



Tribunal international chargé de poursuivre les personnes présumées responsables de violations graves du droit international humanitaire commises sur le territoire de l'ex-Yougoslavie depuis 1991

Affaire n° : IT-03-67-T

Date: 23 juillet 2010

Original: FRANÇAIS

LA CHAMBRE DE PREMIÈRE INSTANCE III

Composée comme suit : M. le Juge Jean-Claude Antonetti, Président
M. le Juge Frederik Harhoff
Mme. le Juge Flavia Lattanzi

Assisté de: M. John Hocking, greffier

Décision rendue le: 23 juillet 2010

LE PROCUREUR

c/

VOJISLAV ŠEŠELJ

DOCUMENT PUBLIC AVEC ANNEXE

**DÉCISION RELATIVE À LA REQUÊTE DE L'ACCUSATION
AUX FINS DE DRESSER LE CONSTAT JUDICIAIRE DE FAITS
RELATIFS À L'AFFAIRE KRAJIŠNIK**

Le Bureau du Procureur

M. Mathias Marcussen

L'Accusé

Vojislav Šešelj

I. INTRODUCTION

1. La Chambre de première instance III (« Chambre ») du Tribunal international chargé de poursuivre les personnes présumées responsables de violations graves du droit international humanitaire commises sur le territoire de l'ex-Yougoslavie depuis 1991 (« Tribunal ») est saisie d'une requête aux fins de dresser le constat judiciaire de faits admis dans l'affaire *Le Procureur c/ Momčilo Krajišnik*, en application de l'article 94(B) du Règlement de procédure et de preuve (« Règlement »), enregistrée par le Bureau du Procureur (« Accusation ») le 29 avril 2010 (« Requête »)¹.

II. RAPPEL DE LA PROCÉDURE

2. Le 29 avril 2010, l'Accusation déposait sa Requête par laquelle elle demandait que soit dressé le constat judiciaire de 194 faits tirés du jugement rendu dans l'affaire *Krajišnik* (« Jugement »)².

3. L'Accusé ne répondait pas à cette requête dans le délai de 14 jours, à compter de la réception de la version en BCS, qui lui était impartie par l'article 126*bis* du Règlement³.

III. ARGUMENTS DE L'ACCUSATION

4. L'Accusation soutient que les faits dont l'admission est sollicitée, qui sont en relation avec les événements en Bosnie-Herzégovine de 1990-1992, prouvent l'existence d'une Entreprise Criminelle Commune (« ECC ») orientée vers l'expulsion des Musulmans et des Croates du territoire Serbe de Bosnie⁴. L'Accusation soutient également que les faits relatifs aux événements dans les municipalités de Bijeljina, Brčko, Ilidža, Ilijaš, Novo Sarajevo et Nevesinje prouvent les chefs 1, 4, 8-11 et 12-14 de l'Acte d'accusation et prouvent la mise en œuvre de l'ECC⁵. L'Accusation estime que le constat judiciaire permet de protéger les intérêts de la justice et garantit un procès équitable en évitant un contentieux répétitif portant sur des faits déjà prouvés dans d'autres affaires⁶. Enfin, l'Accusation estime que le constat judiciaire des 194 faits mentionnés en

¹ Origin al en anglais intitulé "Prosecution Motion for Judicial Notice of Facts Adjudicated by *Krajišnik* Case", 29 avril 2010.

² *Le Proc ureur c/ Momčilo Krajišnik*, affaire n° IT-00-39-PT, Jugement, 27 septembre 2006 (« Ju gement »).

³ L'Accusé recevait la version en BCS de la Requête le 8 juin 2010 (voir Procès-verbal de réception enregistré le 14 juin 2010).

⁴ Requête, par. 5.

⁵ *Ibid.*

⁶ Requête, par. 7.

annexe de sa Requête irait dans le sens de l'économie judiciaire et d'une harmonisation de la jurisprudence du Tribunal, tout en respectant le droit de l'Accusé à un procès équitable⁷.

IV. DROIT APPLICABLE

5. L'article 94(B) du Règlement dispose qu'une Chambre de première instance peut, d'office ou à la demande d'une partie, et après audition des parties, décider de dresser le constat judiciaire de faits ou de moyens de preuve documentaires admis lors d'autres affaires portées devant le Tribunal et en rapport avec l'instance.

6. La Chambre d'appel a estimé que, « en dressant le constat judiciaire d'un fait admis dans une autre affaire, la Chambre part, à bon droit, de la présomption que ce fait est exact [et qu'il] ne devra donc plus être établi au procès⁸ ». Elle a également considéré que :

[L]e recours au constat judiciaire ne renverse pas la charge principale de la persuasion, cette charge continuant d'incomber au Procureur. Le constat judiciaire [...] n'a pour effet que de dégager le Procureur de sa charge initiale consistant à produire des éléments de preuve sur le point considéré : la Défense est habilitée à remettre ce point en question par la suite en versant au dossier des preuves contraires crédibles et fiables⁹.

7. Dans l'exercice de son pouvoir discrétionnaire, la Chambre vérifie donc que les faits en question remplissent effectivement les critères posés par l'article 94(B) du Règlement et développés par la jurisprudence¹⁰, c'est-à-dire qu'il s'agit de faits :

- 1) pertinents au regard de l'acte d'accusation¹¹;

⁷ Requête, par. 8.

⁸ *Le Procureur c/ Milošević*, affaire n° IT-02-54-AR73.5, Décision relative à l'appel interlocutoire interjeté par l'Accusation contre la décision relative à la requête visant à faire dresser constat judiciaire de faits admis dans d'autres affaires rendue le 10 avril 2003 par la Chambre de première instance, 28 octobre 2003, p. 4.

⁹ *Le Procureur c/ Karemera et consorts*, affaire n° ICTR-98-44-AR73 C), Décision faisant suite à l'appel interlocutoire interjeté par le Procureur de la décision relative au constat judiciaire, 16 juin 2006, par. 42.

¹⁰ Voir en ce sens notamment *Le Procureur c/ Zoran Kupreškić, Mirjan Kupreškić, Vlatko Kupreškić, Drago Josipović, Vladimir Šantić*, affaire n° IT-95-16-A, Décision relative aux requêtes des appelants Drago Josipović, Zoran et Vlatko Kupreškić aux fins d'admissions de moyens de preuve supplémentaires, en vertu de l'article 115, et aux fins de constat judiciaire, en vertu de l'article 94 B), 8 mai 2001; *Le Procureur c/ Momčilo Krajišnik*, affaire n° IT-00-39-PT, Décision relative aux requêtes de l'Accusation aux fins du constat judiciaire de faits admis et de l'admission de déclarations écrites en application de l'article 92 bis, 28 février 2003; *Le Procureur c/ Slobodan Milošević*, affaire n° IT-02-54-T, Décision relative à la requête de l'Accusation aux fins de dresser le constat judiciaire de faits admis dans d'autres affaires, 10 avril 2003; *Le Procureur c/ Enver Hadžihasanović et Amir Kubura*, affaire n° IT-01-47-T, Décision relative au constat judiciaire de faits admis dans d'autres affaires suite à la demande des conseils des accusés Hadžihasanović et Kubura déposée le 20 janvier 2005, 14 avril 2005; *Le Procureur c/ Momir Nikolić*, affaire n° IT-02-60/1-A, Décision relative à la requête de l'Appelant aux fins de constat judiciaire, 1^{er} avril 2005; *Le Procureur c/ Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Valentin Čorić et Berislav Pušić*, affaire n° 04-74-PT, Décision relative à la requête aux fins de dresser le constat judiciaire de faits admis dans d'autres affaires en application de l'article 94 B) du Règlement, 14 mars 2006; *Le Procureur c/ Vujadin Popović, Ljubiša Beara, Drago Nikolić, Ljubomir Borovčanin, Radivoje Miletić, Milan Gvero et Vinko Pandurević*, affaire n° IT-05-88-T, original en anglais intitulé "Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts with Annex", 26 septembre 2006; *Le Procureur c/ Édouard Karemera*,

- 2) concrets, distincts et identifiés notamment par des références précises aux paragraphes ou parties du jugement antérieur¹²;
- 3) dont le libellé proposé par la partie demandant le constat ne doit pas être sensiblement différent de celui adopté dans le jugement initial¹³.
- 4) qui ne soient pas vagues ou qui ne prêtent pas à confusion dans le contexte de la demande présentée par la partie requérante¹⁴;
- 5) qui ne reposent pas sur un accord conclu entre les parties à l'affaire initiale¹⁵;
- 6) qui n'ont pas trait aux actes, au comportement ou à l'état mental de l'accusé¹⁶;
- 7) qui sont définitifs et ne font pas l'objet d'une procédure d'appel ou de révision¹⁷;
- 8) ne pouvant raisonnablement être contestés par la partie adverse;
- 9) constituant uniquement des conclusions factuelles et ne contenant pas de qualification juridique ou d'opinion subjective¹⁸ ;

Mathieu Ngirumpatse et Joseph Nzirorera, affaire ICTR-98-44-T, Décision relative à la requête du Procureur aux fins de constat judiciaire, 30 avril 2004.

¹¹ *Le Procureur c/ Niyitegeka*, affaire n° ICTR-96-14-A, Reasons for Oral Decision Rendered 21 April 2004 on Appellant's Motion for Admission of Additional Evidence and for Judicial Notice, 17 mai 2004, par. 16.

¹² Voir, par exemple, *Le Procureur c/ Perišić*, affaire n° IT-04-81-PT, Décision relative à la requête de l'Accusation aux fins de dresser le constat judiciaire de faits admis relatifs à Sarajevo, 26 juin 2008, par. 18 ; *Le Procureur c/ Stanišić*, affaire n° IT-04-79-PT, Décision portant constat judiciaire, 14 décembre 2007, par. 37 ; *Le Procureur c/ Prlić et consorts*, affaire n° IT-04-74-PT, Décision relative à la requête aux fins de dresser le constat judiciaire de faits admis dans d'autres affaires en application de l'article 94 B) du Règlement, 14 mars 2006, par. 12 ; *Le Procureur c/ Hadžihasanović et consorts*, affaire n° IT-01-47-T, Décision relative au constat judiciaire de faits admis dans d'autres affaires suite à la demande des conseils des Accusés Hadžihasanović et Kubura déposée le 20 janvier 2005, 14 avril 2005, p. 5 ; *Le Procureur c/ Krajišnik*, affaire n° IT-00-39-T, Décision relative aux troisième et quatrième requêtes de l'Accusation aux fins de dresser le constat judiciaire de faits admis dans d'autres affaires, 24 mars 2005, par. 14. *Le Procureur c/ Kupreškić*, affaire n° IT-95-16-A, Décision relative aux requêtes des appelants Drago Josipović, Zoran et Vlatko Kupreškić aux fins d'admission de moyens de preuve supplémentaires, en vertu de l'article 115, et aux fins de constat judiciaire, en vertu de l'article 94 B), 8 mai 2001, par. 12.

¹³ *Le Procureur c/ Krajišnik*, affaire n° IT-00-39-T, Décision relative aux troisième et quatrième requêtes de l'Accusation aux fins de dresser le constat judiciaire de faits admis dans d'autres affaires, 24 mars 2005 par. 14.

¹⁴ *Le Procureur c/ Popović et consorts*, affaire n° IT-05-88-T, Décision relative à la requête de l'Accusation aux fins de constat judiciaire de faits admis dans d'autres affaires, annexe jointe, 26 septembre 2006, par. 8.

¹⁵ *Le Procureur c/ Popović et consorts*, affaire n° IT-05-88-T, Décision relative à la requête de l'Accusation aux fins de constat judiciaire de faits admis dans d'autres affaires, annexe jointe, 26 septembre 2006, par. 11 ; *Le Procureur c/ Mejakić*, affaire n° IT-02-65-PT, Décision relative à la requête de l'Accusation aux fins de constat judiciaire en application de l'article 94 B) du Règlement, 1^{er} avril 2004., p. 4; *Le Procureur c/ Krajišnik*, affaire n° IT-00-39-PT, Décision relative aux requêtes de l'Accusation aux fins du constat judiciaire de faits admis et de l'admission de déclarations écrites en application de l'article 92 bis, 28 février 2003, par. 15.

¹⁶ *Le Procureur c/ Kupreškić*, affaire n° IT-95-16-A, Décision relative aux requêtes des appelants Drago Josipović, Zoran et Vlatko Kupreškić aux fins d'admission de moyens de preuve supplémentaires, en vertu de l'article 115, et aux fins de constat judiciaire, en vertu de l'article 94 B), 8 mai 2001, par. 6.

¹⁷ *Le Procureur c/ Kupreškić*, affaire n° IT-95-16-A, Décision relative aux requêtes des appelants Drago Josipović, Zoran et Vlatko Kupreškić aux fins d'admission de moyens de preuve supplémentaires, en vertu de l'article 115, et aux fins de constat judiciaire, en vertu de l'article 94 B), 8 mai 2001, par. 6.

10) ne compromettant pas le droit de l'accusé à un procès équitable.

V. DISCUSSION

8. La Chambre a analysé les 194 faits de la Requête dont le constat judiciaire est sollicité par l'Accusation à la lumière des arguments présentés et des critères rappelés ci-dessus.

9. La Chambre estime que le constat judiciaire des faits portant les numéros suivants dans l'annexe de la Requête ne peut pas être dressé, au motif qu'ils ne sont **pas suffisamment clairs** : 24, 25, 26, 50, 52, 53, 63, 97, 144, 148, 156, 160, 171 et 186.

10. La Chambre estime de plus que le constat judiciaire des faits portant les numéros suivants dans l'annexe de la Requête ne peut pas être dressé, au motif qu'ils mettent potentiellement en cause la **responsabilité de l'Accusé** — en se rapportant notamment à l'objectif ou aux membres de l'entreprise criminelle commune alléguée ainsi qu'aux personnes pour lesquelles l'Accusé est tenu responsable — ou qu'ils sont liés à une **question fondamentale ou a des crimes allégués dans l'Acte d'accusation**: 14, 55, 82, 83, 124, 125, 145, 147, 161, 164, 169, 170, 172, 173, 178, 183, 184, 185, 193 et 194.

11. La Chambre a aussi estimé que le constat judiciaire du fait portant le numéro suivant dans l'annexe de la Requête ne peut pas être dressé, au motif qu'il **n'est pas fidèle au Jugement** : 71.

12. La Chambre a également estimé que le constat judiciaire du fait portant le numéro suivant dans l'annexe de la Requête ne peut pas être dressé, au motif qu'il est **répétitif par rapport à un fait déjà admis**: 77¹⁹.

13. La Chambre estime également que le constat judiciaire des faits portant les numéros suivants dans l'annexe de la Requête ne peut pas être dressé, au motif qu'ils ne constituent pas de simples conclusions factuelles mais constituent des **opinions subjectives** : 11, 96 et 122.

¹⁸ *Le Procureur c/ Dragomir Milošević*, affaire n° IT-98-29/1-AR73.1, Décision relative aux appels interlocutoires interjetés contre la décision de la Chambre de première instance relative à la requête de l'Accusation aux fins de constat judiciaire de faits constatés et à la liste des faits admis, 26 juin 2007, par. 19 à 22 ; *Le Procureur c/ Popović et consorts*, affaire n° IT-05-88-T, Décision relative à la requête de l'Accusation aux fins de constat judiciaire de faits admis dans d'autres affaires, annexe jointe, 26 septembre 2006, par. 10; *Le Procureur c/ Mejakić*, affaire n° IT-02-65-PT, Décision relative à la requête de l'Accusation aux fins de constat judiciaire en application de l'article 94 B) du Règlement, 1^{er} avril 2004, p. 4 ; *Le Procureur c/ Blagojević et consorts*, affaire n° IT-02-60-T, Décision relative à la requête de l'Accusation aux fins de dresser le constat judiciaire de moyens de preuve documentaires et de faits admis dans d'autres affaires, 19 décembre 2003, par. 16.

¹⁹ Ce fait est répétitif avec les faits 75, 76 et 78 qui sont admis.

14. La Chambre a estimé opportun de dresser le constat judiciaire du fait portant le numéro suivant dans l'annexe de la Requête **sous réserve des modifications que la Chambre y a apporté²⁰** : 157.

15. La Chambre a enfin estimé opportun de dresser le constat judiciaire des faits portant les numéros suivants dans l'annexe de la Requête sans y apporter aucune modification : 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 51, 54, 56, 57, 58, 59, 60, 61, 62, 64, 65, 66, 67, 68, 69, 70, 72, 73, 74, 75, 76, 78, 79, 80, 81, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 123, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 146, 149, 150, 151, 152, 153, 154, 155, 158, 159, 162, 163, 165, 166, 167, 168, 174, 175, 176, 177, 179, 180, 181, 182, 187, 188, 189, 190, 191 et 192.

16. L'ensemble des faits dont la Chambre accepte de dresser le constat judiciaire figure en annexe de la présente décision. Ces faits sont mentionnés en langue anglaise car il n'existe à ce jour aucune traduction officielle en langue française de la liste des faits dont l'Accusation sollicite le constat judiciaire, figurant en annexe de la Requête.

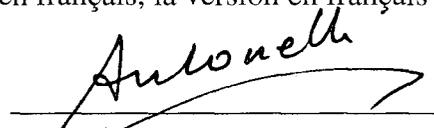
VI. DISPOSITIF

17. Par ces motifs et en application de l'article 20(1) du Statut du Tribunal et de l'article 94(B) du Règlement, la Chambre **FAIT PARTIELLEMENT DROIT** à la Requête et dresse le constat judiciaire des faits énumérés en langue anglaise dans l'annexe jointe à la présente décision.

18. La Chambre **REJETTE** la Requête pour le surplus.

²⁰ Le passage rayé dans ce fait figurant en annexe n'est pas admis.

Fait en anglais et en français, la version en français faisant foi.



Jean-Claude Antonetti
Président de la Chambre

En date du vingt trois juillet 2010
La Haye (Pays-Bas)

[Sceau du Tribunal]

ANNEXE

No.	Fait
1	Bosnia-Herzegovina, more than any other republic of the former Yugoslavia, has been multi-ethnic for centuries, with Serbs, Muslims, and Croats as the predominant nationalities.
2	From 1991 to early 1992 the Serb component of JNA conscripts rose from just over 35 per cent to around 90 per cent.
3	From the moment of its creation, the SDS political platform included an emphasis on the protection of the Serb nation, which was said to be disadvantaged by the purported lower birth rate of Serbs and by the way Bosnia-Herzegovina had been divided into municipalities, effectively making Serbs an ethnic minority in areas where they might otherwise have dominated.
4	Following the November 1990 elections, the SDA, Biljana Plavšić and Nikola Koljević were appointed to the Presidency of Bosnia-Herzegovina as SDS representatives.
5	Alija Delimustafić (SDA) became MUP Minister, Vitomir Žepinić (SDS) became deputy Minister, Avdo Hebib (SDA) became assistant Minister for police affairs, and Momčilo Mandić (SDS) became assistant Minister for the prevention and detection of crime.
6	The regional organization of the Bosnia-Herzegovina MUP was based on nine Security Services Centres (CSBs), located in Bihać, Banja Luka, Doboj, Tuzla, Livno, Mostar, Zenica, Sarajevo, and Goražde.
7	By spring of 1991, the SDS, in coordination with Yugoslav authorities, also started arming and mobilizing the Serb population in many municipalities throughout Bosnia-Herzegovina. JNA and MUP officers assisted them in acquiring and distributing weapons.
8	During the first months of 1991 the SDS began to organize Serb-majority municipalities in Bosnia-Herzegovina into communities of municipalities, in some cases severing ties with pre-existing communities of municipalities.
9	SDS party leaders justified the associations in terms of economic necessity.
10	However, among the functions the SDS assigned to the Bosnian Krajina community of municipalities was the organization of its defence in times of war or imminent threat of war.
12	A confidential SDS document, dated 23 February 1991, considered specific actions to be taken should Bosnia-Herzegovina move towards independence.
13	This policy was adopted by the SDS Deputies' Club, the parliamentary caucus of the party, and was made public in a document dated 10 June 1991.
15	In September 1991 the SDS implemented a policy of « regionaliz ation ».
16	This consisted in the creation of "regions" in which Serbs were the relative majority.
17	On 16 September the SDS Executive Board approved the appointment of a regionalization staff. At least three

	communities of municipalities – Eastern and Old Herzegovina, Bosnian Krajina (ARK), and Romanija – became Serb Autonomous Districts or Regions (SAOs) in September 1991.
18	More SAOs were formed between September and November 1991: Semberija-Majevisa, Northern Bosnia, and Birač.
19	The pursuit of regionalization, according to Momcilo Krajišnik, was used by the SDS in response to the HDZ's and SDA's attempts to discuss independence of Bosnia-Herzegovina. Regionalization was a leverage, in his view, to suggest to the SDS's coalition partners that the three parties should reach an overall agreement on the whole of Bosnia-Herzegovina: its status within Yugoslavia as well as its internal organization.
20	By autumn 1991, two political options for the settlement of the "Bosnian question" openly competed in the Assembly of Bosnia-Herzegovina.
21	One option, espoused by the SDA and the HDZ as well as the majority of opposition parties, envisaged sovereign and internationally recognized statehood for Bosnia-Herzegovina.
22	The other option, preferred by the SDS and some of the smaller parties, was that Bosnia-Herzegovina should remain within Yugoslavia.
23	Each side radically opposed the other's option, and the SDS was ready to have "Serb" territories secede from an independent Bosnia-Herzegovina if that was the only way for Serbs to remain in Yugoslavia.
27	On 15 October 1991 the SDS Political Council met to assess the situation.
28	During this and other meetings, the idea emerged that the SDS should form its own institutions, which would function in parallel to those of Bosnia-Herzegovina.
29	On 16 October 1991 the SDS's "Announcement to the Serbian people" stated that the SDA and HDZ had breached the constitutional order. It reiterated the SDS's support for federal institutions, including the Yugoslav People's Army ("JNA").
30	On 26 October 1991 all SDS presidents of the municipalities in the ARK as well as ARK government met with Radovan Karadžić. During this meeting an order was presented and "fully accepted" by those present.
31	The order consisted of fourteen points and called for, among other things, a "town command" amounting to a military administration; intensified mobilization of the Territorial Defence ("TO"); formation of military units; subordination of the TO to the JNA; disbanding of paramilitary units and their reassignment to the TO; take-over of public enterprises, the post office, banks, judiciary, media, and the SDK (Social Accounting Service); coordination with local directors and with the SDS in Sarajevo to ensure supplies for the population; and imposition of war taxes.
32	On 21 November 1991 the Bosnian-Serb Assembly proclaimed as part of the territory of federal Yugoslavia all those municipalities, communes, and settlements where a majority of registered citizens of Serb nationality had voted in favour of remaining in Yugoslavia.
33	Also on 21 November, the Bosnian-Serb Assembly adopted a resolution declaring full support for the JNA in defence of the common state of Yugoslavia and in conducting mobilization of the Serb people in Bosnia-Herzegovina, in order to reinforce military units.

34	The resolution added: "Serbian people and other people who wish to preserve Yugoslavia are called upon to respond to military call-ups".
35	The third act of the Assembly on 21 November 1991 was to certify the proclamation of the SAOs in Bosnia-Herzegovina.
36	Fifth, the Assembly recommended to the SDS Deputies' Club in the Bosnia-Herzegovina Assembly to foster a division of the joint mass media and the creation of separate radio and television channels, "which shall provide objective, true and just accounts of the Serbian people."
37	Around 20 December 1991, SDS members Nikola Koljević and Biljana Plavšić voiced their opposition to the Bosnia-Herzegovina Presidency's decision to apply to the Badinter Commission – established by the European Community to issue advisory opinions on legal matters relating to the Yugoslav crisis – for recognition as an independent state.
38	On 21 December 1991 the Bosnian-Serb Assembly adopted a statement pointing out that the decisions of the Bosnia-Herzegovina Presidency in favour of independence were taken unconstitutionally and contrary to the equality of the three ethnicities.
39	It also decided "to commence preparations for the establishment of the Republic of Serbian Bosnia and Herzegovina as a federal unit within Yugoslavia".
40	The deputies proceeded to establish a Ministerial Council, which was to act under the Assembly.
41	The Assembly added that the "territorial delimitation with political communities of other peoples in Bosnia-Herzegovina, as well as the solution of other mutual rights and obligations, shall be performed in a peaceful manner and with mutual agreement."
42	The implementation of the proclamation was conditional upon the recognition of independence of Bosnia-Herzegovina by the international community.
43	Nevertheless, the SDS-backed arming of the Serb population during this period shows that the Bosnian-Serb leadership was also simultaneously preparing for another course of action.
44	On 31 December 1991 the <i>Oslobođenje</i> newspaper published an interview with Alija Izetbegović, in which he called for the establishment of a sovereign and independent Bosnia-Herzegovina.
45	Following 11 January 1992, Bosnian-Serb authorities moved ahead with the organization of a separate Serb MUP.
46	During this period, the SDS started contemplating military conflict as a likelihood, and no longer as a mere possibility.
47	Thus, arming and mobilization of the population in cooperation with the JNA increased.
48	A confidential document, contextually dated January or early February 1992, from the "organs of the Republic of Serbian Bosnia-Herzegovina" to the JNA Chief of the Main Staff in Belgrade and the commanders of the 2nd and 4th Military Districts (covering Bosnia-Herzegovina and small areas of Croatia), noted that the Bosnian-Serb Assembly had decided to "institutionalize" a situation, in which the "Serbian territories" of Bosnia-Herzegovina would remain in federal Yugoslavia.
49	The document stated that this was to be done through peaceful means, but went on to note that the organs of the Bosnian-Serb Republic were soon to establish full control over these Serb territories, and requested various forms of assistance

	from the JNA in this respect.
51	The requested support included deploying JNA units to positions, from which they could protect the borders of Serb territories and preparations for providing rapid assistance in establishing control of territory by securing important areas.
54	On 11 February 1992 Momčilo Mandić attended a meeting of Serb officials from the Bosnia-Herzegovina MUP.
56	The minutes of the meeting record a resolution to create a steering committee, a "Serbian advisory board" within the Bosnia-Herzegovina MUP under the direction of Momčilo Mandić "to carry out all preparations necessary for the functioning of the Serbian MUP after the adoption of the constitution of the Serbian Republic of BiH."
57	Part of the preparation for separation included the arming of Serb police officers and Serb police stations.
58	The CSBs and SJBs reassigned stockpiled weapons belonging to the reserve police force to the new Serb MUP.
59	On or about 12 February 1992 a meeting of representatives of three SAOs was held in Doboj.
60	During the meeting, an exchange of population was discussed to achieve territorial continuity between Croatian and Bosnian Krajina, on the one side, and Semberija and Serbia proper, on the other.
61	Three days later after 14 February 1992, the Prijedor SDS municipal board noted that "it is necessary to activate the second stage of the position stated by the SDS BH Main Board. It is absolutely necessary to cover the territory and population (Serbs) by activists and representatives. Each should secure his own area."
62	On 15 February 1992 the Bosnian-Serb Assembly discussed a draft Constitution, according to which the Bosnian-Serb Republic would become part of federal Yugoslavia.
64	Biljana Plavšić and Nikola Koljević became the two acting Presidents of the Bosnian-Serb Republic.
65	After the republican referendum, and due to the fact that the Yugoslav leadership had by then clearly expressed its position to SDS leaders that a Bosnian-Serb entity would not be allowed to be part of the new Yugoslavia in the near future, negotiations persisted, but mainly turned on the nature of what an independent Bosnia-Herzegovina would be like (unitary or federal) and what the division of power among the entities would be.
66	On 11 March 1992 the Bosnian-Serb Assembly decided to continue international negotiations on a confederative arrangement for the three national groups, albeit on its own terms.
67	In response to an invitation from José Cutileiro, international mediator, to continue the multi-party negotiations, the Bosnian-Serb Assembly unanimously rejected a draft of constitutional arrangements in Bosnia-Herzegovina.
68	On 24 March 1992 the Bosnian-Serb Assembly elected Branko Đerić as Prime Minister and he was sworn in on the same day.
69	The Bosnian-Serb Assembly proceeded to instruct the new Government to prepare, by 27 March, an operational plan for assuming power, that is, for establishing power in the Serbian Republic of Bosnia and Herzegovina, and in particular in the field of internal affairs, national defence and money transactions ... in all municipalities where we already have Serbian authorities, and in those municipalities where we have only recently established Serbian municipalities.
70	On 24 March 1992 the Bosnian-Serb Assembly also issued a decision verifying the proclamation of various Serb municipalities.

72	The formal withdrawal of the JNA from Bosnia-Herzegovina occurred on 19 and 20 May 1992, which is also the period when the transformation of what remained of the JNA in the territory of Bosnia-Herzegovina into the VRS was completed.
73	In June 1992 the VRS comprised 177,341 personnel divided into five Corps, as well as some units not attached to any specific Corps, all under the command of an Army Main Staff headed by Ratko Mladić.
74	The five Corps were the 1st Krajina Corps (formerly the JNA 5th Corps, headed by Momir Talić from 17 March 1992); the 2nd Krajina Corps (formerly the JNA 10th Corps); the East Bosnia Corps (formerly the JNA 17th Corps); the Sarajevo-Romanija Corps (formerly the JNA 4th Corps); and the Herzegovina Corps (formerly part of the JNA 9th Corps).
75	The ethnic make up of the armed forces changed significantly in the first half of 1992. Already in early 1992, and partly due to the refusal of non-Serbs to mobilize for the war in Croatia, the JNA units in Bosnia-Herzegovina were progressively becoming all-Serb units.
76	By April 1992, more than 90 per cent of all JNA officers were Serbs or Montenegrins and the JNA was openly favouring Serbs in its personnel policy. (<i>See also</i> Decision, Fact No.157, 186.)
78	The political leadership often exerted influence on the military leaders to remove the remaining non-Serbs from the armed forces. There was also pressure from within the JNA on non-Serb officers to resign which was expressed in the form of threats coming from Serb soldiers and reassignments to menial jobs.
79	The fact that a few non-Serbs did remain appears to be due to the circumstance that, after 16 July 1992, in view of lack of qualified personnel, non-Serbs who proved themselves in combat and declared that they wanted to become citizens of the Bosnian-Serb Republic were allowed to remain in the VRS.
80	The JNA was not the only armed force in the Bosnian-Serb Republic whose composition changed in such dramatic fashion. The TO was also struggling to fill up its ranks following the departure of non-Serbs.
81	In a letter dated 27 April 1992 Minister of Defence Subotić requested reinforcements from the JNA's 2nd Military District, pursuant to an order received by Prime Minister Đerić. The letter provided as follows: In view of the essential need to bring the TO in the Serbian Republic of Bosnia and Herzegovina up to the basic level of manpower, in accordance with an agreement reached and a promise made in Belgrade, we request your urgent assistance in providing us with the following officers.
84	According to a VRS Main Staff intelligence report on paramilitary formations dated 28 July 1992 report, the paramilitary groups operating in the Bosnian-Serb Republic at that time (about 60 groups, totalling 4,000 to 5,000 men) were mostly formed of individuals of low morals, many of them convicted criminals, whose interest was looting.
85	In Zvornik, in the period April to May 1992, the Yellow Wasps, a paramilitary unit consisting of around 100 heavily armed men, cooperated closely with the TO and was even issued arms by the TO's logistics staff.
86	86. On 11 July 1992, the leader of the Yellow Wasps, Vojin (Žučo) Vučković, went to the Pale SJB to collect arms and ammunition. While in Pale, Vučković met with Plavšić. He also met with the Minister of Defence Subotić.

87	At this meeting, Subotić explained to Vučković that whoever took orders from VRS officers was considered to be a full member of the VRS, irrespective of whether that person was a reservist, a Serbian volunteer, or a member of a paramilitary.
88	Local SDS boards, crisis staffs, and regional (SAO) governments often invited and assisted paramilitary groups.
89	This occurred, for example, with the Yellow Wasps, the Red Berets, Mauzer's men, and Arkan's men, operating in north-eastern Bosnia-Herzegovina (Bijeljina, Brčko, and Zvornik).
90	On 28 July 1992, and as a result of the VRS Main Staff Intelligence report mentioned earlier, Mladić issued an order regarding the disarmament of paramilitary formations.
91	The order noted that paramilitaries engaged in looting were operating in all territories under the VRS. It ordered all paramilitary formations with "honourable" intentions to place themselves under the command of the VRS.
92	No individual or group responsible for crimes was to be incorporated into the army, and any member of a paramilitary unit who refused to submit to the unified command of the VRS was to be disarmed and arrested.
93	The report, while aimed at bringing law back to areas now under Bosnian-Serb control, also shows that the VRS was more concerned with looting and the breakdown of order than with the widespread crimes committed by the paramilitaries.
94	The report also does not account for the fact that incorporation of paramilitaries had already been the rule even <i>before</i> July 1992 and that crimes were committed, and were continuing to be committed, by the paramilitaries under the auspices of the Bosnian-Serb armed forces.
95	From very early on following its creation, the VRS was aware of the serious problems posed by the paramilitary formations in various municipalities, as well as their unruly behaviour.
98	The Bosnian-Serb Law on Internal Affairs was enacted by the Bosnian-Serb Assembly on 28 February 1992, on the same day that the Assembly adopted the Constitution. The law was published in the <i>Official Gazette</i> on 23 March 1992. The new law made reference to the MUP's ethnic composition and invited "employees of Serbian nationality and other employees who so desire" to take employment in the MUP.
99	The Bosnian-Serb MUP was to handle security affairs on behalf of the Government.
100	The 1992 law provided for five Security Services Centres (CSBs) in the Bosnian-Serb Republic: Banja Luka for the territory of the ARK; Trebinje for the SAO of Herzegovina; Doboj for the SAO of Northern Bosnia; Sarajevo for the SAO of Romanija-Birač; and Bijeljina for the SAO of Semberija.
101	Each of the five CSBs was in charge of a number of Public Security Stations (SJBs) found in municipalities covered by that particular CSB
102	The Bosnian-Serb MUP was one of the first institutions of the nascent Republic to start functioning effectively. At its session of 11 March 1992, the Bosnian-Serb Assembly unanimously called for the implementation of the new Law on Internal Affairs by the Ministerial Council.
103	On 24 March 1992, Mićo Stanišić was appointed Minister of Internal Affairs by the Bosnian-Serb Assembly.
104	The Law on Internal Affairs, published in the <i>Official Gazette</i> on 23 March 1992 was to enter into force on 31 March

	1992.
105	From that date, all CSBs and SJBs of Bosnia-Herzegovina throughout the territory of the Bosnian-Serb Republic were to stop functioning.
106	On 24 March 1992, the Bosnian-Serb Assembly instructed the Ministerial Council to prepare an operational plan for “assuming power, that is for establishing power and rendering operational the authorities in the territory of the [the Bosnian-Serb Republic] and in particular in the field of internal affairs” and to submit it to the Assembly on 27 March.
107	At the end of June 1992, the MUP noted the presence of special police units at Sokolac and Pale. By September 1992 the Special Brigade of the police had five detachments, one based at each of the five CSBs. Some SJBs, such as those in Ilidža and Novo Sarajevo, also had their own special police units. (<i>See also</i> Decision, Fact No.138.)
108	On 16 April 1992, the Minister of Defence, Bogdan Subotić, declared that a state of imminent threat of war existed in the Bosnian-Serb Republic, and ordered full mobilization. Subotić’s order allowed the authorities to take “all necessary measures appropriate to the situation.”
109	The Bosnian-Serb MUP cooperated closely with the VRS. On 15 May 1992, Stanišić ordered that all employees of the MUP organize into “war units”. (<i>See also</i> Decision, Fact No.142.)
110	This order formalized the cooperation by explaining how MUP units should cooperate with the VRS. Stanišić authorized the CSB heads to implement these arrangements.
111	The SDS crisis staffs in the Bosnian-Serb Republic were all fully set up and operational by April or May 1992.
112	Once they became municipal organs they functioned as the municipal authority when municipal assemblies could not operate due to the state of emergency, replacing both the municipal assembly and the executive committee.
113	As the leading governing body in the municipality, the crisis staffs exercised control over civilian, military, and paramilitary affairs.
114	In addition, throughout the period of their existence, the crisis staffs functioned as the coordinating body between municipal authorities, the SDS, and the central republican level (both state and SDS) on the one side, and the military, the police, and other forces on the ground in the municipalities, on the other.
115	From 1 April to 15 June 1992, municipal and regional SDS organs played a major role in organizing TO units. These units, sometimes working together with JNA, then proceeded to secure Serb municipalities, especially in the ARK.
116	The relationship between crisis staffs and the various military forces present in the municipalities (JNA units, the TO, paramilitary units, and the VRS), differed from municipality to municipality.
117	At a minimum, however, the relationship involved a coordinating and supporting role for the crisis staffs. In at least one municipality, Zvornik, the local JNA commander was listed as member of the crisis staff.
118	Generally there was a progression from SDS-formed military units to infantry units under the command of the crisis staffs, to full VRS control of military units by mid-June 1992.
119	Thus, the crisis staffs filled the gap between the withdrawal, disintegration, or general failure of command structures within the JNA, and the establishment of a VRS with effective control of the armed forces on the ground.

120	At the time when the SDS crisis staffs were being formed, the JNA was the dominant military structure in the municipalities of Bosnia-Herzegovina.
121	The Zvornik SDS municipal board elected a crisis staff for the municipality, consisting of leading SDS persons from Zvornik, as well as the municipal command staff of the JNA.
123	The contacts between municipal crisis staffs and paramilitary units varied from municipality to municipality.
126	With the establishment of the VRS, the central role envisioned for the crisis staffs when it came to defence became less pertinent, as the aim was then to place all armed forces under the unified command of the Main Staff of the VRS.
127	Coordination and contacts between the crisis staffs and the armed forces continued, however.
128	Indeed, the relationship between the two became closer and more institutionalized at this point. One example of this is the fact that some VRS officers were members of the crisis staffs, or participated in the meetings of these organs.
129	On 21 May 1992, the Bosnian-Serb Presidency called for general mobilization of able-bodied citizens of the Bosnian-Serb Republic. In addition, in the months that followed, and despite some delay, many Serb TO units were renamed "light brigades" of the VRS.
130	The municipality of Bijeljina is located in the north-east of Bosnia-Herzegovina. Approximately two-thirds of its municipal boundaries form part of the border between Bosnia-Herzegovina and Serbia.
131	Bijeljina is the closest municipality in Bosnia-Herzegovina to Belgrade. One of the roads connecting Sarajevo and Belgrade crosses the municipality.
132	Ljubiša (Mauzer) Savić was a leading SDS figure in Bijeljina and commander of the Serb (National) Guard paramilitary unit.
133	On 15 June 1992, Mauzer stated that the presidency of SAO Semberija-Majeveica had decided to replace Muslims in managerial positions in Bijeljina, and should "the genocide against the Serbian people" in Bosnia-Herzegovina continue, all Muslims would be fired from their jobs and expelled from the territory.
134	Mauzer also stated that the 2,500 Muslims aged between 18 and 35 who had fled Bijeljina in the aftermath of the Serb take-over would lose their jobs, and their apartments would be seized and sealed, and he advised them not to return.
135	From at least June 1992 until 30 December 1992, Serbs detained Muslims and Croats in the Batković camp in Bijeljina municipality.
136	The detainees originated from a large number of different municipalities, including Brčko, Ključ, Lopare, Rogatica, Sokolac, Ugljevik, Vlasenica, and Zvornik. Many had been transferred from other detention facilities, particularly Sušica camp in Vlasenica and Manjača camp in Banja Luka.
137	Already in February 1992, the JNA began preparations for military operations in Brčko. In February or March, the JNA distributed weapons to Serb villagers and erected checkpoints on major roads around Brčko town.
138	On 1 March 1992, Serbs, including Serb employees of the Bosnia Herzegovina MUP such as the then assistant Minister of Interior, Momčilo Mandić, and the head of the Novo Sarajevo SJB, Milenko Jovanović, and SDS officials such as Rajko Dukić, Jovan

	Tintor, and Ratko Adžić, began to organize barricades at strategic points in Sarajevo and surrounding municipalities.
139	During the following months, Serb police and Serb soldiers in JNA uniforms continued to restrict the movement of non-Serbs.
140	In the beginning of March 1992, a Serb SJB was created after the Muslim police officers were dismissed from their positions.
141	By early May 1992, Serb forces controlled Ilidža.
142	In March 1992, Serb flags were hoisted on the Ilijaš municipal building and on the police station and SDA and HDZ representatives stopped attending the municipal assembly meetings. Around the same time, the SJB split along ethnic lines. The Serb part called itself the "Serb police" of SAO Romanija and came under the control of the Serb crisis staff.
143	Muslim and Croat police officers, as well as Muslims and Croats employed at schools, banks, and hospitals, were dismissed.
146	From June 1992 onwards, soldiers, assigned to sniper duty, took position at the upper floors of four multi-storey buildings in the commune of Grbavica.
149	Sometime in August 1992, a representative of the Ministry of Justice of the Bosnian-Serb Republic visited the detainees and informed them that, because of the poor conditions in detention, they would be moved elsewhere.
150	Around 17 August, the detainees were indeed transferred, to another detention centre in Semizovac, Vogošća municipality.
151	On 14 June 1992, Žuti and some other guards took about 52 detainees by bus to Sokolina, near Srednje, in Ilijaš municipality. There the guards and the driver got off the bus and attacked it with grenades and automatic weapons. A total of 47 detainees were killed during this incident.
152	Since the beginning of June 1992, Serb police also detained men from the village of Lješevno, in Ilijaš municipality, in Planjo's house.
153	On 17 August, a group of more than 80 Muslim men who had been in detention in a school Podlugovi, in Ilijaš municipality, were transferred by police officers in camouflage uniform to Planjo's house.
154	During 1992, Serb forces destroyed 21 Muslim religious monuments, including the mosque in Srednje.
155	Due to repressive measures undertaken against them, many Muslims fled and moved out of the municipality of Ilidža.
157	In early June 1992, many non-Serbs, in order to escape harassment or arrest, paid large sums of money to the Serb authorities to allow them to leave the municipality. Serb forces expelled Muslims on a large scale from the commune of Grbavica.
158	Serb forces expelled Muslims on a large scale from the commune of Grbavica on 30 September 1992.
159	During the night of the 7 April, the SDA also erected barricades, on the bridge linking Zvornik to Serbia. When shooting broke out on 8 April 1992, the barricades were temporarily taken down, allowing hundreds of Muslims and Serbs to leave the municipality.
162	By late April 1992, Serb authorities had taken control of the Muslim village of Đulići in Zvornik municipality, and the

	villagers surrendered their weapons to Serb forces.
163	In order to remain employed, Muslims had to sign a pledge of loyalty to the Serb authorities.
165	By the end of May 1992, a large number of Muslim villagers gathered in the Muslim-majority village of Kozluk fearing paramilitaries and Serb forces who harassed them with demands to surrender arms.
166	After the take-over of Zvornik town, paramilitary groups and local Serbs had set up barricades in nearby villages and isolated Kozluk.
167	On the night of 20 June, the Serb TO under the command of Marko Pavlović attacked Kozluk.
168	Many civilians were killed during the attack, and Zvornik town was taken over by the Serb forces within a day. The Serbian flag was hoisted on top of the main town mosque.
174	On 10 April 1992, the provisional government of Zvornik instructed all persons with tenancy rights in socially owned apartments, as well as all owners of immovable property including private houses and businesses, to return and lay claim to those properties before 15 May, or face loss of title to the municipality.
175	On 5 May 1992, the provisional government established a "real estate exchange agency" authorized to execute exchanges of real estate between residents of Zvornik municipality and other municipalities.
176	In early June 1992, Serbs were seen moving into the villages in Zvornik municipality where Muslims had been evicted. Some of them had been ordered to do so by the provisional government of the Serb municipality of Zvornik.
177	According to the 1991 census in Bosnia-Herzegovina, the ethnic composition of Nevesinje municipality was 10,711 (74 per cent) Serbs, 3,313 (23 per cent) Muslims, 210 (1 per cent) Croats, 123 Yugoslavs, and 91 persons of other or unknown ethnicity.
179	On 13 February 1992 Momcilo Mandić directed the CSB chiefs in Banja Luka, Doboj, and Goražde, the SJB heads in Nevesinje, Sokolac, and Bijeljina, and the chief of the SUP in Sarajevo to prepare for the Serb MUP. Part of the preparation for separation included the arming of Serb police officers and Serb police stations. The CSBs and SJBs reassigned stockpiled weapons belonging to the reserve police force to the new Serb MUP.
180	On 16 June 1992, soldiers in camouflage uniform led by Krsto Savić, the commissioner for SAO Eastern Herzegovina, entered the house of Witness Trebović, a Muslim resident of Nevesinje municipality. They claimed to be looking for weapons and radio equipment. During this operation, Savić shot the witness' husband, Redžep Trebović, in the leg. He later died from this injury and the witness' house was burnt down.
181	On 22 June 1992, Serb forces shelled Presjeka village in Nevesinje municipality.
182	A group of about 150 to 200 other Muslim civilians from Presjeka and Kljuna fled to the Velež mountains.
187	A total of 27 bodies of men from this group were exhumed at Teleća Lastva, to where they had been moved.
188	On the order of Major Zdravko Kandić of the 5th JNA battalion, the women and children, including babies, were taken to the basement of a heating plant in Kilavci, in Nevesinje municipality.
189	The basement of the heating plant was bare and had no lavatory. No food or water was given to the group, not even for the

	babies, and the mothers had to give urine to the babies to avoid dehydration.
190	After four days, five detained women were separated from their children and taken to Boračko Jezero lake resort, in Konjic municipality.
191	The remaining women and children in the basement of the heating plant in Kilavci were killed and placed in a pit at Lipovača by the Serb military.
192	During an official exhumation in 1999, the bodily remains of adult persons and seven children were found at Lipovača.