations other high-ranking foreign officials attended the negotiations, including the Secretary of State of the United States and the German Minister of Foreign Affairs. However, observers noted that the Serbian delegation, in stark contrast to the Kosovo Albanians, initially did not make apparent attempts to engage in serious debates on the draft proposals put to them by the mediators. After protracted negotiations both delegations finally indicated that they would be ready for a settlement, provided they were allowed to return to their respective homes for further consultations. Before their departure, both delegations agreed to return for the signing of an agreement and a conference on the implementation of the same to Paris on 15 March 1999. When the delegations met again on 15 March 1999, only the Kosovo Albanians signed the agreement that was tabled by the Contact Group negotiators. The Serb side introduced new drafts and went back on earlier agreed issues and eventually refused to sign. The talks were suspended on 18 March 1999.

319. The Contact Group in London, on 29 January 1999, issued a statement in which it strongly condemned the massacre at Račak, urged the parties to comply with UN Security Council Resolutions 1160 (1998), 1199 (1998) and 1203 (1998) and at the same time summoned the parties for further negotiations to Rambouillet in France. The basis for these negotiations, as the Contact Group made clear, would have to be the principles it had set out previously. The parties would thus during their negotiations refine the draft proposals presented earlier by Hill, Petritsch and Mayorsky, which contained elements of substantial autonomy for Kosovo.

<sup>316</sup> Exhibit 4.048, Ratomir Tanić.

<sup>317</sup> Exhibit 4.048.

<sup>318</sup> Exhibit 4.595.

<sup>319</sup> Wolfgang Petritsch.

121. Nikola Šainović was the political head of the Serbian delegation at Rambouillet, while Ratko Marković was leading the delegation formally.<sup>320</sup> Milan Milutinović joined the Rambouillet talks after they had begun<sup>321</sup> and was also involved when these negotiations continued in Paris.<sup>322</sup>

122. Šainović and Milutinović undermined or directly obstructed these negotiations, acting with or at the direction of Milošević.<sup>323</sup> During the time of the negotiations there were intense communications between Belgrade and Rambouillet, with Šainović asking Milošević for political decisions.<sup>324</sup> On 23 March 1999, pursuant to Milošević's instructions, high-level political officials, including Milutinović, persuaded the SPS majority in the Republic of Serbia Assembly to reject the Paris accord.<sup>325</sup>

123. Following the failure of the Rambouillet and Paris talks, Knut Vollebaek tried to rescue the faltering KVM mission by introducing an international military presence into Kosovo. However, Milošević refused this proposal.<sup>326</sup>

b. Preparation of the spring offensive

124. In October 1998 Milošević stated that a solution to the situation in Kosovo would be found the following Spring and intimated that the solution would be found by the use of force.<sup>327</sup> While the Serb side made a show of negotiating at Rambouillet and Paris, plans were being made for an offensive in Kosovo. There was an assessment made in November 1998, and recorded in a Joint Command report, that the KLA would launch a Spring offensive, the perfect cover for accomplishing the JCE's objectives.<sup>328</sup>

125. The concerted nature of the military operations conducted by the Serb forces in Kosovo in the period relevant to the Indictment also demonstrates the existence of a plan. Prosecution experts as well as fact witnesses with extensive military experience will testify that the operations carried out by the forces of the FRY and Serbia during the Indictment period could not have been executed

<sup>320</sup> Wolfgang Petritsch.

<sup>321</sup> Wolfgang Petritsch.

<sup>322</sup> Veton Surroi, Ibrahim Rugova.

<sup>323</sup> Veton Surroi, Ibrahim Rugova.

<sup>324</sup> Wolfgang Petritsch.

<sup>325</sup> Ratomir Tanić.

<sup>326</sup> Knut Voellebaek. Probably Milan Milutinović was also present at that meeting.

<sup>327</sup> *Infra*, para. 239-245.

<sup>328</sup> Exhibit 5.223.

without careful planning<sup>329</sup> and that a decision to conduct the operations ultimately carried out must have been taken no later than the end of 1998.<sup>330</sup>

126. A meeting on 14 February 1999 of the Collegium of the Minister of Internal Affairs (the Minister and his assistant Ministers, including the Heads of the RDB and RJB), addressed the need to eliminate the KLA in the period of opportunity which would exist between NATO airstrikes and a NATO ground attack.<sup>331</sup> The MUP and the VJ would execute the plan. More concrete statements about such a plan were provided at a meeting of the MUP leadership in Kosovo on 17 February 1999.<sup>332</sup> Those present included Đorđević and Lukić. The VJ was also engaged in planning for the same operations at this time, as can be inferred from, among other things, the deployment of reinforcements to Kosovo in early March and from the nature of orders issued immediately before and shortly after NATO bombing began.<sup>333</sup> Planning of this nature by the VJ and MUP is initiated on the basis of decisions made by the civilian leadership and during the formulation of such decisions, the civilian leadership seeks the input of the organisations which will implement the direction. Thus, Milošević, Milutinović, Šainović, Ojdanić, and Stojiljković, developed a concept of operations prior to 14 February 1999 and this was then passed down the chains of command of the VJ and MUP, each level reacting to the one above, until orders were issued to field units of the forces of the FRY and Serbia to conduct combat operations shortly before the state of war was declared on 24 March 1999.<sup>334</sup> Deploying large numbers of military and MUP units and engaging them in complex operations, required planning well in advance by the VJ General Staff (Ojdanić), 3<sup>rd</sup> Army (Pavković), Priština Corps (Lazarević), Ministry of Internal Affairs (Stojiljković, Đorđević, Marković, Stevanović), MUP Staff (Lukić), and the Joint Command (Šainović and VJ and MUP members). The planning described ensured that the large military and MUP forces needed to achieve the objectives were all deployed to the right places at the appropriate times and employed in a coordinated manner.<sup>335</sup>

127. A few days prior to the commencement of NATO bombing and upon the departure of the KVM from Kosovo, the forces of the FRY and Serbia launched large-scale offensive operations. These occurred in areas where the majority of ethnic Albanians were concentrated. They were

<sup>329</sup> Peter de la Billiere, Phil Coe, Klaus Naumann, Richard Cragginski.

<sup>330</sup> Klaus Naumann.

<sup>331</sup> Exhibit 5.943.

<sup>332</sup> Exhibit 5.1035.

[STOJILJKOVIĆ] *The Republic of Serbia is determined not to allow military forces on our territory. If they carry out their threats, they will issue an ultimatum and then conduct an aggression. They want to bring in their troops, but without any casualties. We are counting on phases of pressure. Within two or three days of an attack, we have to put our plans in motion and use the time to mop up the territory from terrorists.*

<sup>333</sup> Exhibits 5.360, 5.1011, 5.1013, 5.1014, 5.1015, 5.1016, 5.1017, Peter de la Billiere.

<sup>334</sup> Exhibit 5.360, Aleksandar Vasiljević, Vladimir Lazarević, Sreten Lukić, Zoran Lilić.

<sup>335</sup> Philip Coe, Peter de la Billiere, Klaus Naumann.

ordered by the Joint Command, acting on decisions made in Belgrade, and involved most of the VJ and MUP special units in Kosovo.<sup>336</sup> Occurring concurrently, particularly during the period immediately preceding NATO bombing until late March 1999, these operations exposed much of Kosovo and the Kosovo Albanian population to the excessive and indiscriminate tactics used by forces of the FRY and Serbia. Crimes alleged in the Indictment, especially the massive population displacement, occurred during these joint operations as VJ and MUP combat units swept through large parts of the territory where many of the Indictment sites are located.

128. On its face the Spring offensive was a legitimate operation against the KLA. The Prosecution's evidence will, however, also show that the implementation of the Spring offensive included the commission of massive crimes in Kosovo. One witness will testify that, shortly prior to the OSCE's departure from Kosovo, a VJ officer described a plan whereby the forces of the FRY and Serbia would eliminate the KLA throughout Kosovo, adding that when the KLA was finished, those same forces would remove the Albanians from Kosovo forever.<sup>337</sup> Another witness will testify that he heard from Serbian officials that the NATO bombardment would provide cover for an operation to carry out ethnic cleansing in Kosovo; he heard from other officials, including Milutinović, information reflecting that strategy.<sup>338</sup> Vladimir Štambuk, deputy speaker of the Serbian parliament and member of the Serbian government negotiation delegation at Rambouillet and Paris told Wolfgang Petritsch, that "if NATO bombs fall, there will be a massacre in Kosovo," meaning a massacre of Albanians.<sup>339</sup> Shortly before the commencement of NATO bombings Momir Stojanović, head of security of the Priština Corps, told a witness of a plan to cleanse Đakovica of Albanians.<sup>340</sup>

c. The scale of crimes committed and the number of victims

129. The 'crime-base' evidence shows that a plan must have existed. The numbers of ethnic Kosovo Albanians deported, the scale of destruction of ethnic Kosovo Albanian villages, the general pattern of killings and deportation observed throughout provinces in Kosovo, the military methods used, the concerted and organised way in which refugee columns were directed through

<sup>336</sup> Exhibits 5.360, 5.1011, 5.1013, 5.1014, 5.1015, 5.1016, 5.1017.

<sup>337</sup> Richard Ciagliniski.

<sup>338</sup> Ratimir Tanić.

<sup>339</sup> Wolfgang Petritsch. Earlier, in October 1998 at a reception with the British and the German ambassador Štambuk had said that a small scale bombing would actually be good, since it would allow more persecution of the Albanians, the opposition and the like; Ratimir Tanić.

<sup>340</sup> Nike Peraj.

and out of the province and the routine removal of identification documents<sup>341</sup> demonstrate beyond doubt that the FRY and Serbian forces were implementing their actions following a common plan.

130. Witnesses will testify that more than 10,000 Kosovo Albanians were killed and that about 860,000 Kosovo Albanians were forced to leave Kosovo in the period relevant to the Indictment.<sup>342</sup> The scale of crimes committed and the sheer numbers of crime victims could not have resulted from individual acts of violence committed randomly by individual members of the FRY and Serb forces. Such crimes were the consequence of a carefully planned and executed concerted campaign against the ethnic Kosovo Albanian population in Kosovo. For example, in the Prizren municipality, MUP and VJ entered the village of Mamusha and forced Albanians to leave, while members of the Turkish minority were allowed to remain in their homes.<sup>343</sup>

d. The general pattern of the deportation, killings and destruction throughout Kosovo

131. Testimony of the crime-base witnesses will prove that village after village throughout the province of Kosovo was attacked by FRY and Serb forces. In the course of these attacks, the ethnic Kosovo Albanian civilian population was threatened, mistreated, killed, and/or expelled from their houses in a systematic way and Kosovo Albanian property as well as mosques were looted, destroyed and burnt. Female Kosovo Albanians were sexually harassed and assaulted during those attacks or on their flight to the borders.<sup>344</sup> These attacks were spread over most municipalities in Kosovo, leading to large streams of Kosovo Albanian refugees fleeing from the territory.

<sup>341</sup> The decision to allow Kosovo Albanians whose personal ID documents had been confiscated to leave the Federal Republic of Yugoslavia was illegal. The 1996 Law on Passports says that a passport shall be used by a Yugoslav citizen to cross the border. Travelling without a visa to a country for which a visa is required (this includes the Republic of Albania) carries a fine or 30 days in prison. The decision to allow Kosovo Albanians to enter Albania provides grounds to suspect that it could not have been taken without the consent of the highest state organ; Budimir Babović; Exhibit 5.873. See also Exhibit 5.115, Hani Hoxha, Sabri Popaj, Richard Cigalinski.

<sup>342</sup> Patrick Ball; Fred Abrahams; Sandra Mitchell.

<sup>343</sup> Exhibit 4.084.

<sup>344</sup> The following witnesses' evidence will paint identical or very similar pictures of attacks against their villages: Xhemajl Beqiri, Imer Imeri, Nesret Shabani (Račak – Štimlje-Shtime); Hamide Fondaj, Osman Kuci, Halit Berisha, Hysni Berisha and Shyrete Berisha (Suva Reka-Suharekë); Emin Kabashi, K14, Nazilije Bala (Priština-Prishtinë); Bajram Bucaliu and Florim Elmi Krasniqi (Uroševac-Ferizaj); Reshit Salihi, Sabri Popaj, Isuf Zhuniqi (Orahovac-Rahovec); Rahim Latifi, Halil Morina, Rexhep Krasniqi and Hysni Kryeziu (Prizren); Liri Loshi, Mustafa Draga, Milazin Thaci, Sadik Januzi, Hadije Fazliu, K24, Xhevahire Rrahmani (Srbica-Skenderaj); Lirij Imeraj and Sofije Imeraj (Padalište-Padalishte-Istok/Istog municipality); Musa Krasniqi, Milaim Cekaj, Gani Bacaj (Dubrava-Dubravë Prison-Istok/Istog municipality); Ndrec Konaj and K50 (Pec-Pejë); Aferdita Hajrizi, K15, Muharem Demiraj (Kosovska Mitrovica-Mitrovicë); Hani Hoxha, Behar Haxhiavdija, Ismet Haxhiavdija, Witness K13, Fuad Haxhibeqiri, Merfidete Selmani, Nike Peraj and Martin Pnishi (Đakovica-Gjakovë); Hazbi Loku, Isa Raka, Sejdi Lami and Fadil Vishi, Muharrem Dashi (Kačanik); K20, Fetije Vishaj and Mehmet Mazrekaj (Dečani-Decan); Abdylhaqim Shaqiri and Qamil Shabani (Gnjilane/Gjilan); Sabit Kadriu, Shukri Gerxhalii and Fedrije Hxafa (Vucitrn-Vushtrri). In addition, the evidence of the so-called "overview" witnesses will support the claim of identical crime patterns throughout Kosovo: Patrick Ball, Frederick Abrahams, William Fulton, Inge Joachim, a DNA expert, a representative of the International Commission for Missing People, and Dr. Eric Baccard.

132. The witnesses will also describe how these refugee columns were directed by the Serb forces in concerted efforts to facilitate their expulsion. Serb forces seized the identification documents from ethnic Albanians fleeing the province, with the intent of making it impossible for them to return to Kosovo.<sup>345</sup> Likewise, licence plates of tractors and other vehicles crossing the borders were taken away by the Serbian authorities.<sup>346</sup>

133. Kosovo Albanian witnesses will testify how they were exposed to derogatory comments, racial slurs and insults during the attacks or while travelling in refugee convoys.<sup>347</sup> One witness will say that members of the Serbian MUP taunted the refugees in the column from Bellanice: "You will never come back to Kosovo, don't look back to Kosovo until you are in Albania." The traffic police guided the convoy through Prizren, and told the refugees not to turn off the main road, but to continue to Albania.<sup>348</sup>

134. Witness testimony will further show the degree of pre-planning and organisation of the deportation of the Kosovo Albanian population by the Serbian authorities. For instance, in Peć, buses were seized by the MUP from private enterprises in order to be used to deport the Kosovo Albanian population out of this city and to the Albanian and Montenegrin borders.<sup>349</sup> In Priština and Uroševac, trains were also organised to facilitate the deportation.<sup>350</sup>

135. This evidence will clearly show that the ethnic Kosovo Albanian civilian population was the target of a well-planned and organised campaign by Serbian authorities. The testimonies of the witnesses will demonstrate the existence of a pattern and will establish beyond reasonable doubt that the attacks on the different villages and the expulsion of the 860,000 Kosovo Albanians must have followed a common plan. A crime pattern on the scale seen in Kosovo simply cannot be explained as a series of random acts.

136. Statistical evidence fully supports the claim that there was a coordinated plan to use violence against ethnic Albanians during the period relevant to the Indictment, and thousands of civilians from Kosovo fled as a result thereof.<sup>351</sup>

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<sup>345</sup> Imer Imeri and Nesret Shabani (Štimlje/Shtime municipality); Nazalie Bala, Emin Kabashi (Priština/Prishtine); Florim Elmi Krasniqi (Uroševac/Ferizaj); Reshit Salihu, Sabri Popaj (Orahovac/Rahovec municipality); Rexhep Krasniqi (Prizren); Aferdita Hajrizi, K15, Muhareme Demiraj (Pec/Pejë); Muhareme Demiraj (Kosovska Mitrovica/Mitrovicë); Merfidete Selmani, Hani Hoxha, Nike Peraj (Đakovica/Gjakovë and municipality); Qamil Shabani (Gnjilane/Gjilan municipality).

Nazalie Bala, Emin Kabasha, Sabri Popaj, Reshit Salihu, Rexhep Krasniqi.

<sup>346</sup> Sandra Mitchell, Osman Kuci, Sokoli Besnik. See also paras. 53 and 54.

<sup>347</sup> Osman Kuci, K 24, Florim Krasniqi, Xhemajl Beqiri, Ndrej Konaj, Mustafa Draga.

<sup>348</sup> Shefqet Zogaj.

<sup>349</sup> Edison Zatriqi.

<sup>350</sup> Nazalie Bala, Emin Kabasha, and Bejram Bucaliu.

<sup>351</sup> Patrick Ball.

e. The continued use of the heavy handed tactics used in Kosovo in 1998 and use of armed groups with known criminal propensity

137. Despite knowledge of the commission of crimes against Kosovo Albanians as a result of the heavy-handed tactics used in Kosovo in 1998, none of the accused or any other members of the JCE took effective actions to adjust the combat tactics. Not only did joint operations of the VJ and MUP and the use of heavy weaponry continue, but also despite their *de jure* obligations, the accused failed to take any steps that officials in their positions would and should normally have taken in response to the reports they received. For instance, the investigations of the units concerned, the immediate withdrawal of units involved in crimes from the operational positions, or the breaking up of such units and redeployment of its members to different units and the replacement of the commanding officer are all considered reasonable responses to concerns that discipline is failing or units are committing crimes.<sup>352</sup>

138. Moreover, the members of the JCE were fully aware of the propensity of elements within the armed organisations deployed in Kosovo to use excessive and indiscriminate force and to engage in criminal acts from prior actions of those elements during the conflicts in Bosnia-Herzegovina and Croatia between 1991-1995 and in Kosovo in 1998.<sup>353</sup> Nonetheless several persons and units with a known criminal propensity were deployed in Kosovo. For example Milorad Luković (Ulemek) also known as the notorious “Legija”, who played a key role with Arkan’s men in the war in Bosnia, was appointed Assistant Head for Special Operations of the MUP Staff for Kosovo<sup>354</sup> and was deployed as JSO commander to Kosovo in mid-1998 under secretive circumstances. Franko Simatović, also known as “Frenki”, and Jovica Stanišić, both indicted by this Tribunal in 2003 for crimes against humanity and war for crimes perpetrated in Croatia between 1991 and 1995,<sup>355</sup> were retained in responsible positions during the Indictment period.<sup>356</sup> They visited Legija’s unit, the JSO, at Dubrava prison in early summer 1998 on several occasions.<sup>357</sup> On 24 March 1999, the “Scorpions” were re-activated and a unit of 128 members was deployed to Kosovo as reserve formation of the SAJ with approval of Đorđević and Lukić. On 25 April 1999, the Scorpions were armed and sent to Podujevo in Kosovo on 28 April 1999. Within hours of their arrival in Podujevo, members of this unit murdered a group of Kosovo Albanian civilians, consisting of women and children and one elderly man, and expelled others from their homes. After this incident, the Scorpions were immediately withdrawn from Kosovo and returned

<sup>352</sup> Peter de la Billiere.

<sup>353</sup> Exhibits 5.360, 5.373, John Crosland, Lord Ashdown.

<sup>354</sup> Exhibit 5.538, 5.373, Tab 108. See also *infra* paras. 350 and 395.

<sup>355</sup> *Prosecutor v. Franko Simatović and Jovica Stanišić*, Second Amended Indictment, Case No. IT-03-69-I.

<sup>356</sup> Simatović was in the RDB with authority over the JSO while Stanišić was Chief of the RDB until 27 October 1998.

<sup>357</sup> See *infra* para. 94.

to Prolom Banja but told that they would be re-deployed at a later stage. During their stay there, Pavković visited the Scorpions and talked to their commander. On 26 April 1999, 108 members of the very unit who had committed the Podujevo massacre were included again in the list of reserve formations and redeployed to Kosovo under the SAJ command. They operated in Kosovo until at least 9 May 1999.<sup>358</sup> Another notorious group that already had committed serious crimes in earlier conflicts but was still deployed with official knowledge and approval to Kosovo as volunteers were Arkan's Tigers. A group of 30 Tigers was sent back only after they had killed an Albanian couple.<sup>359</sup>

139. The minutes of a SDC meeting in December 1998 clearly show that members of the Serbian leadership, including Milutinović and Milošević, failed to give proper attention and consideration to allegations of abuses committed by Serb forces in Kosovo:

Deputy Prime Minister Šainović emphasised deep co-operation between all VJ organs and organs of Interior. What is not obvious but must be done before anything else, is training of the soldiers who come to undertake assignments at the border. It is outstanding! Until now he hasn't noticed any problem in carrying out the assignments. Senior officers are outstanding. This should be further developed because that's the way to even better results.

President Đukanović didn't want to comment on candidates, especially because he personally knew only couple of them. He emphasised controversial information on Priština Corps engagement in Kosovo in the last few months. Information that came from Montenegro indicated that behaviour of the Priština Corps was not always in accordance with the constitutional position of the Army and decisions of the Supreme Defence Council. If that is correct, then purpose of promoting current Priština Corps General Pavković should be discussed, no matter that nobody doubted assessment of his personality given by the Chief of the General Staff.

Commenting on President Đukanović's dilemma about General Pavković, President Milošević said there were no complaints, not from any side, about unlawful behaviour of Priština Corps. Army displayed extraordinary discipline and organisation.

President of the Republic of Serbia Milan Milutinović added that certain assessments of behaviour of Priština Corps as allegedly undisciplined and unconstitutional were mainly exaggerated.<sup>360</sup>

140. As a result, the commanding officers responsible for the use of excessive and indiscriminate force against civilians in 1998, including Lazarević, Pavković, Ojdanić, Lukić, Đorđević, remained in their respective positions in 1999 or were even promoted higher up the command chain and commended. Accordingly, the widespread and systematic commission of violations of international humanitarian law that was repeated in Kosovo during the Indictment period went unpunished once more. It shows that the accused believed that the commission of such illegal methods would facilitate and expedite the plan.

<sup>358</sup> Exhibits 4.567, 4.568, 5.1037

<sup>359</sup> Aleksandar Vasiljević.

<sup>360</sup> Exhibit 5.019



f. Steps were not taken to punish those responsible for crimes committed in Kosovo

141. Ojdanić, as Chief of the VJ General Staff, had the authority and obligation to ensure that the military justice system was functioning throughout the VJ. Pavković had similar authority and obligation for the 3rd Army, and Lazarević for the Priština Corps. After a state of war was declared on 24 March 1999, the VJ accused also had *de jure* obligations for addressing MUP and other units subordinated to or operating jointly with them which committed - or were suspected thereof - crimes.

142. On the police side, Đorđević had overall responsibility for the RJB, including ensuring that internal discipline took place. Lukić had direct control of MUP operations in Kosovo with a requirement to address transgressions by the MUP. All of these accused, including Šainović, had *de facto* authority over, and responsibility, for the Serb forces, including all units on the ground in Kosovo, also through their membership in the Joint Command. They were ordering, co-ordinating and supervising these operations through the body of the Joint Command, and thus were also responsible for the conduct of the forces employed on the basis of Joint Command direction.

143. The military justice system was properly functioning throughout the period of the indictment. Military court personnel were attached to the Priština Corps Command, the Priština Military District and the 3<sup>rd</sup> Army Command.<sup>361</sup> A report on criminal proceedings conducted before war-time military courts of the Command of the the Priština Corps, dated 15 May 1999, referred to cases against 91 members of the VJ. However, none of these proceedings concerned war crimes or similarly grave crimes committed against Kosovo Albanians. Only one VJ member was prosecuted for murder while all other 90 cases concerned mainly crimes committed against the VJ, such as desertion, failing or refusing to obey orders etc. with a few cases concerning theft and robbery.<sup>362</sup> Indeed, cases of failure to respond to call-up and evasion of military service were regularly punished in the VJ. According to a report of the Supreme Command Staff on the work of military judicial organs during a state of war, dated 21 June 1999, these types of crimes accounted for 70 % of all crimes investigated while another 18 % were perpetrators of the crime of wilful abandonment and desertion of the army. According to this report, only 12 % were perpetrators of "other crimes".<sup>363</sup> Such "other crimes" involved mainly theft inside the army as well as against civilians, with a few scattered incidents of rape and "crimes against limb and life".<sup>364</sup>

<sup>361</sup> Vladimir Lazarević, Exhibit 5.360.

<sup>363</sup> Exhibit 4.569.

<sup>364</sup> Ibid.

144. A report of the Military Court in Niš to the Supreme Military Court in Belgrade, dated 20 August 2001, states that between 24 March and 10 June 1999 criminal proceedings were conducted by military courts against 396 persons.<sup>365</sup> It is notable that among the Indictments filed in 1999 against a total number of 126 army members by the Military Court in Niš only 10 persons were charged with murder or killing, 5 of whom were indicted for having killed another Serb or army member. According to the same report, multiple bodies or mass graves were investigated only to the extent that "notes" were forwarded to the competent Military Prosecutor by the Investigating Judge of the Military Court attached to the Command of the Priština Corps at five locations in mid-April and at the end of May 1999. For all five cases the perpetrators remained "unknown". Among all investigations conducted by the Military Court in Niš in 1999, only two (2) investigations concerned war crimes committed against the civilian population.<sup>366</sup> In one of these two war crime cases, the investigation was initiated only after Vasiljević found out about the incident and ordered an on-site investigation.<sup>367</sup> According to information received from the Federal MOJ, in 1998, no criminal proceedings against VJ members were conducted for the crime of rape or sexual assault committed in Kosovo in 1998. For the year 1999, only three investigations, concerning seven VJ members were initiated for the crime of rape, attempted rape and/or sodomy. All of the suspects were privates.<sup>368</sup>

145. Civilian courts and police investigations were functioning normally as well, as is proven by the mass of criminal proceedings instituted against Kosovo Albanians during the relevant period. A report of the Humanitarian Law Center in Belgrade on criminal proceedings held against Kosovo Albanians in Serbia in the period from 1998 to 2000 shows that by mid-1998, trials against Albanian inhabitants were reorganised before all District Courts in Kosovo. At the end of the NATO intervention, 2,150 ethnic Albanians, were in detention in Kosovo for various reasons.<sup>369</sup> While crimes allegedly committed by Kosovo Albanians were extensively investigated and prosecuted, the MUP conducted only a few of these investigations against perpetrators in their own ranks. On the basis of information on relevant investigations and prosecutions requested from the MUP,<sup>370</sup> an OSCE report on the prosecution of war crimes came to the conclusion that the MUP "has largely investigated crimes committed by KLA soldiers and only a few cases where potential

<sup>365</sup> Exhibit 4.570.

<sup>366</sup> Ibid.

<sup>367</sup> Aleksandar Vasiljević.

<sup>368</sup> Exhibit 4.461. Most of the cases were transferred to civilian courts as the status of the accused as servicemen had elapsed. The Federal Ministry of Justice declared not to be in possession of any information on the further course of these proceedings.

<sup>369</sup> Exhibit 4.443.

<sup>370</sup> Exhibit 4.446.

perpetrators were Serbian police or security forces". According to the OSCE, these few investigations conducted against Serbian police or security forces were initiated only when and because the public had learnt about the crimes and the MUP had no choice but to enter into investigative action.<sup>371</sup> This conclusion is supported by the small volume of documents received from FRY and Serbia regarding the punishment for war crimes pursuant to Requests for Assistance sent by the Office of the Prosecutor on numerous occasions. These requests were either ignored or responded to with a small number of random case files, few of which dealt with the crimes alleged in this indictment or crimes of similar magnitude in other municipalities. Those files either concerned so-called "terrorist activity" or scattered incidents of killings committed by unknown perpetrators, not by MUP members.<sup>372</sup>

146. This selective application of the legal systems in place for investigating and prosecuting crimes and the failure to punish those responsible for crimes committed against the ethnic Albanian population not only gives rise to criminal liability under Article 7(3),<sup>373</sup> but is also evidence that all of the accused were aware of the JCE, and used their positions of authority to ensure that those who committed the individual acts of violence were protected from punishment for their participation in the plan.

147. The Accused were made aware of crimes committed by members of the Serb forces as well as of the issue of the deployment of certain volunteer units on the territory of Kosovo. For example, on 8 May 1999, Vasiljević was informed that the security service had become aware of crimes committed against civilians. Vasiljević ordered a report to be prepared on this issue and General Farkaš was immediately informed. Farkaš then informed Ojdanić on 13 May 1999 and Ojdanić informed Milošević on 14 May 1999 about this issue. Pavković and Vasiljević were ordered to Belgrade to brief Ojdanić on alleged crimes. On 16 May 1999, a meeting of the General Staff took place, attended by Pavković, Farkaš, Gajić and Vasiljević. The main topic of discussion was the commission of crimes by members of the VJ. At that meeting Pavković criticised the MUP of falsely accusing the VJ for having committed crimes. The next day, a further meeting, chaired by Milošević, took place at the same location. It was attended by Šainović, Pavković, Ojdanić, Farkaš, Gajić, Marković and Vasiljević. The reports on crimes were discussed as was the deployment of Arkan's Tigers in Kosovo. During the meeting, Marković stated that volunteers were "a necessary evil" that accompanied every war.<sup>374</sup>

<sup>371</sup> Exhibit 4.462.

<sup>372</sup> Exhibit 4.597.

<sup>373</sup> See *supra* paras. 367 *et seq.*

<sup>374</sup> Aleksandar Vasiljević.

148. On 22 May 1999 the Prosecutor of the Tribunal signed the first indictment against Milosević, Milutinović, Šainović, Ojdanić and Stojiljković in the case IT-99-37-I. The indictment was made public two days later.<sup>375</sup> The charges in the 1999 indictment overlap with the charges of the Indictment in this case. The individual crime sites particularised in the 1999 indictment substantially overlap with those in the Indictment in the present case.<sup>376</sup> The issuance of the indictment against Milosević, Milutinović, Šainović, Ojdanić and Stojiljković was widely broadcast by the media. Within a few days politicians and spokespersons from various political bodies in the FRY had commented on the indictment to the local and international media.<sup>377</sup> By late May 1999, not only Milutinović, Šainović and Ojdanić, but all of the accused, were therefore on notice of the crimes charged in the Indictment, and could have immediately ordered investigations by military and/or civilian courts into these concrete allegations.

149. The members of the JCE, including the accused, were thus aware of the excessive use of force which occurred numerous times in 1998 and during the period of the Indictment.<sup>378</sup> Steps taken by the members of the JCE to address the criminal acts committed by forces of the FRY and Serbia were token at best.<sup>379</sup> This is shown not only by the selective application of justice, but also by the intentional continuation of the use of units, like the Scorpions, who had already committed serious crimes on previous occasions. The decision to leave these units within the armed forces in Kosovo, despite the knowledge that they were inclined to commit crimes, is strong evidence that the accused intended for the use of excessive force to occur instead of preventing, investigating, prosecuting and punishing them.

g. Investigations obstructed and crimes concealed

150. The objectives of the JCE involved the commission of crimes. This can be inferred from the fact that the accused took steps to prevent investigations of the crimes and engaged in a considerable operation to conceal the commission of crimes in Kosovo, for example by transferring the bodies of many Kosovo Albanian victims to Serbia. Other examples of their efforts to conceal crimes are described in the following paragraphs:

151. Milošević, Milutinović, Šainović and others prevented the Prosecutor and investigators of the Tribunal from carrying out investigations in Račak after the massacre there in January 1999, as

<sup>375</sup> Exhibit 4.584. The Prosecution notes this merely to indicate that notwithstanding the publication of the ICTY indictment the accused continued in their failure to take appropriate measures.

<sup>376</sup> See for example *id.*, paras. 97 and 98.

<sup>377</sup> Exhibit 4.593.

<sup>378</sup> Paddy Ashdown, Klaus Naumann, Karol Drewienkiewicz.

<sup>379</sup> Exhibits 5.360, 5.373, 5.1007.

charged in the Indictment.<sup>380</sup> Moreover, even before any domestic investigations were conducted, Milošević declared that the members of the forces of FRY and Serbia had not committed any crimes.<sup>381</sup>

152. "Asanacija" is a term of art in the VJ. In its legal sense, "*asanacija*" requires units tasked to manage battlefield enemy casualties in the same manner as VJ casualties.<sup>382</sup> Burials are to take place either according to the wishes of the deceased's family members, or, if that is not possible, within the unit's zone of responsibility and a sketch of the place of burial is to be kept. The accused perverted the meaning of the term to include the destruction of evidence of crimes that could implicate forces of the FRY and Serbia. In March 1999, Milošević held a meeting attended by Stojiljković, Đorđević, and Marković where the issue of "*asanacija*" or "clearing up" of the territory was discussed.<sup>383</sup> At the same meeting, Đorđević expressed his concern that the corpses of Kosovo Albanians could become objects of investigation by the Tribunal.<sup>384</sup> Milošević ordered Stojiljković to remove corpses of Albanian civilians that were already buried. Stojiljković subsequently assigned this task to MUP Generals Dragan Ilić and Đorđević. Dragan Ilić went to Kosovo to carry out this task, while Đorđević made arrangements for the disposal of the bodies once they arrived in Serbia.<sup>385</sup>

153. Đorđević co-ordinated, pursuant to Stojiljković's orders, the "clearing-up" of the bodies in secret mass graves at several locations in Serbia.<sup>386</sup> Bodies were driven by MUP officers to one of several locations in Serbia, including Lake Perućac, Bajna Bašta, and the SAJ's own firing range, at Batajnica, near Belgrade.<sup>387</sup> At Batajnica, the bodies were placed by MUP officers in a mass grave on the firing range itself.<sup>388</sup> The entire operation was conducted in secret.<sup>389</sup>

154. Đorđević was personally involved in the operation. He spoke via telephone and in person with low-level MUP officers regarding the details of burial, and his own driver was involved in driving some of the trucks.<sup>390</sup> Đorđević said to a MUP officer that the burial would be part of "mopping up" in Kosovo, a "number one" secret.<sup>391</sup> Several of these mass graves were exhumed by

<sup>380</sup> Exhibit 4.439.

<sup>381</sup> Exhibit 4.096.

<sup>382</sup> Phil Co: Exhibits 4.241 5.273. Vladimir Lazarević admitted his knowledge of appropriate battlefield clearance practices in a 16 June 2001 press interview; Exhibit 5.406.

<sup>383</sup> Radomir Marković, Dragan Karleuša.

<sup>384</sup> Dragan Karleuša, Radomir Marković, Zoran Stijović.

<sup>385</sup> Radomir Marković, Caslan Golubović, Dragan Karleuša.

<sup>386</sup> Dragan Karleuša; Caslan Golubović. Exhibits 4.182, 4.184, 4.203, 4.206, 4.207.

<sup>387</sup> Dragan Karleuša; Caslan Golubović; Bosko Radojković.

<sup>388</sup> Dragan Karleuša, Exhibit 4.203, 4.204.

<sup>389</sup> Dragan Karleuša; Exhibits 4.202-4.203.

<sup>390</sup> Dragan Karleuša; Exhibits 4.202-4.203.

<sup>391</sup> Exhibit 4.203.

authorities in Serbia beginning in 2001.<sup>392</sup> Over 900 bodies have been exhumed thus far.<sup>393</sup> Autopsies and DNA evidence, coupled with the discovery of identity cards and other personal effects with the bodies, will prove that the bodies belong to persons killed in Kosovo during the indictment period, including individuals whose names appear on schedules to the indictment.<sup>394</sup>

155. The burial sites discovered in Serbia were not the only attempt to hide bodies. In April 1999, a refrigerator truck bearing lettering from a Prizren company was found in the Danube near the Serbian-Romanian border by a fisherman.<sup>395</sup> Local MUP divers discovered that the truck was filled with the bodies of ethnic Albanians, including two children.<sup>396</sup> Although a criminal investigation was initially launched by local authorities, Vlastimir Đorđević and others intervened, and directed the local MUP to prepare the bodies for transfer in order to "autopsy" them.<sup>397</sup> The truck was first camouflaged to hide its Prizren origin, and then later destroyed with explosives.<sup>398</sup> The bodies were transferred to another truck and buried in Batajnica.<sup>399</sup>

156. The bodies were moved vast distances. The Meja killing site that is the origin of many of the bodies found in Batajnica, for example, is located near the border with Albania.<sup>400</sup> Bodies were transferred from there all the way across Kosovo, and then across most of Serbia to reach Batajnica.<sup>401</sup> The refrigerator truck was found in Kladovo, on the border with Romania, on the far side of Serbia from Kosovo.<sup>402</sup>

157. Some of the accused have *de facto* admitted that the movement of bodies had nothing to do with legitimate objectives. In a 6 June 2001 newspaper interview regarding the refrigerator truck incident, rather than justify the movement of bodies, Sreten Lukić stated merely that the MUP was subordinate to the VJ during that period.<sup>403</sup> On 16 June 2001, Vladimir Lazarević responded by stating that he ordered the MUP to abide by the law, including conducting investigations into the circumstances of each death.<sup>404</sup> Nebojša Pavković followed suit by identifying the MUP as the

<sup>392</sup> Dragan Karleuša.

<sup>393</sup> Dragan Karleuša, Dusan Dunjic.

<sup>394</sup> Dragan Karleuša, Dusan Dunjic; Antonio Alonso; Jose Pablo. Exhibits 2.4.25-2.4.74, 2.7.06-2.7.21, 2.7.38, 2.9.01, 4.558, 4.559, 4.560, 4.561.

<sup>395</sup> Dragan Karleuša. Exhibits 4.180-4.183, 4.209-4.218.

<sup>396</sup> Dragan Karleuša; Bosko Radojković; Caslan Golubović. Exhibits 4.180-4.183, 4.209-4.218

<sup>397</sup> Caslan Golubović.

<sup>398</sup> Bosko Radojković.

<sup>399</sup> Dragan Karleuša; Bosko Radojković; Caslan Golubović.

<sup>400</sup> Dragan Karleuša. Exhibits 1.001, 4.246.

<sup>401</sup> Dragan Karleuša. Exhibits 1.001, 4.246.

<sup>402</sup> Dragan Karleuša. Exhibits 1.001.

<sup>403</sup> Exhibit 5.602.

<sup>404</sup> Exhibit 5.406.

responsible party for the refrigerator truck incident, without attempting to justify the actions taken.<sup>405</sup>

158. Moving bodies was not the only attempt to hide evidence of crime. At some crime sites, bodies were burned where they lay, camouflaging their identity and interfering with the process of determining the cause of death.<sup>406</sup> In Mala Kruša, the Batusha barn in which the massacre took place was dynamited, and the debris, including human remains, was disposed of at and in the Drini river.<sup>407</sup> In Ćirez, Srbica, bodies were thrown into a well.<sup>408</sup> Similarly, in Kačanik municipality, victims were herded into deep, dry wells and shot there, and explosives were then used to disguise the presence of bodies.<sup>409</sup>

159. In Izbica, as well as other locations in Peć, Lipljan, and Srbica municipalities, Pavković and Lazarević ordered Dr. Gordana Tomašević to undertake a forensic examination of numerous corpses in the field.<sup>410</sup> When Dr. Tomašević asked for the order directing her to perform the autopsies, Pavković replied "I give the orders". Dr. Tomasević travelled to Kosovo along with a colleague who had never handled a dead body before, and conducted hundreds of brief examinations on bodies in the field. The bodies were then buried. Pavković never asked for, paid for, or received her report.<sup>411</sup>

160. Other concealment attempts were prepared in advance of the killings. For example, in one MUP order of January 1999, troops were assigned to ambush suspected KLA members, and were ordered to use Chinese ammunition.<sup>412</sup> Chinese ammunition was habitually used by the KLA, but not by the forces of the FRY and Serbia.<sup>413</sup> This deliberate attempt to frame the KLA for killing Albanians played into later propaganda attempts by JCE members to blame civilian casualties on KLA infighting.<sup>414</sup> Similarly, according to Musa Krasniqi, at Dubrava Prison, deaths caused by the forces of the FRY and Serbia were blamed on NATO bombing.

161. Moving bodies to Serbia and other locations, burning bodies, conducting *pro forma* autopsies without regard for the results, and burying corpses in unmarked mass graves or hiding them in wells or holes is inconsistent with the handling of battlefield casualties in a legitimate armed conflict against terrorists. Falsifying evidence to blame the KLA or NATO for deaths is

<sup>405</sup> Exhibit 5.308, 5.308, 5.569.

<sup>406</sup> See Pre-Trial Brief sections for Milos Gilic Street, Đakovića, Meje, Đakovića, and Celine, Orahovac

<sup>407</sup> Mehmet Avdyli, Rahim Latifi, Lutfi Ramadani, Eric Baccard. Exhibits 2.3.02, 2.3.03, 2.3.12, 2.3.14, 2.3.15

<sup>408</sup> K24, Sabit Kadriu, Eric Baccard, Inge Joaquim. Exhibits 3.001, 3.002, 3.003, 3.004, 3.006, 3.009

<sup>409</sup> Hazbi Loku.

<sup>410</sup> Gordana Tomašević; Exhibits 2.7.30, 2.7.31, 2.7.32.

<sup>411</sup> Gordana Tomašević.

<sup>412</sup> Exhibit 5.251.

<sup>413</sup> Phil Co.

inconsistent with the legitimate use of deadly force. These actions show the attempt to hide the evidence of the criminal plan to alter the ethnic balance of Kosovo by any means possible.

h. The rewards for those supportive of the objectives of the JCE

162. The participants in the JCE, as well as those material to implementing its objectives, were rewarded by Milošević and others through promotions, awards, honours, and other consideration. As a result of their proximity to Milošević they gained broader authority and power.

163. Many commanders and senior officers, including VJ and MUP members of the JCE and those whose units implemented the goals of the JCE, were promoted and/or commended for their roles in Kosovo.<sup>415</sup> Of the accused, Milan Milutinović remained the President of Serbia until 29 December 2002; Nikola Šainović kept his post of Deputy Prime Minister of the FRY until a new government was formed in 2000. Dragoljub Ojdanić was promoted to Federal Minister of Defence after the conflict in Kosovo.<sup>416</sup> Nebojša Pavković was promoted to replace Ojdanić as Head of the General Staff of the VJ, and Lazarević replaced Pavković as commander of the 3<sup>rd</sup> Army, and then was further promoted to colonel general and appointed to the VJ General Staff as Assistant for Ground Forces.<sup>417</sup> Đorđević kept his position as Chief of the RJB until 2001, and was awarded the Order of the Yugoslav Flag of the First Degree by Milošević on 7 July 1999.<sup>418</sup> Lukić was appointed Assistant Minister and Chief of the RJB, and promoted to Colonel-General, when Đorđević left in 2001.<sup>419</sup> Many participants in the JCE attained the positions they held during the Indictment period by their demonstrated loyalty to Milošević and their willingness to implement measures to achieve the objectives of the JCE.

(b) Entities implementing the objectives of the JCE

164. The participants in the JCE used a variety of means to achieve their objectives. They operated through several bodies, including but not limited to the SDC, the Supreme Command, the VJ General Staff (also known as the Supreme Command Staff), the MUP Staff for Kosovo, the Joint Command for Kosovo & Metohija, and a group in Belgrade known by some as the State Commission or Joint Command.<sup>420</sup> These bodies exercised both *de jure* and *de facto* authority.

<sup>414</sup> For example, Exhibits 4.446, 5.114A.

<sup>415</sup> Exhibits 5.037; 5.360, 5.649.

<sup>416</sup> Exhibit 5.233.

<sup>417</sup> Exhibits 5.052, 5.053, 5.381.

<sup>418</sup> Exhibits 5.396, 5.648.

<sup>419</sup> Exhibits 5.396, 5.411, 5.562, 5.563, 5.590, 5.648.

<sup>420</sup> Unless stated otherwise, references herein to Joint Command apply to the Joint Command for Kosovo & Metohija, regularly meeting in Priština.



Through the command authority of these bodies the members of the JCE achieved their objectives using VJ units, MUP units, Federal Military-Territorial units, and a collection of units performing local defence functions.. The members of the JCE also achieved their objectives through civilian bodies in Kosovo, including the Temporary Executive Council (TEC).<sup>421</sup>

165. The members of the JCE facilitated the JCE's operation and the concealment of its activities<sup>422</sup> by leaving the exact *de jure* basis for some bodies and for some reporting chains unregulated<sup>423</sup>. The members of the JCE were aware that such lack of regulation was deliberate, but did not question it. Moreover, the members of the JCE were fully aware of the the armed organisations' tendency to use excessive and indiscriminate force and to engage in criminal acts; precedents were set during the conflicts in Bosnia-Herzegovina and Croatia between 1991-1995 and in Kosovo in 1998.<sup>424</sup> Members of the JCE were put on notice of the excessive use of force numerous times during these periods and during the period of the Indictment.<sup>425</sup> Steps taken by the members of the JCE to address the criminal acts committed by forces of the FRY and Serbia were token at best.<sup>426</sup>

166. At the same time, the principal command and control chains in the VJ and the MUP remained unchanged in order to facilitate the implementation of the objectives of the criminal enterprise on the ground in Kosovo, while at the same time also permitting those organisations to engage in their legitimate tasks combating the KLA and reacting to NATO activities.<sup>427</sup>

167. The sophisticated command and control structures in place ensured that there was constant monitoring of the situation on the ground, with prompt responsiveness and continuous contact between superior commanders at the highest level and their subordinates.

168. The following sections list the principal armed organisations and groups engaged in Kosovo during the period of the Indictment:

(i) Forces operating in Kosovo

a. VJ

<sup>421</sup> Exhibits 5.369, 5.226.

<sup>422</sup> Exhibits 5.344, 5.346, Ratimir Tanić.

<sup>423</sup> Exhibit 4.334.

<sup>424</sup> Exhibits 5.360, 5.373, John Crosland, Lord Ashdown.

<sup>425</sup> Paddy Ashdown, Klaus Naumann, Karol Drewienkiewicz.

<sup>426</sup> Exhibits 5.360, 5.373, 5.1007.

<sup>427</sup> Exhibits 5.360 and 5.373.

169. The VJ was comprised of the General Staff. The following Strategic Groups were subordinate to the General Staff: the 1<sup>st</sup> Army, 2<sup>nd</sup> Army, 3<sup>rd</sup> Army, Air & Air Defence Forces, and the Navy.<sup>428</sup> The Chief of the General Staff, and most authoritative officer in the VJ, was Colonel-General Dragoljub Ojdanić during the period relevant to the Indictment. It was units of the VJ 3<sup>rd</sup> Army, under command of Colonel-General Nebojša Pavković<sup>429</sup>, which were present and operating in Kosovo. The area of responsibility of the Priština Corps of the 3<sup>rd</sup> Army was Kosovo.<sup>430</sup> Major-General Vladimir Lazarević commanded the Priština Corps.<sup>431</sup>

b. Ministry of Internal Affairs (MUP)

170. The MUP was mandated by Serbian law to protect human lives and the safety of persons and their possessions; to prevent and detect criminal acts and to arrest perpetrators committing criminal acts; and to maintain law and order.<sup>432</sup> The Minister of Internal Affairs is responsible for the MUP's work. During the Indictment period Vljeko Stojiljković was the Minister of Internal Affairs.

171. The MUP was comprised of two main Divisions: the Public Security Division ("RJB") and the State Security Division ("RDB"). During the Indictment period RJB and RDB were headed by Assistant Ministers Vlastimir Đorđević and Radomir Marković, respectively.<sup>433</sup> The mandate of the RDB addressed "tasks relating to state security of the Republic of Serbia and the prevention of activities aimed at undermining or overthrowing the constitutionally established order..."<sup>434</sup>

172. The mandate of the RJB was the maintenance of law and order in Serbia. Numerous different Administrations existed within the RJB, each had different responsibilities. One important Administration was the Police Administration which had the duty to "organise, and if necessary, carry out directly the following duties: prevent disturbances and reinstate public law and order in cases of major disturbances, providing security for gatherings and other forms of citizens assembly and heightened security measures on such and other occasions...and other tasks in cases which call for co-ordinated action and the recruitment of a large number of policemen and police units".<sup>435</sup> This Administration was headed by General Obrad Stevanović during the period of the Indictment.

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<sup>428</sup> Exhibit 4.411.

<sup>429</sup> Exhibit 4.415.

<sup>430</sup> Exhibits 5.360, 5.373.

<sup>431</sup> Exhibit 4.416.

<sup>432</sup> Exhibit 5.776.

<sup>433</sup> Exhibits 5.360, 5.373.

<sup>434</sup> Exhibit 5.093.

<sup>435</sup> Exhibit 5.093.

173. Legislation and regulations provided that authorised MUP officials could exercise command within "organisational units" at various levels of the MUP hierarchy. Kosovo was divided into seven such organisational units: regional Secretariats of Internal Affairs ("SUP"), each responsible for Public Security tasks in a number of municipalities.<sup>436</sup>

174. The MUP can also be divided into special units, RDB operatives, and "regular" uniformed police. The special units were heavily-armed and trained and equipped to conduct operations which could not be undertaken by regular police units. Special units included the Special Police Units ("PJP"), Operational Sweep Groups ("OPG"), the Special Anti-Terrorist Unit ("SAJ"), and the Special Operations Unit ("JSO").<sup>437</sup> The latter was an RDB unit and the others belonged to the RJB. These units conducted combat operations in Kosovo, including joint operations with the VJ, on a frequent basis.<sup>438</sup>

175. RDB operatives were involved in the collection of information, usually clandestinely, relevant to the RDB mandate.<sup>439</sup>

176. The "regular" uniformed police fulfilled functions such as criminal investigations, crime prevention, border control, enforcement of traffic laws, and administration of records, including identity documents. The geographical organisation of these responsibilities was assigned to the seven SUP's in Kosovo.<sup>440</sup>

177. The MUP had reservists to augment its regular members during crises.<sup>441</sup> MUP reservists also formed the core of local defence units established in many villages in Kosovo.<sup>442</sup>

c. Other units operating in Kosovo

i. Military Territorial Units

178. The Military-Territorial Organisation was a FRY organisation comprised of regional structures known as Military Districts which had the responsibility to administer conscription, call-up of reservists during mobilisation, and to assign personnel to regular VJ units when required.

<sup>436</sup> Exhibit 5.093.

<sup>437</sup> Exhibits 5.360, 5.373.

<sup>438</sup> Exhibits 5.360, 5.373.

<sup>439</sup> K6, Budimir Babović.

<sup>440</sup> Exhibit 5.093.

<sup>441</sup> Exhibit 5.776.

<sup>442</sup> Exhibits 5.360, 5.373, K64.

Military Districts also formed Military-Territorial units.<sup>443</sup> A Military District was subordinate to an army. In Kosovo, the Priština Military District was subordinate to the 3<sup>rd</sup> Army.<sup>444</sup>

179. The Priština Military District provided operation reports to the 3<sup>rd</sup> Army Operations Centre on a regular basis. These reports summarised the main activities which occurred in the five Sectors of the Military District, including attacks by the KLA as well as military and MUP activities.<sup>445</sup>

ii. Paramilitaries and Volunteers

180. The notorious groups often described as paramilitaries were present in Kosovo during the Indictment period. There was no tolerance of such groups operating outside an official organisation.<sup>446</sup> It is apparent that they were integrated into official organizations rather than allowed to operate in a rogue manner.

181. A prime example of that integration is the Scorpions unit which was brought in as a reserve unit of the MUP's SAJ on 25 March 1999.<sup>447</sup> Another group was the Munja unit,<sup>448</sup> which consisted of members of the Peć MUP. Munja was known to, *inter alia*, MUP Generals Đorđević and Lukić

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182. In addition, the VJ had a formal system of accepting volunteers: they had to undergo strict screening designed to eliminate volunteers with criminal tendencies. The other purpose of the system was to reduce the potential for unsanctioned groups operating with the VJ. A Supreme Command Staff order prohibited the admission of members of paramilitary units and others who had not passed through the volunteer screening process, although the wording of the order suggests that members of paramilitary groups could be admitted if they passed the screening.<sup>450</sup> Claims made by the VJ that the employment of volunteers as groups in the VJ was prohibited, are untrue. One exhibit even has a name assigned to a volunteer platoon operating west of Đakovica during the state of war.<sup>451</sup>

183. The Supreme Command Staff re-iterated warnings to be vigilant for, and intolerant of, the presence of rogue paramilitary units.<sup>452</sup> The ability of "illegal" groups to operate on a widespread

<sup>443</sup> Exhibits 5.060, 5.970.

<sup>444</sup> Exhibits 5.360, 5.373, Aleksandar Vasiljević.

<sup>445</sup> Exhibit 5.144.

<sup>446</sup> Exhibit 5.242.

<sup>447</sup> Exhibit 5.1037.

<sup>448</sup> Exhibit 4.048, especially pages 81-82, 291, 301-304, 328-329..

<sup>449</sup> Exhibit 5.501.

<sup>450</sup> Exhibit 5.987.

<sup>451</sup> Exhibit 5.1055.

<sup>452</sup> Exhibit 5.947.

basis in an area with such a high concentration of military and MUP forces on high alert and the equipment these groups possessed according to witness' reports (e.g. tanks, anti-aircraft artillery systems, and armoured personnel carriers) suggest that they were in fact operating with the approval of the VJ and/or MUP or what witnesses saw was the VJ or MUP.

iii. Civil Defence and Protection

184. Federally-regulated Civilian Protection units filled a non-combat role: Civilian Protection units were "intended for the protection and rescue of the population and material and other resources from wartime destruction, natural and other disasters, and other threats in times of peace or war in the territory for which they were formed."<sup>453</sup>

185. During a state of war, the law included provisions for another type of Federal MOD unit: armed Civilian Defence units would be raised to "protect the civilian population and property from attack, secure public buildings (schools, hospitals, and others) and other civilian buildings and resources."<sup>454</sup> A VJ officer commanding a battalion or higher could "issue special tasks concerning the defence and protection of the civilian population and material resources" to Civilian Defence units and "control them in the area of his responsibility."<sup>455</sup>

iv. Local Defence/Village Defence Forces

186. In addition to the primary organisations conducting combat operations throughout Kosovo — the regular VJ and special units of the Serbian MUP — other armed organisations had internal security roles. These units included reserve elements of the MUP; military-territorial units of the Priština Military District; Civilian Defence units; and armed non-Albanian civilians. These units were responsible for local defence. Each municipality had staff responsible for co-ordinating local defence using such units<sup>456</sup>.

187. The VJ provided weapons to both the MUP and the Provincial Secretariat for Civil Defence for distribution to civilians involved in local defence units. The administration of the arming of civilians was a Federal MOD responsibility. While non-Albanians were armed, the ethnic Albanian population was disarmed.<sup>457</sup>

(ii) Co-ordination/ control of entities implementing the goals of the JCE

<sup>453</sup> Exhibit 5.004.

<sup>454</sup> Exhibit 5.004.

<sup>455</sup> Exhibit 5.004.

188. The implementation of the JCE's objective to resolve the situation in Kosovo in 1999 was in accordance with the strategic objectives of the FRY and Serbian leadership. This required and involved a diversity of command and co-ordination structures. Some of those structures had constitutional and legal bases while others were less formal. These structures are set out below.

a. SDC

189. The 1992 FRY Constitution mandates the SDC, the President of the FRY, and the VJ with primary responsibility for the defence of the country. The SDC, during the Indictment period, was composed of the Presidents of Serbia (Milutinović), Montenegro (Đukanović) and the FRY (Milošević), as the three voting members, together with non-voting members including the Chief of the General Staff of the VJ (Ojdanić).<sup>458</sup> The SDC passed the Defence Plan and was the highest authority responsible for strategic matters relating to the defence of the FRY.<sup>459</sup> The SDC could adopt decisions without holding a session, on the basis of consultations among its members.<sup>460</sup> At the 23 March 1999 meeting of the SDC – with Đukanović absent – the Rules of Procedure were amended to remove the mandatory majority attendance so that the SDC could operate by consensus. Both changes rendered the SDC more efficient.<sup>461</sup> Simultaneously, the attendance of the Chief of the General Staff and the Minister of Defence at SDC sessions was made mandatory.<sup>462</sup> The Chief of the General Staff (Ojdanić) was normally present at sessions of the SDC even before his attendance was made mandatory.<sup>463</sup>

190. Milošević and Milutinović, as members of the SDC held and exercised supreme command over the VJ and other organisations engaged in defence of the country.<sup>464</sup> Milošević, together with Milutinović and Šainović, also exercised command over the VJ and other armed organisations through other bodies, including the Joint Command for Kosovo, headed by Šainović.<sup>465</sup>

b. Supreme Command

<sup>456</sup> Phil Co.

<sup>457</sup> Exhibits 5.360, 5.373.

<sup>458</sup> Exhibits 5.004, 5.005, 5.373.

<sup>459</sup> Exhibit 5.004.

<sup>460</sup> Exhibit 5.777.

<sup>461</sup> Exhibits 5.616, 5.777.

<sup>462</sup> Exhibit 5.777.

<sup>463</sup> Exhibit 5.019.

<sup>464</sup> Exhibit 5.060, Aleksandar Vasiljević.

<sup>465</sup> Exhibits 5.360, 5.373, K64.

191. The Supreme Command was the highest military-civilian leadership body during war time. It was headed by President Milošević as the Supreme Commander, formulated strategy, issued direction arising from strategic-level decisions, and commanded operations by forces of the FRY and Serbia during the state of war declared on 24 March 1999. Other members of the Supreme Command included Milutinović, the FRY Defence Minister, and the Chief of the General Staff (Ojdanić).<sup>466</sup>

c. VJ General Staff / Supreme Command Staff

192. The VJ General Staff was the VJ's highest commanding organ, and was headed by the Chief of the General Staff. The Chief of the General Staff reported to the President of the FRY in his capacity as head of the SDC and Supreme Commander.<sup>467</sup> Throughout the Indictment period, Ojdanić was the Chief of the General Staff of the VJ.<sup>468</sup>

193. As the Chief of the General Staff, Ojdanić issued rules, orders, commands, instructions, and other documents under the authority of Milošević, the SDC, and the Supreme Command. The VJ General Staff, among other things, translated those into orders, decisions of the President of the FRY and the SDC and other institutions with supreme command authority.<sup>469</sup> During a state of war, the VJ General Staff became the Supreme Command<sup>470</sup>

194. The right of command in the VJ belonged to the President of the FRY and designated officers of the VJ, including the Chief of the General Staff and commanding officers of units.<sup>471</sup> Command in the VJ was based on the principles of unity of command, singleness of command, and the obligation to carry out the lawful decisions, commands and orders of a superior officer.<sup>472</sup> These principles and the relevant legislation made the chain of command simple and clear.

195. The exercise of command in the structures of the VJ relevant to the Indictment included the development of plans and production of orders by the General Staff. Direction, including orders, was issued by the General Staff, on the authority of the Chief of the General Staff, to the 3<sup>rd</sup> Army. The 3<sup>rd</sup> Army continued the same process providing direction to the Priština Corps which in turn issued orders to its brigades. This core process whereby a superior headquarters developed plans

<sup>466</sup> Exhibits 5.360, 5.373, Aleksandar Vasiljević.

<sup>467</sup> Exhibit 5.003.

<sup>468</sup> Exhibits 5.360, 5.373.

<sup>469</sup> Exhibit 5.003.

<sup>470</sup> Exhibits 5.360, 5.373, Aleksandar Vasiljević.

<sup>471</sup> Exhibit 5.003, 5.060.

<sup>472</sup> Exhibit 5.003.

and provided direction to subordinate units was carried out at each level in the VJ hierarchy and is common to any professional military.<sup>473</sup>

196. Direction and orders from the highest level of command were translated ultimately into combat and other operations in Kosovo. Many of the operations were conducted with the MUP and Military-Territorial units and co-ordinated through the Joint Command (as discussed below).<sup>474</sup>

197. The FRY's constitution, laws, and relevant military regulations created systems of military discipline and justice, defined the FRY's obligations under international humanitarian law, and established the FRY President's responsibilities, and those of other designated individuals, to ensure discipline and respect for the law within the armed forces.<sup>475</sup>

d. MUP Staff in Kosovo

198. The MUP Staff for Kosovo & Metohija ("MUP Staff") was in Priština and headed from June 1998 through to June 1999 by Major-General Sreten Lukić. Its purpose was to "plan, organise and manage the work of the Ministry's organisational units and the work of units posted or attached to it during their engagement on the suppression of terrorism in the territory of the AP Kosovo and Metohija. Additionally, the task of the Staff was to plan, organise, direct and bring together the work of the Ministry's organisational units when performing more complex special security tasks in Kosovo and Metohija."<sup>476</sup> The Heads of the RDB Departments in Kosovo and Chiefs of the seven Kosovo SUPs were members of an extended MUP Staff. As Head of Staff, Lukić was required to report to the Minister of Internal Affairs.

199. The MUP Staff for Kosovo distributed its daily situation reports to the following: Minister of the Interior, Head of the RJB, Head of the RDB, Assistant Minister Lieutenant-General Stevanović (Head of the Police Administration in the MUP), and Chiefs of the Kosovo SUPs. The daily situation reports, both before and during the conflict with NATO, covered terrorist activities, serious crime, and miscellaneous incidents such as smuggling.<sup>477</sup> This regular and comprehensive reporting fulfilled a key criterion for a functional chain-of-command.

200. In addition, SUPs in Kosovo were required to report significant incidents directly and immediately to the MUP Operations Centre in the MUP HQ, Belgrade, and to the MUP Staff for

<sup>473</sup> Phil Coe, Peter De La Billiere, Aleksandar Vasiljević, Vladimir Lazarević. Exhibits 5.373, 5.360.

<sup>474</sup> Exhibits 5.360, 5.373.

<sup>475</sup> Exhibits 5.030, 5.360, 5.373.

<sup>476</sup> Exhibit 5.850.

<sup>477</sup> Exhibit 5.255.



Kosovo.<sup>478</sup> This measure reinforced the level of awareness of the MUP leadership and, concurrently, the level of awareness of events in Kosovo held by those in regular and close contact with the MUP such as the military and civilian leadership, including the members of the JCE. Regular reporting of events on the ground also armed commanders in the MUP - and any of the armed organisations identified above - with the information needed to deploy their forces in a planned and co-ordinated manner.

201. The standard procedure of regular reporting up and down the MUP's internal chain of command was augmented by the direct involvement of the senior leadership of the MUP and of Šainović in regular meetings involving the MUP Staff.<sup>479</sup> In addition to Lukić and other members of the MUP Staff and Šainović, such meetings included the Minister of Internal Affairs (Stojiljković), the Head of the RJB (Đorđević), the Head of the Police Administration of the RJB (Obrad Stevanović), and commanders of the MUP special units. Direction intended for the MUP units in Kosovo was given at these meetings by the senior MUP leadership and Šainović. Topics covered included the role of the PJP in operations against the KLA, the recognition that ethnic Albanians had left their homes and Kosovo, and references to criminal acts against the civilian population by members of the forces of the FRY and Serbia. These meetings demonstrate the hands-on involvement of Šainović and senior MUP leaders from the Ministry in Belgrade in the activities of the MUP.

202. Like the VJ, the MUP had disciplinary regulations, setting out the responsibilities of superiors and subordinates for both their own actions and the actions of others. Special provisions that came into effect during wartime reinforced these obligations.<sup>480</sup>

**e. Joint Command for Kosovo & Metohija**

203. The Joint Command was established in June 1998 with a mandate to co-ordinate civil affairs and the activities of the military, MUP and other armed organisations and groups in Kosovo.<sup>481</sup> It exercised the same mandate in 1999.<sup>482</sup> The Joint Command received its direction from the FRY President, Slobodan Milošević, and exercised its mandate on his authority.

<sup>478</sup> Exhibit 5.113.

<sup>479</sup> Exhibits 5.1034, 5.1035, 5.1036, 5.1038, 5.1041.

<sup>480</sup> Exhibits 5.360, 5.373, Budimir Babović.

<sup>481</sup> Exhibit 5.344.

<sup>482</sup> Aleksander Vasiljević, Exhibits 5.360, 5.373.

Nikola Šainović headed the Joint Command. Other members included the Commanders of the 3<sup>rd</sup> Army (Pavković) and Priština Corps (Lazarević), the Head of the MUP Staff (Lukić), the Head of the Temporary Executive Committee (Anđelković), and others from the VJ and MUP.<sup>483</sup>

204. Responsible for ensuring that the forces in Kosovo conducted operations in accordance with the political objectives and in a coordinated manner, the Joint Command also possessed command authority over the forces of the FRY and Serbia operating in the area.<sup>484</sup> The Joint Command was intimately involved in the highly sophisticated planning, execution, and monitoring of the various combat operations taking place in Kosovo during the indictment period. These operations included a number conducted concurrently over a large area of Kosovo and involving numerous VJ brigades, MUP special units, and with the involvement of what the Joint Command orders referred to as the “armed non-Shiptar population”.<sup>485</sup> Many of the incidents alleged in the Indictment occurred during these operations in the same areas. While combat operations co-ordinated by the Joint Command involved the VJ, MUP, and armed non-Albanian civilians, the written orders issued by the Joint Command were in VJ format, including one signed by Lazarević.<sup>486</sup> This was by virtue of the VJ’s ability to plan complex combat operations on the basis of decisions made by the Joint Command involving Šainović and the VJ and MUP leadership in Kosovo.<sup>487</sup>

205. Notwithstanding the absence of a basis in law, the Joint Command was accepted by JCE members as a part of the system by which forces of the FRY and Serbia were tasked to conduct operations in Kosovo. It was engaged by, among others, Ojdanić, Pavković, Lazarević, Šainović, Đorđević, and Lukić.<sup>488</sup>

**f. The Temporary Executive Council (“TEC”)**

206. Following the removal of Kosovo's autonomy, no later than from January 1992 onwards, the province was ruled directly from Belgrade. The Republic of Serbia government appointed District Heads for each of the five districts of the province. These District Heads were appointed for a period of four years.<sup>489</sup> During the time period relevant to this Indictment, the District Head of the

<sup>483</sup> Aleksander Vasiljević.

<sup>484</sup> Exhibit 5.1061.

<sup>485</sup> Exhibits 5.1011, 5.1013, 5.1014, 5.1015, 5.1016, 5.1017.

<sup>486</sup> Exhibit 5.1012.

<sup>487</sup> Aleksandar Vasiljević, Shukri Aliu, K64, Exhibit 5.360.

<sup>488</sup> Aleksandar Vasiljević, Exhibit 5.520.c.

<sup>489</sup> Exhibit 4.582.

Kosovo District, which was politically the most important one of the five districts, was Veljko Odalović of the SPS.<sup>490</sup>

207. In September 1998, the Serbian National Assembly established a TEC and appointed Zoran Anđelković, the Serbian Minister for Youth and Sports and a high ranking member of the SPS, as its President.<sup>491</sup> The TEC answered to the National Assembly of the Republic of Serbia.<sup>492</sup> The proclaimed purpose of the TEC was to strengthen the work of the civilian structures in Kosovo.<sup>493</sup> The TEC was given significant powers over provincial administration authorities. One of them was the right to adopt administrative regulations, which the provincial administration authorities were required to follow. The TEC was also supposed to supervise the work of the provincial administration authorities. It could annul or revoke their general acts and could also appoint and dismiss superiors in provincial administration authorities.<sup>494</sup> To carry out its work, the TEC formed a number of bodies, which reported to it. Two Committees were established: one responsible for economic issues, the other one responsible for public activities. There were also six commissions, among them one for relations between nationalities and one for monitoring local security.<sup>495</sup> Veljko Odalović was President of the commission for humanitarian aid.<sup>496</sup> There were also fourteen provincial Secretariats.<sup>497</sup> The TEC did include representatives of the non-Serb communities living in Kosovo. Non-Serb TEC members participated at the Rambouillet peace talks in France for the Republic of Serbia state delegation.<sup>498</sup>

208. Nonetheless, the involvement of the SPS in the TEC supplanted normal democratic procedures and would account for the predominance of Serbs, within the TEC. TEC members were selected and appointed by TEC President Zoran Anđelković in a process that fell short of minimal democratic requirements. The positions in the TEC secretariats and commissions were also filled by Anđelković by appointment. He also appointed the President of the Commission for the supervision of the work of the local security organs, Momčilo Stanojević.<sup>499</sup> Prominent Kosovo Albanian

<sup>490</sup> Exhibit 4.594.

<sup>491</sup> Exhibits 4.523, 4.524.

<sup>492</sup> Exhibits 4.572, 4.573.

<sup>493</sup> Exhibit 4.580.

<sup>494</sup> Exhibit 4.572.

<sup>495</sup> Exhibit 5.231.

<sup>496</sup> Exhibit 4.574.

<sup>497</sup> Exhibit 4.575. For example, one of the TEC Secretariats monitored the work of civil and military courts and collected data on criminal activity in the Province.

<sup>498</sup> Exhibit 4.583.

<sup>499</sup> Exhibits 4.576, 4.577, 4.592.

politicians reacted negatively to the creation of the TEC<sup>500</sup> and even some Serbs viewed it with mistrust.<sup>501</sup>

209. The TEC did co-ordinate some humanitarian activities in Kosovo, which benefited all citizens, including non-Serbs. At the same time, the TEC financed civilian defense bodies in Kosovo.<sup>502</sup> The Serbian mayor of Đakovica discussed defense and matters related to civil protection with the TEC President, including the arming of civilians.<sup>503</sup> The TEC provided the local security with pistols and other police equipment.<sup>504</sup> The TEC also closely cooperated with the Joint Command: Prior to the state of war, meetings of the Joint Command and meetings of the TEC were held within the same premises.<sup>505</sup> The TEC President participated in meetings of the Joint Command and VJ and MUP members of the Joint Command attended at least one session of the TEC.<sup>506</sup>

210. The reasonable inference is that the real purpose of the TEC, was to further the objectives of the JCE members while creating the illusion that political efforts by the FRY and Serbian leadership would be under way to resolve the conflict in Kosovo by peaceful means.

g. Other bodies

211. In addition to the SDC and Supreme Command, there existed an *ad hoc* body in Belgrade. It was composed primarily of some of the most senior politicians in Serbia and the FRY, some of the highest ranking officers of the VJ and the MUP, and senior members of the SPS party.<sup>507</sup> The group met in various locations. One such location was the library in the presidential palace, known as the Beli Dvor. The attendance at some of the meetings of this group included: Milošević, Šainović, Ojdanić, Marković, and Pavković. Most of the members of that group continued to meet during the NATO air campaign.<sup>508</sup> The commission of the crimes alleged in the Indictment was discussed by this group.<sup>509</sup> Milošević also held meetings with a similar constituency (including

<sup>500</sup> Exhibit 4.579.

<sup>501</sup> Exhibit 4.581.

<sup>502</sup> Exhibits 4.465, 4.466.

<sup>503</sup> Exhibit 5.218.

<sup>504</sup> Exhibit 5.218.

<sup>505</sup> Exhibit 4.564.

<sup>506</sup> Exhibit 5.226.

<sup>507</sup> Nikola Šainović, Exhibits 4.220, 5.1213. The body had no apparent formal basis in law, nor an official title. It was known by various persons as either the "Joint Command," the "State Commission," or the "Inter-Departmental Staff For the Suppression of Terrorism". It is to be distinguished from the Joint Command for Kosovo & Metohija, regularly meeting in Priština.

<sup>508</sup> Aleksandar Vasiljević.

<sup>509</sup> Aleksandar Vasiljević.

Šainović, Ojdanić, Pavković, and others) addressing the same matters at an underground complex located in Dedinje, a neighbourhood in Belgrade.<sup>510</sup>

212. At the meetings of these various command bodies and organs in Belgrade, the members of the JCE developed, planned, ordered the execution of the criminal plan and the commission of the crimes contemplated by that plan.

h. Co-ordination of the MUP and the military

213. The VJ has primacy over other organs with related competencies during state of war and “unites all participants in the armed struggle and command of all combat activities.”<sup>511</sup> In addition, the Law on Defence specifies that during a state of imminent threat of war (23 March 1999),<sup>512</sup> state of war (from 24 March 1999 to 26 June 1999),<sup>513</sup> or state of emergency, MUP units are subordinated to the VJ when engaged in combat operations.<sup>514</sup> Therefore, on 23 March 1999, when the FRY declared an imminent threat of war, the official relationship between the VJ and the MUP changed. Pursuant to their authority as members of the SDC and Supreme Command, Milošević and Milutinović then exercised control over MUP units. As Chief of the General Staff, Ojdanić also exercised such control over MUP units engaged in combat operations.

214. The evidence will show that, although the subordination of the MUP to the VJ was not strictly in accordance with the Law on Defence because it did not occur the moment a state of imminent threat of war was declared (23 March 1999) and met with some resistance within the MUP, MUP units engaged in combat operations under the effective control of the VJ. Related tasks were under the effective control of the VJ as evidenced by the following facts: the VJ drafted plans for conducting combat operations and included MUP units in these; senior VJ officers (Ojdanić, Pavković, Lazarević) were members of the SDC, Supreme Command, and the Joint Command, and as a result they could exert influence over decisions regarding the use of VJ and MUP units in Kosovo; the VJ was intimately involved in the co-ordination and implementation of joint VJ-MUP operations; VJ personnel had an obligation to address any criminal acts committed by MUP personnel operating with them; and MUP units submitted themselves to subordination to the VJ. In fact, MUP and VJ units worked in such close co-ordination throughout the Indictment period – as

<sup>510</sup> Nikola Šainović, Exhibit 4.220.

<sup>511</sup> Exhibit 5.004.

<sup>512</sup> Exhibit 5.011.

<sup>513</sup> Exhibit 5.010.

<sup>514</sup> Exhibit 5.004.

they did in 1998 – that a definitive resolution of the subordination issue was not necessary for the accomplishment of the strategic objectives of the JCE.<sup>515</sup>

215. Prior to, and throughout the Indictment period, the close co-ordination of the VJ and MUP was evidenced by, *inter alia*, the use of common communication networks.<sup>516</sup> When these joint attacks were conducted, a typical tactic involved the VJ supporting an attack by special units of the MUP with heavy weapons (e.g. artillery and tanks).<sup>517</sup> This close co-ordination was a common feature of MUP and VJ forces carrying out operations in Kosovo both in 1998 and during the Indictment period and was facilitated by the Joint Command, headed by Šainović.<sup>518</sup>

i. Co-ordination of Local Defence efforts

216. Municipal Defence Staff, consisting of "local self-governing bodies, MUP, executive councils of municipal assemblies and the VJ, and... the heads of defence sections and departments",<sup>519</sup> were set up to co-ordinate local defence.<sup>520</sup> "Forces intended for the defence of cities and other populated areas consist of MUP units which unite all forces in populated areas and organize, command and carry out combat actions. Also, command and control is the responsibility of the staff which organizes the city's defence. Commander of the unit, which organizes the defence, is a police officer, who also commands the engaged forces."<sup>521</sup> The Joint Command set out this policy for local defence and ensured it was integrated into the broader measures being taken in Kosovo to deal with the security situation. The VJ drafted operational orders for the Joint Command which included tasks for local defence units and personnel, including armed civilians.<sup>522</sup>

217. The evidence will show that the campaign of persecution and ethnic cleansing in Kosovo, as alleged in the Indictment, was carried out by forces of the FRY and Serbia whose actions were commanded and co-ordinated by the bodies described above. Decisions reached in Belgrade by the members of the JCE and others established the strategic framework within which the armed organisations would operate in Kosovo. The VJ and MUP *de jure* chains of command, brought together by the Joint Command for Kosovo, planned and executed operations in Kosovo conforming to the strategic direction.

<sup>515</sup> Exhibits 5.004, 5.296, 5.492, 5.360, 5.373, Zlatomir Pesić, K64, Aleksander Vasiljević.

<sup>516</sup> Exhibit 5.071.

<sup>517</sup> Exhibit 5.360, 5.373.

<sup>518</sup> Exhibit 5.360, 5.373.

<sup>519</sup> Reference to "defence sections and departments" here means Civilian Defence structures.

<sup>520</sup> Exhibit 5.083.

<sup>521</sup> Exhibit 5.083.

<sup>522</sup> Exhibit 5.923.

(c) **Conclusion**

218. From January to June 1999 about 800.000 Kosovo Albanians were deported to other countries, many thousands were killed, Kosovo Albanian property looted, dwellings and mosques burned and destroyed, and countless people beaten, intimidated and raped as part of a campaign of ethnic cleansing in Kosovo. These crimes were part of the implementation of a common plan among a number of Serbian leaders to achieve a change in the demographic balance in Kosovo in favour of the Serbs, which was seen as essential for continued Serb control over Kosovo.

219. During the late 1980's and early 1990's the view formed among the Serbian leadership that continued Serbian control over Kosovo required a change of the demographic balance in Kosovo in favour of the Serbs. By 1997 the Serbian leadership concluded that this aim could not be achieved by the means employed until then. As the KLA was created and the armed conflict in Kosovo escalated, the view formed in the Serbian leadership that the desired demographic change would have to be implemented through other means. As shown above, several centrally placed persons, including Slobodan Milošević, made no secret of their intent to use force to reach that goal. By October 1998 the plan to achieve that objective was in place: the Joint Command, the TEC and the MUP Staff had already been created; senior officers seen as an obstacle to the plan were replaced with loyal ones; international efforts to reach a peaceful solution to the problems in Kosovo were obstructed; the build-up of troops in Kosovo continued; and the use of tactics that deliberately cause loss of civilian lives, extensive damage to civilian objects and outright crimes continued and as a result also caused vast numbers of internally displaced people in Kosovo.

220. In 1999, last minute international efforts to secure a peaceful resolution of the conflict in Kosovo were again obstructed. At the same time, plans were made for major operations in Kosovo to be implemented if there was an attack by NATO. That these plans were not just legitimate contingency plans is evident from the fact that under the guise of these operations widespread and systematic crimes against the Kosovo Albanian population were committed throughout Kosovo. These were clearly not coincidental or random events. The troops that were known to have committed crimes in 1998 continued to be deployed without any effort being made to prevent or curb crimes and indeed officers and units who were known for their involvement in crimes during the wars in Croatia and Bosnia were deployed in Kosovo. Although it was well known that the crimes had been committed, no real steps were taken to punish those responsible for the serious crimes committed. On the contrary a concerted effort was made to cover-up the commission of the crimes. This leads to the inescapable inference that the crimes were in furtherance of a plan.

221. The JCE plan was implemented by the forces of the FRY and Serbia in an organized and coordinated fashion. It required the efforts of civilian and military officials at the highest levels. It could only have been carried out with the organization and coordination of civilian authorities and military forces. These officials would necessarily possess the authority or ability to ensure that the crimes were carried out.

222. The only reasonable inference from the facts set out in this section is that the crimes charged in the indictment were an integral part of a common plan to alter the demographic balance in Kosovo. They were thus part of joint criminal enterprise under Article 7(1) of the Statute.

### **E. Responsibility pursuant to Article 7 (1) of the Statute**

223. As will be shown in this section, the accused are responsible under Article 7(1) of the Statute because they contributed to the implementation of the joint criminal enterprise described in the previous section. The accused jointly and individually possessed and exercised *de jure* and/or *de facto* responsibility and authority over the elements of the forces of the FRY and Serbia that were engaged in the execution of the criminal enterprise. The accused, among others, were those officials who shared the intent to carry out these crimes and contributed to the execution of the joint criminal enterprise. Each accused knew that the plan was being implemented by the perpetration of the crimes charged in the indictment and none of them exercised his authority to prevent or restrain it. On the contrary, in performing the several acts set out in the following paragraphs each of the accused, within his own sphere of responsibility, exercised his authority to facilitate and further the execution of the joint criminal enterprise by the forces of the FRY and Serbia which they commanded and controlled. The next section of the Brief addresses with further particularity the individual participation of each accused.

#### **1. Legal Elements of 7(1) modes of liability**

##### **(a) Joint criminal enterprise**

224. The phrase "joint criminal enterprise" is used to articulate a form of "commission" under Article 7(1) of the Statute.<sup>523</sup> While the accused are not charged with the direct, physical perpetration of the criminal acts, "committed", as used in the Indictment, refers to their participation in a JCE as co-perpetrators.<sup>524</sup> The principles of a common criminal plan, design or purpose, *i.e.*, JCE, articulate a mode of individual criminal responsibility encompassed by Article 7(1) of the

<sup>523</sup> *Decision on Ojdanić's Motion Challenging Jurisdiction – Joint Criminal Enterprise*, Appeal Chamber Decision, 21 May 2003, para. 20 (*Ojdanić Appeals Decision*); *Tadić Appeal Judgement*, para. 220; *Kvočka Appeal Judgement*, para. 79.

<sup>524</sup> See, *Kvočka Appeal Judgement*, para. 81.



Statute, in which one person can be criminally responsible for the acts of another where both participate in the JCE.

225. The Prosecution relies on two alternative factual allegations in its case. First, it is alleged that the persons carrying out the *actus reus* of the crimes charged in Counts 1 to 5 of the indictment (the “physical perpetrators”) were members of the JCE. The elements that the Prosecution need to prove in this factual scenario are the following:

**i. Actus Reus**

(a) A plurality of persons was involved in the commission of the crime.<sup>525</sup>

(b) They acted on the basis of a common plan, design or purpose which amounted to or involved the commission of a crime provided for in the Statute.<sup>526</sup>

(c) The accused participated<sup>527</sup> in the common design<sup>528</sup> involving the perpetration of the crimes.<sup>529</sup>

**ii. Mens Rea**

The accused intended<sup>530</sup> to perpetrate the crime, this being the shared intent on the part of all co-perpetrators.<sup>531</sup>

226. Alternatively, it is the Prosecution’s case that the physical perpetrators of the crimes charged in Counts 1 to 5 of the Indictment were not members of the JCE but were used by the members of the JCE to carry out the *actus reus* of the crimes that were part of the JCE. Based on this articulation of the facts, the Prosecution has to prove the following elements:

**i. Actus Reus**

(a) A plurality of persons (co-perpetrators)<sup>532</sup> was involved in the commission of the crime<sup>533</sup> (none of which physically carried out the crime).

<sup>525</sup> *Tadić* Appeal Judgement, para. 227.

<sup>526</sup> *Id.*

<sup>527</sup> It is generally not required that the contribution to the JCE is substantial or significant, see *Kvočka* Appeal Judgement, para. 97.

<sup>528</sup> This participation need not involve the commission of a specific crime under the Statute, but may take the form of assistance in, or contribution to the execution of the common plan or purpose, *Tadić* Appeal Judgement, para. 227.

<sup>529</sup> *Tadić* Appeal Judgement, para. 227.

<sup>530</sup> The intent for JCE I requires purpose in the sense of “aiming at”, knowledge (i.e. the awareness of a certainty) or awareness of a risk is not sufficient, see *Tadić* Appeal Judgement, para. 229 (iv).

<sup>531</sup> *Tadić* Appeal Judgement, para. 228.

<sup>532</sup> The participants in a JCE are co-perpetrators (see *Prosecutor v Vasiljević*, Case No. IT-98-32-A, Appeal Chamber Judgement, 25 February 2004, para. 102, (“*Vasiljević* Appeal Judgement”)). There are, however, other forms of co-perpetration in addition to JCE, such as the *Stakić* co-perpetration, see *Stakić* Trial Judgement, paras. 438, 441. Note however, that the use of the terminology is not consistent in our jurisprudence.

- (b) They acted on the basis of a common plan, design or purpose which amounted to or involved the commission of a crime provided for in the Statute.<sup>534</sup>
- (c) One or more of the members of the JCE used the physical perpetrators to carry out the crimes.<sup>535</sup>
- (d) The accused participated in the common design<sup>536</sup> either physically or through the use of others.

## ii. Mens Rea

The accused intended<sup>537</sup> to perpetrate the crime, this being the shared intent on the part of all co-perpetrators.<sup>538</sup>

227. In the alternative, the Prosecution alleges that although the crimes charged in Counts 3, 4 and 5 were not part of the JCE, they were reasonably foreseeable consequences of the common plan, design or purpose in the commission of crimes charged in Counts 1 and 2. The accused are therefore not only responsible for the crimes charged in Counts 1 and 2, but also for crimes charged in Counts 3, 4 and 5. In order to obtain a conviction for the crimes in Counts 3, 4 and 5 on this basis, the prosecution must show that there was a JCE to commit a crime in the Statute,<sup>539</sup> in this case crimes charged in Count 1 and/or Count 2. Moreover, in respect of the crimes charged in Counts 3, 4 and 5, the following elements must be proven:

## i. Actus Reus

In the execution of the JCE, a crime other than the one(s) agreed upon in the common plan, design or purpose was carried out by a member of the JCE or a person who the members of the JCE used to carry out the crimes covered by the JCE.<sup>540</sup>

<sup>533</sup> *Tadić* Appeal Judgement, para. 227.

<sup>534</sup> *Tadić* Appeal Judgement, para. 227.

<sup>535</sup> This legal issue has been extensively briefed in this case. The Prosecution incorporates by reference the arguments made the *Prosecution's Response to General Ojdanić's Preliminary Motion Challenging Jurisdiction: Indirect Co-Perpetration*, 21 October 2005, RP D1020-D1007 and *Prosecution's Sur Reply in Relation to General Ojdanić's Preliminary Motion*, 23 November 2005, RP D1537-D1530. Since those submissions were made the Appeals Chamber has issued its Judgement in the *Stakić* case. The Appeals Chamber's application of JCE at paras. 66 to 85 of the *Stakić* Appeal Judgement further confirms the Prosecution's position that it is *not* a requirement that the physical perpetrator is a member of the JCE. See also *Decision on Ojdanić's Preliminary Motion Challenging Jurisdiction: Indirect Co-Perpetration*, 22 March 2006, RP D 1699-D1659 in particular the *Separate opinion of Judge Bonomy*.

<sup>536</sup> *Tadić* Appeal Judgement, para. 227.

<sup>537</sup> The intent for JCE I requires purpose in the sense of "aiming at", knowledge (i.e. the awareness of a certainty) or awareness of a risk is not sufficient, see *Tadić* Appeal Judgement para. 229 (iv).

<sup>538</sup> *Tadić* Appeal Judgement, para. 228.

<sup>539</sup> Depending on which of the two alternatives (including or excluding the physical perpetrators) is charged, different requirements need to be fulfilled.

## ii. Mens Rea

It was foreseeable that such a crime might be perpetrated and the accused willingly took that risk, that is, he was aware that such crime was a possible consequence of the execution of that enterprise, and with that awareness, the accused decided to participate in that enterprise.<sup>541</sup>

228. The common plan need not be previously arranged or formulated but can “materialise extemporaneously and be inferred from the fact that a plurality of persons acted in unison to put into effect a JCE.”<sup>542</sup>

229. It is sufficient for the accused to perform acts that in some way are *directed to* the furthering of the plan or purpose;<sup>543</sup> there is no legal requirement that the accused make a “substantial contribution” to the JCE<sup>544</sup> or, indeed, physically participate in any element of any crime.<sup>545</sup> Furthermore, there is no requirement that the accused be present when and where the crime is being committed.<sup>546</sup>

230. In this case, there are two mental states applicable to liability under a theory of JCE. Each accused is liable where he intends to commit a certain crime, this intent being shared by all members of the JCE.<sup>547</sup> To prove liability, the Prosecution must show that the accused “voluntarily participated in one aspect of the common design” and that the accused, “even if not personally effecting the (criminal act), must nevertheless have intended this result.”<sup>548</sup> In addition, responsibility for a crime other than that agreed upon in the common plan, design or purpose may arise if, under the circumstances of the case, it was natural and foreseeable that such crimes might be perpetrated by one or more participants in the JCE, and the accused willingly took that risk.<sup>549</sup> Foreseeability involves the concept that a crime is a “possible” consequence of the enterprise.<sup>550</sup>

<sup>540</sup> See *Tadić* Appeal Judgment, para. 228, *Blaškić* Appeal Judgment, para. 33.

<sup>541</sup> *Blaškić* Appeal Judgment, para. 33, quoting *Vasiljević* Appeal Judgment, para. 101, quoting *Tadić* Appeal Judgment, para. 228.

<sup>542</sup> *Tadić* Appeal Judgment, para. 227; *Vasiljević* Appeal Judgment, para. 100; *Kvočka* Appeal Judgment, para. 117.

<sup>543</sup> *Tadić* Appeal Judgment, para. 229(iii). The accused’s participation need not be the *sine qua non*, without which the crime could or would not have been committed. *Kvočka* Appeal Judgment, para. 98.

<sup>544</sup> *Kvočka* Appeal Judgment, para. 97.

<sup>545</sup> *Kvočka* Appeal Judgment, para. 99.

<sup>546</sup> *Kvočka* Appeal Judgment, para. 112; *Krnojelac* Appeal Judgment, para. 81.

<sup>547</sup> *Tadić* Appeal Judgment, paras. 220, 228.

<sup>548</sup> *Tadić* Appeal Judgment, para. 196. It is not required the accused’s personal satisfaction or enthusiasm; intent is distinct from motive. *Kvočka* Appeal Judgment, para. 106.

<sup>549</sup> *Ojdanić* Appeals Decision, para. 33; *Tadić* Appeal Judgment, para. 228.

<sup>550</sup> *Prosecutor v. Brdanin & Talić*, Case No. IT-99-36PT, “Decision on Form of Further Amended Indictment and Prosecution Application to Amend,” 26 June 2001, para. 29; *Kvočka* Appeal Judgment, para. 83.

The accused must intend to participate in and further the criminal activity or plan agreed upon “and to contribute to the JCE, or in any event to the commission of a crime by the group.”<sup>551</sup>

(b) Ordering

231. The elements of ordering under Article 7(1) of the Statute are:

i. **Actus Reus**

The accused, as a person in a position of authority, instructed another person to commit an offence.<sup>552</sup>

ii. **Mens Rea**

The accused acted with direct intent or with the awareness of the substantial likelihood that a crime would be committed in the execution of that order.<sup>553</sup>

232. Ordering does not require a formal superior-subordinate relationship but it must be established that the accused possessed the authority to order.<sup>554</sup> The order can be explicit or implicit; no particular form is required. It is not necessary that the order be given directly to the individual executing it.<sup>555</sup>

(c) Planning

233. The elements of planning under Article 7(1) of the Statute are:

i. **Actus Reus**

The accused, alone or together with others, designed the criminal conduct constituting the crimes charged. The planning was a factor substantially contributing to the perpetration of the crimes.<sup>556</sup>

ii. **Mens Rea**

The accused acted with direct intent or with the awareness of the substantial likelihood that a crime would be committed in the execution of that plan.<sup>557</sup>

234. The existence of a plan can be proved by circumstantial evidence.<sup>558</sup>

<sup>551</sup> *Tadić* Appeal Judgement, para. 228.

<sup>552</sup> *Kordić* Appeal Judgement, para. 28.

<sup>553</sup> *Blaškić* Appeal Judgement, para. 42; *Kordić* Appeal Judgement, paras. 29, 30.

<sup>554</sup> *Kordić* Trial Judgement, para. 388.

<sup>555</sup> *Blaškić* Trial Judgement, para. 282.

(d) Instigating

235. The elements of instigation under Article 7(1) of the Statute are:

i. **Actus Reus**

The accused prompted another person to commit the offence.<sup>559</sup> The instigation was a factor substantially contributing to the conduct of the other person(s) committing the crime.<sup>560</sup>

ii. **Mens Rea**

The accused acted with direct intent or with the awareness of the substantial likelihood that a<sup>561</sup> crime would be committed in the execution of that instigation.<sup>562</sup>

236. It need not be shown that the offence would not have been committed without the participation of the instigator. It suffices to demonstrate that the instigation was a factor substantially contributing to the conduct of the person committing the crime.<sup>563</sup>

(e) Aiding and abetting

237. The elements of aiding and abetting under Article 7(1) of the Statute are the following:

i. **Actus Reus**

The accused gave practical assistance, encouragement, or moral support which had a substantial effect on the perpetration of the crime.<sup>564</sup>

ii. **Mens Rea**<sup>565</sup>

<sup>556</sup> Kordić Appeal Judgement, para. 26.

<sup>557</sup> Kordić Appeal Judgement, paras. 29, 31.

<sup>558</sup> Akayesu Trial Judgement, para. 480; Blaškić Trial Judgement, para. 279.

<sup>559</sup> Kordić Appeal Judgement, para. 27.

<sup>560</sup> Kordić Appeal Judgement, para. 27.

<sup>561</sup> Kordić Appeal Judgement, para. 32.

<sup>562</sup> Kordić Appeal Judgement, paras. 29, 32.

<sup>563</sup> Kordić Appeal Judgement, para. 27.

<sup>564</sup> Blaškić Appeal Judgement para. 46.

<sup>565</sup> The standard is not yet settled. The Blaškić Appeal Chamber stated that the *mens rea* for aiding and abetting consists of knowledge that the acts performed by the aider and abettor assist the commission of a crime by the principal offender (para. 49). It is however not necessary that the aider and abettor has knowledge of the precise crime that was intended and which was actually committed, as long as he was aware that one of a number of crimes would *probably* be committed, including the one actually committed (para. 50). Because of the probability element and in order to have one standard of *mens rea* for planning, instigating, ordering and aiding and abetting, it is our submission in the Prosecution's Appeal Brief in *Blagojević and Jokić* para. 2.62 that "the *mens rea* of aiding and abetting is awareness of

The accused knew that his acts would assist the commission of the crime by the perpetrator or he was aware of the substantial likelihood that his acts would assist the commission of the<sup>566</sup> crime by the perpetrator.

238. The act of assistance need not have caused the act of the principal and may consist of either an act or an omission, taking place before, during or after the commission of the crime.<sup>567</sup> The abettor need not share the *mens rea* of the principal but must know of the essential elements of the crime, including the *mens rea* of the principal, and that he was assisting in the commission of the crime.<sup>568</sup>

## 2. Individual participation of the accused

### (a) Slobodan Milošević

239. Slobodan Milošević was President of the FRY and without question the most powerful person in that country during the period covered by the Indictment. His dominance was built on manipulation of Serbian nationalist policies, the central theme and essence of which is that Serbs must live in a polity and territory controlled by Serbs or be vulnerable to discrimination, persecution and genocide by non-Serbs. In brief, Milošević was a leading member of the JCE, and his role was primarily that of an instigator, planner and orderer of the crimes.

240. In the late '1980ies, Kosovo Serbs complained of discrimination against them by the majority Kosovo Albanian population. In the spring of 1987, Serb and Montenegrin activists in Kosovo were planning a march on Belgrade to express their grievances about the situation in Kosovo. Milošević travelled to Kosovo on 24 April 1987 in order to calm the situation. He addressed the Serb demonstrators by saying "No one should dare to beat you!"<sup>569</sup> The statement received enormous publicity and made him a hero in the eyes of the Serbian public<sup>570</sup>. Milošević seized on this sentiment and exploited the Serbian myth of Kosovo and the complaints of Kosovo's Serbs for his own political advantage. During another rally, in Belgrade, in November 1988, which

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a substantial likelihood that the crime will be committed and knowledge (or awareness) of a substantial likelihood that the acts of the accused will assist".

<sup>566</sup> Kordić Appeal Judgement, para. 28. It is not required that the aider and abettor had knowledge of the precise crime that was intended and which was actually committed, as long as he was aware that one of a number of crimes would probably be committed, including the one actually committed (*Blaškić* Appeal Judgement, para. 50).

<sup>567</sup> *Blaškić* Appeal Judgement, paras. 47-48; Prosecutor v. *Aleksovski*, Case No. IT-95-14/1, Appeal Chamber Judgement, 24 March 2000, paras. 62, 164, ("*Aleksovski* Appeal Judgement").

<sup>568</sup> *Kvočka* Appeal Judgement, para. 90; *Vasiljević* Appeal Judgement, para. 102.

<sup>569</sup> Exhibits 4.047, 4.048, 5.1004

was attended by over 300,000 people, he stated "Every nation has a love which eternally warms its heart. For Serbia it is Kosovo."<sup>571</sup> From these incidents in the 1980ies until he departed office in October 2000, Slobodan Milošević used Serbian nationalist feelings about Kosovo to further his personal power and political objectives. In order to maintain political control, it was imperative that Milošević succeed in keeping Kosovo controlled by Serbs.

241. Milošević surrounded himself with loyal followers, individuals who shared his belief that Kosovo was integral to Serbia and must be kept Serb at all costs. He manipulated the political, military, and police promotion systems to ensure that his people retained control. All of the accused shared Milošević sentiments about Kosovo and were loyal to him; some, such as Nebojša Pavković, had close personal ties as well.<sup>572</sup>

242. As President of the FRY Milošević commanded the VJ in accordance with decisions taken by himself and Milan Milutinović.<sup>573</sup> He issued his orders to one or more co-perpetrators: whereas by law his chain of command ran through Dragoljub Ojdanić, Milošević occasionally issued orders to Nebojša Pavković, either directly or through Nikola Šainović.<sup>574</sup> Acting on Milošević's orders the VJ (together with the MUP) launched on or about 24 March 1999 a massive and highly coordinated operation in pursuit of the goals of the criminal enterprise: the modification of the ethnic balance of Kosovo in order to ensure continued Serbian control over the province.

243. Milošević was in a position to exercise effective control of its forces in Kosovo, although he had no *de jure* authority over the MUP in peacetime.<sup>575</sup> According to law MUP forces were subordinated to the VJ during wartime.<sup>576</sup> Milošević also could and did receive reports from, and issue instructions to, the Minister for Internal Affairs Vlastimir Đorđević.<sup>577</sup> Stojiljković and other senior MUP officials including Vlastimir Đorđević and Rade Marković met with and received orders from Milošević at other times, notably in connection with the removal of bodies of Kosovo

<sup>570</sup> *Id.*

<sup>571</sup> *Id.* Similarly, at the 600<sup>th</sup> anniversary of the Battle of Kosovo,<sup>571</sup> Milošević made a statement suggesting the possibility of an armed conflict in Kosovo – "Six centuries later, now, we are being again engaged in battles and are facing battles. They are not armed battles, although, such things cannot be excluded yet." Exhibit 5.1004.

<sup>572</sup> For example, Zoran Lilić notes that Pavković attended birthday parties and other events at the Milošević home.

<sup>573</sup> The third member of the SDC, Milo Djukanović, did not attend any sessions after 25 December 1998.

<sup>574</sup> Aleksandar Vasiljević, John Crosland.

<sup>575</sup> In addition to the evidence cited in this paragraph, Klaus Naumann will testify to Milošević's general authority with respect to the MUP in negotiations he took part in.

<sup>576</sup> Budimir Babović, Philip Coe, Rade Marković. There is some dispute about whether, when, and to what extent MUP units were in fact subordinated to the VJ; the Prosecution's claim in this sentence is merely that the relevant provisions existed in Serbian and FRY law, and that the intent of the law existed in practice.

<sup>577</sup> Exhibits 4.426, 5.535.

Albanians.<sup>578</sup> Finally, numerous witnesses will attest that VJ and MUP units acted together in closely coordinated fashion.<sup>579</sup>

244. At a Socialist Party of Serbia (SPS) meeting in June 1998<sup>580</sup>, following deliberations of the members of the main board of the SPS<sup>581</sup>, Milošević ordered the formation of the Joint Command in 1998.<sup>582</sup> The Joint Command, which exercised command over MUP and VJ forces in Kosovo in 1998 and 1999 as detailed elsewhere in this brief, had no source of authority in law apart from that delegated to it by Milošević: it could not have existed or functioned without his intervention.<sup>583</sup> Milošević exercised control of the Joint Command first through Milomir Minić and later through Nikola Šainović, the person with the responsibility to ensure that the objectives of the JCE - and those of Milošević in particular - were implemented in Kosovo.<sup>584</sup>

245. Finally, evidence will show Milošević was the unquestioned political leader of the FRY, and that no strategic, political, or military decisions – including the criminal plan described above – could have been taken or implemented without his knowledge and approval. Thus, Milošević's contribution to the JCE included providing the overall political direction without which the enterprise could not have functioned.

(b) Milan Milutinović

246. As shown in the previous section, there was a criminal enterprise to change the ethnic composition of Kosovo through, *inter alia*, the persecution; deportation/forcible displacement; murder; rape of Kosovo Albanians, and the looting and destruction of their dwellings and mosques over a protracted period of time throughout Kosovo. The common plan to alter the demographic balance in favour of the Serbs in Kosovo was implemented through a variety of ways, including the setting up of *ad hoc* bodies for the implementation of the plan in Kosovo and through the structures of the VJ and the MUP.

247. Milutinović was present on at least two occasions when key members of the JCE explicitly stated that the Kosovo Albanians should be killed. In mid June 1998, Milutinović chaired at least one meeting of top VJ and MUP leadership dealing with co-ordination of operations in Kosovo. At this meeting, Vlatko Stojiljković responded to reports of reserve police committing crimes against

<sup>578</sup> Rade Marković, Dragan Karleuša, Aleksandar Vasiljević, Olivera Antić-Simić, Zoran Stijović.

<sup>579</sup> Richard Ciaglinski, Philip Coe, John Crosland, Karel Drewienkiewicz, and see also section on Joint Command.

<sup>580</sup> Exhibit 5.1208).

<sup>581</sup> *Id.* Milomir Minić, Nikola Šainović, Milan Milutinović, Zoran Anđelković, Dušan Matković and other SPS main board members were present at the meeting.

<sup>582</sup> Exhibit 5.344, Philip Coe.

<sup>583</sup> Philip Coe, Aleksandar Vasiljević.

<sup>584</sup> Aleksandar Vasiljević, Shukri Aliu, Karol Drewienkiewicz, K64.



Albanians, by stating with respect to the Albanians that "all of them" should be killed.<sup>585</sup> On 25 October 1998, after signing the Holbrooke agreement, Slobodan Milosević described Kosovo Albanians as "criminals, murderers and rapists" and went on stating that a solution would be found in the spring of 1999. When he was asked further, he said they will do what they did in Drenica in 1945 or 1946, which was getting them together and shooting them.<sup>586</sup> On neither occasion did Milutinović, despite being the President also for the Kosovo Albanians, take a contrary view.

248. On the contrary, Milan Milutinović used his position as the President of the Republic of Serbia and as a senior member of the SPS<sup>587</sup> to contribute to implementation of the criminal enterprise in a variety of significant ways, including by participating in decisions in relation to the deployment of the VJ and the MUP; removal of officers seen as an obstacle to the JCE and promotion of others loyal to it; maintaining the position of the JCE before the international community; issuing decrees; contributing to the establishment of bodies implementing the JCE in Kosovo; participating in international meetings and conferences; and by effectively encouraging the commission of crimes.

249. Milutinović contributed to the JCE by participating in decisions regarding the deployment of the VJ and the MUP. As President of Serbia, he was a member of the Supreme Defence Council of the FRY and of the Supreme Command<sup>588</sup>. Milutinović participated in decisions at the highest strategic level regarding the deployment of the VJ in Kosovo. His Presidential powers and membership in the Supreme Defence Council and the Supreme Command also gave him authority over the Serbian MUP.<sup>589</sup>

250. Furthermore, Milutinović furthered the JCE, as the President of the Republic of Serbia and as a member of the Supreme Defence Council, by participating in the appointment and promotion of other members of the JCE. He thus participated in the appointment of Dragoljub Ojdanić as the VJ Chief of General Staff, to replace Momčilo Perisić who was falling out of favour with Milosević for his objection on the use of the army in Kosovo. Milo Djukanović debated this issue quite vigorously, while Milutinović endorsed the appointment.<sup>590</sup> Under the Decree on Ranks of Members of the Ministry of Internal Affairs had the power to promote. Milutinović could appoint MUP officers to the rank of General and could assign officers to their duty stations.<sup>591</sup> These

<sup>585</sup> Zoran Lilić.

<sup>586</sup> Klaus Naumann- K022-3152-K022-3162

<sup>587</sup> Paras 68 and 193

<sup>588</sup> Para 189 and 191

<sup>589</sup> Indeed, at the 6<sup>th</sup> session of the Supreme Defence Council on 4 October 1998, Milošević complained that international leaders always blamed him even when the problem was not properly within his jurisdiction: "for the police is not within my jurisdiction – there is the President of Serbia, Milutinović...."Exhibit 5.614.

<sup>590</sup> Exhibit 5.615 (Minutes of the 7<sup>th</sup> session of the SDC, 14 November 1998.)

<sup>591</sup> Exhibit 5.034.

powers were important for the career of MUP officers, giving Milutinović leverage over the MUP. Despite his knowledge of the crimes committed in Kosovo by the MUP,<sup>592</sup> Milutinović, for example, signed the promotion of the chief of the MUP Staff for Kosovo, accused Sreten Lukić, to the rank of Colonel-General. This happened on 12 May 1999<sup>593</sup> and coincides with the completion of several big operations in Kosovo during which many crimes had been committed by the MUP. Moreover, Milutinović publicly praised the work of the forces of the FRY and Serbia.<sup>594</sup>

251. During wartime, the Serbian Constitution gave Milutinović the authority to issue decrees otherwise the prerogative of the National Assembly.<sup>595</sup> He used the authority on numerous occasions, at times in line with the goals of the criminal enterprise. For example on 31 March 1999 he issued a "Decree on Identification Cards in Time of War."<sup>596</sup> Article 3 of that Decree provides that any person who "loses, or in another fashion comes to be without an identification card" must report the loss within 24 hours to the MUP office in the municipality of loss, and must apply for a new card within 8 days in his/her home municipality. This decree affected the thousands of Kosovo Albanians whose identification documents were confiscated and destroyed by the very MUP officials charged with replacing them. Another decree he issued the next day required all persons older than 14 to register changes of permanent residence within 24 hours, changes of temporary residence within 12 hours, and departure from place of residence before leaving. The penalty for infractions was 30 days in prison. This decree affected on its face the great majority of Kosovo Albanians during the indictment period.<sup>597</sup>

252. Milutinović also contributed to the implementation of the JCE in a number of more subtle but my no means less important ways.

253. First, Milutinović's accepted Šainović's appointment as responsible for Kosovo affairs. Milutinović's acceptance of the appointment is not only significant because of the important role Šainović played in the implementation of the criminal enterprise, as discussed in the next section. It is also because Šainović's appointment in many ways was an abnormality, because Šainović, despite being a minister at the federal level came to play a key role in what my FRY politicians consistently was claimed to be an internal affair for the Republic of Serbia.<sup>598</sup>

<sup>592</sup> See paras. 96, 97, 99, 103, 148

<sup>593</sup> Exhibit 5.389.

<sup>594</sup> Exhibits 5.388 (Ojdanić), 5.019 (Šainović), 5.212 (Milutinović).

<sup>595</sup> Exhibit 5.040.

<sup>596</sup> Exhibit 5.012.

<sup>597</sup> Exhibit 5.012.

<sup>598</sup> Klaus Naumann

254. Second, Milutinović also furthered the JCE by participating in international negotiations and often accompanied Milošević to meetings with international representatives on Kosovo,<sup>599</sup> whereby he gave legitimacy to those meetings. Milutinović was prominent in the October 1998 negotiations and led the FRY/Serbia VJ and MUP delegations during technical negotiations with NATO's representatives.<sup>600</sup> He also played an important role in the Rambouillet and Paris negotiations, particularly during the latter negotiations where he led the delegation's rejection of the agreement, even if he was not an official member of the Serbian delegation at Rambouillet.<sup>601</sup>

255. Third, Milutinović exercised authority on behalf of the joint criminal enterprise through his position as a senior member of the SPS. For example during the war Milutinović orally disciplined a senior Serbian politician for having written a letter to international leaders, on grounds that the letter could be used to inculcate Milošević.<sup>602</sup>

256. Fourth, by being seen as remaining silent in face of the prevalent crimes in Kosovo, Milutinović qua his important positions endorsed and instigated the commission of further crimes. That Milutinović knew of the crimes in Kosovo is beyond doubt, not only because of what has already been set out above:

- Milutinović not only received information through the government and different ministries, he also got information through the press and media, including the television.<sup>603</sup> Milutinović had the ability to, ask for and receive reports from MUP staff including the Minister.
- On at least two occasions he exercised those powers by summoning the Minister of Interior and some officials to be briefed on the situation in Kosovo and particularly on the Adem Jashari killings of 83 people including women and children and on another occasion on the Račak incident.<sup>604</sup>
- At the 8<sup>th</sup> session of the SDC on 25 December 1998, Milošević noted that there had been "incidents involving breach of discipline" in the police but not in the VJ.<sup>605</sup> At no point did Milutinović challenge any of these assertions. Milutinović was privy to international

<sup>599</sup> Knut Vollebeck.

<sup>600</sup> Klaus Naumann; Exhibit 4.045.

<sup>601</sup> Wolfgang Petritsch.

<sup>602</sup> Zoran Lilić.

<sup>603</sup> Milan Milutinović Interview Transcript.

<sup>604</sup> Milan Milutinović Interview Transcript.

<sup>605</sup> Exhibit 5.019.

notification of crimes by the VJ and the MUP in Kosovo, and concerns about the commission of further crimes should VJ and MUP activities continue.<sup>606</sup>

- On 22 April 1999, when meeting with Ibrahim Rugova, Milutinović was updated on the situation in Kosovo. Rugova stated that Kosova was being emptied of Kosovo Albanians were being driven out by Serb police and military forces, paramilitaries, and other voluntary forces; that they were being oppressed; and violence was committed against them. In response Milutinović repeated the slogan being used by Serb community that this “was the outcome of the international community”.<sup>607</sup> This response reflects his already formed opinion and shows no intention of following up on the matter, amounting to an endorsement of the crimes.

257. Although Milutinović was the President of Serbia, thus the President also for the population in the province of Kosovo, and a senior member of the SPS he took no steps to bring the crimes in Kosovo to an end or even dissociate himself from the crimes in public. Further, he remained a member of the Supreme Defence Council and subsequently the Supreme Command throughout the period where serious crimes were committed in Kosovo. Despite his knowledge of the serious crimes committed by the VJ and the MUP in Kosovo he did not use his position in the highest body controlling these forces to try to bring the crimes to an end.

258. The fact that Milutinović clearly knew of the crimes committed in Kosovo and was seen not to take any steps to prevent or curb the continued crimes in Kosovo contributed to the creation of an atmosphere of impunity which facilitated the commission of the crimes, and amounted to an endorsement and instigation of the crimes.

258a. In light of the demonstrated common purpose to alter the demographic balance in Kosovo in favour of the Serbs in Kosovo, were to be implemented in part through persecution; deportation/forcible displacement; murder; rape of Kosovo Albanians and the looting and destruction of their dwellings and mosques, which Milutinović contributed to in the numerous ways set out above, he is responsible as a co-perpetrator for the commission of the crimes charged in the Indictment under Article 7(1) of the Statute. The facts set out in paragraphs 2, 3, and 4 establish the criminal responsibility of Milutinović on the basis of planning and ordering under Article 7(1) of the Statute. Furthermore, the facts set out in paragraphs 11, 12 and 13, establish the criminal responsibility of Milutinović on the basis of instigating.

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<sup>606</sup> Klaus Naumann.

(c) Nikola Šainović

259. Nikola Šainović participated in the JCE through various positions and functions he held in 1998 and 1999. He was first appointed Deputy Prime Minister of the FRY in 1994 and continued to hold this position, after three re-appointments, also during the relevant period. As Vice President of the Government of the FRY he was often the most senior official present in Kosovo. Apart from his official and unofficial positions, he in effect deputised for Milošević in Kosovo matters and spoke and acted with Milošević's delegated authority.<sup>608</sup>

260. Nikola Šainović also participated in the JCE by using his influence as a senior SPS member. More than just being a loyal SPS member, he belonged – together with Minić - to Milošević's SPS "inner circle", also referred to as the "shadow cabinet", where all decisions of importance were taken, only to be rubber-stamped later by the SPS Executive Committee so that these decisions would receive some form of political legitimacy.<sup>609</sup> Šainović was present at the 16<sup>th</sup> session of the SPS main board on 10 June 1998, where Minić held his speech, demanding that the number of Serbs must remain the same today and must grow tomorrow in order to "defend" Kosovo.<sup>610</sup> It was thus no co-incidence that first Minić and then Šainović were put in command of the most important control and co-ordination body that was established to deal with the Kosovo crisis: the Joint Command.

261. Šainović participated in the plan by acting as Milošević's representative for Kosovo. As early as in spring 1998, Šainović was sent on two fact-finding missions to Kosovo in order to monitor and gain insight into the situation there.<sup>611</sup> The first mission took place on 17 May 1998, the second on 27 May 1998. While Šainović was accompanied by Lilić and Samardžić the first time, for the second trip Samardžić was replaced by Pavković.<sup>612</sup> On these occasions information was received from the MUP and the VJ as well as from the municipal presidents and the delegation visited critical areas like Đakovića and Junik.<sup>613</sup> During a meeting held in Priština, the Federal Program to facilitate the return of expelled Serbs into Kosovo was discussed.<sup>614</sup> On his return from these trips, Šainović reported, *inter alia*, to Milošević, Federal Prime Minister Bulatović and SPS representatives.<sup>615</sup> The results of these missions were the foundation for the heated debate during

<sup>607</sup> Exhibit 4.009, Ibrahim Rugova.

<sup>608</sup> K64, Karol Drewienkiewicz, Dušan Lončar.

<sup>609</sup> Zoran Lilić.

<sup>610</sup> See para 73

<sup>611</sup> Exhibit 4.220.

<sup>612</sup> Zoran Lilić.

<sup>613</sup> Ibid.

<sup>614</sup> Exhibit 4.220.

<sup>615</sup> Exhibit 4.220.

the 13 June 1998 meeting, chaired by Milošević, where the Serb political, military and police leadership split into groups, one voting for a political solution while the other supported a military approach. Notably, Šainović – in stark contrast to Lilić – but together with Stojiljković – supported a military solution to the Kosovo problem. It was at the same meeting where Stojiljković, after quarrelling with Lilić about Lilić's allegation that the MUP had acted illegally in Kosovo, shouted that Šiptars should be killed.<sup>616</sup> By siding with Milošević and Stojiljković, Šainović laid the foundation for him to become one of the key players in Kosovo from the summer of 1998 onwards.

262. Šainović also participated in the plan by representing FRY and Serbian interests before interlocutors from the international community, including as chair of the FRY Commission for Co-operation with the Kosovo Verification Mission ("KVM") of the Organisation for Security and Co-operation in Europe ("OSCE"). Šainović represented himself to officials of KVM as well as other foreign officials as the head of that Commission and exercised authority over all other officials of the FRY/Serbia in Kosovo.<sup>617</sup> These international interlocutors noted that Šainović had ready access to Milošević and received orders directly from him on a range of matters.<sup>618</sup> As head of this Commission, Šainović used his position to frustrate the activities of the KVM and therefore the commitments the FRY and Serbia had made to the peace process in October 1998.<sup>619</sup>

263. The nature of Šainović's role is visible in his actions during the January 1999 crisis over the captured VJ soldiers. Intercepted conversations show that he was at various times negotiating with KVM, conferring with Ojdanić and Milošević, visiting various command posts and at one point the office of Sreten Lukić.<sup>620</sup> Šainović was briefed regularly by senior representatives of the VJ, MUP, and civilian structures in Kosovo on the security situation and, more generally, on matters of relevance to the objectives of the JCE. Members of KVM and other international interlocutors brought concerns regarding human rights in Kosovo to Šainović's attention on a regular basis.<sup>621</sup> During the 1999 state of war, similar concerns were, or would have been, made known to Šainović through a variety of sources.<sup>622</sup>

264. After the Joint Command was established in June 1998, Šainović also contributed to the plan by holding the key position of head of this body.<sup>623</sup> The Joint Command was formed "on the order by the FRY President in June 1998 without any specific document."<sup>624</sup> Generally, documents

<sup>616</sup> Zoran Lilić.

<sup>617</sup> Karol Drewienkiewicz; J. Maisonneuve; Klaus Naumann; Wolfgang Petritsch; Knut Vollebaek; William Walker.

<sup>618</sup> Karol Drewienkiewicz; J. Maisonneuve; Klaus Naumann; Wolfgang Petritsch; Knut Vollebaek; William Walker.

<sup>619</sup> Karol Drewienkiewicz, William Walker, Richard Craglinski, Dušan Lončar.

<sup>620</sup> Exhibits 4.429 to 4.436.

<sup>621</sup> Karol Drewienkiewicz.

<sup>622</sup> Exhibit 4.010, Aleksandar Vasiljević, Peter de la Billiere.

<sup>623</sup> Alexander Vasiljević, K64, Zoran Lilić, Exhibit 4.564.

<sup>624</sup> Exhibit 5.344.

such as orders and instructions issued by the Joint Command did not have signature blocks and were not signed.<sup>625</sup> Šainović therefore exercised his authority through his role as Head of the Joint Command with, at best, a tenuous basis in FRY law. The absence of a proper legal basis for the Joint Command's existence and mandate - in stark contrast to an equivalent body set up on the basis of a Decision by FRY President Koštunica to deal with security problems in southern Serbia in 2001 - provided more flexibility in the use of the Joint Command in accordance with the wishes of the members of the JCE, including Šainović.<sup>626</sup> Moreover, the quasi-legal status of the Joint Command and the associated lack of accountability of its members and those with authority over it meant that attribution of any wrongdoing to individuals such as Šainović would be problematic. This lack of accountability was intentional.

265. The Joint Command was created with a mandate to co-ordinate political, military and MUP activities in Kosovo.<sup>627</sup> As Head of this body, Šainović oversaw the activities of the VJ, MUP, and civilian structures in Kosovo which he directed in conformity with the instructions provided by Milošević and agreed to by other members of the JCE.<sup>628</sup> His task was to co-ordinate, to settle disputes, to collect information, to make decisions and to issue orders in relation to the actions of the VJ and MUP forces in Kosovo.<sup>629</sup> The most senior representatives of the VJ (Pavković and Lazarević), MUP (Đorđević, Stevanović, Lukić, and Ilić), and civilian structures (Zoran Andelković) in Kosovo - all members of the JCE - reported to Šainović on events in Kosovo and transformed his instructions into combat operations and other activities which led to, *inter alia*, violations of international humanitarian law as alleged in the Indictment.<sup>630</sup> As head of the Joint Command, Šainović not only had command and control over the MUP and the VJ but also with regard to local defence.<sup>631</sup>

266. Šainović also exercised authority over the VJ, including over Ojdanić. For example, prior to Milošević's extremely reluctant and late signature on the 25 October 1998 "Record of Meeting" between NATO representatives and the FRY and Serbia, Šainović was the lone signatory on behalf of the FRY and VJ.<sup>632</sup> He also accompanied Ojdanić to a meeting with Wesley Clark in December

<sup>625</sup> Exhibits 5.220, 5.923.

<sup>626</sup> Exhibits 5.056, 5.360, 5.373.

<sup>627</sup> Exhibit 5.344.

<sup>628</sup> Exhibits 5.501, 5.360, 5.373, 4.564, 5.308; Aleksandar Vasiljević.

<sup>629</sup> Exhibits 4.332, 5.501, John Crosland, Radomir Marković, Aleksandar Vasiljević, and a Rule 70 witness.

<sup>630</sup> Exhibit 5.501, K64, Aleksandar Vasiljević.

<sup>631</sup> Exhibit 5.501.

<sup>632</sup> Klaus Naumann.

1998 and appeared, to Clark, as the most authoritative person present.<sup>633</sup> Moreover, simply Milošević's authority vested in Šainović gave him *de facto* authority over Ojdanić.<sup>634</sup>

267. Šainović further exercised authority over the MUP. On at least one occasion, Sreten Lukić referred Rade Marković, who questioned what was being done to stop the flow of refugees from Kosovo, to Nikola Šainović.<sup>635</sup> This shows that the most senior MUP officials treated Šainović as their *de facto* superior. At a meeting of the Joint Command on 1 June 1999, Šainović was briefed by the VJ and MUP on the situation and approved the proposed tasks for subsequent VJ and MUP activities. That meeting was indicative of similar meetings being held regularly and frequently and corresponded to the nature of Joint Command meetings held in 1998.<sup>636</sup>

268. Šainović shared the intent to carry out the goals of the JCE. This is the only reasonable inference to be drawn from his close relationship to Milošević, the important functions he was given by him and his senior position in the SPS. Like Milošević, Šainović believed that a precondition to the resolution of tensions in Kosovo was a change in the ethnic demographic balance in Kosovo. Šainović openly expressed towards international representatives in October 1998 his view that a "better balance" between Serb and Albanian demographic levels ought to be achieved in Kosovo.<sup>637</sup>

269. Šainović also shared the intent that the crimes charged in the Indictment be committed. In December 1998, he gave a presentation to the SDC on the situation in Kosovo. Despite the repeated and numerous allegations by international observers, the international community and the Security Council of serious crimes having been committed by these forces in operations in 1998 that Šainović must have been aware of, he commented on the activities of the VJ and MUP praising them for the way in which they co-operated with one another.<sup>638</sup> Šainović was also present at meetings where Milošević and Stojiljković made blunt statements that killing all Albanians might be the best solution.<sup>639</sup> Šainović also regularly attended meetings with other members of the JCE in Belgrade. At these meetings, events in Kosovo were discussed, including the activities of FRY and Serb forces involved in the campaign of violence against civilians.<sup>640</sup> These facts demonstrate that Šainović knew that the plan encompassed serious crimes against the Kosovo Albanian population.

<sup>633</sup> Exhibit 4.045.

<sup>634</sup> Aleksander Vasiljević.

<sup>635</sup> Radomir Marković.

<sup>636</sup> Exhibit 5.501, K64.

<sup>637</sup> Klaus Naumann. This is corroborated by an intelligence report of an intercepted conversation between MUP officers in September 1998, describing the visit of a senior government delegation to Kosovo and further describing the "plan" to improve the demographic balance in Kosovo by removing Albanians and settling Serbs; Exhibit 4.428.

<sup>638</sup> Exhibit 5.019.

<sup>639</sup> See para 74 and 76

<sup>640</sup> Aleksandar Vasiljević, Radomir Marković.



That he nevertheless continued to participate in the plan by exercising his various functions, most of all, acting as head of the Joint Command, evidences that he intended for the crimes as charged in the Indictment to occur.

270. In the alternative, the facts set out above establish that Šainović is individually criminally responsible for planning, instigating and ordering the crimes charged.

271. Further, in the alternative, Šainović aided and abetted the commission of the charged crimes. He knew that without the Joint Command co-ordinating and steering the military and police operations in Kosovo, the objectives of the plan could not be achieved. By acting as the head of this central control and co-ordination body, he lent important encouragement and moral support to the members of the JCE. By failing to take appropriate disciplinary measures against members of military or police units who had committed crimes in Kosovo in 1998 and 1999 and by tolerating the integration of notorious units into the MUP, he encouraged and morally supported the direct perpetrators of the crimes charged. Šainović knew of the commission of widespread crimes in 1998 and 1999 and was aware that he substantially contributed to the commission of these crimes by his actions.

(d) Dragoljub Ojdanić

272. As Chief of the General Staff of the VJ, Dragoljub Ojdanić was the highest-ranking military officer in the FRY during the Indictment period.<sup>641</sup> Ojdanić participated in the joint criminal enterprise by using the General Staff to plan, direct, and coordinate the operations and activities of the forces of the FRY and Serbia in Kosovo. He issued orders and instructions to his subordinates in furtherance of the joint criminal enterprise, pursuant to decisions of the FRY President, the Supreme Defence Council and the Supreme Command.<sup>642</sup> His authority was augmented by the fact that he was a member of the Supreme Command and the Supreme Defence Council and thereby directly participated in the formulation of overall policy.<sup>643</sup> He made these contributions to the enterprise discussed above, with the intent to commit the crimes charged in the Indictment.

273. Ojdanić was promoted to Chief of the General Staff of the VJ in November 1998 after serving as Deputy Chief of the General Staff since 1996.<sup>644</sup> Unlike his predecessor, Colonel-General Perišić, Ojdanić supported the involvement of the VJ in combat activities in Kosovo under conditions which Perišić felt were in contravention of the Constitution and legal provisions for

<sup>641</sup> Exhibits 4.411, 5.003, 5.360 and 5.373. During the state of war, the Chief of VJ General Staff was referred to as Chief of Staff of the Supreme Command or Chief of the Supreme Command Staff. Exhibit 5.360.

<sup>642</sup> Exhibits 5.360 and 5.373.

<sup>643</sup> See paras 189 and 191, Exhibits 5.360, 5.373.

<sup>644</sup> Exhibit 4.411.

engaging the VJ in internal security operations.<sup>645</sup> This shows that other participants in the common purpose could rely on Ojdanić to implement the crimes that were part of the common purpose.

274. During the indictment period, Ojdanić exercised *de jure* and *de facto* command over the VJ and units that were subordinated to VJ units, as well as over other armed formations and personnel falling under the authority of the VJ.<sup>646</sup> After the declaration of a state of imminent threat of war on 23 March 1999, he also exercised control over MUP units engaged in combat operations, and other organs subordinated to the VJ, or acting in concert with the VJ, under the FRY Law on Defence.<sup>647</sup>

275. Ojdanić actively contributed to the joint criminal enterprise through several channels. Through his participation in meetings of the highest civilian, VJ and MUP leadership, Ojdanić assisted in the planning and co-ordination of the deployment of troops to Kosovo. He implemented instructions from the FRY President and reinforced the VJ presence in Kosovo immediately prior to and during the Indictment period. As Chief of the General Staff of the VJ, Ojdanić exercised his authority, *inter alia*, by ordering an increase in troop strength of 3<sup>rd</sup> Army units,<sup>648</sup> by mobilising reserve units, and by carrying out preparations and monitoring the conscription of new recruits.<sup>649</sup> Ojdanić favoured close coordination between VJ and MUP units in Kosovo<sup>650</sup> and was involved in the co-ordination and implementation of joint VJ-MUP operations.<sup>651</sup>

276. Like other Accused, in his public statements Ojdanić openly encouraged and gave legitimacy to the actions of the forces of the FRY and Serbia in Kosovo.<sup>652</sup>

277. The VJ plans and orders for operations in Kosovo during the Indictment period involved the continued use of troops and commanders Ojdanić knew had been involved in crimes in 1998. Ojdanić knew that the implementation of orders issued on his authority would lead to the commission of the crimes charged in the Indictment. Rather than change tactics once he assumed command of the VJ, General Ojdanić ordered the same troops to engage in the same conduct that had led to crime in 1998.<sup>653</sup> By so doing, Ojdanić encouraged the commission of further crimes and

<sup>645</sup> Exhibit 4.332, Aleksandar Vasiljević, Nike Peraj, Zoran Lilić.

<sup>646</sup> Exhibits 5.003 and 5.004.

<sup>647</sup> Exhibits 5.010 and 5.004.

<sup>648</sup> Exhibits 5.718, 5.506, 5.719, 5.722, 5.975.

<sup>649</sup> See, eg, exhibits 5.724, 5.978, 5.496 and 5.966.

<sup>650</sup> Exhibit 5.520; Several international observers and KVM officials observed joint MUP-VJ operations taking place in 1998 and 1999. Karol DREWNIKIEWICZ, John CROSLAND, Michel MAISONNEUVE, Paddy ASHDOWN.

<sup>651</sup> Ojdanić issued orders to formally subordinate MUP units engaged in combat operations to the military command. For example, on 18 April 1999, Ojdanić issued an order to, among others, the 3<sup>rd</sup> Army HQ, pursuant to article 17 of the Law on Defence, which directed certain VJ units, including the 3<sup>rd</sup> Army, to subordinate "internal affairs units and organs" to them. Exhibit 5.521.

<sup>652</sup> Exhibit 5.265 and 4.290. During a visit to VJ units in the field in March, Ojdanić publicly stated that "Kosovo is ours, it has always been a part of Serbia and that is the only option for the future, because it lives in our hearts and in the hearts and minds of every citizen of our country." Exhibit 5.280.

<sup>653</sup> Nike Peraj. For example, exhibits 5.069, 5.101, 5.536.

therefore contributed to the commission of the crimes through which the criminal purpose was implemented.

278. Ojdanić knew of the crimes committed in Kosovo by the forces of the FRY and Serbia in 1998 and during the indictment period and was aware that he was contributing to the commission of these crimes. Ojdanić's knowledge of events in Kosovo derived from the positions he held in key command organs, as well as the reporting structures within those organs,<sup>654</sup> and from personally touring VJ positions in Kosovo.<sup>655</sup> Ojdanić issued instructions to his immediate subordinates to ensure that periodic reports, including daily reports, were sent up the chain of command and that he was kept fully apprised of developments on the ground and of the progress of operations.<sup>656</sup> The following excerpt from an order to Pavković is an example:<sup>657</sup>

During 9 April 1999, obey the directive tasking you with preparing a proposal for a decision on preventing aggression...

Submit your proposal for a decision to the Supreme Command Staff by 2000 hours on 10 April 1999.

The report on the proposal for a decision will be submitted on 11 April 1999 at the Supreme Command Staff in the presence of the Supreme Commander.

279. Ojdanić's direct communication with Šainović and Milošević provided him with further knowledge of the overall picture in Kosovo.<sup>658</sup> He communicated directly with Milošević on a one-to-one basis regarding operations, even relatively small operations, including on matters such as the use of special MUP units.<sup>659</sup>

280. Ojdanić was also informed of crimes committed by the forces under his command through numerous complaints voiced by international observers. As early as 1998, interlocutors from the international community formally protested to members of the joint criminal enterprise, including Ojdanić, about multiple incidents of criminal acts committed against ethnic Albanian civilians by VJ and MUP units in Kosovo.<sup>660</sup> For example, during a briefing with the defence attaché community in August 1998, an international observer confronted Ojdanić, then the Deputy Chief of the VJ General Staff, with video footage showing VJ units providing heavy direct and indirect fire support to MUP "clearance" operations in civilian areas. Earlier at this meeting, Ojdanić had denied

<sup>654</sup> Aleksandar Vasilejvić, Exhibit 4.565.

<sup>655</sup> Exhibits 5.280, 4.450, 4.248, 5.269 and 5.682.

<sup>656</sup> Aleksandar Vasilejvić. See exhibits 4.565, 5.966, 5.783, 5.515, 5.784, 5.959, 5.996, 5.479, 5.502.

<sup>657</sup> Exhibit 5.513.

<sup>658</sup> See *supra* paras 263, 266.

<sup>659</sup> Exhibits 4.429, 4.433.

<sup>660</sup> John Crosland, Karol Drewienkiewicz, exhibits 4.130, 4.306.

that such operations were taking place and had stated that force would be met with force in Kosovo.<sup>661</sup>

281. Ojdanić was also informed of criminal acts committed against ethnic Albanian civilians by the MUP operating with the VJ.<sup>662</sup> These crimes were also reported extensively in the international media.<sup>663</sup> Further, he was made aware of these crimes through reports from international NGOs that were provided to FRY and Serbian authorities.<sup>664</sup>

282. Despite his knowledge of the widespread and systematic crimes committed by the forces of the FRY and Serbia throughout 1998 and 1999, Ojdanić failed to take substantive measures to prevent his subordinates from committing further crimes, or punish them for the crimes they committed over a protracted period of time in Kosovo. By failing to take such adequate measures Ojdanić created an atmosphere of impunity which encouraged and instigated the crimes charged in the Indictment with a view to implement the common purpose. This clearly supports the inference, in light of the other overwhelming evidence of a criminal enterprise to persecute and forcibly remove Kosovo Albanians carried out through operations by military, MUP and other forces, that Ojdanić intended the commission of the crimes.

283. In light of the demonstrated criminal enterprise to persecute and forcibly remove Kosovo Albanians throughout General Ojdanić's area of military responsibility and the necessary involvement of forces in this zone, there can be no doubt that General Ojdanić was a participant and his acts contributed to the joint criminal enterprise. General Ojdanić is therefore responsible as a co-perpetrator for the commission of the crimes charged in the Indictment under Article 7(1) of the Statute. The facts set out in paragraphs 272-278 establish the criminal responsibility of Ojdanić on the basis of planning and ordering under Article 7(1) of the Statute. Furthermore, the facts set out in paragraph 276, combined with Ojdanić's failure to discipline troops who committed crimes, establish his criminal responsibility on the basis of instigating.

284. In the alternative, Ojdanić aided and abetted the commission of such crimes. Ojdanić permitted and facilitated the involvement of VJ personnel and resources in combat activities in Kosovo. He knew that without the involvement of units of the VJ in Kosovo, the objectives of the JCE could not be achieved. By implementing instructions received from Milošević, Sainović, and the Joint Command, Ojdanić lent material and moral support to the members of the JCE. By abstaining from taking any substantive disciplinary measures against VJ or MUP members who had

<sup>661</sup> John Crosland.

<sup>662</sup> Exhibit 5.492.

<sup>663</sup> For example, Exhibit 2.4.01.

<sup>664</sup> Exhibit 4.051.

committed crimes in Kosovo, he encouraged and morally supported the direct perpetrators of crimes against the Kosovo Albanian population. Ojdanić knew of the commission of widespread crimes by the forces of the FRY and Serbia and was aware that he was substantially contributing to the commission of such crimes.

(e) Nebojša Pavković

285. General Pavković was the commander of the 3rd Army during the Indictment period.<sup>665</sup> As the commander of the 3rd Army, he controlled VJ units, and units subordinated to the VJ, in Kosovo, including the Priština Corps.<sup>666</sup> After 23 March 1999, he was the *de jure* commander of all MUP and MUP-subordinated troops engaged in combat operations in Kosovo.<sup>667</sup> General Pavković participated in the JCE primarily by using his position to implement the plan by instigating and ordering the operations in which the crimes charged in the Indictment were committed and by generally controlling and managing the forces used to commit those crimes. He made these contributions to the enterprise discussed above, with the intent to commit the crimes charged in the Indictment.

286. General Pavković directly ordered the operations that resulted in many of the crimes alleged in the indictment.<sup>668</sup> Because he operated at the level of the 3rd Army, his orders encompassed wide swathes of territory.<sup>669</sup> In crafting his orders during the indictment period, General Pavković chose to continue the same tactics and use the same troops that had resulted in widespread crimes in 1998.

287. Pavković knew that using the same troops and tactics employed in 1998 would result in crimes. During 1998, he was in command of the Priština Corps, the sub-unit of the 3<sup>rd</sup> Army responsible for Kosovo.<sup>670</sup> As commander of the Priština Corps, he directly ordered the operations that resulted in crimes in 1998.<sup>671</sup>

288. General Pavković was fully conversant with the Priština Corps, and knew the commanders of individual units, along with the firepower and operational capabilities of these units.<sup>672</sup> He knew

<sup>665</sup> Exhibits 4.415, 4.565, 5.019, 5.023, 5.315, 5.545, 5.547B.

<sup>666</sup> Units sent to Kosovo, even from other armies, were generally subordinated to the 3<sup>rd</sup> Army. Phil Coe, Exhibit 4.565, 5.360, 5.373 (Coe Report), 5.506, 5.522, 5.715, 5.718.

<sup>667</sup> Phil Coe. Exhibits 4.565, 5.360, 5.373 (Coe Report); 5.516, 5.521, 5.761. General Pavković' order is dated 20 April 1999.

<sup>668</sup> Exhibits 5.296B, 5.477, 5.478, 5.479, 5.943, 5.990, 5.991, 5.995.

<sup>669</sup> Many of his orders were directed to the VJ throughout Kosovo, and commanded broad patterns of attack, rather than specific operations. For example, Exhibits 5.477, 5.478, 5.479.

<sup>670</sup> Exhibits 4.565, 5.309.

<sup>671</sup> Exhibits 5.123, 5.179, 5.360, 5.373, 5.435, 5.438, 5.439, 5.441, 5.442, 5.443, 5.444, 5.445, 5.447, 5.449, 5.450, 5.451, 5.452, 5.453, 5.455, 5.457, 5.458, 5.459, 5.460, 5.462, 5.464, 5.467, 5.469, 5.474, 5.573, 5.574, 5.575, 5.576, 5.577, 5.578, 5.743, 5.750, 5.757, 5.765, 5.796, 5.797, 5.804, 5.979.

<sup>672</sup> Exhibit 5.068.

that crimes resulted from the 1998 operations, because he demanded and received reports from field commanders, and also participated in reviews of both VJ and MUP activities during 1998.<sup>673</sup>

289. Furthermore, he knew of the 1998 crimes from widespread reporting in local and international media, among other possible sources.<sup>674</sup> He knew that large numbers of refugees had fled the scene of conflict in 1998, and ordered the VJ to control their movements.<sup>675</sup> General Pavković further contributed by his role as Commander of the Pristina Corps and later as Commander of the 3<sup>rd</sup> Army. He was appointed Commander of the 3<sup>rd</sup> Army in December 1998 after having served as Commander of the Priština Corps since 9 January 1998.<sup>676</sup> Considering the importance of the commander of the 3<sup>rd</sup> Army for the implementation of the common purpose (as the unit's area of responsibility included Kosovo), shows that other participants in the common purpose trusted Pavković's willingness to implement the crimes that were part of the JCE.

290. General Pavković also influenced the course of events in Kosovo through his role in the Joint Command. As discussed in paragraphs 83-88, the Joint Command was the body at which decisions regarding where operations were to take place, and what the objective of the operations was to be, were made. Pavković consistently advocated for a forceful response from both the VJ and the MUP at Joint Command meetings.<sup>677</sup>

291. General Pavković further advanced the goals of the JCE by continually trying to increase the VJ's role in Kosovo, and to escalate the harshness of the military response.<sup>678</sup> He continually asked for more troops, and took steps to increase the units available to the VJ, including working to ensure conscripts showed up for service, and ensuring that local defence forces were fully operational.<sup>679</sup>

292. He knew of, and approved, the incorporation into the VJ of volunteers and volunteer groups, including those with a history of allegations of involvement in crimes.<sup>680</sup> General Pavković denied that paramilitaries operated in Kosovo, confirming that the crimes in the indictment were committed by the forces of the FRY and Serbia.<sup>681</sup>

293. He was involved, as the commander of the Priština Corps in 1998 and as the commander of the 3<sup>rd</sup> Army during the indictment period, in the arming and training of predominantly non-

<sup>673</sup> Exhibits 5.099, 5.100, 5.452, 5.455, 5.457, 5.458, 5.459, 5.473.

<sup>674</sup> For example, Exhibits 4.447, 5.888.

<sup>675</sup> Exhibits 5.440, 5.441, 5.445, 5.463, 5.467, 5.707, 5.708, 5.756.

<sup>676</sup> See above para. 285.

<sup>677</sup> Exhibit 5.501.

<sup>678</sup> Exhibits 5.030, 5.401, 5.468 (1998).

<sup>679</sup> Exhibits 5.780 (ordering mobilisation), 5.969 (mobilising VTOD, VOK), 5.981 (organizing work of Military-Territorial Department), 5.719, 5.952, 5.975, 5.976, 5.991, 5.992 (requesting more troops), 5.979 (Resubordinating unit from Niš to Priština Corps).

<sup>680</sup> Exhibits 4.565, 5.983. Pavković notes the presence of volunteer groups and criminals, but rejects only those physically unfit for service, including blind, alcoholic, and lame persons.

<sup>681</sup> Exhibits 4.565, 5.568, 5.773.

Albanian civilians into local or village defence units, and encouraged their incorporation into the VJ system of defence, and in the disarming of Albanians.<sup>682</sup>

294. General Pavković exercised *de jure* and *de facto* authority over MUP troops. Pavković insisted on close cooperation with the MUP, even before MUP units were directly subordinated to his command on 23 March 1999.<sup>683</sup> He participated in the Joint Command, and therefore had *de facto* ability to command MUP troops. As Commander of the 3<sup>rd</sup> Army he planned and issued orders for combat and other operations in Kosovo during the Indictment period on. The evidence, as discussed, demonstrates the systematic and ongoing commission of acts of persecution and forcible displacement / deportation by those troops operating under and within General Pavković's area of responsibility. Additionally, he issued orders describing the roles VJ and MUP would each play in an operation.<sup>684</sup> After subordination, he directly commanded MUP troops with the same level of detail that he applied in orders to the VJ forces under his command, including ordering General Lukić to use particular units in specific areas.<sup>685</sup>

295. General Pavković further assisted the JCE by keeping Belgrade-based members informed of activities in Kosovo. At least once a month, he travelled to Belgrade and officially reported to Milošević and others on the situation in Kosovo; he made other, informal, visits at the request of Milošević and others.<sup>686</sup>

296. General Pavković intended for his actions to aid the Joint Criminal Enterprise. He believed, along with Milošević and the other JCE members, that Kosovo belonged to Serbs, not to ethnic Albanians.<sup>687</sup> In an interview with PBS television,<sup>688</sup> he stated:

I think that the whole world knows what Kosovo means to Serbia . . . It is its cradle . . . Serbia is in Kosovo, and Kosovo is in Serbia. Serbian roots are in Kosovo, and everything that is connected to the Serbs throughout the past centuries is there. Every Serb is intimately connected to it.

297. His attitude towards the Kosovo crisis was expressed in a blunt letter of 23 July 1998 to his superiors written when he commanded the Priština Corps. In it he bemoans the failure to engage the VJ in a more vigorous role in Kosovo and focuses on the "loss of Kosovo and genocide of Serbs".<sup>689</sup>

<sup>682</sup> Arming Serbs: Exhibit 5.448. Disarming Albanians: Exhibit 5.470, 5.471, 5.501.

<sup>683</sup> Exhibit 5.123, 5.435, 5.441, 5.445.

<sup>684</sup> For example, Exhibit 5.460.

<sup>685</sup> Exhibit 5.296A. See also 5.481, ordering joint operations.

<sup>686</sup> Zoran Lilić, Exhibit 5.386, 5.654.

<sup>687</sup> Exhibit 5.410. See also Exhibit 5.022, 5.434, and 5.556, wherein General Pavković describes "our people" in Kosovo as non-Albanians. Furthermore, Exhibit 5.803 describes General Pavković receiving an award from the ethnic Serbs of Djakovica municipality in 1998.

<sup>688</sup> Exhibit 5.410.

<sup>689</sup> Exhibit 5.030.

298. Similarly, in October 1998, he expressed frustration with his immediate supervisor that rapid intervention groups for combating terrorists had not been formed, and urged continued MUP/VJ cooperation.<sup>690</sup>

299. General Pavković knew of the crimes committed during the indictment period. As Commander of the 3<sup>rd</sup> Army, he spent much of the indictment period in the 3<sup>rd</sup> Army's forward command post in Kosovo.<sup>691</sup> He regularly visited units in the field, often accompanied by General Lazarević.<sup>692</sup> Pavković decorated units for particular actions, demonstrating that he was familiar with the combat activity of his troops.<sup>693</sup> He knew his commanders, both because he had served with them in 1998, and because he personally appointed some of them.<sup>694</sup>

300. In addition to his personal visits, Pavković knew what was happening on the ground because the 3<sup>rd</sup> Army had an effectively functioning reporting structure.<sup>695</sup> He established a system of checkpoints in Kosovo, and required his troops to maintain records of who passed; thus, the movement of large columns of refugees cannot have escaped his notice.<sup>696</sup> During operations, regular reports, interim reports and summary or combat reports would be transmitted up through the chain of command.<sup>697</sup> That Pavković was well informed about the events in his area of responsibility can further be seen from the reports he was required to, and did, submit to his superiors.<sup>698</sup>

301. The Joint Command for Kosovo and Metohija provided another forum for the exchange of information, and Pavković's regular attendance ensured that he heard frequent updates from MUP and other members regarding activities in their areas.<sup>699</sup> His membership in the Joint Command meant that he could receive moment-by-moment updates of operations from both the VJ and police.<sup>700</sup>

<sup>690</sup> Exhibit 5.472.

<sup>691</sup> Exhibits 4.565, 5.654.

<sup>692</sup> Exhibits 5.022, 5.045, 5.235, 5.269, 5.280, 5.346, 5.380, 5.382, 5.387, 5.390, 5.394, 5.654, 5.734, 5.736, 5.737.

<sup>693</sup> Exhibits 5.044, 5.385, 5.394, 5.397, 5.550, 5.555, 5.557, 5.592.

<sup>694</sup> For example, Exhibit 5.067.

<sup>695</sup> Phil Co. Exhibits 4.565, 5.281, 5.792 (Pavković order for reports detailing compliance) In addition to receiving written reports, Pavković met personally with troop commanders. Exhibit 5.480.

<sup>696</sup> Exhibit 5.481.

<sup>697</sup> Phil Co. Exhibit 4.565.

<sup>698</sup> See, for example, Exhibit 5.982. The language of General Pavković' orders also demonstrates knowledge of events on the ground. For example, in Exhibit 5.805, he directs units to deal with refugees, proving he knew of the massive movement of displaced persons within Kosovo.

<sup>699</sup> Zlatomir Pešić, K64, K36. Exhibits 4.565, 5.451 (1998), 5.501(1998).

<sup>700</sup> Exhibit 5.071(A-C).



302. Pavković was also informed about the concerns voiced by international observers over crimes committed by the forces under his command.<sup>701</sup> Moreover, such crimes were reported extensively in the international media.<sup>702</sup> Furthermore, he knew why KVM and the other monitoring missions were created, and that their mandate was to observe and investigate allegations of crimes committed by military personnel.<sup>703</sup> Finally, he attended meetings of the Temporary Executive Council, and thus had access to the information held by citizens and local government leaders.<sup>704</sup>

303. Despite his knowledge of the commission of crimes, Pavković failed to take substantive measures to prevent further crimes. He also failed to punish those responsible for criminal acts, contributing to the creation of an environment permissive of criminal behaviour.

304. In addition to his authority to investigate and refer to the military courts VJ members that committed crimes, and his authority to remove an officer or enlisted person from the battlefield, General Pavković had the authority and ability to order investigations of crime when the perpetrator was not a VJ member. For example, on 13 April 1999, he ordered that a commission consisting of VJ, MUP, and others investigate reports of crimes filed by citizens in Istok.<sup>705</sup>

305. Similarly, he ordered Dr. Gordana Tomašević to undertake a forensic examination of numerous corpses in Peć, Lipljan, and Srbica municipalities on his authority, directing her to disregard the normal channels for such investigations.<sup>706</sup> He then neither asked for, paid for, nor received her report.<sup>707</sup> Throughout 1998 and the indictment period, General Pavković issued repeated orders noting criminal behaviour on the part of his troops, and exhorting them to follow the law.<sup>708</sup> Despite notice that previous orders had failed to curb criminal behaviour, Pavković took no other steps to exert control.

306. In light of the demonstrated criminal enterprise to persecute and forcibly remove Kosovo Albanians throughout General Pavković's zone of military responsibility and the necessary involvement of forces in this zone, there can be no doubt that General Pavković was a participant and his acts contributed to the joint criminal enterprise. General Pavković is therefore responsible as a co-perpetrator for the commission of the crimes charged in the Indictment under Article 7(1) of

<sup>701</sup> International observers from the KVM and other organizations interacted regularly with VJ liaison officers under Pavković' command. Dusan Lončar, Richard Cragg, Karol Drewienkiwicz, Michel Maisonneuve.

<sup>702</sup> Exhibit 2.4.01.

<sup>703</sup> Dusan Lončar, Exhibits 4.042, 4.050, 4.058, 4.065, 4.255.

<sup>704</sup> Exhibits 4.453, 5.226.

<sup>705</sup> Exhibit 5.759.

<sup>706</sup> Gordana Tomašević; Exhibits 2.7.30, 2.7.31, 2.7.32.

<sup>707</sup> Gordana Tomašević.

<sup>708</sup> Exhibits 5.485, 5.487, 5.488, 5.489, 5.492, 5.497, 5.571, 5.572, 5.580, 5.705, 5.712, 5.744, 5.747, 5.748.

the Statute. The facts set out in paragraphs 285-291 establish the criminal responsibility of Pavković on the basis of planning and ordering under Article 7(1) of the Statute. Furthermore, the facts set out in paragraph 286, combined with Pavković's failure to discipline troops who committed crimes, establish the criminal responsibility of Pavković on the basis of instigating.

307. In the alternative, Pavković aided and abetted the commission of such crimes. Pavković permitted and facilitated the involvement of VJ personnel and resources in combat activities in Kosovo. He knew that without the involvement of the 3<sup>rd</sup> Army, the objectives of the joint criminal enterprise could not be achieved. By implementing instructions received from Milošević, Ojdanić, Sainović, and the Joint Command, he lent material and moral support to the members of the joint criminal enterprise. By abstaining from taking any substantive disciplinary measures against VJ or MUP members who had committed crimes in Kosovo, he encouraged and morally supported the direct perpetrators of crimes against the Kosovo Albanian population. Pavković knew of the commission of widespread crimes by the forces of the FRY and Serbia and was aware that he was substantially contributing to the commission of such crimes.

(f) Vladimir Lazarević

308. As indicated in paragraphs 218 to 222, the evidence demonstrates the existence of a criminal enterprise to change the ethnic composition of Kosovo through the persecution; deportation/forcible displacement; murder; rape; looting; destruction of Kosovo Albanian dwellings and mosques, specifically in the zone of responsibility of the Pristina Corps. Over an extended period of time numerous crimes were committed in a coordinated and systematic manner within the area of responsibility of the Pristina Corps, to achieve the common purpose of the criminal enterprise.

309. General Lazarević was commander of the Priština Corps during the Indictment period and a member of the Joint Command for Kosovo.<sup>709</sup> He participated in the JCE primarily by using his position to plan and order the operations in which the crimes charged in the Indictment were committed. He made these contributions to the enterprise discussed above, with the intent to commit the crimes charged in the Indictment.

310. General Lazarević contributed to the implementation plan described in the previous section through his role in the Joint Command, participating in policy decisions and the co-ordination of the operations of the forces of the FRY and Serbia in Kosovo.<sup>710</sup> Joint command orders frequently directed Priština Corps units to undertake actions in which crimes were committed.<sup>711</sup> Lazarević

<sup>709</sup> Exhibits 4.416, 5.023, 5.315.

<sup>710</sup> Alexandar Vasiljević, Shukri Aliu, Zlatomir Pesić, K64. Exhibits 5.501, 5.1012.

<sup>711</sup> Exhibit 5.1011-5.1022.

was directly involved in the crafting of those orders.<sup>712</sup> He ordered his troops to follow the orders of the Joint Command.<sup>713</sup>

311. General Lazarević further contributed by his role as Commander of the Pristina Corps. He was appointed Commander in December 1998 as a result of the purge of senior officers, after having served as Chief of Staff of the Priština Corps since January 1998.<sup>714</sup> Considering the importance of the commander of the Priština Corps for the implementation of the common purpose (as it had responsibility for Kosovo), this shows that other participants in the common purpose trusted his willingness to implement the crimes that were part of the common purpose.

312. Moreover, Lazarević shared the view of the other members of the JCE on the importance of maintaining Serb control over Kosovo, and expressed this view publicly prior to the commencement of the operations during which most of the crimes charged in the Indictment were committed.<sup>715</sup>

313. As the commander of the Priština Corps, General Lazarević had *de jure* and *de facto* control over VJ brigades and smaller VJ units forming the Priština Corps, as well as units from other VJ Corps attached to the Priština Corps.<sup>716</sup> Importantly, after the declaration of the imminent threat of war on 23 March 1999 he acquired control over military-territorial units conducting combat operations, MUP units engaged in combat operations, and armed non-Albanians in Kosovo acting in a local security role.<sup>717</sup>

314. The Priština Corps headquarters planned and issued orders for combat and other operations in Kosovo during the Indictment period on the authority of General Lazarević.<sup>718</sup> These plans and orders included plans for joint VJ and MUP operations. The evidence, as discussed, demonstrates the systematic, widespread and ongoing commission of acts of persecution; forcible displacement / deportation; murder; rape; looting; destruction of Kosovo Albanian dwellings and mosques by those troops operating under and within General Lazarević's area of responsibility.

315. The Priština Corps' plans and orders for operations during the Indictment period involved the continued use of troops and commanders that Lazarević knew had been involved in crimes in 1998. During 1998, General Lazarević served as Chief of Staff of the Priština Corps, and therefore

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<sup>712</sup> Exhibits 5.501, 5.1012.

<sup>713</sup> Exhibit 5.461.

<sup>714</sup> Exhibit 4.566.

<sup>715</sup> Exhibit. 5.658. In a newspaper article on 15 March 1999, General Lazarević stated: "For centuries we have protected and defended our hearths and this is what we are doing now. Kosmet is the cradle and spirit of our statehood, Kosmet is the beacon of freedom and resistance of our people."

<sup>716</sup> Phil Co.

<sup>717</sup> Phil Co.

was in a position to receive reports about and personally observe the crimes of 1998. Furthermore, prior to assuming command in 1999, he participated in a review of VJ and MUP activities during the 1998 operations.<sup>719</sup> Additionally, he knew of the 1998 crimes from widespread reporting in local and international media, among other possible sources.<sup>720</sup> He knew that large numbers of refugees had fled the scene of conflict in 1998.<sup>721</sup> Rather than change tactics once he assumed command of the Priština Corps in 1999, General Lazarević ordered the same troops to engage in the same conduct that had led to crime in 1998.<sup>722</sup>

316. By so doing, Lazarević encouraged the commission of further crimes and therefore contributed to the commission of the crimes through which the criminal purpose was implemented.

317. Lazarević received information from the MUP and military security organs about events in his area of responsibility<sup>723</sup> and continued in his operations. Lazarević was also informed about the concerns voiced by international observers over crimes committed by the forces under his command and, in 1998, by virtue of his position as the Chief of Staff and Deputy Commander of the Pristina Corps.<sup>724</sup> On one occasion, NATO planes dropped leaflets over Kosovo, which were found by members of the VJ, specifically warning General Lazarević that he could face prosecution for the crimes committed by his troops.<sup>725</sup>

318. Moreover, such crimes were reported extensively in the international media.<sup>726</sup> Lazarević, fully informed about the widespread and systematic crimes committed by the forces of the FRY and Serbia throughout 1998 and 1999, continued as the Commander of the Pristina Corps. At no time did General Lazarević prevent the commission of crimes of persecution and forcible displacement committed within Kosovo, his area of responsibility. This clearly supports the inference, in light of the other overwhelming evidence of a criminal enterprise to persecute and forcibly remove Kosovo Albanians carried out through operations of force in the Pristina Corps zone by military, MUP and other forces, that General Lazarević intended the commission of the crimes.

319. Lazarević was required to, and did, submit reports to his superiors which show that he was well informed about the events in his area of responsibility.<sup>727</sup> He frequently visited units all across

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<sup>718</sup> Exhibits 5.437, 5.461, 5.536. See also Exhibit 5.101.

<sup>719</sup> Exhibit 5.100.

<sup>720</sup> For example, Exhibits 4.447, 5.888.

<sup>721</sup> Exhibits 5.440, 5.441, 5.445, 5.463, 5.467, 5.707, 5.708, 5.756.

<sup>722</sup> Nike Peraj. For example, Exhibits 5.069, 5.101, 5.536.

<sup>723</sup> Exhibit 4.566.

<sup>724</sup> For example, Exhibit 4.591.

<sup>725</sup> Exhibit 5.779.

<sup>726</sup> For example, Exhibit 2.4.01.

<sup>727</sup> See for example Exhibits 5.784 and 5.948.

Kosovo, which enabled him to gain first-hand knowledge of operations, to make adjustments accordingly, and to see the results of operations on the ground.<sup>728</sup> Furthermore, the Priština Corps had an effective and functional reporting structure. During operations regular reports, interim reports and summary or combat reports would be transmitted up through the chain of command.<sup>729</sup> Moreover, at the brigade and corps levels, duty officers in command posts monitored radio communications of units in operations on the ground to follow how the operations were unfolding.<sup>730</sup>

320. General Lazarević also attended meetings of the Temporary Executive Council, bringing him into contact with Serb community leaders in Kosovo and the information they had regarding events on the ground.<sup>731</sup>

321. Despite his knowledge of the commission of crimes, General Lazarević failed to take substantive measures to prevent further crimes. By failing to take adequate steps to prevent his subordinates from committing crimes, or punish them for the crimes they committed over a protracted period of time in Kosovo, Lazarević created an atmosphere of impunity which encouraged and instigated the crimes charged in the Indictment with a view to implement the common purpose.

322. In light of the demonstrated criminal enterprise to persecute and forcibly remove Kosovo Albanians throughout General Lazarević's area of military responsibility and the necessary involvement of forces in this zone, there can be no doubt that General Lazarević was a participant and his acts contributed to the joint criminal enterprise.

323. General Lazarević is therefore responsible as a co-perpetrator for the commission of the crimes charged in the Indictment under Article 7(1) of the Statute. The facts set out in paragraphs 309, 316 establish the criminal responsibility of Lazarević on the basis of planning and ordering under Article 7(1) of the Statute. Furthermore, the facts set out in paragraphs 317-321, combined with Lazarević's failure to discipline troops who committed crimes, establish the criminal responsibility of Lazarević on the basis of instigating.

324. In the alternative, Lazarević aided and abetted the commission of such crimes. Lazarević permitted and facilitated the involvement of VJ personnel and resources in combat activities in Kosovo. He knew that without the involvement of the Priština Corps, the objectives of the JCE could not be achieved. By implementing instructions received from Milošević, Ojdanić, Pavković,

<sup>728</sup> Exhibits 4.566, 5.737, 5.736, 5.734, 5.685, 5.583, 5.556, 5.548, 5.382, 5.380.

<sup>729</sup> Phil Co. Exhibit 4.566.

<sup>730</sup> Exhibit 4.566.

Sainović, and the Joint Command, Lazarević lent material and moral support to the members of the JCE. By abstaining from taking any substantive disciplinary measures against VJ or MUP members who had committed crimes in Kosovo, he encouraged and morally supported the direct perpetrators of crimes against the Kosovo Albanian population. Lazarević knew of the commission of widespread crimes by the forces of the FRY and Serbia and was aware that he was substantially contributing to the commission of such crimes.

(g) Vlastimir Đorđević

325. As indicated in paragraphs 59-163, the evidence demonstrates the existence of a criminal enterprise to change the ethnic composition of Kosovo through the persecution and forcible displacement of ethnic Albanians. Over an extended period of time crimes were committed in a coordinated and systematic manner within Kosovo to achieve the common purpose of the criminal enterprise.

326. Vlastimir Đorđević was, at the time relevant to the indictment, Assistant Minister of Internal Affairs of the Republic of Serbia and Chief of the Public Security Sector (RJB) of the Ministry of Internal Affairs (MUP).<sup>732</sup> In Kosovo, the chain of command ran from the ministry headquarters in Belgrade to the MUP Staff which commanded the seven SUP's and all MUP activities in Kosovo, including those of special units. Sreten Lukić was head of the MUP staff, and thus reported to Đorđević, who in turn reported directly to the Minister.<sup>733</sup> Đorđević was responsible for ensuring that the RJB fulfilled their *de jure* mandate. The RJB included three special units: the Special Anti-terrorist Unit (SAJ), the Special Police Unit (PJP), and the Operational Sweep Groups (OPG).<sup>734</sup> Police operations also ran through Secretariats of Internal Affairs (SUPs).<sup>735</sup> Local defence units were also centred on the MUP reserve<sup>736</sup> and therefore operated under Đorđević's authority.

327. Đorđević participated in the joint criminal enterprise by using his position to plan and order the operations in which the crimes charged in the Indictment were committed. Moreover, he used his position as Head of the RJB to integrate criminal elements into units subordinated to him who upon deployment in Kosovo committed crimes. Đorđević also organised the disposal of the bodies of massacred Kosovo Albanians in an effort to conceal those crimes. He made these contributions to the enterprise discussed above, with the intent to commit the crimes charged in the Indictment.

<sup>731</sup> Exhibit 5.226.

<sup>732</sup> Exhibit 5.542.

<sup>733</sup> Exhibit 5.093, 5.278, 5.279.

<sup>734</sup> Exhibit 5.373.

<sup>735</sup> Exhibit 5.373.

<sup>736</sup> Exhibit 5.373.

328. Đorđević also participated in the joint criminal enterprise as a politician trusted by Milošević to participate on his behalf in important negotiations during the crisis in 1998. Đorđević not only was tasked to conduct negotiations in key meetings with representatives of the international community but he was also authorised to sign agreements on behalf of the Republic of Serbia. Milošević directed representatives of the international community to negotiate the details of the October Agreements with, *inter alia*, Đorđević. Đorđević signed on behalf of the Republic of Serbia, while Šainović signed on behalf of the FRY.<sup>737</sup> Đorđević also led the negotiations in the technical talks held between the Ministry of the Interior in Belgrade and the KVM. He signed the Memorandum of Understanding on behalf of the Republic of Serbia.<sup>738</sup> That Đorđević had the authority to negotiate and sign on behalf of the Republic of Serbia (and Milošević), shows that other participants in the common purpose trusted his willingness to implement the crimes that were part of the common purpose.

329. Đorđević participated in the JCE by planning and coordinating the operations and activities of the forces of the FRY and Serbia in Kosovo. Đorđević attended meetings with other members of the joint criminal enterprise in Belgrade<sup>739</sup> at which the situation in Kosovo, including the campaign of violence by forces of the FRY and Serbia was discussed, and operations in which crimes were committed were planned.<sup>740</sup>

330. It was Đorđević who appointed Lukić to Head of the MUP Staff and who set out the MUP Staff's mandate in his decisions dated 11 and 15 May 1998.<sup>741</sup> At least in 1998 – during a time when numerous crimes were committed in particular by members of the MUP in Kosovo – the MUP Staff had a clearly subordinate relationship to Đorđević.<sup>742</sup> Considering the importance of the Head of the MUP Staff for the implementation of the common purpose (as it was one of the three main steering bodies in Kosovo), this shows that he hand-picked the candidate he and the other members of the joint criminal enterprise trusted to be willing to implement the crimes that were part of the common purpose.

Lukić was obliged to inform Đorđević “about the major security events, undertaken measures and the outcome of these measures”.<sup>743</sup> Daily reports were received by Đorđević from his subordinates and were made by him to the Joint Command.<sup>744</sup> Đorđević participated in MUP Staff meetings

<sup>737</sup> Klaus Naumann, Exhibits 4.005, 5.806.

<sup>738</sup> Exhibit 4.004, J. Maisonneuve.

<sup>739</sup> Radomir Marković, Aleksander Vasiljević.

<sup>740</sup> Aleksander Vasiljević, Radomir Marković.

<sup>741</sup> Exhibit 5.278, 5.279.

<sup>742</sup> Exhibits 5.278, 5.360.

<sup>743</sup> Exhibit 5.278.

<sup>744</sup> Exhibit 5.373, Aleksandar Vasiljević, K64.

where commanders of various detachments reported on the situation in their units.<sup>745</sup> He thus had detailed information from various channels at his hand that enabled him to effectively control the operations in which crimes were committed.

331. After the Joint Command was established in 1998, Đorđević also became a member of this body.<sup>746</sup> He attended and participated in meetings regularly in 1998 and 1999.<sup>747</sup> As a member of the Joint Command, he exercised effective control over both VJ and MUP forces which committed the crimes in operations planned and ordered by this body.

332. Đorđević was frequently present in the territory of Kosovo throughout 1998<sup>748</sup>, monitoring operations.<sup>749</sup> He was nearby in the Stimlje police station and monitored the Račak operation while it was underway.<sup>750</sup> He flew over the scene<sup>751</sup> and, in addition to Lukić, reported directly to Šainović on 15 January 1999. The attack was a joint VJ-MUP operation with the MUP, subordinate to Đorđević, having primacy. Đorđević's responsibility for this event and that he intended the crimes at Račak to occur must be inferred from these circumstances. In addition, his obligations to investigate and punish post its occurrence, are beyond doubt and is reinforced by Šainović's statement that as Đorđević was senior he could take over what he thought needed to be done.<sup>752</sup>

333. Đorđević contributed to the joint criminal enterprise by creating a situation that prevented the Račak incident from being investigated properly. He openly expressed the opinion that given that there were so many international observers, it would not be possible to find out what had happened anyway.<sup>753</sup> More accurately, it however became impossible to find out what happened for the reason that he himself had permitted those responsible for the offences to leave the area.<sup>754</sup> The only investigation that was carried out by FRY and Serbian authorities was done by Investigating Judge Danica Marinković, a dubious and biased candidate.<sup>755</sup>

334. Đorđević also participated in the plan by planning, organising and co-ordinating the disposal of Kosovo Albanian bodies in order to conceal crimes. He contributed to the joint criminal enterprise by corrupting the legitimate meaning of asanacija through the planning and coordination of the cover-up of offences committed. He attended the first meeting with Milošević and

<sup>745</sup> K64.

<sup>746</sup> Radomir Marković, K64, Klaus Naumann, Exhibits 4.428, 4.564, 5.501.

<sup>747</sup> Exhibit 5.501.

<sup>748</sup> Exhibit 4.220.

<sup>749</sup> K64.

<sup>750</sup> K56, Exhibit 4.220.

<sup>751</sup> Exhibit 4.220.

<sup>752</sup> Exhibit 4.220.

<sup>753</sup> Exhibit 4.220.

<sup>754</sup> See *supra* para. 42.

<sup>755</sup> K6, Richard Ciglinski, William Walker, Karol Drewienkiewicz.



Stojiljković where this project was discussed and then a second meeting with Stojiljković and Ilić where the details as to how Milošević's instructions were to be carried out were decided upon.<sup>756</sup> Đorđević willingly accepted being tasked with the "clearing-up" process by Stojiljković.<sup>757</sup> The substantive efforts Đorđević then indeed undertook to ensure that hundreds of corpses, constituting evidence of massacres, were removed and hidden never to be found, are set out elsewhere in this brief.<sup>758</sup>

335. Đorđević further contributed to the plan by ordering the use of forces that were highly likely to commit offences. He knew of offences committed in 1998<sup>759</sup> and did nothing to prevent the participation of subordinates that may have been involved in those crimes. Instead, as did Lukić, he approved the notorious unit of the Scorpions to be incorporated into the RJB's most elite unit, the SAJ.<sup>760</sup> Even after they had committed serious crimes against Kosovo Albanian civilians upon their arrival in April 1999 and were removed from Kosovo, the redeployment of this unit under SAJ command in Kosovo was approved by him once more on 26 April 1999. They operated in Kosovo until at least 9 May 1999.<sup>761</sup> He had the power to give orders, to pronounce disciplinary measures and to remove people from their positions<sup>762</sup> to ensure that crimes were not committed by those subordinated to him and, failing this, to punish those who committed crimes but he did not use them appropriately. Instead, he made sure that perpetrators who would willingly commit crimes were included in elite units under his command.

336. Đorđević shared the intent to carry out the goals of the plan and intended for the crimes to occur. This is the only reasonable inference to be drawn from his actions set forth above, in particular his hiring of criminal elements and his engagement in the movement of bodies in an attempt to conceal the crimes committed. Đorđević intended the crimes to happen. In the first meeting regarding the "bodies" held in Milošević's office, it was openly discussed that any trace of evidence that may fall within the interest of the Tribunal needed to be eliminated.<sup>763</sup> Đorđević even openly approved of the crimes that were committed when he was questioned in Serb investigations into the discovered bodies in 2001. The only statement he made to the investigating authority were his words: "What happened, happened. What can I tell you?"<sup>764</sup> When the Working Group on these

<sup>756</sup> Dragan Karleusa.

<sup>757</sup> Radomir Marković.

<sup>758</sup> See *infra* paras 152-155.

<sup>759</sup> Exhibit 5.256, 5.501.

<sup>760</sup> Milan Milanović, Exhibit 5.1037. 4.567, 4.568.

<sup>761</sup> Milan Milanović, Exhibit 5.1037. 4.567, 4.568.

<sup>762</sup> Exhibit 5.093.

<sup>763</sup> Dragan Karleusa.

<sup>764</sup> Dragan Karleusa.

investigations sought to interview Đorđević again, they could no longer locate him.<sup>765</sup> To date, Đorđević has not been found.

337. In light of the demonstrated criminal enterprise to persecute and forcibly remove Kosovo Albanians, the necessary involvement of MUP commanders, MUP units and special units subordinated to Đorđević and Đorđević's leading role regarding the concealment of evidence of crimes committed, there can be no doubt that Đorđević was a participant and his acts contributed to the joint criminal enterprise.

338. Đorđević is therefore responsible as a co-perpetrator for the commission of the crimes charged in the Indictment under Article 7(1) of the Statute. The facts set out in paragraphs 326-327, 329, 331 establish the criminal responsibility of Đorđević on the basis of planning and ordering under Article 7(1) of the Statute. Furthermore, the facts set out in paragraph 325, combined with Đorđević's failure to discipline MUP officials who committed crimes, establish the criminal responsibility of Đorđević on the basis of instigating.

339. Further, in the alternative, Đorđević aided and abetted the commission of the charged crimes. He knew that without the participation of the RJB, the objectives of the joint criminal enterprise could not be achieved. By implementing instructions received from Milošević through the Ministry of Justice or the Joint Command, he lent important encouragement and moral support to the members of the joint criminal enterprise. By failing to take appropriate disciplinary measures against RJB members who had committed crimes in Kosovo in 1998 and 1999 and by approving the integration of notorious units into the MUP, he encouraged and morally supported the direct perpetrators of the crimes charged. Đorđević knew of the commission of widespread crimes in 1998 and 1999 and was aware that he substantially contributed to the commission of these crimes by his actions.

(h) Sreten Lukić

340. Sreten Lukić contributed to the joint criminal enterprise by using the MUP Staff for Kosovo and Metohija for the planning, ordering, co-ordinating and commanding of the MUP anti-terrorist operations in Kosovo, in the course of which the crimes charged in the Indictment were committed. Lukić was appointed Head of the MUP Staff in Kosovo for one year on 11 May 1998 by his co-Accused Đorđević.<sup>766</sup> The MUP Staff was one of the key headquarters in Kosovo where the planning and implantation of the JCE plan took place. The mandate of the MUP Staff was to plan, guide and co-ordinate MUP operations inside Kosovo relating, *inter alia*, to terrorism and armed

<sup>765</sup> *Ibid.*

rebellion. The MUP Staff's mandate further enshrined the training and maintaining readiness of special units, like the PJP and SAJ.<sup>767</sup>

341. The MUP Staff had the authority to issue decisions, control the course of MUP operations, request reports, and be directly involved in carrying out and directing assignments.<sup>768</sup> As head of the MUP Staff, Lukić thus had authority and control over all MUP units operating in Kosovo, including special units like the PJP which were assigned to one of the seven SUP's which, in turn, were subordinated to Lukić.<sup>769</sup> The MUP also had responsibilities concerning local security arrangements through the use of those with MUP reservist status in village defence units.<sup>770</sup> In October 1998 and during the state of war, MUP units in Kosovo numbered about 14,000 personnel.<sup>771</sup> A high percentage of these personnel were special units, equipped with heavy weapon systems, such as mortars, machine guns and armoured vehicles.

342. The MUP Staff - and thus likewise - Lukić's powers, were expanded in June 1998, just before a large offensive by the VJ and MUP. The expanded version of the MUP Staff not only brought the RDB and RJB together in the MUP Staff's headquarter in Priština, thereby including the State Security service, but also the chiefs of Kosovo's seven SUP's, thereby enabling Lukić to control and co-ordinate all MUP actions and operations in municipalities throughout Kosovo even more closely and efficiently.<sup>772</sup> While some changes to the membership in the MUP Staff occurred during Lukić's tenure, Lukić remained the Head of this extended MUP Staff throughout the period relevant to the Indictment.<sup>773</sup>

343. Lukić thus held a key position in the MUP chain of command. As Head of the MUP Staff, he received his orders from the Ministry in Belgrade which he implemented by passing them on to the SUP's and the special MUP units, planning, co-ordinating and controlling the operations. Already in 1998, operations were carried out jointly by the MUP and the VJ. While Pavković was the main person in charge with regard to VJ units, Lukić acted as his counter-part on the same command level regarding the participation of MUP units in these joint operations in 1998.<sup>774</sup> Not only between June and December 1998, at a time when extensive joint operations were conducted, but even before the Joint Command was established, Lukić met regularly with Pavković in order to

<sup>766</sup> Exhibits 5.279, 5.563.

<sup>767</sup> Exhibit 5.278.

<sup>768</sup> *Ibid.*

<sup>769</sup> K64.

<sup>770</sup> Exhibit 5.360, 5.373.

<sup>771</sup> *Ibid.*

<sup>772</sup> Exhibit 5.538.

<sup>773</sup> Exhibit 5.850.

<sup>774</sup> Exhibit 4.564.

discuss the security situation and the steps to be taken by their respective units.<sup>775</sup> During the operations in 1998, the MUP was not subordinated to the VJ because a state of emergency had not been declared; nevertheless joint VJ and MUP operations were conducted, planned, co-ordinated and controlled by Lukić and Pavković.

344. Lukić not only planned, ordered and controlled the individual anti-terrorist operations conducted in summer 1998 but he was instrumental in developing and adopting the tactics for such operations which did entail crimes being committed by units subordinated to him. As described elsewhere in this brief<sup>776</sup>, standard tactics in joint MUP-VJ operations in 1998 as well as in 1999 was that the MUP units would act as infantry, entering villages and settlements on foot, while the VJ would establish a cordon and provide fire support with tanks or artillery.<sup>777</sup>

345. Lukić, together with other key members of the joint criminal enterprise, including Milutinović, Šainović, Pavković and Đorđević, participated actively in a meeting chaired by Milošević in July 1998 in Belgrade where the forthcoming summer offensive was discussed in detail. In this meeting, Pavković gave a presentation on the situation in Kosovo, using a detailed map and proposing operations to be conducted jointly by the VJ and MUP from 20 July onwards. Lukić made his own suggestions and proposals. At the end, a "plan" for the summer operations envisaging joint MUP-VJ operations was endorsed<sup>778</sup>. After the adoption of this plan, the number of MUP members brought into Kosovo increased between 40% and 50%.<sup>779</sup> Throughout July, August and September this plan was executed in phases. That Lukić (and Pavković) continued to plan, co-ordinate and command the operations using the tactics that encompassed widespread destruction, murder and displacement of huge parts of the Kosovo Albanian population throughout the summer of 1998 - even in the face of direct warnings from the international community and the UN Security Council that crimes committed by police forces against the population must be stopped - evidences clearly that these crimes were part of the plan adopted in Belgrade in July 1998 and that Lukić (and Pavković) intended for them to be committed. That the same crimes occurred also in 1999 all over Kosovo during the times and in the areas where operations were conducted by units subordinated to Lukić demonstrates that the Joint Command continued to employ the same tactics used in 1998, i.e. tactics that entailed the crimes of murder, persecution, rape and destruction of property.

<sup>775</sup> Exhibit 4.564, K64.

<sup>776</sup> See *infra* para. 90.

<sup>777</sup> Exhibits 5.360, 5.184, 5.177, John Crosland.

<sup>778</sup> Exhibit 4.564.

<sup>779</sup> *Ibid.*

346. After the establishment of the Joint Command and TEC, Lukić also played an important role in the activities of these command and administration bodies. He was instrumental in ensuring a close co-operation and co-ordination of the four most important steering bodies in Kosovo, i.e. the Joint Command, the Priština Corps, the MUP Staff and the TEC. Lukić was a member of the Joint Command and regularly attended and actively participated in its meetings, sharing MUP-related information and suggesting operations to be conducted.<sup>780</sup> On 24 March 1999, he reported in a TEC meeting on the situation in Kosovo regarding activities of the MUP and emphasised a need to strengthen the local defence in villages.<sup>781</sup> In turn, the Head of the Joint Command, Šainović, attended MUP Staff meetings which demonstrates the close co-operation and co-ordination between these crucial bodies.<sup>782</sup>

347. Lukić remained an important contributing member of the joint criminal enterprise after the Declaration of an Imminent Threat of war was issued on 23 March 1999. According to Article 17 of the Law on Defence, MUP units and organs, in carrying out combat assignments, shall be subordinate to the officer of the VJ who is commanding combat operations in case of a state of war.<sup>783</sup> On 18 April 1999, the Supreme Command Staff ordered, among others, the 3<sup>rd</sup> Army to subordinate MUP units and organs to them.<sup>784</sup> The 3<sup>rd</sup> Army issued its own order on this basis to the Priština Corps on 19 April 1999.<sup>785</sup> On 20 April 1999, the Priština Corps ordered its brigades to subordinate the MUP to the brigades for combat operations.<sup>786</sup> That the subordination of the MUP to the VJ however *de facto* was not complied with as straight-forwardly as these orders may indicate, is evidenced not only by later orders issued in May 1999<sup>787</sup>, indicating a lack of subordination, but also by the debate led publicly in the media between Lukić and Pavković in 2001, in which Lukić claimed that the MUP had submitted itself to the VJ command while Pavković insisted that the MUP had ignored all subordination orders.<sup>788</sup> Notwithstanding the degree of subordination of the MUP to the VJ that actually tookplace, Lukić continued to have command authority over the use of MUP units and personnel in Kosovo. Moreover, as an important member of the Joint Command which planned, ordered and controlled large combat operations, Lukić bore responsibility for the actions of forces operating on the basis of Joint Command orders.

<sup>780</sup> Exhibit 5.501.

<sup>781</sup> Exhibits 5.226, 5.222.

<sup>782</sup> Šainović attended the meetings on 4 April and 7 May 1999, providing an overview on the situation and issuing taskings. Anđelković attended meetings on 29 March and 16 April 1999; K64.

<sup>783</sup> Exhibit 5.004.

<sup>784</sup> Exhibit 5.581.

<sup>785</sup> Exhibit 5.723.

<sup>786</sup> Exhibit 5.761.

<sup>787</sup> Exhibit 5.296.

<sup>788</sup> Exhibits 5.308, 5.673, 5.603, 5.602, 5.404.

348. In both his functions as Head of the MUP Staff and key member of the Joint Command, Lukić also exercised the powers implicit in his function as the Head of the MUP Staff (and thereby participated in the joint criminal enterprise) by acting as important adviser to Milutinović, Milošević, Šainović and other senior politicians entrusted with Kosovo matters regarding all MUP – related aspects of the security situation and anti-terrorist actions in Kosovo. During 1998 and 1999, Milutinović, when visiting Kosovo, met with Lukić.<sup>789</sup> In spring 1998, on the occasion of such a visit of Milutinović, Lukić addressed a meeting of about 20 MUP officials, briefing Milutinović and others on the situation.<sup>790</sup> Lukić also had a direct line of communication to Šainović. He was the first who briefed Šainović about the Račak incident and Šainović regularly consulted him on complex matters simultaneously to consulting Đorđević, despite Lukić holding the lower rank.<sup>791</sup>

349. After the Joint Command was established, Lukić attended regular Joint Command meetings where the security information available, including incidents and events, were discussed between him and his co-Accused.<sup>792</sup> Upon this information, Lukić and the other members of the Joint Command planned, ordered and co-ordinated joint operations to be conducted all over Kosovo. The fact that crimes of murder, destruction of property, rape and persecution occurred in all areas where these operations were conducted and during the times that units subordinate to Lukić were operating in the immediate vicinity of the crime sites demonstrates that the operations planned and approved by the Joint Command, including Lukić, encompassed such crimes.

350. Lukić knew that units and commanders who had been involved in crimes in earlier conflicts in the former Yugoslavia were re-deployed to Kosovo in 1998 and 1999. One of the very members of the MUP Staff itself in 1998 was the notorious Milorad Ulemek (Luković), nicknamed “Legija”, who – per Decision signed by Lukić’s co-Accused Đorđević – held the important position of Assistant Head for Special Operations.<sup>793</sup> He also commanded the JSO.<sup>794</sup> Legija was in charge of the operation at the Jashari compound in March 1998, in the course of which nearly the whole Jashari family, including many women and children, were killed.<sup>795</sup> Legija also was seen operating in Kosovo in 1999.<sup>796</sup>

<sup>789</sup> Exhibit 4.219.

<sup>790</sup> K64.

<sup>791</sup> Exhibit 4.220.

<sup>792</sup> Lukić suspect interview, pp. 35/36, English transcript; Šainović suspect interview, AV00-4232, p. 12.

<sup>793</sup> Exhibit 5.538.

<sup>794</sup> Aleksandar Vasiljević.

<sup>795</sup> K64. For the Jashari incident see *infra* para. 89.

<sup>796</sup> K64.

351. Lukić, however, went beyond passively tolerating such elements on his staff. He personally approved the deployment of units to the conflict theatre in Kosovo who upon their very arrival committed grave crimes against the Kosovo civilian population. Lukić approved the integration of 128 members of the "Scorpions" into the SAJ as reservists in March 1999, who upon their arrival in Podujevo executed a group of women and children.<sup>797</sup> More than that, even after this unit had already proved to include criminal elements in this incident in March 1999, Lukić nevertheless again approved the re-deployment of the Scorpions to Kosovo Polje on 26 April 1999 from where they operated until at least May 1999.<sup>798</sup> Another notorious group called Munja, consisting of MUP members from Peć<sup>799</sup> also operated in Kosovo with the knowledge of Lukić, as documented by them being referred to in Joint Command as well as in MUP Staff meetings.<sup>800</sup> This demonstrates that Lukić, and other JCE members, not only approved of the use of criminal elements in the leadership and operating units for Kosovo but also that Lukić intended or for some crimes at least accepted that they would be committed against the Albanian civilian population in the course of anti-terrorist operations by these elements, like the Podujevo massacre.

352. Lukić also participated in the joint criminal enterprise by assisting with the arming of non-Albanian civilians. The MUP, together with the Provincial Secretariat for Civil Defence distributed weapons provided by the military, to civilians involved in local defence.<sup>801</sup> A 1998 Joint Command Instruction on Defending Populated Areas gave the MUP command over local defence units.<sup>802</sup> Lukić actively participated in this program by directing SUP Chiefs to update their reserve police unit records and keeping the Ministry of Internal Affairs informed about the number of weapons issued to citizens.<sup>803</sup> As a member of the Joint Command whose forces were engaged in joint combat operations, Lukić would have been aware of the inclusion of what was termed as the "armed non-Shiptar population" in operations aimed at the KLA in 1999 and during which many crimes alleged in the Indictment occurred.<sup>804</sup> He was thus aware of the fact that he was involved in arming one ethnic group at a time when inter-ethnic conflict was taking place.

353. Lukić shared the intent to carry out the goals of the joint criminal enterprise. He was present and did not intervene at the meeting on 13 June 1998 where the political, military and police leadership of Serbia split into two groups, one voting for a political solution, the other one arguing for a military solution for the situation in Kosovo and where Stojiljković, at one point, shouted that

<sup>797</sup> See *supra* para. 138; Exhibit 5.1037.

<sup>798</sup> *Ibid.*

<sup>799</sup> Exhibit 4.408.

<sup>800</sup> Exhibits 5.501, 5.360.

<sup>801</sup> Exhibit 5.373.

<sup>802</sup> Exhibit 5.360, Exhibit 5.090, K64.

<sup>803</sup> Exhibit 5.137.

<sup>804</sup> Exhibit 5.923.

all Albanians should be killed.<sup>805</sup> While those who suggested a political solution all lost office within a period of less than six months after this key meeting, Lukić remained in his position, was even promoted on 12 May 1999 – in the midst of the ongoing campaign against the Kosovo Albanian population – to Colonel General and was commended with the Order of the Yugoslav Flag of the First Degree on 7 July 1999.<sup>806</sup> A reasonable inference to be drawn from both his performance as the Head of the MUP Staff and member of the Joint Command and his steep career over the relevant period is that he shared the views of and sided with Milošević, Šainović and Stojiljković who promoted the rigorous military solution, the implementation of which led to the crimes charged in the Indictment.

354. That the MUP leadership, including Lukić, was ready and willing to use excessive force over political means is further evidenced by statements made at MUP Staff meetings. In a meeting on 17 February 1999, Stojiljković congratulated the MUP representatives and units on their work and emphasised that Kosovo must defend itself by all means, regardless of how strong the opponent was. Lukić stated even more concretely at a mid-March 1999 MUP Staff meeting that with the Rambouillet conference at a standstill and NATO aggression was expected to begin, it had been decided that, when the first bombs fell, they would destroy the Šiptar terrorist in all of Kosovo within three days.<sup>807</sup> The crimes charged in the Indictment show the degree of force and violence that was indeed unleashed in order to execute this decision from 24 March 1999 onwards.

355. That Lukić intended for the crimes charged to occur is further proved by the fact that, despite receiving information about crimes being committed by MUP members from several credible sources, including the discussions in the Joint Command and the MUP Staff as well as concerns expressed repeatedly by the international community, as early as in 1998<sup>808</sup> and later again in 1999<sup>809</sup>, he dismissed such information without taking appropriate action to investigate, prosecute and – most importantly – prevent the commission of future crimes by his subordinates. Members of the Joint Command received a daily newsletter or bulletin, compiled by the Priština Corps, featuring information collected by the State Security Department, the Public Security Department and the Military Security.<sup>810</sup> Lukić, as well as the other Joint Command members, were thus actively steering and following the development on the ground all times. Lukić was even privy to direct information from the field as and when operations unfolded and could immediately

<sup>805</sup> Zoran Lilić.

<sup>806</sup> Exhibits 5.389, 5.648.

<sup>807</sup> K 64.

<sup>808</sup> See *infra* paras. 31.

<sup>809</sup> For instance, Lukić was the first who briefed Šainović about Račak, informing him that 15 “terrorists” had been killed; see *supra* paras. 332, 348. Crimes of murder, looting and theft were discussed at a meeting held on 29 March 1999 at the Grand Hotel in Priština, in the presence of Lukić, Šainović, Stojiljković and Anđelković; K 64.

<sup>810</sup> Lukić suspect interview, pp. 120, 121.



intervene if he wished to do so: radio communications existed with the commanders in the field reporting to their respective commanders in the Joint Command. PJP units thus specifically informed Lukić.<sup>811</sup>

356. The MUP also had effective and functional reporting structures. Detailed reporting went both ways along this chain of command, and Lukić, holding the key connecting function between the Ministry in Belgrade and the MUP units in the field, received all relevant information. Indeed, the SUP's were ordered to simultaneously sent all their reports to the MUP Staff in Priština that were sent to the Ministry in Belgrade.<sup>812</sup> In addition to daily reports that the SUP's were obliged to send him, Lukić would also request and receive oral updates on specific events or issues via a secure phone connection.<sup>813</sup> As all local MUP departments and police stations were obliged by the same instruction to report "all occurrences, events and information of interest for security" to the SUP to which it belonged, the MUP Staff and thus, Lukić, was on top of all individual events in the different municipalities.<sup>814</sup> In February 1999, police stations throughout Kosovo were ordered to report significant incidents directly and immediately to, *inter alia*, the MUP Staff, thereby reinforcing the control about events held by Lukić.<sup>815</sup> In addition to this extensive reporting system within the MUP structures, in 1998, Lukić also met with representatives of the international community, including representatives of humanitarian organisations, delegations, the ICRC and the KVM mission who would raise their concerns about crimes being committed to him.<sup>816</sup>

357. These facts evidence that Lukić intended for the crimes in 1998 and 1999 to occur. He himself planned, ordered and controlled the operations in 1998 and 1999, The fact that serious crimes as charged in this Indictment were committed wherever and whenever units subordinated to him were operating in compliance with the orders received from Lukić (and his co-Accused) leads to only one reasonable inference to be drawn, namely that Lukić shared the intent to carry out the goals of the joint criminal enterprise and intended for the charged crimes to occur.

358. In the alternative, the facts set out above in paragraphs 341-344, 346, 355, 357 establish that Lukić is individually criminally responsible for planning, instigating and ordering the crimes charged.

359. Further, in the alternative, Lukić aided and abetted the commission of the charged crimes. He knew that without the participation of the MUP Staff and MUP units, the objectives of the joint

<sup>811</sup> K64.

<sup>812</sup> Exhibit 5.063.

<sup>813</sup> K64.

<sup>814</sup> *Ibid.*

<sup>815</sup> Exhibit 5.113.

<sup>816</sup> Lukić suspect interview, V000-3910-V000-3910, English transcript, p. 41.

criminal enterprise could not be achieved. By implementing instructions received from Milošević through the Ministry of Justice or the Joint Command, he lent important encouragement and moral support to the members of the joint criminal enterprise. By failing to take appropriate disciplinary measures against MUP members who had committed crimes in Kosovo in 1998 and 1999 and by approving the integration of notorious units into the MUP, he encouraged and morally supported the direct perpetrators of the crimes charged. Lukić knew of the commission of widespread crimes in 1998 and 1999 and was aware that he substantially contributed to the commission of these crimes by his actions.

(i) Other members

360. Vlado Stojiljković, as Minister of the Serbian Ministry of Internal Affairs, had *de jure* command over the MUP. Stojiljković received his direction from Milošević and Milutinović and co-ordinated the activities of the MUP in Kosovo with the VJ through the Supreme Command, the Joint Command, and the MUP Staff for Kosovo. Stojiljković was kept informed about events in Kosovo through regular reporting by the MUP Staff and SUPs and by the RDB.<sup>817</sup> He also attended meetings with other members of the JCE in Belgrade at, among other places, the presidential palace.<sup>818</sup> At these meetings, events in Kosovo were discussed, including the activities of FRY and Serb forces involved in the campaign of violence against civilians.

361. In March 1999, Milošević held a meeting attended by Stojiljković, Đorđević, Marković and others where the issues of “*asanacija*” or “clearing up” of the territory was discussed and Milošević ordered Stojiljković to take steps to hide evidence of violations of international humanitarian law in Kosovo.<sup>819</sup> Prosecution evidence will show that the removal of such evidence from Kosovo had also been undertaken prior to that meeting under orders of members of the JCE. Pursuant to an order issued by Stojiljković, Đorđević instructed MUP RJB staff to exhume the bodies of ethnic Albanian civilians murdered in Kosovo and transport them to Serbia proper.<sup>820</sup> The Joint Command covered activities related to the removal of these bodies.<sup>821</sup> Đorđević coordinated, pursuant to Stojiljković’s orders, the concealment of these bodies in secret mass graves in several locations in Serbia.<sup>822</sup> Officers of the MUP RDB also participated in the concealment of these bodies in mass graves.<sup>823</sup>

<sup>817</sup> Exhibits 5.360, 5.373.

<sup>818</sup> Radomir Marković, Aleksandar Vasiljević.

<sup>819</sup> Zoran Stijović; Olivera Antonić-Simić.

<sup>820</sup> Dragan Karleuša; Zoran Stijović; Olivera Antonić-Simić; Radomir Marković.

<sup>821</sup> Aleksander Vasiljević.

<sup>822</sup> Dragan Karleuša; Caslav Golubović; Bosko Radojković.

<sup>823</sup> Dragan Karleuša; Caslav Golubović; Bosko Radojković.

Several of these mass graves are located in Batajnica, near Belgrade, at a firing range that was under the authority of the SAJ during the Indictment period.<sup>824</sup>

362. Radomir Marković was head of the RDB during the Indictment period and directly subordinate to Stojiljković on a *de jure* basis, but also reported to Milošević on a *de facto* basis. He was appointed to that position by Milutinović in October 1998, despite his lack of experience in RDB matters, having spent his career in the RJB.<sup>825</sup> Marković was responsible for ensuring that organisational units of the RDB fulfilled their mandate in Kosovo. He was kept informed of their activities, including those of the JSO, through regular reporting from Kosovo.<sup>826</sup> Marković attended meetings with other members of the JCE in Belgrade at, among other places, the presidential palace. At these meetings, events in Kosovo were discussed, including the activities of FRY and Serb forces involved in the campaign of violence against civilians.<sup>827</sup>

363. Marković attended the March 1999 meeting with Milošević at which the removal of bodies from Kosovo was discussed. Officers of the RDB subordinate to Marković later participated in the concealment of these bodies in mass graves.<sup>828</sup>

364. General Obrad Stevanović was an Assistant Minister in the RJB and Head of the Police Administration which had responsibility for, among other things, the PJP. Witnesses will testify that Stevanović was in Kosovo frequently during the period of the Indictment and attended at least one Joint Command meeting. Stevanović also attended numerous meetings with the collegium of the Minister of Internal Affairs and, at these and other meetings, operational matters were discussed. Amongst the topics of discussion was sanitation of the battlefield (*asanacija*).<sup>829</sup> The practice of *asanacija* was associated with efforts by the JCE to hide evidence of crimes by removing bodies from Kosovo and hiding them in mass graves in Serbia proper.

365. General Dragan Ilić was an Assistant Minister in the MUP. Ilić was involved in sanitation of the battlefield in Kosovo and this role was assigned by, and known to, other members of the JCE.<sup>830</sup> His involvement originated in a tasking from Milošević to Stojiljković which was subsequently communicated to Ilić.<sup>831</sup>

366. As set out above, the Prosecution submits that the individual criminal responsibility of the accused is most accurately described as co-perpetrators of a JCE. However, the conduct of the

<sup>824</sup> Dragan Karleuša; William Fulton; Caslav Golubović.

<sup>825</sup> Radomir Marković, Zoran Lilić, Ratomir Tanić.

<sup>826</sup> Exhibits 5.360, 5.373.

<sup>827</sup> Aleksander Vasiljević.

<sup>828</sup> Dragan Karleuša, Caslav Golubović, Bosko Radojković.

<sup>829</sup> Exhibit 5.943, Aleksander Vasiljević.

<sup>830</sup> Aleksander Vasiljević.

<sup>831</sup> Radomir Marković.

accused also fulfills the criteria of the other forms of responsibility under Article 7 (1) of the Statute.

## **F. Superior responsibility**

### **1. The law on Article 7 (3)**

367. Article 7(3) of the Statute applies where a superior failed to exercise his power and breached his duty to prevent subordinates from committing offences or failed to punish them afterwards.<sup>832</sup> The doctrine of superior responsibility attaches not only to military commanders, but also to civilian superiors in positions of authority,<sup>833</sup> and is applicable in both international and internal armed conflicts.<sup>834</sup> The elements of responsibility under Article 7(3) are:

#### **i. Actus Reus**

- a. The accused exercised superior authority over the perpetrator(s) of the offence;
- b. The accused failed to take the necessary and reasonable measures to prevent the offence or to punish the perpetrator.<sup>835</sup>

#### **ii. Mens Rea**

The accused knew or had reason to know that the perpetrator was about to commit the offence or had done so.

368. A "superior-subordinate" relationship exists between the superior and the subordinate where the former "possesses the power or authority in either a *de jure* or *de facto* form to prevent [the latter's] crime or to punish the perpetrators of the crime after the crime is committed."<sup>836</sup> Responsibility under Article 7(3) applies both to military and civilian superiors.<sup>837</sup> A superior-subordinate relationship is most obviously characterised by the hierarchical relationship that exists

<sup>832</sup> *Aleksovski* Appeal Judgement, para. 76.

<sup>833</sup> *Aleksovski* Appeal Judgement, para. 76; *Čelebići* Appeal Judgement, paras. 195-196.

<sup>834</sup> *Prosecutor v. Hadžihasanović, Alagić and Kubura*, Decision on Interlocutory Appeal Challenging Jurisdiction in Relation to Command Responsibility, Case No. IT-01-47-AR72, 16 July 2003, paras. 10-36 and para. 57.

<sup>835</sup> *Čelebići* Trial Judgement, para. 346; *Prosecutor v. Aleksovski*, Case No. IT-95-14/1, Trial Chamber Judgement, 25 June 1999, paras. 69-71, ("*Aleksovski* Trial Judgement").

<sup>836</sup> *Prosecutor v. Zejnil Delalić, Zdravko Mucić, Hazim Delić and Esad Landžo* Case No. IT-96-21-T, Appeal Chamber Judgement, 20 February 2001, para. 192, ("*Čelebići* Appeal Judgement").

<sup>837</sup> *Čelebići* Appeal Judgement, para. 196.

in a military structure on all levels,<sup>838</sup> but it does not require direct or formal subordination.<sup>839</sup> Furthermore, there is no requirement that the relationship between the superior and subordinate be permanent in nature; superior responsibility can be triggered in cases of temporary command or re-subordination of troops.<sup>840</sup> The test for determining a superior-subordinate relationship is whether the superior had authority or “effective control” over the perpetrators, meaning the material ability to prevent or punish the commission of the offences.<sup>841</sup>

369. The “knew or had reason to know” requirement can be satisfied by either actual knowledge or by “notice of the risk of such offences,” *i.e.* “inquiry notice.”<sup>842</sup> The same state of knowledge is required for both civilian and military commanders.<sup>843</sup> The Appeals Chamber in the *Čelebići* case held that “[a] showing that the superior had some general information in his possession, which would put him on notice of possible unlawful acts by his subordinates would be sufficient to prove that he “had reason to know” [...] This information does not need to provide specific information about unlawful acts committed or about to be committed.”<sup>844</sup> The Appeals Chamber found that if a military commander received information that some of the soldiers under his command have violent or unstable characters, or have been drinking prior to being sent on a mission, he “may be considered as having the required knowledge.”<sup>845</sup> The known criminal propensity of subordinates can also put a superior on inquiry notice.<sup>846</sup> In cases where a commander is aware of prior criminal

<sup>838</sup> See, ICRC Commentary on Article 87 of Additional Protocol I, para. 3553: “There is no member of the armed forces exercising command who is not obliged to ensure the proper application of the [Geneva] Conventions and the [Additional] Protocol. As there is no part of the army which is not subordinated to a military commander at whatever level, this responsibility applies from the highest to the lowest level of the hierarchy, from the Commander-in-Chief down to the common soldier who takes over as head of the platoon to which he belongs at the moment his commanding officer has fallen and is no longer capable of fulfilling his task.”

<sup>839</sup> *Čelebići* Appeal Judgement, para. 303.

<sup>840</sup> *Strugar* Trial Judgement, para. 363, relying on ICRC Commentary on Article 87 of Additional Protocol I, para. 3554, which provides that: “A commander may, for a particular operation and for a limited period of time, be supplied with reinforcements consisting of troops who are not normally under his command. He must ensure that these members of the armed forces comply with the Conventions and the Protocol as long as they remain under his command.” See also, *Blaškić* Appeal Judgement, paras. 498-99.

<sup>841</sup> *Čelebići* Appeal Judgement, para. 196; *Čelebići* Trial Judgement, para. 378. “The doctrine of command responsibility is ultimately predicated upon the power of the superior to control the acts of his subordinates.” *Ibid.*, para. 377.

<sup>842</sup> *Čelebići* Appeal Judgement, paras. 238 and 241 provides, in part: “a superior will be criminally responsible through the principles of superior responsibility only if information was available to him which would have put him on notice of offences committed by subordinates” (emphasis added).

<sup>843</sup> *Krnjelac* Trial Judgement, para. 94.

<sup>844</sup> *Čelebići* Appeal Judgement, para. 238. See also *Krnjelac* Appeal Judgement, paras. 154-155; *Blaškić* Appeal Judgement, para. 62.

<sup>845</sup> *Čelebići* Appeal Judgement, para. 238.

<sup>846</sup> *Prosecutor v. Hadžihasanović and Kabura* Case No. IT-01-47-T, Trial Chamber Judgement, 15 March 2006, para. 118 (“*Hadžihasanović* Trial Judgement”). The Appeals Chamber has applied the same principle in the *Blaškić* Appeal Judgement, paras. 476 and 480.

conduct of some of his units he may incur criminal responsibility if he fails to take adequate measures to prevent these units from committing future crimes.<sup>847</sup>

370. The “necessary and reasonable” measures to prevent or punish which a superior must take are those measures that are “within his material possibility.”<sup>848</sup> An accused can be held responsible even if he possessed no legal competence or other formal authority to take preventive or punitive action, provided that he had *de facto* powers that amounted to effective control.<sup>849</sup> What falls within the accused's material possibility is to be evaluated on a case-by-case basis.<sup>850</sup> If a superior is put on notice of a risk of criminal conduct (past or future) by his or her subordinates, the superior is required to take necessary and reasonable measures to address that risk. Such measures may, in appropriate cases, include conducting further inquiries and requesting a report or investigation. A superior has the duty to both prevent the commission of crimes *and* punish his subordinates who perpetrate the crimes and thus can be held liable for his failure to prevent crimes, *or* his failure to punish the perpetrators thereof. Where the accused knew or had reason to know that subordinates were about to commit crimes and failed to prevent them, he cannot make up for the failure to act by punishing the subordinates afterwards.<sup>851</sup>

## 2. The facts

371. As set out above, the accused operated through various bodies, exercising both *de jure* and *de facto* command authority. The general structure of command authority over the individual bodies and the respective reporting chains have already been set out in detail elsewhere in this brief.<sup>852</sup>

### (a) Superior responsibility of the VJ accused

#### (i) The VJ Disciplinary system and the command and control structure of the VJ

372. The VJ functioned as a professional army, in accordance with the principles of command and control.<sup>853</sup> The Law on the VJ outlines the fundamental principles of command, stating that

<sup>847</sup> *Krnjelac* Appeal Judgement, para. 172. (“The Appeals Chamber considers that, in order to correct the Trial Chamber’s error, the acquittals under counts 2 and 4 of the Indictment must be reversed and Krnjelac found guilty under those counts pursuant to Article 7(3) of the Statute for having *failed to take the necessary and reasonable measures to prevent the acts of torture committed subsequent to those inflicted on Ekrem Zeković* and for having failed to investigate the acts of torture committed prior to those inflicted on Ekrem Zeković and, if need be, punish the perpetrators.” (emphasis added)). See also *Trial of Major Karl Rauer and Six Others* before the British Military Court in Wuppertal Germany; *IMTFE Judgement*, pp.31, 452, 453, 454 and 463; *Hostages Case*, p.71 (from where the Appeals Chamber cited, with apparent approval, in the *Blaškić Appeal Judgement*, para. 82).

<sup>848</sup> *Čelebići* Trial Judgement, para. 395; *Blaškić* Appeal Judgement, para. 72.

<sup>849</sup> *Čelebići* Trial Judgement, para. 395; *Prosecutor v. Kayishema and Ruzindana*, Case No. ICTR-95-1-A, Appeal Chamber Judgement, 1 June 2001, para.302 (“*Kayishema* Appeal Judgement”).

<sup>850</sup> *Id.*

<sup>851</sup> *Blaškić* Trial Judgement, para. 336.

<sup>852</sup> See *supra* paras. 164-212.

<sup>853</sup> Exhibit 5.003.

"Command in the Army shall be based on the principles of unity of command with respect to the use of the forces and materiel, the single command concept and the obligation to carry out decisions, commands, and orders of a superior officer".<sup>854</sup> Military manuals in force during the Indictment period detail the responsibilities of Corps commanders, which include assigning tasks to their subordinates, organising and coordinating operations in their zones of responsibility and ensuring that decisions are implemented.<sup>855</sup> The VJ Command and Control Manual and the Brigade Rules elaborate and reinforce the application of these principles to various levels of military command, ensuring, *inter alia*, the continuous flow of information between superior and subordinate commanders.<sup>856</sup> The concept of superior-subordinate relationship is clearly reflected in these regulations as a core principle of command recognised by the VJ.<sup>857</sup>

373. Pursuant to Article 17 of the Law on Defence, the MUP was subordinated to the VJ when engaged in combat operations during times of war or national emergency.

374. At all times relevant to the Indictment, a functioning military discipline and justice system existed to ensure discipline and respect for the law within the armed forces.<sup>858</sup> The Chief of the General Staff had both the authority and responsibility to maintain discipline within the armed forces of the FRY, in compliance with the FRY's obligations under international law.<sup>859</sup> According to the legislation applicable to the VJ, commanding officers had disciplinary duties *vis-à-vis* their subordinates.<sup>860</sup>

(ii) Superior responsibility of Dragoljub Ojdanić, Nebojša Pavković and Vladimir Lazarević

375. As the Chief of the VJ General Staff, Ojdanić exercised *de jure* command over the VJ in Kosovo, as well as over other armed formations and personnel falling under the authority of the VJ.<sup>861</sup> Pavković was the commander of the 3rd Army during the Indictment period<sup>862</sup> and controlled virtually all VJ and subordinate units in Kosovo, including the Priština Corps.<sup>863</sup> As the commander of the Priština Corps, Lazarević had control over and responsibility for the VJ brigades and smaller

<sup>854</sup> Exhibit 5.003.

<sup>855</sup> Exhibit 5.373.

<sup>856</sup> Exhibit 5.373.

<sup>857</sup> Exhibit 5.003, 5.373.

<sup>858</sup> See *supra* para.197.

<sup>859</sup> Exhibit 5.003.

<sup>860</sup> Exhibit 5.003.

<sup>861</sup> Exhibits 5.003, 5.004.

<sup>862</sup> Exhibits 4.415, 4.565, 5.019, 5.023, 5.315, 5.545, 5.547B

<sup>863</sup> Units sent to Kosovo, even from other armies, were generally subordinated to the 3<sup>rd</sup> Army. Phil Co, Exhibits 4.565, 5.360, 5.373., 5.506, 5.522, 5.715, 5.718.

VJ units forming the Pristina Corps as well as units from other VJ Corps attached to the Pristina Corps.<sup>864</sup>

376. After the declaration of war on 24 March 1999, all three accused had command over MUP units subordinated to the VJ for combat operations in their respective areas of responsibility. Pavković and Lazarević also exercised authority over VJ and MUP units through their participation in the Joint Command for Kosovo and Metohija.<sup>865</sup> Ojdanić additionally possessed authority over both VJ and MUP troops by virtue of his position on the SDC and the Supreme Command.<sup>866</sup>

377. As described in paragraphs 272-324 above, all three accused had sufficient information available to them to put them on notice that VJ and MUP units under their command were about to or had committed crimes such as those charged.<sup>867</sup> Ojdanić was also put on notice that crimes charged in the Indictment had been committed by his subordinates when the Prosecutor issued an indictment against him, Milošević, Milutinović and Šainović on 24 May 1999. As the issuance of the indictment was widely published and as Pavković and Lazarević were working closely with Ojdanić, they were put on notice as well.<sup>868</sup>

a. Dragoljub Ojdanić

378. As the most authoritative military officer in the FRY, Ojdanić had the material ability to enforce military discipline among his troops and to issue appropriate orders to subordinate officers, in particular to Pavković, to prevent the commission of crimes. As a member of the Supreme Command, Ojdanić had authority over the VJ and MUP.<sup>869</sup>

379. Ojdanić also had the material ability and obligation to effect the prosecution and punishment of members of the VJ and subordinate units for crimes committed during the course of their operations in Kosovo. Ojdanić was fully aware that certain military tactics used during operations against the KLA in 1998 would lead to the commission of serious violations of humanitarian law. In his capacity of Chief of the General Staff of the VJ, he had the responsibility to ensure that such tactics would not be employed again in Kosovo in 1999. However, he failed to take effective measures to prevent the commission of crimes such as those alleged by units under his command.

380. Ojdanić failed to take the necessary and reasonable measures to punish the crimes that he knew had been committed by Serb forces in Kosovo. Throughout the Indictment period, Ojdanić

<sup>864</sup> See *supra* para. 169.

<sup>865</sup> See *supra* para. 203-205.

<sup>866</sup> Exhibits 5.360, 5.373.

<sup>867</sup> See *supra* paras. 278-282, paras. 287-289, 299-305, and paras. 317-320.

<sup>868</sup> See *supra* para. 148.



issued frequent reminders to his troops stressing the need that they abide by the provisions of international law applicable to the conduct of war.<sup>870</sup> The fact that these instructions were reiterated on several occasions suggests Ojdanić's awareness that units under his authority were involved in criminal acts. Ojdanić failed however to take effective measures to control the situation on the ground or to punish those responsible for criminal acts. As an example, in April 1999, instead of using his authority to put an end to the widespread attacks against the civilian population, Ojdanić instructed his immediate subordinates to focus on the prevention and prosecution of crimes against the VJ, such as desertion, theft of military weapons, and other crimes related to the morale and combat readiness of VJ units.<sup>871</sup> Ojdanić's lack of an effective and timely response to the criminal acts perpetrated by Serb forces against Kosovo Albanian civilians clearly demonstrates a deliberate intent to allow them to happen and to permit the situation of violence to continue, and, at a minimum, the knowledge and lack of action fulfilling the requirements of Article 7(3).

b. Nebojša Pavković

381. Pavković had the authority to issue orders to Lazarević and other subordinate officers. Throughout 1998 and the indictment period, General Pavković issued repeated orders noting criminal behaviour on the part of his troops and exhorting them to follow the law.<sup>872</sup> Despite notice that previous orders had failed to curb criminal behaviour, Pavković took no other steps to exert control.

382. Due to the close co-ordination of VJ and MUP units and his participation in the Joint Command, he also had the material ability to issue orders prohibiting the commission of crimes by MUP units.<sup>873</sup> Despite his material ability to take such feasible measures, he failed to take necessary and appropriate measures to prevent the commission of the alleged crimes.

383. Pavković had the ability and obligation to enforce the laws through his role as commander of the 3<sup>rd</sup> Army. He was required to investigate and refer incidents of criminal behaviour to the military courts.<sup>874</sup> He also had the authority and obligation to remove commanders and soldiers from their positions immediately upon receipt of a report of criminal behaviour.<sup>875</sup>

<sup>869</sup> Ojdanić had sufficient authority over the MUP to constitute effective control under Article 7(3). See *supra* paras. 278-284.

<sup>870</sup> Exhibits 5.723, 5.523, 5.989.

<sup>871</sup> Exhibit 5.510.

<sup>872</sup> Exhibits 5.485, 5.487, 5.488, 5.489, 5.492, 5.497, 5.571, 5.572, 5.580, 5.705, 5.712, 5.744, 5.747, 5.748

<sup>873</sup> See *supra* paras 285 *et seq.*

<sup>874</sup> Exhibit 5.373.

<sup>875</sup> Exhibit 5.373.

384. Pavković had the authority and ability to order investigations of crime, even when the perpetrator was not a VJ member. For example, on 13 April 1999, he ordered that a commission consisting of VJ, MUP, and others investigate reports of crimes filed by citizens in Istok.<sup>876</sup>

385. Similarly, he ordered Dr. Gordana Tomašević to undertake forensic examinations of numerous corpses in Peć, Lipljan, and Srbica municipalities on his authority, directing her to disregard the normal channels for such investigations.<sup>877</sup> He then did not ask for, pay for, or receive her report.<sup>878</sup> Instead of using the tools available to him to fully investigate reports of murder, rape, wanton destruction, and other crimes against Kosovo Albanians by forces under his command, Pavković used his mandate to investigate mostly crimes against the VJ, such as desertion, drunkenness, and insubordination.<sup>879</sup>

c. Vladimir Lazarević

386. Lazarević, like Pavković, had both the duty and the material ability to prevent his subordinates from committing crimes. Although he knew of the crimes committed in Kosovo during 1998 and 1999 he failed to take the necessary steps to prevent further crimes. As the Commander of the Priština Corps, Lazarević issued numerous orders to his subordinates. Those orders often contained a section on "Moral and Psychological Support", which contained formulations like "[t]he provisions of the International Laws of Combat shall be observed in all situations."<sup>880</sup> No concrete steps were, however, taken to avoid the commission of the crimes. The general instructions included in such orders were inadequate in the circumstances where it was known that serious crimes had been and were still being committed during operations. As noted above, other appropriate efforts by a responsible commander were also not taken.<sup>881</sup>

387. As the commander of the Priština Corps, Lazarević had the duty and ability to enforce the law of war, by reporting criminal behaviour to his superiors, requesting reports, initiating investigations, taking disciplinary measures, and reassigning or removing soldiers and commanders.<sup>882</sup> Despite being on notice that serious crimes were being committed in Kosovo by forces under his command, he failed to take the necessary measures to punish such conduct. Illustrative of Lazarević's attitude towards crimes against Kosovo Albanians is a work plan for the

<sup>876</sup> Exhibit 5.759

<sup>877</sup> Gordana Tomašević; Exhibits 2.7.30, 2.7.31, 2.7.32

<sup>878</sup> Gordana Tomašević

<sup>879</sup> Exhibit 5.773, 5.798 (Niš Corps), 5.957, 5.982. In his statement to the OTP, General Pavković stated that no war crimes were committed by the VJ. See transcript AV00-4178

<sup>880</sup> Exhibit 5.536.

<sup>881</sup> See *supra*, para. 136.

<sup>882</sup> Exhibit 5.373. Lazarević.

“Annual review of the work, order, discipline and unusual incidents in Priština Corps units in 1998”<sup>883</sup> that he approved upon becoming commander of the Priština Corps. The review was limited to matters having an impact on the Priština Corps, such as “serious forms of disrupting work, order and discipline with the emphasis on leave without permission and its impact on morale”; “the impact of increased mental and physical strain in combat operations on personnel as the cause of unusual incidents”; and “thefts of weapons, ammunition and other military equipment.” No mention was made in the plan of serious violations of international humanitarian law. Indeed, as shown above,<sup>884</sup> although the military justice system was fully functional in 1999, Lazarević, like other senior officers, failed to make adequate use it.

(b) Superior responsibility of the MUP accused

(i) The MUP Disciplinary System and FRY Criminal Law

388. The Law on Internal Affairs established a framework for disciplinary responsibility and accountability within the MUP.<sup>885</sup> Article 50 defines criminal acts committed on duty or in connection with official duties, the giving of orders that, once carried out, would represent a criminal act and concealment on the part of a direct superior of any serious breach of employment obligations or duties committed by a subordinate as “serious breaches of duty”. Articles 51 to 57 set out the procedure for responding to such disciplinary violations, establishing disciplinary investigators, prosecutors and courts within the MUP.<sup>886</sup> The process of disciplining MUP officials is regulated further in detail in the Decree on Disciplinary Responsibility at the Ministry of the Interior.<sup>887</sup> A functional system of internal discipline thus existed for the MUP during the relevant time.

389. MUP members were further responsible and punishable for crimes committed under the FRY Criminal Code.<sup>888</sup> As the civilian court system functioned normally during the relevant period<sup>889</sup>, MUP perpetrators could also have been prosecuted for war crimes against the population, unlawful killing or wounding of the enemy, destruction of cultural and historical monuments and racial and other discrimination under Articles 142-154 of the Criminal Code.

<sup>883</sup> Exhibit 5.100.

<sup>884</sup> See *supra* paras. 143-146.

<sup>885</sup> Exhibit 5.776.

<sup>886</sup> *Ibid.*

<sup>887</sup> Exhibit 5.035.

<sup>888</sup> Exhibit 5.039. The FRY Code applies to “whoever” should commit such acts.

<sup>889</sup> See *infra* paras 145.

390. On 24 March 1999, a Decree on Internal Affairs during the State of War was issued, amending the disciplinary responsibilities for MUP officials to some extent in order to take into account the state of war.<sup>890</sup> The authority of MUP officials to detain suspects, restrict their movements and perform searches of persons and property was strengthened.<sup>891</sup> New offences, including “exhibiting national, racial, or religious intolerance”, were included.<sup>892</sup> The Decree simplified the disciplinary system by authorising the head of a sector of the MUP or a person designated by him to discipline without resort to the usual procedures.<sup>893</sup> This decree indicates that the disciplinary system also existed during the state of war in 1999.

391. At all times relevant to the Indictment, a functioning discipline and justice system existed to ensure discipline and respect for the law within the MUP.<sup>894</sup> The Law on Internal Affairs restricted the use of force by the MUP and established the foundation for disciplining officials who were in breach of their official duties. The Decree on Disciplinary Responsibility imposed concrete duties to investigate and conduct preliminary proceedings on MUP superiors. MUP Disciplinary Courts and Higher Disciplinary Courts were in place to deal with cases. Likewise, the regular criminal law system in the country worked normally and applied to members of the MUP when committing crimes as enshrined in the FRY Criminal Code. Various legal systems thus were in place, allowing for efficient investigations and prosecutions of alleged crimes.

(ii) Superior responsibility of Đorđević and Lukić

392. As discussed above at paragraphs 333 *et seq.* and 340 *et seq.* Đorđević and Lukić exercised *de jure* command over MUP units, including special forces, through their respective positions as Head of the RJB and Head of the MUP Staff. Đorđević and Lukić also had *de facto* authority over other forces operating under the authority of the Joint Command by virtue of their membership in this body.

393. In their respective positions of authority, Đorđević and Lukić had the material ability to prevent crimes from being committed as well as to enforce discipline among the MUP units, including special units. As Head of the RJB and Assistant Minister, Đorđević had the material

<sup>890</sup> Exhibit 5.012.

<sup>891</sup> Ibid.

<sup>892</sup> Ibid. Art. 9.

<sup>893</sup> Ibid. Art. 9.

ability to issue orders to subordinate officers, including Lukić, instructing them to prevent and punish the commission of crimes. Lukić, as Head of the MUP Staff, had the material ability to issue orders to subordinate officers, including commanders of special units, giving such instructions.

394. Đorđević and Lukić were informed about crimes being committed by MUP members by various sources in 1998 and 1999.<sup>895</sup> Notably, prevention and punishment of crimes were common topics at Joint Command meetings.<sup>896</sup> The publication of the Tribunal Indictment against Milošević, Šainović, Milutinović and Stojiljković on 24 May 1999 was widely broadcast and commented on by various institutions in Serbia.<sup>897</sup> It is inconceivable that Đorđević and Lukić could not have noted also the specific crime allegations contained in the Indictment at this point. Đorđević and Lukić therefore knew or had reason to know that crimes charged in the Indictment had been committed by their subordinates. Nevertheless, no reasonable measures were undertaken to investigate the crimes properly.

395. Both Đorđević and Lukić went far beyond failing to investigate and punish crimes. They actively contributed to the commission of crimes by allowing criminal elements into the SAJ and by taking measures to conceal crimes. Đorđević as well as Lukić approved the presence of the notorious "Legija" as members of the MUP Staff.<sup>898</sup> Both accused also actively approved the repeated deployment of units to Kosovo that they were aware had already committed serious offences against the Kosovo Albanian population. In this regard, they failed to prevent further crimes when they approved the re-deployment of the Scorpions to Kosovo Polje on 26 April 1999, after they knew that this very unit had already killed a group of women and children during their first deployment on 28 March 1999.<sup>899</sup>

396. Đorđević further actively participated in the concealment of the crimes committed by organising and co-ordinating the transport the bodies of Kosovo Albanian victims which were then hidden in several locations, including at the SAJ training compound at Belgrade. When faced with the Danube truck incident, rather than investigate what blatantly appeared to be the result of a mass-

<sup>894</sup> See *supra* para.143-146

<sup>895</sup> See *infra* paras 325 *et seq.* and 340 *et seq.*, also exhibits 5.256, 5.501.

<sup>896</sup> Exhibit 5.501.

<sup>897</sup> See *infra* paras 148.

<sup>898</sup> See *infra* paras 350.

<sup>899</sup> See *infra* paras 181 and 331. Exhibit 5.1037.

civilian murder, Đorđević quashed a local investigation into the matter and set about concealing the event.<sup>900</sup>

(c) Superior responsibility of the accused politicians

(i) Milutinović

397. Milutinović was the President of Serbia, which gave him authority in relation to the Government of Serbia, including over the Ministry of Interior and thus to the MUP. Milutinović was also a member of SDC and the Supreme Command, which exercised command over both the VJ and the MUP.<sup>901</sup> He therefore had a material ability to institute reasonable and appropriate measures to discipline members of the forces of the FRY and Serbia.

398. Milutinović received information about the crimes being committed in Kosovo from several sources.<sup>902</sup> Milutinović therefore knew or had reason to know that crimes charged in the Indictment had been committed by his subordinates.

399. Despite his knowledge of the continued crimes in Kosovo Milutinović failed to take any steps to prevent a continuation of these crimes. Milutinović also failed to take any reasonable steps to ensure that the perpetrators of the crimes were punished.

400. Milutinović is therefore responsible pursuant to Article 7(3) of the Statute for the crimes charged in the Indictment.

(ii) Šainović

401. Šainović was Deputy Prime Minister of the FRY at the relevant time. As such, he was a member of the government of the FRY, which formulated both domestic and foreign policy, enforced federal law, and directed and co-ordinated the work of federal ministries, and organised defence preparations.<sup>903</sup> As Vice President of the Government of the FRY he was often the most senior official present in Kosovo. As Milošević's representative for Kosovo,<sup>904</sup> Šainović exercised broad authority over forces of the FRY and Serbia in Kosovo. Both in 1998 and in 1999, Šainović demonstrated his authority on various occasions over the MUP and the VJ, as well as over local

<sup>900</sup> See *supra* paras. 155.

<sup>901</sup> Exhibit 5.373.

<sup>902</sup> *Supra*, paras. 246 *et seq.* He was furthermore put on specific notice of the crimes charged in the Indictment of 24 May 1999, when the first indictment by the Tribunal was issued against him, Milošević, Stojiljković, Šainović and Ojdanić.

<sup>903</sup> *Supra*, paras. 259 *et seq.*

<sup>904</sup> See *infra* paras 261

government authorities.<sup>905</sup> Only Milošević exercised superior authority over Šainović on such matters.<sup>906</sup>

402. By virtue of his position as the *de facto* head of the Joint Command for Kosovo, and within the context of the implementation of the JCE, Šainović exercised superior authority over the MUP and VJ and subordinated forces in Kosovo, through Pavković and Lazarević, who were the VJ participants in the Joint Command, and through Lukić, Đorđević, and Stevanović who were the MUP participants in the Joint Command.<sup>907</sup> In meetings attended by senior VJ and MUP officers, among others, Šainović exercised command authority over the forces of the FRY and Serbia in Kosovo through his positions in other bodies in Belgrade.<sup>908</sup> His authority over the forces of the FRY and Serbia in Kosovo also derived from his close relationship with Milošević.<sup>909</sup> This relationship enabled Šainović to wield *de facto* authority over VJ and MUP commanders, even outside the framework of any command body.

403. As the most authoritative person on the Joint Command, Šainović had the material ability to enforce discipline among the units operating pursuant to instructions of the Joint Command and to instruct other members of the Joint Command, in particular Pavković, Lazarević, Lukić and Đorđević to prevent the commission of crimes.

404. Šainović also had the material ability and obligation to effect the prosecution and punishment of members of the VJ and the MUP and subordinate units for crimes committed during the course of their operations in Kosovo. Šainović was fully aware that certain military tactics used during operations against the KLA in 1998 led to the commission of serious violations of humanitarian law.<sup>910</sup> In his capacity as close adviser to Milošević on Kosovo matters and head of the Joint Command, he had the responsibility to ensure that such tactics would not be employed again in Kosovo in 1999. He failed, however, to take effective measures to prevent the commission of crimes such as those alleged in the Indictment.

405. Šainović received information about the crimes being committed in Kosovo from several sources<sup>911</sup> in 1998 and 1999 and he was put on specific notice of the crimes charged in the Indictment on 24 May 1999, when the first indictment by the Tribunal was issued against him,

<sup>905</sup> Exhibit 5.501

<sup>906</sup> Exhibits 5.360, 5.501, Richard Ciaglinski; Karol Drzewienkiewicz; Wolfgang Petritsch; William Walker; J. Maisonneuve, Aleksander Vasiljević.

<sup>907</sup> Exhibits 5.360, 5.373, 5.923, John Crosland, Aleksander Vasiljević, Zoran Lilić, K 56.

<sup>908</sup> Wolfgang Petritsch, Klaus Naumann, Aleksander Vasiljević.

<sup>909</sup> Karol Drzewienkiewicz; J. Maisonneuve, Klaus Naumann; Wolfgang Petritsch; William Walker.

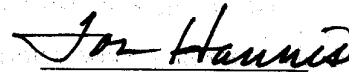
<sup>910</sup> See *infra* paras 259 *et seq.*

<sup>911</sup> *Supra*, paras. 259 *et seq.*

Milosević, Milutinović, Stojiljković and Ojdanić.<sup>912</sup> Šainović therefore knew or had reason to know of the crimes charged in the Indictment.

406. Despite his knowledge of the continued crimes in Kosovo Šainović failed to take any reasonable steps to ensure that the perpetrators of the crimes were punished. He is therefore responsible pursuant to Article 7(3) of the Statute for the crimes charged in the Indictment.

Word count: 54.481

  
Thomas Hannis  
Senior Trial Attorney

Dated this 10<sup>th</sup> day of May 2006  
in The Hague, The Netherlands

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<sup>912</sup> *Supra*, paras. 148.



PROSECUTOR

v.

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

(IT-05-87-PT)

**CHARTS ATTACHED TO THE PROSECUTION'S PRE-TRIAL BRIEF  
PURSUANT TO RULE 65*ter*(E)(i)**

- Chart 1: Overview of structure of command structure of the VJ and the MUP, including the Joint Command and MUP Staff**
- Chart 2: Command structure of the VJ**
- Chart 3: Command structure of the MUP**
- Chart 4: Overview of key political bodies and politicians**

# Supreme Command

Milošević / Milutinović

**Supreme Command Staff**  
(aka VJ General Staff)  
D. Ojdanić

**3rd Army**  
N. Pavković

**Priština Military District**  
Z. Pesić

**Priština Corps**  
V. Lazarević

**VJ Brigades**

**Republic of Serbia Ministry of Internal Affairs**  
(aka MUP)  
V. Stojiljković

**Public Security Department (RJB)**  
V. Djordjević

**State Security Department (RDB)**  
R. Marković

**Joint Command for Kosovo & Metohija**  
N. Šainović

**MUP Staff for Kosovo & Metohija**  
S. Lukić

**Secretariats for Internal Affairs (SUPs)**  
Peć, Kosovo Mitrovica, Prizen, Uroševac,  
Priština, Djakovica, Gnjilane

**Special Police Units (PJP)**

**Special Anti-Terrorist Unit (SAJ)**  
Z. Trajković

**Special Operations Unit (JSO)**  
M. Luković (aka "Legija")

**Temporary Executive Council (TEC)**  
Z. Andjelković

**Municipal Staffs**  
Municipal Presidents

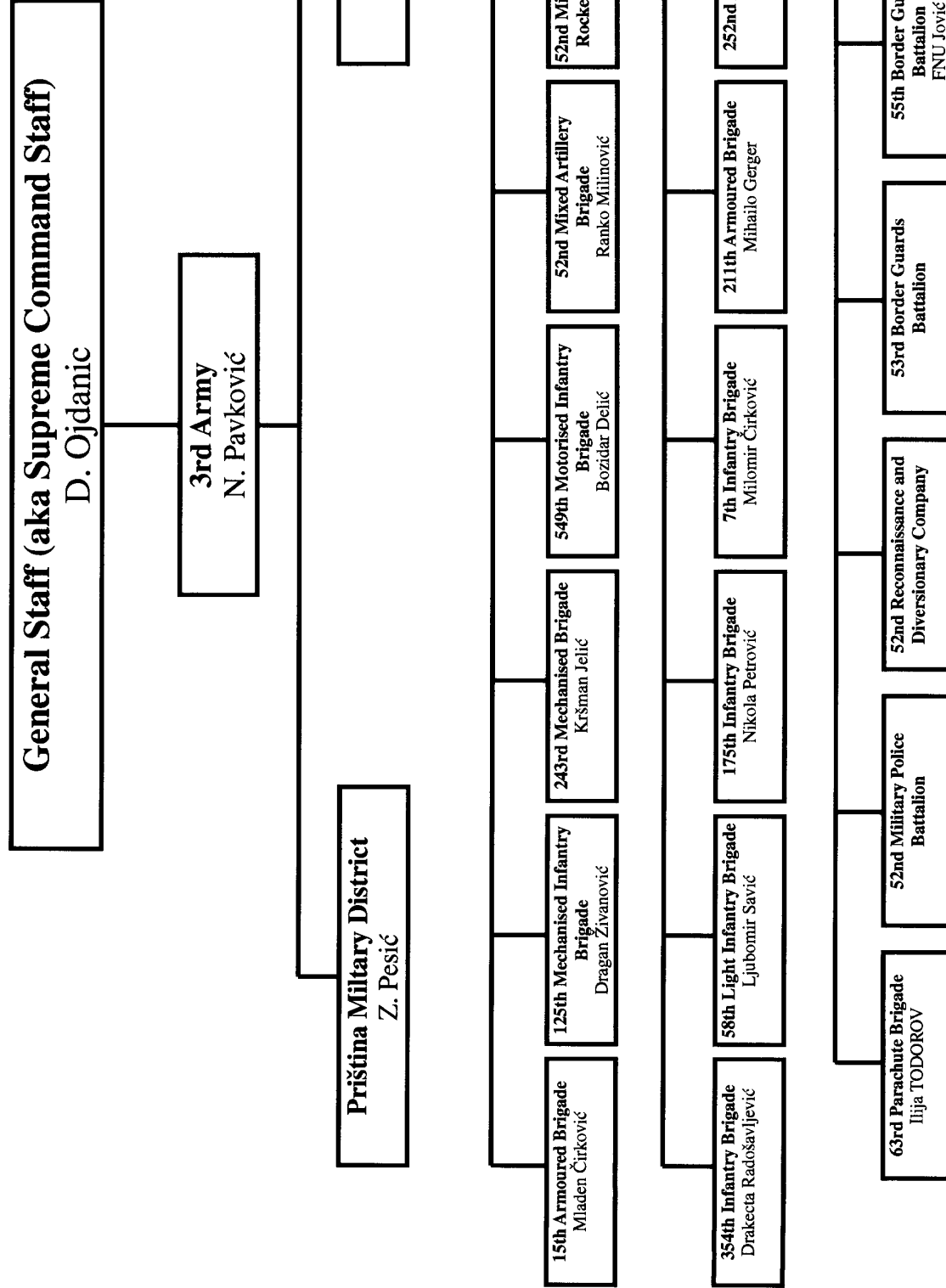
**Local Security Units**

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NOTE: This chart is a simplified representation of the command structure in Kosovo. It does not represent all aspects of command relationships.

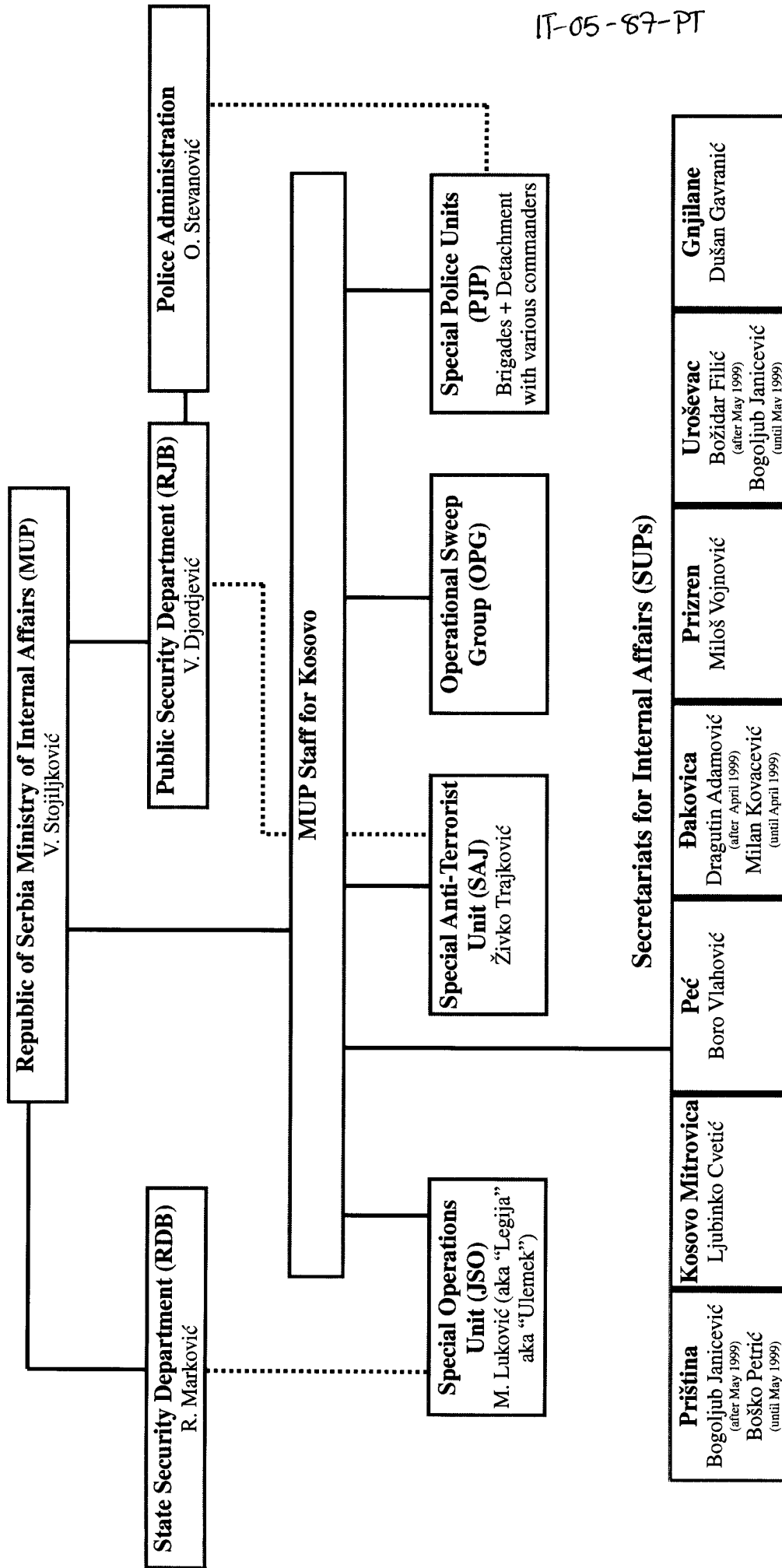
# Command Structure of the Army of Yugoslavia (VJ)



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4952

# Command Structure of the Republic of Serbia Ministry of Internal Affairs (MUP)



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4951

NOTE: This chart is a simplified representation of the command structure in Kosovo. It does not represent all aspects of command relationships.

08-May-06 v1 (PC/RB)

# Political Leadership of FRY and Serbia 1998/1999

## Socialist Party of Serbia (SPS)

SPS President: Slobodan Milošević

SPS Vice-Presidents: Zoran Lilić, Živadin Jovanović, Dušan Matković

SPS Executive Committee: Nikola Šainović, Milan Milutinović, Milomir Minić, Dragan Tomić, Zoran Anđelković (plus 17 not listed)

### Federal Republic of Yugoslavia

President: Slobodan Milošević

Prime Minister: Momir Bulatović

Deputy Prime Ministers: Nikola Šainović, Zoran Lilić, Jovan Zelić, Danilo Vrksanović,  
Vladan Kutlešić, Vuk Drašković (18 January 1999 to 28 April 1999)

Milošević, at 10 June 1998 SPS Main Board meeting, appointed Minić, Anđelković and  
Matković to head a "political co-ordination body for Kosovo and Metohija".  
Also present at meeting: Šainović, Milutinović and others.

### FRY Assembly 1996-2000

**Chamber of Citizens**  
(108 from Serbia / 30 from  
Montenegro)  
Chair: Milomir Minić

**Chamber of Republics**  
(20 from Serbia / 20 from  
Montenegro)  
Chair: Srđa Božović

### Republic of Serbia

President: Milan Milutinović

Prime Minister: Miroko Marjanović

Deputy Prime Ministers: Vojislav Šešelj, Dragan Tomić, Milovan Bojić,  
Ratko Marković, Tomislav Nikolić  
Minister of the Interior: Vojko Stojiljković  
Minister of Youth and Sport: Zoran "Baki" Anđelković

### Republic of Serbia National Assembly

President: Dragan Tomić

### Joint Command

Milomir Minić, Nikola Šainović, Vlastimir  
Đorđević, Obrad Stevanović, Zoran  
Anđelković, Dušan Matković, Petar Ilić,  
Veljko Odalović, Nebojša Pavković,  
Vladimir Lazarević, Sreten Lukić

### Temporary Executive Council (TEC)

President: Zoran "Baki" Anđelković

Appointed → 16 TEC Members and other TEC staff

Established 28 September 1998

Appointed 28 September 1998