

THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA

Case No. IT-08-91-T

IN TRIAL CHAMBER II

Before: Judge **Burton Hall, Presiding**
Judge **Guy Delvoie**
Judge **Frederik Harhoff**

Registrar: Mr. John Hocking

Date Filed: **12 July 2012**

THE PROSECUTOR

V.

MİĆO STANIŠIĆ
STOJAN ŽUPLJANIN

PUBLIC

ŽUPLJANIN DEFENCE FINAL TRIAL BRIEF (REDACTED PUBLIC VERSION)

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BACKGROUND AND CONTEXT TO THE INDICTMENT

Stojan Zupljanin's background

1. Stojan Zupljanin was born on 22 September 1951 as an only child to a poor rural family, in the village of Maslovare, within the municipality of Kotor Varos. With ambitions to obtain a higher education, Zupljanin moved to Banja Luka, where he graduated from high school; and then to Sarajevo where he was obtained his law degree in 1975.
2. Following graduation, Zupljanin joined the Municipal Secretariat of Internal Affairs in Banja Luka although from 1976 to 1977 he carried out his compulsory military service in the School for Reserve Officers in Bileca. Zupljanin then returned to the Secretariat of Internal Affairs in Banja Luka and in 1978 was appointed Chief of the Mejdan police station. He held this position for three years before being transferred to the role of Chief of the Centar police station which he carried out for four years.
3. In 1985, Zupljanin was promoted to Chief of the Department for the Prevention of General Crime in the municipal SUP in Banja Luka. He was a success in this role and as a result Alija Delimustafic, the former Minister of Interior of Bosnia and Herzegovina, appointed him Chief of the Banja Luka Security Services Centre ("CSB") on 6 May 1991.¹

Broader developments in the area of Bosanska Krajina during 1991-1992

4. When considering the evidence in this case relating to the individual criminal responsibility of Zupljanin for the crimes alleged in the Indictment, the Defence submit that the wider context of the events leading to the break-up of the former Yugoslavia and the tragic events which ensued in Bosnia is of some relevance. This is because, these events had an impact on the legal and jurisdictional framework in which Zupljanin was empowered to act and thus

¹ P2043, Decision on appointment of Stojan ZUPLJANIN as Head of Security Services Center.

must be taken into account when assessing Zupljanin's performance of his duties and the actions that he took to prevent and punish any crimes taking place during the Indictment period.

5. Indeed, Zupljanin's police force was operating in an environment of considerable strain due to the chaos resulting from the influx of more than 50,000 refugees from Croatia and a further 50,000 refugees from Sarajevo who had fled to the region covered by the CSB Banja Luka.² This massive wave of refugees and the outbreak of war in April 1992 led to a dramatic surge in crime across the Krajina. What followed was a situation of widespread but sporadic crimes committed by all ethnic groups and a corollative rise in ethnic tensions. This chaotic situation led to the entire Krajina region effectively falling under the authority of the army.
6. It is against this backdrop which the Trial Chamber must assess the performance of Stojan Zupljanin as Chief of the CSB Banja Luka, taking into account other factors such as the depletion of police forces through the widespread practice of re-subordination by the army, as well as the influence of local Crisis Staffs, a non-existent communications network and a plethora of other problems that Zupljanin faced during this period of time.³ These issues are discussed in depth in the chapters on Indictment paragraphs 12(b) and 12(d).
7. In addition to the aforementioned circumstances engulfing Banja Luka at the time, the Yugoslavian National Army (JNA) was, at the same time, withdrawing from the territory of Croatia following the war there and, like the refugees, their first destination was the area of Bosanska Krajina and the city of Banja Luka.⁴ As at this point the JNA was fragmenting due to the failure of Serbs and Croats to adhere to the law and answer the call for mobilisation, many soldiers joined groups of illegal armed extremists to form paramilitary units whose

² [REDACTED];P624,Report on the Work of the Banja Luka CSB from 04-Apr-92 to 31-Dec-92, [REDACTED];ST-182,RADULOVIC,T.11039,(31/05/10),(testified about 600'000 refugees coming to the Krajina region).

³ P624, [[REDACTED]];SZ-009,SAJINOVIC,T.25130-25131,(17/10/11).

⁴ SZ-009, SAJINOVIC,T.25130,(17/10/11); [REDACTED].

only purpose was to undermine the constitutional order and security and to use the chaos brought by the wartime context for their own personal gain.⁵

8. The CSB Banja Luka neither had the sufficient numbers of trained police officers and equipment to deal with this surge in crime, nor was it supported by a civil court system that could cope with the huge amount of criminal cases reported. Indeed, jurisdictional issues in respect of civil and military courts were another problem as the latter were not operational until September 1992. As the vast majority of crimes during the war were committed by soldiers, Zupljanin had the added dilemma of not having the requisite authority or jurisdiction to arrest and detain soldiers and paramilitaries who committed crimes.
9. The Trial Chamber must also take into consideration that during this period, only 1,056 active-duty and 5,890 reserve police officers were employed by the CSB Banja Luka across the ARK region (not only the charged municipalities).⁶ When compared to the more than 40,000⁷ soldiers of the 1st Krajina Corp in May of 1992 (a figure which grew to more than 108,000 by the end of the year),⁸ the picture that forms is one in which Banja Luka and the ARK region were controlled almost entirely by the army. The influence of the army over daily police functions cannot be overstated- according to CSB Banja Luka's 1992 report⁹ over 80 percent of the entire police force of the CSB Banja Luka (and its subordinate SJBs) were re-subordinated to the army and engaged in combat activities on the frontline during the Indictment period.¹⁰ This statistic demonstrates just how depleted the police forces were and how impossible it must have been for Zupljanin to properly carry out his professional duties.
10. Zupljanin's work was also hampered by a chronic lack of electricity and fuel (for generators), the result of which was a non-functioning communications system and inadequate transport. The resultant lacunae in effective control between the Banja Luka CSB and the local SJBs meant that political influence from local Crisis Staffs (often in tandem with the army)

⁵ SZ-009, SAJINOVIC, T.25130-25131, (17/10/11).

⁶ P624, p.4.

⁷ P1745.07.

⁸ 2D137.

⁹ P624, pp.2,4.

¹⁰ P624; MS-002, MACAR, T.23094, (11/07/11).

dictated the activities of local SJBs and the disobedience of several SJB Chiefs to Zupljanin's orders meant that Zupljanin was unable to exercise effective control over those police officers in local SJBs who had not been re-subordinated and who were his *de jure* subordinates.¹¹

11. It will be recalled that Zupljanin brought all these difficulties (and more) to the attention of his superiors in his address at the expanded RS MUP collegium on 11 July 1992. As a result of his complaints during that meeting many of the issues faced by the police (including the unlawful activities of paramilitaries and special police, as well as the poor conditions in detention facilities) were addressed. Such actions on the part of Zupljanin (one of the many steps which he took to prevent and punish crimes), coupled with the raft of glowing endorsements as to his good character (including many from non-Serb Prosecution witnesses), demonstrate his personal integrity, professional conduct and non-discriminatory attitude toward non-Serbs.

12. All of the features outlined above are highly relevant to the Trial Chamber's deliberations on the personal culpability of Zupljanin for the crimes charged in the Indictment. The Defence submit that a detailed examination of the evidence in this case will show that the Prosecution have not established beyond reasonable doubt that Zupljanin committed the crimes alleged in the Indictment and he should therefore be acquitted on all counts.

¹¹ P624,pp.14-16.

ZUPLJANIN SUBMISSIONS ON MODES OF LIABILITY

The various modes of liability with which Zupljanin is charged

13. To observe that the modes of liability with which Zupljanin is alleged to be individually responsible for the crimes charged in the Indictment are multifarious is something of an understatement. Under article 7(1) of the ICTY Statute, he is alleged to have “planned, instigated, ordered, committed [by participating in a JCE as a co-perpetrator], or in whose planning, preparation or execution he aided and abetted” persecutions (count 1), extermination and murder (counts 2 to 4), torture, cruel treatment and inhumane acts (counts 5 to 8), deportation and inhumane acts [forcible transfer] (counts 9 to 10).¹² Likewise, under article 7(3) of the Statute, Zupljanin is alleged to be individually criminally responsible for these same crimes by virtue of his position of superior authority as the Chief of the CSB Banja Luka. The Defence submit that this over-burdening of the indictment with excessive modes of liability is symptomatic of a case that rests on weak foundations. The paucity of evidence as to Zupljanin’s involvement in any of the crimes with which he is charged cannot be overcome by the Prosecution’s attempt to cast a thick fog over the exact means of his alleged perpetration of such crimes.

Article 7(1): 'Commission' by means of participation in a joint criminal enterprise

Introduction

14. The Defence respectfully submit that Zupljanin's alleged participation in the JCE is: (a) not established beyond reasonable doubt; and (b) in the alternative, to the extent that any acts by Zupljanin are found to be participatory acts for the purposes of JCE, such acts are insufficient to amount to a significant contribution to the common criminal purpose. It is also maintained that the Prosecution have failed to prove that Zupljanin possessed the requisite *mens rea* for both the basic and extended forms of the JCE.

¹² Indictment, paras.5-6.

Zupljanin's actus reus and mens rea for the alleged JCE have not been proven

Actus Reus

15. In paragraph 12 of the Indictment, the Prosecution allege seven means by which Zupljanin is said to have participated in the JCE. The thrust of the Defence submissions (as set out in the chapters on Indictment paragraphs 12(a) to (g) in this brief) in relation to each of these acts of alleged participation are as follows:

- (a) Stojan Zupljanin was not involved in the formation of Serb bodies and forces that participated in the takeovers and crimes set out in Indictment paragraph 12(a). These bodies were formed either by political leaders, the army or rogue groups of soldiers returning from the front in Croatia. Furthermore, Zupljanin's brief membership of the ARK Crisis Staff was in an *ex officio* capacity by virtue of his position. Importantly, Zupljanin expressly forbade his police chiefs from implementing any of its orders that were in conflict with the law.¹³ The army planned, co-ordinated and executed the takeovers of the ARK municipalities and any involvement of the police was in a re-subordinated capacity.
- (b) Stojan Zupljanin did not act in co-ordination with the army and local Crisis Staffs and was not part of, nor could he have been aware of, any alleged JCE. The enormous adverse influence of local Crisis Staffs (often in tandem with the army) and a breakdown in communications infrastructure meant that Zupljanin was unable to exercise effective control over local police forces. Alternatively, he had no authority to do so as the majority of police forces were re-subordinated by the army.
- (c) Stojan Zupljanin did not have effective control over the CSB Banja Luka Special Police Unit. This unit was established for military purposes as a result of negotiations between the SOS (Serbian Defence Force) and the army. Zupljanin had no say in the matter. Furthermore, the unit was at all times accommodated,

¹³ 2D25,30-Jul-92,p.3.

equipped and, most importantly, commanded by military officers. At no time did Zupljanin have any authority or control over the actions of any of its members, including members who were police officers and as such were re-subordinated under military command.

- (d) Stojan Zupljanin did not participate in or order his police forces to participate in joint operations with the VRS in furtherance of an alleged JCE. Any involvement of the police in joint operations with the army was in a re-subordinated capacity. Zupljanin was opposed to this and specifically addressed this at the key RS MUP meeting on 11 July 1992.¹⁴ Zupljanin wanted a multi-ethnic police force and he never discriminated (personally or professionally) against non-Serbs.¹⁵
- (e) Zupljanin had no knowledge of the conditions and treatment of prisoner-of-war detention camps. After he was informed of their existence by prosecution witness Radulovic, he verified the information and addressed it directly to the RS MUP at the meeting on 11 July 1992. He later formed a Commission to investigate the conditions and treatment of detainees at detention camps in various municipalities. As a result, conditions improved dramatically and several were closed down.
- (f) For the purposes of this brief, the chapter on Indictment paragraph 12(f) is dealt with in the context of 12(f/g).
- (g) The evidence clearly demonstrates that when Zupljanin was made aware of crimes taking place (either by police officers or by other persons) he took prompt and effective action. Where he was unable to take action, it was because he either did not know of the crimes, was unable to act due to military jurisdiction or a lack of effective control. The Defence submit that, given the wartime context and the myriad of obstacles this presented for the Zupljanin, it is apparent that Stojan

¹⁴ P160,11-Jul-92.

¹⁵ P355,(Item 22);2D25,(Item 11).

Zupljanin did everything he possibly could to fulfil his professional duties fairly and without ethnic discrimination (See also section on “Zupljanin’s character” in the chapter on Roles and Responsibilities).

16. This summary indicates that Zupljanin’s actions in 1992 within the ARK municipalities simply do not amount to a sufficiently ‘significant’ or ‘real’ contribution¹⁶ to the execution of one or more of the underlying offences so as to establish Zupljanin’s liability pursuant to the doctrine of JCE.

Mens Rea for JCE generally

17. For Zupljanin to be liable for the crimes alleged in the Indictment pursuant to JCE, the Prosecution must establish beyond reasonable doubt¹⁷ that he shared a common design with one or more of the other members of the alleged JCE to permanently remove Bosnian Muslims, Bosnian Croats and other non-Serbs from the territory of the planned Serbian state by means which included the commission of the crimes alleged in Counts 1-10.¹⁸ The Defence submit in relation to this requirement that the Prosecution have failed to establish any such common plan. In particular, contrary to paragraph 11 of the Indictment, they have not proved that members of the JCE wished to secure takeovers of the municipalities in the targeted territory in order to effect the forcible removal of the non-Serb population. As a result, there is plainly no basis upon which the Trial Chamber can draw an inference that the common criminal plan as alleged actually existed in fact.¹⁹

Mens Rea – JCE I

18. To incur individual criminal responsibility under the basic form of JCE (JCE I), Zupljanin must be found to have shared with the other JCE members the intent to commit counts 1 to 10 of the Indictment.²⁰ The Defence also recall the Appeals Chamber’s guidance in this

¹⁶ *Kvocka*, AJ, para.193.

¹⁷ *Furundzija*, AJ, para.120.

¹⁸ Indictment, para.7.

¹⁹ *Tadic*, AJ, para.227.

²⁰ *Vasilijevic*, AJ, para.101; *Stakic*, AJ, para.65; *Kvocka*, AJ, para.82.

regard that “a Chamber can only find that the accused has the requisite intent if this is the only reasonable inference on the evidence”.²¹

19. Contrary to paragraph 13 of the Indictment, the Defence suggest that the assertion that Zupljanin possessed the *mens rea* for these horrendous crimes is absurd. There is plainly no evidence to prove that Zupljanin possessed the requisite intent to remove Bosnian Muslims, Bosnian Croats and other non-Serbs from the “planned Serbian state”.²² In fact, all of the evidence adduced in this case illustrates that Zupljanin consistently acted in a non-discriminatory way towards non-Serbs and advocated for their representation within the MUP and the political leadership²³. This commitment to non-discrimination actually led to Zupljanin being alienated by other MUP and army officials and even formed the basis of plans to remove him from his post.²⁴ Furthermore, there is a plethora of evidence to suggest that Zupljanin did his best to act professionally and with integrity and to ensure equal application of the law and equal treatment for all, regardless of religious or ethnic background.²⁵ Indeed, Zupljanin’s proper conduct during the war was noted by Defence, Prosecution and Trial Chamber witnesses.²⁶

Mens Rea – JCE III

20. To incur individual criminal responsibility for crimes under the extended form of JCE (JCE III), Zupljanin must be found to have: (a) known that additional crimes were the natural and foreseeable consequence of the common criminal purpose and (b) willingly taken the risk that such crime/s might be perpetrated by a member of the JCE by continuing to participate in the enterprise.²⁷ The additional crimes with which Zupljanin is charged under JCE III are those contained in counts 1 to 8 of the Indictment.

²¹ *Brdjanin*, AJ, para.429.

²² *Stakic*, AJ, para.278; *Krstic*, TJ, para.519-532.

²³ See: “Zupljanin was renowned both as a professional police officer and a ‘good person’”, Chapter on Roles and Responsibilities.

²⁴ ST-182, RADULOVIC, T.11160-11162, (01/06/10), 2D91.

²⁵ P355; [REDACTED]; ST-123, TUTUS, T.7906-7909, (22/03/10)-1D137; 2D25, (Item 11); 2D153, (shows Muslim and Croat employees); [REDACTED]; [REDACTED].

²⁶ [REDACTED]; ST-067, MERDZANIC, T.18387, (09/02/10); [REDACTED].

²⁷ *Kvocka*, AJ, para.83; *Stakic*, AJ, para.65.

21. The Defence submit that in respect of JCE III and its applicability to Counts 1 to 8 that Zupljanin was not aware that the crimes of persecution, extermination, murder, torture, cruel treatment and inhumane acts as alleged in paragraphs 25, 27, 28, 30, 31, 33, 35 and 36 of the Indictment were the natural and foreseeable consequence of the alleged JCE to permanently remove non-Serb populations from the ARK Municipalities. Such crimes are of a wholly different nature to acts of forcible transfer or deportation. They were either completely outside the JCE with which he was charged or formed part of an expanded JCE to commit acts of revenge against Bosnian Muslims of which Zupljanin formed no part.
22. Moreover, as outlined below in the sections of this final brief dealing with Zupljanin's 'Knowledge' and his alleged participatory acts forming part of the JCE, Zupljanin could not have foreseen such crimes taking place and certainly did not willingly continue to participate in the JCE with knowledge of their likelihood. At all times during the Indictment period, Zupljanin worked tirelessly to try to prevent such crimes occurring despite the difficult circumstances prevailing in the ARK in 1992.²⁸ At that time, the work of the Banja Luka CSB had increased exponentially due to the chaos of war and the number of police officers reporting to Zupljanin had commensurately dramatically reduced as a result of the majority of police officers being re-subordinated to the army.²⁹ Where regrettable criminal incidents like these did take place and where Zupljanin was informed of their commission (in spite of the ill-functioning communications infrastructure in place at the time,³⁰ he immediately commenced an investigation and took all steps within his power (and occasionally steps which were beyond his legal powers) to ensure that the perpetrators were punished and that

²⁸For example: 1D198;2D115;2D25;1D82;P596;P1002.

²⁹ P624;MS-002,MACAR,T.23094,(11/07/11); See "Re-subordination applied under different forms and contexts",chapter on Indictment paragraph 12(d);"Zupljanin presented his concerns publicly on a wide range of matters at the meeting with the RS MUP leadership in Belgrade on 11 July 1992",chapter on Indictment paragraph 12(f/g).

³⁰ ST-169,DELIC,T.1589,1590,(19/10/09);ST-181,DJEKANOVIC,T.1426-1427,1013(14/10/09);ST-167,RALJIC,T.12428,12451-12452(30/06/10);ST-212,RODIC,T.14481(13/09/10);ST-126,KEZUNOVIC,T.11690-11691(12/06/10);2D52;P595;P621;P624(numbers-of-transmitted-dispatches);ST-166,RAKOVIC,T.6872-6876,(25/02/10);"Breakdown in communications across Krajina",chapters on Indictment paragraph 12(f/g) –and Knowledge.

such acts would not re-occur.³¹ Zupljanin's actions in ensuring investigations of all crimes within his jurisdiction regardless of the ethnicity or religion of the victims and perpetrators is simply not consistent with his continued participation in a JCE to permanently remove non-Serbs from the ARK municipalities even when it was foreseeable that crimes of persecution, extermination, murder, torture, cruel treatment and inhumane acts would result from that JCE.

Conclusion as to JCE

23. The Prosecution has therefore failed to prove beyond a reasonable doubt that Zupljanin, acting individually or in concert with others, was a member of the alleged JCE to permanently remove Bosnian Muslims, Bosnian Croats and other non-Serbs from the ARK Municipalities. The Prosecution has failed to establish either the *actus reus* or the *mens rea* for the crimes charged under the alleged JCE and accordingly, he must be acquitted of all counts of the Indictment under this mode of liability. As Cassese emphasized in his extra-judicial writings on JCE:

“the latitude that the notion leaves to judges should induce them to proceed gingerly and with utmost prudence when appraising the evidence and establishing the existence of both *actus reus* and *mens rea*. In case of doubt, they should arguably opt for a not guilty determination.”³²

Article 7(1): Other modes of liability

'Planning'

24. Planning involves the formulation of a ‘method of design or action, procedure, or arrangement for the accomplishment of a particular crime’, by one or more persons.³³ Individual responsibility under this mode of liability accrues only when the level of participation in the planning has been substantial – for example, formulating the plan, or

³¹ST-182,Radulovic,T.11118,(01/06/10); 1D236;2D35;P1002;2D69;1D198;1D201;1D200;P1363;2D57;2D58;2D59;2D60;1D206;1D207;1D350;2D71;2D153; See“Stojan Zupljanin consistently demonstrated that he acted promptly and decisively to combat any criminal activity—including those against non Serbs”,chapter on Indictment paragraph 12(f/g).

³² Cassese,page.133.

³³ Kordic,TJ,para.386.

endorsing the plan of another.³⁴ It must also be proved beyond reasonable doubt that the accused was involved in the immediate preparation of the concrete crimes.³⁵ The Defendant must be proven to have possessed the state of mind required by the underlying offence with which he is charged, and to have ‘directly or indirectly intended that the crime in question be committed’.³⁶

'Instigating'

25. Instigation consists of ‘urging, encouraging or prompting’ another to commit an offence.³⁷

There is a threshold causal requirement – that the act of instigation must constitute a substantial or real contribution to the offence. The Defendant must have the requisite intention for the crime alleged, and the act of instigation must have been deliberately intended to provoke the commission of the crime.³⁸

'Ordering'

26. Ordering involves a person deliberately using their position of authority – *de jure* or *de facto* – to convince another to commit the offence charged.³⁹ Though the order may be implicit, it must be proven that the person intended to give the order.⁴⁰ It is also not sufficient that a person giving an order know that there is a risk that a crime will be committed. A person who orders an act or omission must, at a minimum, act with the awareness of the substantial likelihood that a crime will be committed in the execution of that order.⁴¹

³⁴ *Bagilishema*, TJ, para.30.

³⁵ *Brdjanin*, TJ, para.380.

³⁶ *Blaskic*, TJ, para.278; *Galić*, TJ, para.168; *Brdanin*, TJ, paras.357–358.

³⁷ *Kordić & Čerkez*, AJ, para.27.

³⁸ *Kordic*, TJ, para.386.

³⁹ *Krstic*, TJ, para.601.

⁴⁰ *Blaskic*, TJ, para.282.

⁴¹ *Blaskic*, AJ, para.42.

'Otherwise aiding and abetting'

27. For an individual to incur liability for aiding and abetting, it is necessary to prove the carrying out of any act or omission which renders practical assistance, encouragement, or moral support to the principle offender.⁴² The act or omission of assistance must be proven to have had a 'substantial effect' on the commission of the crime by the principal offender.⁴³ Where a Defendant is accused of having rendered knowing assistance *after* the completion of the core crime, the Prosecution must prove a prior agreement between the accused and the perpetrators, such that the latter were genuinely assisted in their conduct.⁴⁴
28. The requisite mental element consists of knowledge that the Defendant's acts assisted in the commission of the specific crime in question by the principal offender.⁴⁵ The Defendant must also have been aware of the essential elements of the crime committed by the principal offender, including the principal offender's state of mind (even for crimes of specific intent),⁴⁶ and have taken a conscious decision to act or not to act in the knowledge that they would thereby support the commission of the crime.⁴⁷

Submissions as to Zupljanin's liability for ordering, planning, instigating and aiding and abetting

Actus Reus

29. The conduct alleged by the Prosecution which purportedly establishes the *actus reus* of Zupljanin's liability for ordering, planning, instigating and aiding and abetting the crimes charged in the Indictment is that same as that allegedly constituting his participation in the joint criminal enterprise. This conduct is as set out by the Prosecution in paragraph 12 of the Indictment. The Defence response to each of the seven sub-modes of participation is dealt with in detailed submissions set out subsequently in this brief and summarized above in the

⁴² Delalić, TJ, para.327; Blagojević, AJ, para.127; Simić, AJ, para.85.

⁴³ Blagojević, AJ, para.127; Brđanin, AJ, para.277.

⁴⁴ Haradinaj, TJ, para.145; Blagojević, TJ, para.731.

⁴⁵ Blagojević, AJ, paras.127,219–221; Brđanin, AJ, para.484.

⁴⁶ Seromba, AJ, paras.56,65; Blagojević, AJ, para.127.

⁴⁷ Seromba, AJ, para.44.

section dealing with the *actus reus* of the alleged JCE. As this summary of the Defence position demonstrates, it simply cannot be maintained that Zupljanin's conduct in relation to the ARK municipalities made a *substantial* contribution to the crimes alleged against him.

30. Furthermore, and for the purposes of determining planning liability, the Defence contend that there is simply no evidence whatsoever to indicate that Zupljanin formulated or endorsed the alleged plan to remove Bosnian Muslims, Bosnian Croats and other non-Serbs from the Krajina municipalities.⁴⁸ Likewise, in respect of instigating, the Defence point to the total absence of any evidence of urging, encouraging or prompting anyone to commit the offences charged in the Indictment. In fact, whenever an offence was committed, Zupljanin did all that he could to initiate investigations into such conduct – such behaviour is not consistent with instigating individuals to carry out Indictment offences.⁴⁹ Turning to liability for ordering, there is again a complete *lacunae* in the Prosecution's case, as they have failed to show that Zupljanin had functional authority in the Krajina municipalities in 1992 which could therefore have been used to convince anybody to carry out the crimes set down in the Indictment. As explained in subsequent sections of this brief, the key issue in the Krajina municipalities was that the municipal level SJBs were not obeying orders issued by the Banja Luka CSB but were instead acting entirely independently and in furtherance of orders issued by municipal Crisis Staffs and / or the army.⁵⁰

31. Finally, and with regard to the possibility of incurring liability for aiding and abetting, the Defence suggest that there is no evidence to substantiate the Prosecution's allegation that Zupljanin carried out any act (or indeed, any omission) which rendered practical assistance, encouragement or moral support to any person alleged to have committed the offences for which Zupljanin has been indicted.⁵¹

⁴⁸ P355(Item 22);2D25(Item 11).

⁴⁹ See: "Stojan Zupljanin consistently demonstrated that he acted promptly and decisively to combat any criminal activity—including those against non Serbs", chapter on Indictment paragraph 12(f/g).

⁵⁰ See: "Power of local Crisis Staffs usurped Zupljanin's authority", chapter on Indictment paragraph 12(b); "Influence of local authorities and local Crisis Staffs amid breakdown in communications", chapter on 12(f/g); "Simo Drljaca's influence stemmed from his allegiance to the local Crisis Staff and army", chapter on 12(c).

⁵¹ See: submissions re Zupljanin's character in chapters on Role and Responsibilities and more generally, Indictment paragraph 12(f/g).

Mens Rea

32. Turning to the *mens rea* for ordering, planning, instigating and aiding and abetting the crimes charged in the Indictment, the Defence maintain that, based on the submissions in the section of the brief below dealing with Zupljanin's knowledge, there is plainly no evidence capable of belief beyond reasonable doubt, to indicate that Zupljanin possessed the necessary mental state for the modes of liability.
33. With respect to planning, Zupljanin did not possess the *mens rea* for the underlying offences and did not directly or indirectly intend that the crimes in question be committed. In relation to instigation liability, there is a similar lack of any evidence to the effect that Zupljanin intended the crimes charged and deliberately intended to provoke others to carry out these crimes. In terms of ordering, no evidence has been adduced to indicate that Zupljanin gave an intentional order (or even one which was implicit) with the awareness that there was a substantial likelihood that a crime would result in the course of the order's execution.
34. Finally, the Defence assert that Zupljanin clearly had no knowledge that any of his acts could have been of any assistance to any individual alleged to have carried out the specific crimes with which he is charged. In this vein, he was certainly not aware of the essential elements of the crimes alleged, and in particular was not aware of the specific persecutory intent which would be required on the part of any perpetrators for liability under aiding and abetting to be made out. Zupljanin categorically did not take a conscious decision to act in the way he did during the Indictment period in the knowledge that he would be supporting individuals committing the offences set down in the Indictment.

Conclusion

35. It is therefore submitted that the Prosecution has failed to adduce any evidence, or any credible evidence, before the Trial Chamber to establish to the requisite standard their contention that Zupljanin ordered, planned, instigated or aided and abetted the commission of persecutions, exterminations, murders, torture, cruel treatment, inhumane acts, deportations

and forcible transfers of Bosnian Muslims, Bosnian Croats and other non-Serbs as alleged in the Indictment.

Article 7(3): Superior Responsibility

36. The Indictment alleges that Zupljanin is individually criminally responsible for the crimes charged in the Indictment pursuant to article 7(3) of the Statute.⁵² In order to prove the applicability of this mode of liability to Zupljanin the Prosecution must establish beyond reasonable doubt:

- a. The existence of a superior-subordinate relationship between Zupljanin and those who committed the offences;
- b. Zupljanin knew or had reason to know that the criminal acts were about to or had been committed; and
- c. That Zupljanin failed to take the necessary and reasonable measures to prevent the criminal acts or punish the perpetrators thereof.⁵³

Superior – Subordinate Relationship

37. In order to establish the existence of a superior-subordinate relationship, the Prosecution must prove beyond reasonable doubt that Zupljanin, by virtue of his *de jure or de facto* position of authority, had effective control over the persons committed the underlying offences.⁵⁴ There are several indicators of establish effective control which, include, but are not limited to factors such as: the power to give orders and have them executed; the ability to direct the conduct of combat operations involving the forces in question; the absence of any other authority over the forces in question; and the authority to promote or remove subordinates engaging in criminal acts.⁵⁵

⁵² Indictment, paras.20-23.

⁵³ *Stakić*, TJ, para.457.

⁵⁴ *Blaškić*, TJ, para.300, citing-*Mucić*, TJ, para.378.

⁵⁵ *Blaskic*, TJ, para.69; *Hadzihasanovic*, TJ, paras.82-83; *Delic*, TJ, paras.367,62.

38. The Defence maintain that, even on the narrowest interpretation of such indicia, there is insufficient evidence to prove beyond reasonable doubt that Stojan Zupljanin had effective control over his police forces across the Krajina.
39. As more than three quarters of police officers were involved in combat operations in the Krajina in 1992 and were therefore re-subordinated to the army during such operations, all orders which Zupljanin issued were automatically inapplicable to them.⁵⁶ This meant that Zupljanin not only did not have the ability to direct the conduct of combat operations carried out by police officers, but it meant that despite his *de jure* positions as Chief of the Banja Luka CSB and *ex officio* member of the ARK Crisis Staff that he actually had no authority whatsoever over 80% of the officers purportedly under his command.⁵⁷
40. Moreover, even in relation to the remaining 20% of individuals purportedly remaining under his command, as is demonstrated in other sections of this brief,⁵⁸ Zupljanin was unable to ensure that his orders to these police officers were followed.⁵⁹ This was because the local Crisis Staffs were so powerful that Zupljanin's orders to police at municipal SJBs (as well as orders issued by the ARK Crisis Staff of which Zupljanin was an *ex officio* member) were often ignored in favour of directions issued by municipal Crisis Staffs. The local municipalities had a significant degree of independence from the ARK level MUP and Crisis Staff, in practice they operated as as their own private fiefdoms⁶⁰ - this effectively usurped any degree of control Zupljanin had over local police.⁶¹ In the rare instances where isolated individuals at particular municipal SJBs were amenable to receiving direction from Zupljanin, due to the poor state of communications in 1992 orders to such individuals and reports from such individuals were not reliably transmitted and accordingly Zupljanin did not have the basic facilities to exercise command over these persons.⁶² Zupljanin's lack of

⁵⁶ Halilovic, TJ, paras.745,747,327.

⁵⁷ See: "Role of ARK Crisis Staff" in chapters on Indictment paragraphs 12(a).

⁵⁸ See influence of local Crisis Staffs in chapter on Indictment paragraphs 12(b) and 12(f/g).

⁵⁹ P595;P621;P624;P160;2D25;1D82;P596;P1002;2D83.

⁶⁰ MS-002,MACAR,T.23112-23113,(11/07/11);ST-204,Gajic,T.12876,12910,(15/07/10);2D194,p.47;ST-163,AVLIJAS,T.15665,(08/10/10); [REDACTED];ST-110,TRBOJEVIC,T.4114-4117,(03/12/09);ST-113,DJOKANOVIC,T.3572-3573, 3575,(20/11/09).

⁶¹ See chapters on Zupljanin's Knowledge and Indictment paragraph 12(b).

⁶² See chapter on Zupljanin's Knowledge.

power is also demonstrated by his inability to promote or remove subordinates engaging in criminal acts. While he was not averse to exercise his influence to try to remove underperforming or disobedient staff, Zupljanin was unable to exercise such authority with other police chiefs as they were either re-subordinated under the command of the army or he had no effective control over them.⁶³ Moreover, under the Law on State Administration, Zupljanin himself did not have the legal authority to appoint or dismiss other police chiefs.⁶⁴

41. Accordingly, Zupljanin's authority arising from his positions as Chief of the Banja Luka CSB and as an *ex officio* member of the ARK Crisis Staff therefore cannot be said to amount to 'effective control' over individuals carrying out Indictment crimes for the purposes of article 7(3) of the Statute.

Knew or had reason to know

42. In establishing that Zupljanin knew or had reason to know of the alleged crimes, the Prosecution must show that: (i) Zupljanin had actual knowledge of the commission of crimes; or (ii) he had in his possession information which would put him on notice of the risk of such offences, thereby alerting him to the need for additional investigation.⁶⁵
43. The Defence maintain that Zupljanin's lack of knowledge of the crimes committed by police officers (under the influence of local Crisis Staffs and / or the direction of the army) is a legitimate defence that negates criminal responsibility for such crimes.⁶⁶ Zupljanin made every effort to be kept informed of developments in the ARK, including the commission of any crimes within his areas of geographic competence, by sending repeated requests to his SJB Chiefs for timely and complete reports.⁶⁷ As this brief will illustrate, the wartime

⁶³ See: "Zupljanin took action against the Mice group in Teslic", "Town Commands", chapter on Indictment paragraph 12(f/g); "Relationship between re subordinated police officers and the army was based on principle of 'singleness of command'", chapter on Indictment paragraph 12(d); [REDACTED], chapter on Indictment paragraph 12(c).

⁶⁴ See P2462, Art.39(1)(7) on Minister of Interior's exclusive authority to appoint and dismiss police chiefs.

⁶⁵ *Stakić*, TJ, para.460; *Blaškić*, AJ, para.62 citing *Mucić*, AJ, para.24.

⁶⁶ *Oric*, AJ, para.60; *Hadzihasanovic*, TJ, para.1353.

⁶⁷ 2D83;P1002;1D82;P596.

context and the problems it brought⁶⁸ often made this impossible and he simply did not have information available to him which would have put him on notice that crimes were taking place. Indeed, there is a vast amount of evidence that once Zupljanin knew or had reason to know of a crime, he took every measure that was available to him to investigate, punish perpetrators and to prevent the re-occurrence of such acts.⁶⁹

Necessary and reasonable measures

44. In proving that Zupljanin failed to take necessary and reasonable measures to prevent criminal acts and punish perpetrators,⁷⁰ the Prosecution must establish that Zupljanin's effective control over subordinates was such that had the ability and competence to take such measures.⁷¹ This means that the Prosecution must prove, beyond reasonable doubt, that Zupljanin had the 'material ability to prevent or punish the commission of the offences' – a mere showing of 'substantial influence' over subordinates will not be enough.⁷²
45. As explained above, although Zupljanin had *de jure* authority over police officers in the Krajina by virtue of his positions as Chief of the Banja Luka CSB and *ex officio* member of the ARK Crisis Staff, he did not have effective control over such officers due to an array of factors. These factors included: (a) the re-subordination of more than 80% of his police officers to combat operations for the army; (b) the refusal of local SJBs to obey his orders due to their choice to instead follow the directions of local Crisis Staffs; and (c) the poor state of communications within the ARK in 1992 which meant that both orders issued from Banja Luka and reports sent to Banja Luka were not regularly received.
46. These circumstances meant that Zupljanin was thwarted in his efforts to ensure law and order for all persons in the Krajina regardless of ethnicity or religious persuasion. Zupljanin's lack

⁶⁸ See: "General flow of documents to and from CSB Banja Luka during 1992 were dramatically reduced due to breakdown in communications", chapter on Zupljanin's knowledge.

⁶⁹ See: chapters on Zupljanin's knowledge and Indictment paragraph 12(f/g).

⁷⁰ *Blaškić*, AJ, para. 72; *Oric*, TJ, para. 177; *Halilović*, TJ, para. 63; *Boskoski*, TJ, para. 415.

⁷¹ *Blaškić*, AJ, para. 72; *Boškoski*, TJ, para. 415.

⁷² *Blaškić*, AJ, para. 69; *Stakić*, TJ, para. 459.

of knowledge of crimes being committed, and his lack of effective control over subordinates meant that he not have the material ability to prevent and punish the commission of offences.⁷³

47. In particular, Zupljanin did not possess the legal competence to discipline or to investigate offences committed by police officers while they were re-subordinated to the army, or indeed, offences committed by members of the Serb army, paramilitaries or the TO, as these were categorised as offences falling under the jurisdiction of the military courts.⁷⁴ Events taking place within detention camps also fell within the competence of the military courts.⁷⁵ Despite this lack of legal competence, Zupljanin was not content to let the matter rest and even acted beyond his legal powers to try to initiate investigations and prosecutions for such acts within the civilian courts.⁷⁶ On many occasions, these efforts also did not succeed as the cases were then thrown out by the civilian judges.⁷⁷ Zupljanin then took the only possible course of action which was open to him in the circumstances, by reporting the crimes being committed by Serb forces to his superiors⁷⁸ at the meeting with the RS MUP leadership in Belgrade on 11 July 1992.⁷⁹ Despite having no legal authority to do so, Zupljanin also ordered that his staff continue to investigate and document war crimes regardless of who were the victims and perpetrators of such acts.⁸⁰ In this vein, he took action against police committing crimes as well as the “Mice” group in Teslic, investigated the killings at Koricanske Stijene and Manjaca and even formed a Special Commission to investigate the existence of and treatment and conditions within detention camps throughout the ARK.⁸¹

⁷³ *Oric*, TJ, para. 329.

⁷⁴ See: “Police versus military jurisdiction for investigation and punishment of crimes”, chapter on Indictment paragraph 12(f/g).

⁷⁵ See: “Detention camps fell under military jurisdiction”, chapter on Indictment paragraph 12(f/g).

⁷⁶ See: “Zupljanin ordered that all war crimes be documented despite this not being legal duty of civilian police”, chapter on Indictment paragraph 12(f/g).

⁷⁷ See: “Separate jurisdiction of civilian and military courts”, chapter on Indictment paragraph 12(f/g).

⁷⁸ *Stakić*, TJ, para. 461; *Bošković*, TJ, para. 418.

⁷⁹ P160, 11-Jul-92; See: “Zupljanin’s submissions at RS MUP meeting on 11 July 1992”, chapter on Indictment paragraph 12(f/g).

⁸⁰ See: “Zupljanin ordered that all war crimes be documented despite this not being legal duty of civilian police”, chapter on Indictment paragraph 12(f/g).

⁸¹ See: “Zupljanin took action against the “Mice” group in Teslic”; “Zupljanin ordered an investigation into the killings at Mount Vlasic/Koricanske Stijene”; “An investigation was made into non Serb detainees who suffocated on a bus en route to Manjaca from Sanski Most”; “Zupljanin ordered an investigation into the Manjaca/Vrbas river killings”; “Zupljanin formed a special Commission to investigate the existence of, and/or alleged abuse of detainees and conditions within detention camps throughout the ARK region”, chapter on Indictment paragraph 12(f/g).

Following this Commission, conditions at the camps were improved and Omarska and Keraterm very eventually closed down. Taking all reasonable and necessary measures does not require an accused person to perform the impossible. Zupljanin certainly took all measures which could have been considered ‘necessary and reasonable’ in the circumstances.⁸²

The modes of liability alleged are therefore not established in Zupljanin’s case

48. For the reasons set forth above, it is submitted that there is insufficient evidence that Zupljanin committed, planned, instigated, ordered or aided and abetted the commission of any of the crimes alleged in the Indictment pursuant to Article 7(1) of the Statute or that as a consequence of his position of superior authority he is individually criminally responsible for the acts or omissions of subordinate members and agents of the RS MUP pursuant to article 7(3). Accordingly, he must be acquitted of all charges.

⁸² *Aleksovski*, TJ, para.78; *Brdjanin*, TJ, para.281; *Boškoski*, TJ, paras.417-418, citing *Hadžihasanović*, AJ, para.142.

ZUPLJANIN'S ROLES AND RESPONSIBILITY

Zupljanin's role as Chief of the CSB Banja Luka

49. The Prosecution allege that by virtue of Zupljanin's position as Chief of the CSB in Banja Luka he "wielded great power and influence".⁸³ They also allege that Zupljanin exercised not only *de jure*, but *de facto* control over the police forces under this authority across the ARK during 1992.⁸⁴

50. It is admitted that Zupljanin was appointed Banja Luka CSB Chief on 7 May 1991.⁸⁵ This original appointment was by the Muslim Minister of Interior, Alija Delimustafic. Following the creation of the RS this appointment was ratified by Mico Stanisic (as the new Republika Srpska Minister of Interior) in May 1992.⁸⁶ However, the Defence stress that the vast bulk of evidence presented during this trial indicates that contrary to the Prosecution's assertions, Zupljanin did not exercise effective control over ARK police forces during the Indictment period. This was for several reasons, including:

- a. the systemic breakdown in communications infrastructure throughout 1992 between the CSB Banja Luka and its subordinate SJBs which made it impossible for Zupljanin to know what was going on (or to issue orders to his subordinates) across the ARK municipalities, as he received no or, at best, irregular and incomplete reports from his local police chiefs.⁸⁷ The lack of information received from SJBs to the Banja Luka CSB is demonstrated by the fact that Zupljanin took to constantly reiterating the need to provide informative daily reports as he was not receiving sufficient information to carry

⁸³ OTP Pre-Trial Brief, para.48.

⁸⁴ *Ibid.*

⁸⁵ P2043.

⁸⁶ P458, 15-May-92.

⁸⁷ ST-123, TUTUS, T.7792-7793, (18/03/10); [REDACTED]; P374; ST-167, RALJIC, T.12454-12455, (30/06/10); [REDACTED]; P621; P624; P160.

out his job properly and on many occasions was receiving incomplete daily reports from local SJBs 10-15 days after the events reported in them;⁸⁸

- b. the fact that any orders which he was able to issue (in spite of the communications breakdown) went unheeded due to the influence of local Crisis Staffs over the police force in their area which led to local SJBs preferring to follow the orders of their local Crisis Staff rather than orders issued by the Banja Luka CSB.⁸⁹ The failure to abide by Zupljanin's orders precipitated his 6 May 1992 request in which he emphasized the importance of discipline and obeying orders;⁹⁰
- c. as more than 80% of ARK police officers in 1992 were re-subordinated to the army to participate in combat activities,⁹¹ any orders which Zupljanin was able to issue were automatically inapplicable to most of his purported subordinates as once re-subordinated a police officer becomes a member of the army and is no longer under the *de jure* authority of the police;⁹²
- d. the large scale re-subordination of police officers, which took place despite Zupljanin's objections to the practice⁹³, also meant that there was a massive depletion in police resources at a time when the ARK was experiencing an unprecedented surge in crime, an influx of refugees from war-torn surrounding areas, power cuts, fuel shortages and vast numbers of armed men being stationed in the region.⁹⁴ In short, Banja Luka in 1992 was

⁸⁸ ST-169, DELIC, T.1589-1590, (19/10/09); ST-181, DJEKANOVIC, T.1426-1427, 1013, (14/10/09); ST-167, RALJIC, T.12428, 12451-12452, (30/06/10); ST-212, RODIC, T.14481, (13/09/10); ST-126, KEZUNOVIC, T.11690-11691, (14/06/10); [REDACTED]; ST-167, RALJIC, T.12454-12455, (30/06/10); P374 See Chapter on 'Knowledge'.

⁸⁹ ST-123, TUTUS, T.7917, (22/03/10); 2D25, P160, p.7; P621, pp.5, 7; P624, p.2; [REDACTED]; ST-177, T.3202, (16/11/09).

⁹⁰ P367(items2-5); P1896(items8-10). See also Chapter on Indictment para.12(b).

⁹¹ See for example P427.08, p.2 (which confirms that 100% of police officers were resubordinated at the frontlines in the region of Hercegovina and 70% were re-subordinated in Doboj); see also P624: 5034 (police officers in the CSB area were re-subordinated (according to P624 as of 31 December 1992 there were 6268 police officers (active plus reserve) in the 26 municipalities covered by the entire territory of the CSB Banja Luka – only 7 of these municipalities are included in the Indictment); MS-002, MACAR, T.23094, (11/07/11),

⁹² [REDACTED]. See chapter on Indictment paragraph 12(f/g) on jurisdiction between army and police for investigation of crimes; & Chapter on Indictment para. 12(d) as to meaning of re-subordination.

⁹³ P160, pp.5-8.

⁹⁴ 2D54; ST-123, TUTUS, T.7889-7890 (19/03/10).

a situation of utter chaos over which Zupljanin, with his small remaining contingent of untrained and ill-equipped police officers, was unable to exercise effective control;⁹⁵

- e. Zupljanin's lack of membership of the SDS⁹⁶ and his non-discriminatory attitude towards non-Serbs⁹⁷ meant that he was regarded within the upper echelons of power as not conforming to the party line. These attributes meant that Zupljanin had to deal with threats from loyal SDS members and was also the subject of attempts to remove him from his post.⁹⁸

51. Accordingly, the assertion that Zupljanin had both *de facto* and *de jure* control over police across the Krajina both mis-states the evidence and ignores the prevailing circumstances at the time. The many obstacles to Zupljanin exercising authority and control over ARK police officers in 1992 which were brought on by the war made it impossible for him to do his job effectively in spite of his best efforts to do so.⁹⁹

Zupljanin's role as an ex officio member of the ARK Crisis Staff

52. The Prosecution also allege that Zupljanin's "influence and power" was enhanced by his position on the ARK Crisis Staff, "a body with which he worked closely", and which was "unique" in that "it issued decisions which were sent to municipal crisis staffs and put into effect".¹⁰⁰ These allegations are not substantiated by the evidence adduced during trial.

⁹⁵ SZ-009,T.25130,(17/10/11); [REDACTED].

⁹⁶ ST-092,NIELSEN,T.5581,(27/01/10).

⁹⁷ See submissions below under heading 'Zupljanin was renowned both as a professional police officer and a 'good' person.

⁹⁸ 2D91,Milos Report, 3-Aug-92;ST-182,RADULOVIC,T.11160-11161,(01/06/10);ST-172,MAJKIC,T.3200-3201,(16/11/09).

⁹⁹ P160,11-Jul-92,p.8;Chamber Witness LISICA,T.26866,26935-26936,(01/03/12); 2D159,Mar-2011,paras.127-135; SZ-013 KOVACEVIC, T.23697, 23717-23718,(06/09/11);P1284.07,24-Dec-76,Arts.8,12-14; [REDACTED].

¹⁰⁰ OTP Pre-Trial Brief,para.49.

53. It is not disputed that Zupljanin was a member of the ARK Crisis Staff. However, his membership was *ex officio* in nature and thus an automatic result of his position as Chief of the CSB Banja Luka.¹⁰¹ The role of the ARK Crisis Staff is dealt with in detail in other sections of this Final Brief,¹⁰² but in summary form the Defence case on the ARK Crisis Staff is that:

- a. Zupljanin was only a member of the body for a few weeks in May 1992 and during this time he did not play an active role in its activities;¹⁰³
- b. During Zupljanin's membership of the ARK Crisis Staff (prior to its becoming a War Presidency on 31 May 1992) it was focused on less important matters such as logistics (ie. power supplies and infrastructure), economics and agriculture. It did not deal with police and / or military operational issues;¹⁰⁴
- c. Zupljanin had no reason to doubt the integrity of the ARK Crisis Staff when it was first established as the Crisis Staff model was regarded as entirely appropriate as it was based on a concept which had long existed under Yugoslav law. Accordingly, the 6 May 1992 CSB Council decision ordering SJBs to implement decisions of the ARK Crisis Staff was not unlawful;¹⁰⁵
- d. Decisions of the ARK Crisis Staff / War Presidency only became binding on local municipalities following a legislative change to this effect on 15 June 1992. Prior to this local Crisis Staffs operated entirely independently and any decision adopted by the ARK Crisis Staff had to be ratified by the ARK Assembly to attain binding status on local Crisis Staffs;¹⁰⁶

¹⁰¹ [REDACTED].

¹⁰² See submissions on Indictment para 12(a).

¹⁰³ P556,05-May-1992,Formation of ARK CS; P1830,08-June-92,Decision of Replacement of ARK CS with ARK War Presidency already on the 31-May-1992.

¹⁰⁴ P2100 (Under Seal) [REDACTED],T.21975-21976(03/11/03); [REDACTED].

¹⁰⁵ P1896.

¹⁰⁶ P1830,08-June-92; P221,3-May-1992;ST-123,TUTUS,T.7626-7627,(15/03/10)

- e. Upon finding out about unlawful behaviour by Crisis Staffs, Zupljanin explicitly ordered SJBs on 30 July 1992 not to follow any orders or decisions from “regional or municipal Crisis Staffs” or any other bodies (such as the army) which were not in accordance with the law.¹⁰⁷

54. The Defence accordingly maintain that the Prosecution has not proved that Zupljanin’s alleged attendance at ARK Crisis Staff meetings in May 1992 imbued him with power or influence such as to establish either his individual criminal pursuant to the law on superior responsibility or his involvement in a JCE to commit the crimes set out in the Indictment.

Zupljanin’s dealings with Karadzic

55. The Prosecution imply in their Pre-Trial Brief that Zupljanin exercised *de facto* power or influence as a result of his pre and post Indictment period dealings with Karadzic.¹⁰⁸ This assertion can be dealt with swiftly. First, it is impermissible for the Trial Chamber to give consideration to any events subsequent to the Indictment period in determining his responsibility for acts taking place between 1 April and 31 December 1992.¹⁰⁹ [REDACTED],¹¹⁰ [REDACTED].¹¹¹ [REDACTED].¹¹² [REDACTED].

Zupljanin was renowned both as a professional police officer and a “good” person

56. Throughout the trial evidence multiple prosecution and defence witnesses attested to Zupljanin being a “good person” who was also renowned for his professionalism and integrity as a police. This characterisation of Zupljanin stands at odds with his alleged participation in a joint criminal enterprise and / or his alleged superior responsibility for the crimes listed in the Indictment.

¹⁰⁷ ST-123,TUTUS,T.7917,(22/03/10);ST-158,HANSON,T.4635,(11/12/09);2D25,30-Jul-92, pp.3-4.

¹⁰⁸ OTP Pre-Trial Brief,para.48.

¹⁰⁹ Cf.OTP Pre-Trial Brief,para.15.

¹¹⁰ [REDACTED].

¹¹¹ P887;P1103.

¹¹² P887,pp.3-4.

Prosecution Evidence as to Zupljanin's good character

57. An array of Prosecution witnesses gave evidence in support of Zupljanin's general good character.¹¹³ [REDACTED].¹¹⁴ [REDACTED].

58. [REDACTED]¹¹⁵ [REDACTED].¹¹⁶ [REDACTED]¹¹⁷ [REDACTED].¹¹⁸ [REDACTED]¹¹⁹ [REDACTED].¹²⁰ ST-123 also commented on Zupljanin's professional behaviour observing that Zupljanin sometimes used strict language in his dispatches because "there were those who acted in an arrogant way in the field ... and he wanted them to act in a more serious way".¹²¹

59. ST-067 gave evidence that Zupljanin was renowned for not expressing any form of animosity toward non-Serbs.¹²² This attribute was corroborated by [REDACTED] ST-177 who testified that through all their dealings with Zupljanin, he never expressed racist motivations¹²³ or intolerance towards non-Serbs.¹²⁴ [REDACTED]¹²⁵ ST-177 similarly attested that Zupljanin was well liked precisely because of his demonstrated lack of ethnic bias: "For him [Zupljanin] ethnicity was in the last place... he treated all the Chiefs, the Serbs, the Muslims and others, equally."¹²⁶ [REDACTED].¹²⁷ [REDACTED].¹²⁸

60. The Prosecution will likely seek to rely upon Zupljanin's 25 July 1991 letter to Plavsic which was sent to her in her then role as Chair of the Council for the Protection of the

¹¹³ ST-177,T.3226,(17/11/09).

¹¹⁴ ST-177,T.3186,(16/11/09).

¹¹⁵ [REDACTED].

¹¹⁶ [REDACTED].

¹¹⁷ [REDACTED].

¹¹⁸ [REDACTED];ST-092,NIELSEN,T.5581,(27/01/10).

¹¹⁹ [REDACTED].

¹²⁰ ST-165,NJEGUS,T.11469,(09/06/10).

¹²¹ ST-123,TUTUS,T.7673,(16/03/10).

¹²² ST-067,MERDZANIC,T.18387-18388,(09/12/10).

¹²³ [REDACTED]; ST-177,T.3186,(16/11/09).

¹²⁴ [REDACTED].

¹²⁵ [REDACTED].

¹²⁶ ST-177,MAJKIC,T.3186,(16/11/09).

¹²⁷ [REDACTED].

¹²⁸ [REDACTED].

Constitutional Order of the SR BiH as evidence of his alleged malign views of non-Serbs.¹²⁹ In this letter, Zupljanin complains of the splitting of police training along ethnic lines and of police documentation which had always been blue (in accordance with the traditional practices of the Yugoslav multi-ethnic police force) suddenly being switched to green. Not only does this exhibit not pertain to events during the Indictment period, but all it in fact demonstrates is that Zupljanin was concerned that the traditional model of equal representation and equitable treatment amongst police officers of all ethnicities and religions, which had only recently been reaffirmed in a report dated 24 June 1991 was being eroded.¹³⁰ Such a concern to prevent inequality on the basis of ethnicity or religion in no way demonstrates an intention by Zupljanin to discriminate against non-Serbs.

61. Likewise, the Prosecution's probable reliance on Zupljanin's intercepted conversation with Cedomir Kljajic on 7 May 1992 to try to depict Zupljanin's character as anti-Muslim, is far from the mark.¹³¹ It is clear from the conversation that they enjoyed a personal friendship and this is reflected in the jovial and sarcastic comments recorded. The jokes in that conversation were no doubt in poor taste but they were made in jest and were undoubtedly a response to the unique strains both individuals were labouring under at the time.¹³²
62. Indeed, the Prosecution evidence shows that not only did Zupljanin himself not harbour a racist ideology, but that he made his disagreement with the discriminatory intentions of those around him well known. Given the wartime context, this was an extremely brave step to take and one that was unsurprisingly not without repercussions. Indeed, Prosecution witness Radulovic commented on exhibit 2D91,¹³³ a Milos intelligence report, which revealed plans to replace Zupljanin as CSB Banja Luka Chief because he did not agree with plans to remove non-Serbs from the Krajina region.¹³⁴ Radulovic confirmed that this report was indicative of a practice at the time whereby lies and scandals would be fabricated to discredit high level

¹²⁹ P895;OTP Pre-Trial Brief,para.57.

¹³⁰ P892;1D135 also illustrates Zupljanin's concerns as to the lack of equal treatment within the police of persons of different ethnicities and religions.

¹³¹ P1124. Intercept of conversation between Zupljanin and C.Kljajic,7-May-1992.

¹³² For a more accurate depiction of Zupljanin's non-racist character, see chapter on Role and Responsibilities and the actions he took against Serbs as demonstrated in the chapter on Indictment paragraph 12(f/g).

¹³³ 2D91,2-Aug-92.

¹³⁴ ST-182,RADULOVIC,T.11160-11162,(01/06/10).

officials, such as Zupljanin, because of their failure to comply with certain political positions.¹³⁵ [REDACTED].¹³⁶

63. [REDACTED].¹³⁷ [REDACTED].¹³⁸ [REDACTED].¹³⁹ [REDACTED].¹⁴⁰
[REDACTED].

64. In fact the evidence shows that Zupljanin also took active steps to try to counter what he felt was wrongful discrimination against non-Serbs in the MUP. In relation to the proposal to replace all non-Serb police personnel with Serb officers, Zupljanin sent a letter to all the SJB chiefs stating that he would be informing the municipal assemblies of his objection to the unacceptable interference of “authority organs and individuals” into the personnel policy of the municipal assembly within the SJB and CSB”.¹⁴¹ Registering his objection to this policy in such a public way, given the tide of anti-Muslim sentiment that existed at the time indicates that far from being complicit in the commission of the crimes which he is now accused of, Zupljanin was in fact concerned at these developments within the police force and did what he could (given the constraints of his role and the power of the army and local Crisis Staffs) to hinder them.¹⁴²

65. Zupljanin also was notable for his efforts in investigating crimes committed by Serbs against non-Serbs.¹⁴³ When he heard about the massacre at Koricanske Stijene, his first reaction, as recorded by Branko Buhavac in an interview with the Office of the Prosecutor, was one of “horror” with him explaining to Buhavac (the Chief of Forensics in Banja Luka) “fuck, some jerks did something stupid”.¹⁴⁴ Zupljanin then ordered Buhavac to carry out an investigation of the incident and to collect all evidence.¹⁴⁵ His overall instruction was that “the case

¹³⁵ 2D91,3-Aug-92; ST-182,RADULOVIC,T.11160-11162,(01/06/10).

¹³⁶ [REDACTED].

¹³⁷ [REDACTED].

¹³⁸ P459.21.

¹³⁹ [REDACTED].

¹⁴⁰ See Chapter on Re-subordination.

¹⁴¹ 1D60; [REDACTED].

¹⁴² P355(Item 22), p.6;ST-123,TUTUS,T.7907-7909,(22/03/10).

¹⁴³ See discussion below in section relating to paragraph 12(f/g) of Indictment.

¹⁴⁴ 2D139.

¹⁴⁵ 2D139.

should be properly conducted”.¹⁴⁶ Zupljanin also issued a further strict order to those conducting the investigation of the massacre that they were to provide him with a “personal guarantee” that any survivors “were to reach Banja Luka safe and sound” and that any failure to ensure this would incur “personal responsibility”.¹⁴⁷ Given that survivors of the massacre at that time would have been at great risk from perpetrators or others wishing to protect perpetrators,¹⁴⁸ Zupljanin’s actions are telling in showing that did not willingly participate in a plan to carry out crimes against non-Serbs.

66. Zupljanin’s real efforts to try to prevent and investigate crimes committed by one ethnicity against another is also demonstrated by his constantly seeking reports from local SJBs as to whether any crimes had been committed in their municipalities.¹⁴⁹ Unfortunately, on the rare occasions when he did receive reports, they were incomplete and were often received 10-15 days after the events in question, thwarting his best efforts to prevent and punish such crimes taking place in the municipalities.¹⁵⁰

67. [REDACTED].¹⁵¹ It is notable that such behaviour is not a regular practice before this Tribunal and serves as a further reminder of the Prosecution’s error in attempting to portray Zupljanin as a man driven to commit crimes by a racist ideology and a hatred of non-Serbs.

Defence evidence as to Zupljanin’s good character

68. A vast amount of Defence evidence additionally illustrates that Zupljanin was and is uninfluenced by extraneous factors such as race or political alignment in both his professional and personal dealings.

69. [REDACTED].¹⁵² Likewise, SZ-020 [REDACTED] emphasized that he never heard Zupljanin voice anything discriminatory against any ethnicity.¹⁵³ Moreover, Zupljanin had

¹⁴⁶ 2D139.

¹⁴⁷ ST-195,KREJIC,T.14094-14096,(02/09/10).

¹⁴⁸ ST-195,KREJIC,T.14094-14096,(02/09/10).

¹⁴⁹ ST-167,RALJIC,T.12453-12455,(30/06/10);[REDACTED].

¹⁵⁰ ST-167,RALJIC,T.12453-12455,(30/06/10);[REDACTED].

¹⁵¹ [REDACTED];[REDACTED].

once explicitly said to several witnesses that “nothing bad should ever happen to [them].”¹⁵⁴ Indeed, it was as a result of Zupljanin’s fairness and lack of prejudice that SZ-020 never felt that “bad things” would happen to Muslims who stayed in the police.¹⁵⁵

70. [REDACTED].¹⁵⁶ [REDACTED].¹⁵⁷

71. Nine other Defence witnesses, [REDACTED], gave evidence as to Zupljanin’s non-discriminatory attitude [REDACTED]¹⁵⁸, as well as his integrity and professionalism as a police officer (he had a “modest manner ... and tried to maintain good interpersonal relations among staff and employees”).¹⁵⁹ [REDACTED]¹⁶⁰ In fact, he “made it his mission to help all people including Muslims and Croats” and that he had “helped many people, including Croats and Bosniaks during the war”.¹⁶¹ One witness attested that he “never observed [Zupljanin] issue any order contrary to the law or directed against other ethnic groups or nationalities”.¹⁶²

72. Several witnesses [REDACTED]¹⁶³ in statement form¹⁶⁴ noted that despite their non-Serb ethnicity, Zupljanin had ensured that they and their other non-Serb colleagues were able to remain working for the police throughout the war¹⁶⁵ [REDACTED].¹⁶⁶ [REDACTED].¹⁶⁷ [REDACTED].¹⁶⁸

¹⁵² [REDACTED].

¹⁵³ SZ-020, SMAJLOVIC, T.26067-26068, (18/11/11), 2D187.

¹⁵⁴ SZ-020, SMAJLOVIC, T.26068-26069 (18/11/11), 2D187.

¹⁵⁵ SZ-020, SMAJLOVIC, T.26069, (18/11/11).

¹⁵⁶ [REDACTED].

¹⁵⁷ [REDACTED].

¹⁵⁸ 2D156 (Under Seal) [REDACTED]; 2D140.

¹⁵⁹ 2D142.

¹⁶⁰ 2D141; 2D156 (Under Seal) [REDACTED]; 2D140; 2D142; 2D187.

¹⁶¹ 2D141; 2D142.

¹⁶² 2D187.

¹⁶³ [REDACTED].

¹⁶⁴ 2D144; 2D187.

¹⁶⁵ 2D144; 2D187.

¹⁶⁶ 2D144; 2D156 (Under Seal) [REDACTED]; 2D140; 2D142; 2D187; [REDACTED].

¹⁶⁷ 2D144; 2D187.

¹⁶⁸ 2D187.

73. Others among these witnesses, who knew Zupljanin in a personal capacity during the war, expressed sentiments to the effect that he: (a) “was very popular among both Croats and Muslims”¹⁶⁹, (b) was “always fair and friendly toward everyone and was attentive to peoples’ concerns”;¹⁷⁰ (c) never expressed any “nationalistic attitudes” or said “anything negative against Croats or Muslims”;¹⁷¹ (d) “always tried to help people, regardless of their ethnicity, nationality or religion”.¹⁷² [REDACTED].¹⁷³

74. [REDACTED].¹⁷⁴ [REDACTED].¹⁷⁵ [REDACTED].¹⁷⁶

75. The exceptionality of Zupljanin’s good character even during times of enhanced ethnic tensions (including during 1992), as well as his non-discriminatory attitude and actions towards non-Serbs, constitutes powerful evidence of Zupljanin’s lawful behaviour throughout the Indictment period.

¹⁶⁹ 2D143.

¹⁷⁰ 2D146.

¹⁷¹ 2D146.

¹⁷² 2D146.

¹⁷³ 2D143.

¹⁷⁴ 2D145 (Under Seal) [REDACTED].

¹⁷⁵ 2D145 (Under Seal) [REDACTED].

¹⁷⁶ 2D145 (Under Seal) [REDACTED].

ZUPLJANIN'S KNOWLEDGE

General comments regarding the Prosecution's onus as to knowledge

76. The concept of proof of guilty knowledge (and the evidence in support of the *mens rea* to commit a crime) of an accused person is nearly always a difficult one in a criminal trial. More often than not there is no direct evidence to assist the tribunal of fact. As a result, knowledge has to be inferred through indirect or circumstantial evidence, which may include documentary or other exhibits. As hard as it can be to prove knowledge, it is often much harder to disprove it. This is in the nature of this type of litigation and the Trial Chamber is asked to bear this in mind at all times. Like many things it is always much easier to make the allegation than to actually refute it. In this regard, it is obviously a central tenet at the International Tribunal that the burden in relation to this topic does not shift in any way to the Defence.

General flow of documents to and from CSB Banja Luka during 1992 were dramatically reduced due to breakdown in communications

Breakdown in communications generally across the ARK territory

77. Throughout the course of the trial nearly most prosecution witnesses corroborated the fact that almost all forms of communication between the CSB Banja Luka and its subordinate SJBs (as well as communications between the CSB Banja Luka and the RS MUP) were severely disrupted and were often impossible for long periods during the early months of the war. This evidence indicates that Zupljanin was not adequately informed of events and crimes alleged by the Prosecution to have taken place across the Krajina region during the Indictment period.

Number of dispatches sent and received via CSB Banja Luka during 1992 fell by over 90% from 1991 figures due to communications system breakdown and wartime disruptions

78. The difference in the number of dispatches sent and received by the CSB Banja Luka before and during the war illustrates the extent to which communications were disrupted after the conflict commenced.¹⁷⁷ Prosecution witness Kezunovic confirmed that P595 and P621 show accurate statistics of dispatches sent from 1 January 1992 to 30 June 1992 and 1 July to 30 September 1992 respectively.¹⁷⁸ P595 indicates that during the first six months of 1992 there were 9,956 open dispatches received and 9,686 sent in the entire CSB Banja Luka area (including all the SJBs attached to it).¹⁷⁹ During the following three months (i.e. July to September 1992) when the war was raging, P621 records that only 1,996 open dispatches were received and 1,385 were sent.¹⁸⁰
79. The significance of these figures is highlighted by a further report on dispatch numbers for the first nine months of 1991.¹⁸¹ This report documented a total of over 200,000 dispatches being sent and received during these months.¹⁸² After studying these documents, prosecution witness Kezunovic gave evidence that the number of despatches for the first nine months in 1992 amounted to only 10% of the number of dispatches for the same period in 1991. He also confirmed as correct the description in P595 of frequent breakdowns and disruptions to the lines due to the war during the summer of 1992.¹⁸³

¹⁷⁷ 2D52, CSB Banja Luka Report on Activities for Nine Months of 1991, 1-Oct-91; P595, Security Services Centre Banja Luka, Report on the Work of Security Services Centre Banja Luka for the Period 1-Jan to 30-Jun-92, dated Jul-92; P621, Report of Security Services Centre Banja Luka on the Work of the Public Security Station Banja Luka for the Period from 1-Jul to 30-Sep-1992, dated Oct-92; [REDACTED]; P1486, Annual report on organisation, status and functioning of cryptography for the period from 25-Dec-91 to 25-Dec-92, SJB Kotor Varos; ST-167, RALJIC, T.12451, (30/06/10). RALJIC confirmed that the statistics highlight a sharp drop in the number of dispatches sent and received from 11 June and for the rest of 1992 and that this was reflected in the dispatches between the CSB Banja Luka and the SJB in Kotor Varos. He noted that the statistics were slightly skewed as the first five months of 1992 was "peacetime" and it was only after mid-June, (i.e. after the conflict came to Kotor Varos) that communications were seriously affected.

¹⁷⁸ P595; P621.

¹⁷⁹ ST-126, KEZUNOVIC, T.11691-11692, (14/06/10).

¹⁸⁰ ST-126, KEZUNOVIC, T.11691-11692, (14/06/10).

¹⁸¹ 2D52.

¹⁸² ST-126, KEZUNOVIC, T.11694-11695, (14/06/10).

¹⁸³ ST-126, KEZUNOVIC, T.11690-11691, (14/06/10).

80. These statistics clearly illustrate the dire state of the communication systems across the Krajina region during the Indictment period. It follows that Zupljanin did not have a sufficient functional communication apparatus to allow him to keep abreast of events and alleged crimes committed within the municipalities under his *de jure* authority.
81. The Prosecution have suggested that communications were not so heavily disrupted. They refer to P1426, a status report from the CSB Doboj, which indicates that radio transmissions and cryptographic messaging devices were stabilised (albeit with frequent disruptions). The Defence stress that this status report was dated October 1992, and that it does not mention anything in respect of CSB Banja Luka's ability to communicate with its SJBs. If anything, it reinforces the Defence position by acknowledging, "the system was seriously disrupted when the combat activities broke out" and ... "that this organ [CSB Doboj] has been, and still is, experiencing problems caused by the war operations ... which has directly affected the activities of the Department."¹⁸⁴

Breakdown in communication system within CSB Banja Luka

82. Prosecution witness Rakovic, who was the head of the communications department at the CSB Banja Luka, and therefore ideally placed to comment on the extent of the problem, explained that blackouts and shortages of electricity affected the entire Krajina region throughout 1992 and that dispatches to and from the CSB in Banja Luka were severely disrupted as a consequence. He stated "*there were breakdowns ... and sometimes we had other problems, such as power blackouts. It happened very often... At one point in Banja Luka, we had no electricity for two months. ...Then there were shortages of fuel. Problems were everywhere. It was not just in our station.*"¹⁸⁵ Rakovic went on to add that his team had no access to a courier and that he was unclear what happened after dispatches had to be returned when they could not contact the addressee.¹⁸⁶

¹⁸⁴ P1426-Activity Report of the Communications and Cryptographic Data Protection Department of CSB Doboj for the period from 30 July to 30 September, 1992, 1-Oct-92.

¹⁸⁵ ST-166, RAKOVIC, T.6872-6875, (25/02/10).

¹⁸⁶ ST-166, RAKOVIC, T.6876, (25/02/10).

83. [REDACTED].¹⁸⁷ [REDACTED].¹⁸⁸ [REDACTED].¹⁸⁹

Disruption to telephony network

84. Prosecution witness Rakovic also confirmed that there was no fixed telephone line between the CSB in Banja Luka and several of its subordinate municipalities (eg. Sanski Most). He added that when he arrived at the CSB in April 1992, half the telephone lines had already been cut off.¹⁹⁰ This supports the argument that Zupljanin was not receiving sufficient information to be adequately kept informed of events unfolding across the Krajina either through dispatch or via telephone.

Zupljanin personally addressed communications problems to the RS MUP

85. Zupljanin brought up the communications problems that he was experiencing at a key RS MUP meeting in Belgrade on 11 July 1992, stating “the functional communications system has been destroyed.”¹⁹¹ Prosecution witness Rakovic agreed that this corresponded with his view on what the situation was like during the wartime months in 1992.¹⁹² He extrapolated: “there was a period when there was a power cut in Banja Luka for two months. that's why I said that it was very difficult with constant interruptions and sometimes it would take a ... man a whole day to send a dispatch to one station, and he would say to his colleague: I've managed to send these but not those...”¹⁹³ Rakovic further confirmed the contents of a document which emphasises, on behalf of Zupljanin, the importance of getting the

¹⁸⁸ [REDACTED]; [REDACTED].

¹⁸⁹ [REDACTED]; [REDACTED]; ST-166, RAKOVIC, T.6872-6875, (25/02/10) (who testifies that the breakdown in communications between the CSB in Banja Luka and the SJBs during 1992 was significant during the summer of 1992 with power-cuts lasting sometimes up to two months).

¹⁹⁰ ST-166, RAKOVIC, T.6954 -6955, (26/02/10).

¹⁹¹ P160, Minutes of Ministry of Interior of the Republika Srpska meeting in Belgrade, 11-Jul-92; ST-166, RAKOVIC, T.6970-6972, (26/02/10).

¹⁹² ST-166, RAKOVIC, T.6971, (26/02/10).

¹⁹³ ST-166, RAKOVIC, T.6968-6969, (26/02/10).

communications systems up and running.¹⁹⁴ It is reasonable to assume that a CSB Chief would not have gotten directly involved in communications issues if the disruptions were minor. As such, this document indicates that Zupljanin was cognisant of the importance of re-establishing communications and took appropriate action to do so.

The RS MUP communications network was not properly operational until March 1993

86. It was further established by the Defence that the communication breakdown was endemic across the main organs of government in 1992 and included the RS MUP headquarters in Vrace, Pale and Bijeljina. This is supported by prosecution witness Pejic who stated that he had to build up the system of communications of the RS MUP in April 1992 from scratch.¹⁹⁵ This would clearly have had a direct impact on Zupljanin's role as he would not have been able to communicate with his superiors at the MUP and vice versa.¹⁹⁶

87. Moreover, prosecution witness Kezunovic acknowledged that it was not until March 1993 that the rules of internal organisation, a prerequisite for an operational communications network were enacted. He described the development of the RS MUP communications network during the whole of 1992 as a "work in progress"¹⁹⁷ claiming: "throughout 1992 everyone just went about disrupting things, including the communications system ... nobody built anything or did anything ... that was true of all systems, the electricity supply system and everywhere else".¹⁹⁸ This quote demonstrates that contrary to the OTP submission in its Pre-Trial Brief¹⁹⁹ that any use of RS MUP mobile communications units would also have been met with debilitating shortages of fuel and staff as well as being at risk of ambushes.

Disruption to communications between CSB Banja Luka and specific SJBs

¹⁹⁴ 2D50, Order and information concerning receipt of order regarding the establishment and maintenance of communications systems in SJBs of Banja Luka National Security Centre,,24-Jul-92;ST-166,RAKOVIC,T.6979-6980,(26/02/10).

¹⁹⁵ ST-168,PEJIC,T.12172,(24/06/10).

¹⁹⁶ ST-166,RAKOVIC,T.6991-6992,(26/02/10).

¹⁹⁷ ST-126,KEZUNOVIC,T.11638-11639,(11/06/10).

¹⁹⁸ ST-126,KEZUNOVIC,T.11641,(11/06/10).

¹⁹⁹ OTP Pre-Trial Brief,para.82.

Kotor Varos

88. Prosecution witness Raljac explained that while Tepic, the Chief of the Kotor Varos SJB could utilise a special internal line for the MUP,²⁰⁰ even this special phone line was often not operational.
89. His Honour Judge Harhoff asked how often there would be power cuts between April and September 1992. Raljac responded that this would be very frequent – 5-10 times per day sometimes lasting up to 10 days without any power at all.²⁰¹ Raljac unequivocally confirmed that the communications systems in Kotor Varos were, for the most part, not working.²⁰² He did mention that couriers were used as a substitute to send dispatches – including to Banja Luka.²⁰³ They were however unlikely to be effective in cases of urgency due to the time it would take to deliver the dispatch. Furthermore, prosecution witness Kezunovic denied that couriers were used to and from the CSB Banja Luka as he claimed it would have been very difficult to arrange them due to constant shortages of fuel, personnel and vehicles.²⁰⁴ Kezunovic noted that *“there was one period when the shortages were so bad that the ministry in its seat would ration fuel among its organisational units.”*²⁰⁵
90. Notwithstanding the very limited use of couriers as an emergency measure, the situation indicates that reporting of crimes within Kotor Varos and dispatching orders (including those from the CSB in Banja Luka) would have been significantly impaired throughout this period. As dispatches were the primary means to circulate orders to SJBs (and many dispatches had to be encrypted which required an operational communications system and machinery to be functional at both ends), many of Zupljanin’s orders would most likely not have been received by the SJB in Kotor Varos or any other SJB due to the communications problems affecting the entire region. Prosecution witness Djekanovic supported this by attesting that during the period of May through July 1992 in which Crisis Staffs were operating in Kotor Varos “many communications had broken down in BiH”. This included electricity and

²⁰⁰ ST-167,RALJIC,T.12403,(29/06/10).

²⁰¹ ST-167,RALJIC,T.12428,(30/06/10).

²⁰² ST-167,RALJIC,T.12442,(30/06/10).

²⁰³ ST-167,RALJIC,T.12443,(30/06/10).

²⁰⁴ ST-126,KEZUNOVIC,T.11633,(11/06/10).

²⁰⁵ ST-126,KEZUNOVIC,T.11633-11634,(11/06/10).

telephone lines. Djekanovic also stated that it was unsafe to travel by road due to ambushes being set up by Muslim and Croat armies.²⁰⁶ He went on to note that, as a consequence, the SDS party organs did not receive reports submitted by the Crisis Staff in Kotor Varos.²⁰⁷ This is compelling evidence that Zupljanin, being based in Banja Luka, had no way of being informed as to any criminal activity taking place in Kotor Varos.

91. Prosecution witness Raljic provided a clear example of how important information simply failed to reach Zupljanin. He confirmed that no information about crimes including murder, attacks on religious institutions and other crimes were reported to the CSB in Banja Luka via the SBJ Kotor Varos Communications Department (as was the standard practice). Indeed when asked by the Defence whether, the murder of Ilija Dragulic and the killings in front of the health centre were ever reported to the CSB Banja Luka, Raljic responded, “no ... we didn't send out such information from our communications centre at all.” He further confirmed that events such as the burning of the church and mosque in Kotor Varos were also not reported through the communications system to Banja Luka. Finally, when asked by the Defence if he had sent out reports on crimes such as murder and arson, Raljic responded, “information about such matters was not sent out through our communications centre.”²⁰⁸

Sanski Most

92. Similarly, Prosecution witness Delic (the basic public prosecutor in Sanski Most) confirmed that during June, July and August 1992:

“telephone lines were down most of the time. It was very difficult to establish communication with Banja Luka, or any other towns. The movement of people was restricted. People could not leave town. There were frequent controls at checkpoints which were manned by armed members of the army.”²⁰⁹

Prijedor

²⁰⁶ ST-181,DJEKANOVIC,T.1426-1427,(14/10/09).

²⁰⁷ ST-181,DJEKANOVIC,T.1013,(07/10/09).

²⁰⁸ ST-167,RALJIC,T.12451-12452,(30/06/10).

²⁰⁹ ST-169,DELIC,T.1589,(19/10/09).

93. Prosecution witness Rodic also confirmed that communication methods between Banja Luka and Prijedor were severely disrupted after the conflict broke out in April 1992 – there were only intermittent (unsecure) phone lines, the “special line” would break down constantly and there was no courier service.²¹⁰ Rodic stated that only on occasions when they were able to travel to Banja Luka personally (which was infrequent due to risk of attacks by Muslim and Croat militia and general wartime disruptions and obstructions to roads) on some other business would they be able to physically pick up their mail.²¹¹
94. This continues a consistent thread of prosecution evidence that illustrates just how difficult it was for Zupljanin to be kept informed about events not only in the specific municipalities mentioned here but also across the entire Krajina region.

Lack of regular and/or complete reports from SJBs

Semi-annual report on work of Banja Luka CSB prepared from incomplete and uncritical SJB reports

95. The Prosecution have suggested that Zupljanin was kept well informed of all activities across the ARK by his SJBs as illustrated in a detailed report to Minister Stanisic in May 1992.²¹² However, the detail of this report was not reflective of that in subsequent reports as is illustrated by P595. That exhibit is a report on the work of the Banja Luka CSB for the first six months of 1992, prepared on the basis of reports from SJBs and other relevant organisational units within the CSB structure.²¹³ However, as prosecution witness Gajic (who worked at RS MUP headquarters and was charged with inspecting the work of

²¹⁰ ST-212, RODIC, T.14481, (13/09/10).

²¹¹ ST-212, RODIC, T.14481, (13/09/10).

²¹² OTP Pre-Trial Brief, para.55; P432.12-Weekly Status Report by ZUPLJANIN to RS MUP from 18 May 1992 to 25 May 1992, 26-May-92

²¹³ ST-204, GAJIC, T.12905-12907, (16/07/10); P595-Semi-annual CSB report, July, 1992.

CSBs²¹⁴) confirmed, most SJBs did not or were unable to provide complete information to the CSB Banja Luka for the full report to be compiled properly.²¹⁵ Zupljanin also criticised the poor analytical quality of the reports submitted by the SJBs²¹⁶ which made it difficult to get an overview of what was actually taking place.²¹⁷ Gajic confirmed that Zupljanin and his associates pointed out the incompleteness of information, and this was reflected in his own report.²¹⁸ It is evident that Zupljanin was not, despite his requests, receiving the information he required from his SJBs. Furthermore, his own critical response is indicative of his desire that he be provided with such information to enable him to better fulfil his professional obligations.

96. [REDACTED].²¹⁹ [REDACTED].²²⁰ [REDACTED].

VRS combat reports not distributed to police

97. The Prosecution's own military expert, Brown, confirmed that while it was common for military documents to have a distribution list of recipients, that civilian police would not ordinarily be included on that list.²²¹ This was evidenced by the general briefing of VRS activities as reflected in a retrospective report and meeting that included army and government officials but was devoid of police representatives.²²²

²¹⁴ ST-204,GAJIC,T.12818-12819,(15/07/10), 1D176,MUP Orders issued by Mico STANISIC and based on the request by the Assembly of Serbian People in BiH held on 25,26-Jul-92, 27-Jul-92.

²¹⁵ ST-204,GAJIC,T.12906-12907,(16/07/10); P595;See also ST-168,PEJIC,T.12180,(24/06/10)(who concurred that not only were there problems with delays, but many organisational units,(including SJBs) simply failed altogether to submit regular reports to the CSB Banja Luka. Accordingly, it was impossible for Zupljanin to be aware of all activities occurring at the SJB level).

²¹⁶ P595, ST-204,GAJIC,T.12906,(16/07/10), [REDACTED];See also P374-Zupljanin's complaint about incomplete SJB reports,26-May-1992; and ST-167,RALJIC,T.12444-12455,(30/06/10). See also P367-CSB meeting on 6 May,20-May-1992.

²¹⁷ ST-204,GAJIC,T.12906-12907,(16/07/10), P595.

²¹⁸ ST-204,GAJIC,T.12818,(15/07/10);P631,Report on Performed Inspection of the Security Services Center and Public Security Station on the Territory of the Autonomous Region of Krajina, 5-Aug-92.

²¹⁹ [REDACTED]; [REDACTED].

²²⁰ [REDACTED].

²²¹ ST-097,BROWN, T.18657,(11/01/11).

²²² P1781,Analysis of the combat readiness and activities of the Army of Republika Srpska in 1992,5-Apr-93; ST-097,BROWN,T.18669-18700,(11/01/11).

98. Prosecution witness Djekanovic lent further support to the Defence position that the police were not informed of military strategy and operations. Djekanovic, as part of the Crisis Staff in Kotor Varos, was kept abreast only of logistical aspects and requirements pertaining to military operations and was not aware of information relating to combat missions and actual military activities as this fell under the remit of the army. Accordingly, he was in no position to transmit any such information to the CBS in Banja Luka. [REDACTED]:

“[REDACTED].”²²³

Information dissemination to and from CSB Banja Luka was not always from Zupljanin personally

CSB Banja Luka was not a “one-man orchestra” and dispatches often bore Zupljanin’s signature without his knowledge

99. It is clear that many dispatches, although bearing Zupljanin’s typed signature, would not have been reviewed by him personally before being sent or received and therefore his knowledge of their content is reliant on him receiving accurate and honest oral reports from his subordinates. [REDACTED].²²⁴

100. This is further established by reference to prosecution exhibit P123, a “confidential document” from the Chief of the Sanski Most SJB sent to Zupljanin, who tasked the CSB crime department (designated as “02”) to forward the report to the Corps headquarters and the MUP. However, under Zupljanin’s initials, the handwritten name of Djukic appears (Dusko Djukic was an inspector in the crime department) followed by a manuscript note that proved illegible.²²⁵ In essence, there was a different handwriting to that of Zupljanin on the same letter. This has an important bearing on Zupljanin’s assumed level of knowledge of many events as his typed signature would be the only signature visible by a recipient of a dispatch sent through the communications centre. This is because whoever drafted and

²²³ ST-181, DJEKANOVIC, T.1096, (08/10/09).

²²⁴ [REDACTED].

²²⁵ P123, Report by Public Security Station Sanski Most re: deteriorating situation between Muslims and Croats in the area of Sanski Most in the period from 23-Oct-92 to 08-Nov-92, dated 10-Nov-92; [REDACTED].

signed off on the dispatch on Zupljanin's behalf would not have their handwritten signature appear at the recipient end and the dispatch would, accordingly, be assumed to have come from Zupljanin directly.²²⁶

101. Zupljanin therefore had to place a large degree of trust in his subordinates to follow his instructions. By way of example, prosecution witness Kovacevic confirmed, in respect of the killings that occurred at Koricanske Stijene, that nothing whatsoever suggested to him that Zupljanin attempted to obstruct the investigation in any way.²²⁷ He agreed that Zupljanin was not a "one-man orchestra" and that he reasonably relied on professional operatives under him within the CSB Banja Luka to deal with certain types of crimes and carry out operative work.²²⁸

Zupljanin distributed dispatches to all relevant parties, including Muslims and Croats

102. The evidence demonstrates that the CSB Banja Luka addressed dispatches to all who were supposed to receive them at the BiH MUP, including Muslim and Croat officials.²²⁹

Key Meetings

General comments regarding the Prosecution's onus as to knowledge

103. The Defence submit that the Prosecution have failed to prove that meetings in which Zupljanin was present along with members of the army, MUP or SDS offered any information which could give rise to an inference that Zupljanin was, or that it would be

²²⁶ [REDACTED].

²²⁷ ST-128,KOVACEVIC,T.14258,(06/09/10).

²²⁸ ST-128,KOVACEVIC,T.14261,(06/09/10).

²²⁹ P411.12,Cover letter and Report of Security Services Centre Banja Luka on the Activities of Armed Groups on the Territory of Security Services Centre Banja Luka, 23-Sep-91;2D40,Information to Presidency of SR BiH - SR BiH Assembly and others re discovery of great number of members of Armed forces of the Republic of Croatia that were hiding among the refugees Author: ZUPLJANIN,5-Dec-91;P355,Item 7,Dispatch CSB Banja Luka about Conclusions from Enlarged Centre Council meeting on 6-Apr-92, and the reorganization of MUP, CSB and SJBs.

reasonably foreseeable for him to recognise that other members of the meeting were involved in widespread and systematic crimes directed against non-Serb populations.

Zupljanin did not attend top-level SDS/VRS meetings that discussed war strategy or anti-Serb sentiment

104. The Prosecutor questioned Borovcanin about a statement, made by Zupljanin at the collegium on 11 July 1992 in Belgrade, where Zupljanin said, “It seems a long time since we met in Sarajevo...” When asked if Zupljanin was present at a meeting held in mid-March at the Hotel Serbia with top ranking members of the SDS, Borovcanin answered, “Definitely not”.²³⁰ The Defence submit that the Prosecution’s attempt to create a personal nexus between Zupljanin and the SDS hierarchy is misleading and wholly inaccurate. Zupljanin was not and never was a member of the SDS²³¹ and, accordingly, would not have attended any of their meetings.

Zupljanin attended peace-building meetings with non-Serbs to listen to them and provide assistance and protection

105. [REDACTED].²³² [REDACTED].²³³ [REDACTED].²³⁴ [REDACTED].²³⁵

106. On 7 November 1991 at the CSB in Banja Luka, the former Federal Interior Minister Petar Gracanin (and it appears the BiH Interior Minister Delimustafic although this is uncertain) attended a meeting with Zupljanin, General Daljevic and Bogdan Bogdanovic (the Major of Belgrade) to discuss measures to counter the increasing number of attacks on mosques and ways in which the civilian population of Banja Luka could be better

²³⁰ ST-164, BOROVCANIN, T.6645, (22/02/2010).

²³¹ ST-092, NIELSEN, T.5581, (27/01/10).

²³² [REDACTED].

²³³ [REDACTED].

²³⁴ [REDACTED].

²³⁵ [REDACTED].

protected.²³⁶ Again, such discussions point to a willingness by Zupljanin and others to engage in proactive discussions with Muslim leaders.

107. [REDACTED].²³⁷ [REDACTED].²³⁸ [REDACTED].²³⁹ [REDACTED].²⁴⁰
[REDACTED].

No evidence of meetings that took place with ARK Crisis Staff had anything to do with JCE

108. [REDACTED].²⁴¹ [REDACTED].²⁴² [REDACTED].

Zupljanin only received knowledge of military operations (including crimes committed against non-Serb populations in the context and aftermath of municipal takeovers) well after they occurred

109. Prosecution witness Pejic testified that especially when communications were poor in 1992, decisions had to be made by SJB police officers who would engage police in combat without first sending a request to the CSBs in order to do so.²⁴³ Pejic believed that the requests for police engagement in military operations came from either the army directly or through the Crisis Staffs, who engaged police without the knowledge of the MUP or CSBs.²⁴⁴ It was rarely possible to communicate this information to CSBs on the day of the attack or takeover and information would instead be sent when conditions permitted, often some considerable time after the attack or takeover.²⁴⁵ Accordingly it

²³⁶ 2D68, TANJUG dispatch re: SFRY Secretary for Internal Affairs Petar GRACANIN's visit to the SDB Centre in Banja Luka where he attended a meeting together with Minister of the Interior of SR BiH Alija DELIMUSTAFIC, 8-Nov-91.

²³⁷ [REDACTED].

²³⁸ [REDACTED].

²³⁹ [REDACTED].

²⁴⁰ [REDACTED].

²⁴¹ [REDACTED].

²⁴² [REDACTED]. This is supported by other prosecution witnesses – see section on ARK Crisis Staff in chapter on Indictment paragraph 12(b).

²⁴³ ST-168, PEJIC, T.12141, (24/6/10).

²⁴⁴ ST-168, PEJIC, T.12141, (24/6/10).

²⁴⁵ ST-168, PEJIC, T.12142, (24/6/10).

was difficult for the more senior officials, including Zupljanin, to receive the information while it was still possible to have any control over the situation. Indeed, *de jure* and *de facto* re-subordination often took place without the knowledge of the MUP or relevant CSB.²⁴⁶

Zupljanin did not receive intelligence (“Milos”) reports from the SDB at the CSB Banja Luka as his senior subordinates deliberately undermined him and kept him in the dark

110. Prosecution witness Radulovic emphasised that Zupljanin was deliberately kept in the dark by Bera and Kesic (the leaders of the SDB) regarding information and intelligence about crimes being committed in various municipalities, as documented in the Milos reports. He acknowledged that he only very rarely spoke to Zupljanin himself, but when he did get the chance to relay important information directly, he confirmed that Zupljanin always responded promptly and decisively to uphold the law.²⁴⁷

Conclusion

111. As outlined above, the Prosecution have not demonstrated that Zupljanin gained knowledge of the alleged common criminal plan or indeed of the crimes alleged in the Indictment taking place either from meetings, despatches or any other means during the Indictment period.

²⁴⁶ See: “Re-subordination” section in the chapter on Indictment paragraph 12(d).

²⁴⁷ ST-182,RADULOVIC,T.11118,(01/06/10).

INDICTMENT PARAGRAPH 12(A)

112. The Prosecution have failed to establish to the requisite standard that Zupljanin participated in the formation of the Bosnian Serb bodies and forces that implemented the forcible takeovers of ARK municipalities and participated in the crimes listed in the Indictment. In particular, Zupljanin did not participate in the formation of the ARK Crisis Staff, local Crisis Staffs, the RS Army (“VRS”), the Territorial Defence (“TO”) or the Serbian Defence Force (“SOS”). The formation of the Banja Luka Special Police unit is dealt with below and the nature of its activities are expanded upon in a subsequent chapter of this Final Brief.²⁴⁸

Formation and role of ARK Crisis Staff

Formation of ARK Crisis Staff

113. The relative weight placed by the Prosecution on the importance of the ARK Crisis Staff and its alleged role in passing down instructions to local Crisis Staffs, is entirely unsubstantiated by the evidence presented during the trial.

114. The ARK Crisis Staff was established by the Executive Board in May 1992 in an attempt to replicate a model of regional governance employed in other regions. Though they existed in parallel, it was a separate institution to the ARK Assembly – the latter which was permanent throughout 1992 (and of which Zupljanin was not a member).

115. The Defence case on this issue is straightforward. While it is not disputed that Zupljanin was a member of the ARK Crisis Staff, it must be noted that his membership was not by virtue of individual choice. Rather, it was automatic by virtue of his position as Chief of the CSB Banja Luka.²⁴⁹ It is also important that the Trial Chamber appreciate that Zupljanin ceased to be a member of the ARK Crisis Staff on 31 May 1992. After this date, the ARK Crisis Staff became the ARK War Presidency and Zupljanin was no longer a member of this

²⁴⁸ See Chapter on Indictment paragraph 12(c).

²⁴⁹ P221-Zupljanin was member of ARK Crisis Staff by virtue of his position as CSB Chief; [REDACTED].

body.²⁵⁰ Accordingly, Zupljanin's involvement with the ARK Crisis Staff only lasted for a few weeks during May 1992.

116. Decisions of the ARK Crisis Staff/War Presidency became binding on local municipalities following a change in its Statute on 15 June 1992 (when Zupljanin was no longer a member). Before then, the local municipalities had the final say on whether to implement ARK Crisis Staff decisions.²⁵¹ This is important evidence. It demonstrates that until that point power was vested in local Crisis Staffs - not the ARK Crisis Staff.

Role of ARK Crisis Staff

117. The Defence stress the fact that the ARK Crisis Staff/War Presidency existed for only a short period. Indeed, its final decision was reported in the Official Gazette in late July 1992.²⁵² To suggest that during this time it wielded power over local Crisis Staffs contradicts the timeline of events in the Republika Srpska. The decision to disband local Crisis Staffs was made by the Presidency as early as June 1992²⁵³ due to the fact that not even the highest echelons of state power had any control over them. To effect their disbandment and regain a centralised control over local municipalities across Republika Srpska, the Presidency dispatched individual commissioners to each municipality.²⁵⁴ However, such was the power of local Crisis Staffs that even a deliberate attempt by the Presidency to disband them proved ineffective.²⁵⁵ The evidence of local Crisis Staffs operating very much independently of any regional or governmental oversight, coupled with the extensive evidence of them having conflicting agendas to Zupljanin²⁵⁶ clearly indicates that the ARK Crisis Staff and its members had no authority to influence their actions.

²⁵⁰ P442, ARK instructions on municipal Crisis Staffs and War Presidencies, 11 June, 1992

²⁵¹ P1830, Official Gazette notification on abolition of ARK Crisis Staff and creation of War Presidency, Art. 5, 08-June-92; P221, Meeting regarding change in Statute of ARK Crisis Staff/War Presidency to make its decisions binding on local municipalities, 31 May 1992.

²⁵² P1830, 8-Jun-92.

²⁵³ P1830, 8-Jun-92, Arts. 4, 5.

²⁵⁴ ST-110, TRBOJEVIC, T. 4181-4182, (03/12/09); P1830, Art. 4; 1D60, 5-Nov-92.

²⁵⁵ 1D60; ST-110, TRBOJEVIC, T. 4182, (03/12/09); [REDACTED].

²⁵⁶ See chapters on Indictment paragraphs 12(b) and 12(f/g).

118. Prosecution witness Radic supported this position. He insisted that meetings between members of the ARK Crisis Staff were, “a waste of time because nothing important went on there” and that any decision reached by the ARK Crisis Staff would in any event need to be ratified by the Municipal Assembly, suggesting that decision-making power lay firmly at the local municipal/Crisis Staff level. [REDACTED].²⁵⁷ [REDACTED].²⁵⁸

119. [REDACTED].²⁵⁹ [REDACTED].²⁶⁰ [REDACTED].

120. Indeed, even prosecution expert Brown confirmed that relations between the 1st Krajina Corps and the ARK Crisis Staff were distant and strained.²⁶¹ This was because the army did not consider that it was under a duty to co-ordinate with civil and political factions of the state. As such, Zupljanin, in his capacity as a member of the ARK Crisis Staff, certainly would not have been privy to any plans to co-operate or co-ordinate with the army in any way.

121. The Defence accordingly maintain that Zupljanin had no involvement in the formation of the ARK Crisis Staff, nor did his alleged attendance at ARK Crisis Staff meetings suggest that he had knowledge of or was to any extent involved in the alleged JCE or exercising superior responsibility for the purposes of the crimes set out in the Indictment. Alternatively, if the Trial Chamber should reach the conclusion that some members of the ARK Crisis Staff were involved in an alleged JCE, this was independent of the official functions of the ARK Crisis Staff and, does not indicate that Zupljanin either knew about or was involved in such activities.

Zupljanin never implemented any orders from any of the ARK authorities that were illegal

122. Zupljanin only ever implemented orders from the ARK Crisis Staff (and/or other ARK authorities) that were in accordance with the law.²⁶² For example, the ARK Crisis Staff order

²⁵⁷ P2100 (Under Seal) [REDACTED] ;ST-123,TUTUS,T.7626-7627,(15/03/10).

²⁵⁸ P2100 (Under Seal) [REDACTED] ;ST-123,TUTUS,T.7626-7627,(15/03/10).

²⁵⁹ [REDACTED].

²⁶⁰ [REDACTED].

²⁶¹ ST-097,BROWN,T.18706,(12/01/11).

²⁶² P594;P1883.

that nobody could leave the territory of the Krajina with more than the equivalent amount of 300DM was a law that already existed under the former Yugoslavia to prevent smuggling and was simply adopted, like many others, under the new laws of Republika Srpska. Similarly, P1883 was an order to prevent people of all three ethnic groups shirking their military (and legal) duty to respond to mobilisation by the JNA. Again, Zupljanin merely passed down an order already enshrined in law under the previous regime. The Defence emphasise the fact that when Zupljanin later recognised that orders were being issued by the ARK Crisis Staff that were illegal, he immediately instructed his local police chiefs to disregard such orders.²⁶³

Ministry of Defence ordered disarmament of all civilians in Republika Srpska

123. The Defence submit that the ARK Secretariat for Defence (part of ARK Government and separate to the ARK Crisis Staff) passed down a general order from the Ministry of Defence of Republika Srpska that gave a one-week grace period for paramilitaries and all citizens to hand in illegal weapons.²⁶⁴ This order from the Ministry of Defence was to implement: (a) a general mobilisation; (b) a curfew; and (c) a general disarmament of all illegal weapons. The Defence stress that this was a mandatory order that applied to the whole territory of the Republika Srpska.²⁶⁵ The police were accordingly, and quite reasonably, authorised to search houses and implement sanctions on those who refused to comply. The Defence stress that this order applied to all ethnic groups equally. Accordingly, Zupljanin ordered his police chiefs to implement this order as it was in accordance with the law and was a seemingly necessary step to prevent violent skirmishes in an increasingly febrile environment. Even prosecution witness Tutus confirmed that everyone throughout 1992 had to be disarmed in order to try to improve the security situation, and that this was consistent with Article 28 of the Law on the Acquisition, Possession and Carrying of Weapons.²⁶⁶ As such, the disarmament served not only practical and security reasons, but had a clear legal basis.

²⁶³ 2D25,30-Jul-92.

²⁶⁴ P555,4-May-92.

²⁶⁵ P467,16-April-92.

²⁶⁶ ST-123,TUTUS,T.7863-7864,(19/3/10).

Zupljanin was not involved in the formation of Bosnian Serb forces that participated in the alleged crimes as set out in the Indictment

124. It is the position of the Defence that the Bosnian Serb forces (VRS) were formed for reasons of self-defence in a climate of increasing ethnic tensions and political upheaval. These forces were established simultaneously with parallel activities by Bosnian Muslims and Bosnian Croats. Zupljanin had no involvement in or knowledge of any alleged underlying criminal purposes for the establishment of the VRS. Likewise, the Serb Territorial Defence (TO) was an emanation of the JNA (and later the VRS) and fell exclusively under military authority and command. Indeed, prosecution expert Brown confirmed that while it was common that military documents have a distribution list of recipients, the civilian police would not ordinarily be on that list.²⁶⁷

Establishment of local SDS Crisis Staffs

SDA and HDZ Crisis Staffs existed in parallel with SDS Crisis Staffs – and with similar objectives

125. Prosecution experts Hanson and Brown both acknowledged that all three political parties had their own Crisis Staffs even before 1992, and that they were legally established pursuant to the Law on All Peoples Defence under the former Presidency of the Socialist Republic of Bosnia and Herzegovina.²⁶⁸ Hanson also accepted that the purpose of the HDZ and SDA in establishing Crisis Staffs on 18 September 1991 “paralleled” that of the SDS.²⁶⁹ Hanson further admitted that the instructions for the HDZ and SDA Crisis Staffs reflected how the SDS Crisis Staffs operated, including contingency measures to protect their own people and interests, among other responsibilities.²⁷⁰

²⁶⁷ ST-097,BROWN,T.18657,(11/01/11).

²⁶⁸ L1,Art.74;ST-097,BROWN,T.18844-18847,(18/01/11);ST-158,HANSON,T.4481,(09/12/09).

²⁶⁹ ST-158,HANSON,T.4491,(09/12/09);1D110,18-Sep-91.

²⁷⁰ ST-158,HANSON,T.4492-4494,(09/12/09); 1D110.

126. In terms of decision-making, there is a vast body of evidence that supports the Defence position that local SDS Crisis Staffs operated as autonomous mini-states during the war and Zupljanin was often kept in the dark as to their activities.²⁷¹ Due to this state of affairs, his orders, if they were ever received,²⁷² were largely ignored and/or supplanted by local Crisis Staff orders. Decisions as to the functions and involvement of local police with local Crisis Staffs and the VRS were taken by the leadership of the VRS and local Crisis Staffs. Zupljanin was not informed of their actions and had no effective control over those local police who opted to join ranks with the local Crisis Staffs and functionally detach themselves from the CSB Banja Luka.²⁷³

127. It is accordingly submitted that Zupljanin was not involved in the establishment or operation of local Crisis Staffs. On the contrary, he opposed their interference in the fulfilment of his duties as his work was severely hampered by their actions and refusal to respect the authority of the CSB Banja Luka.²⁷⁴

Zupljanin was not involved in the formation of the SOS

128. [REDACTED]²⁷⁵

129. A Milos (intelligence) report provided information on the establishment of road blockades in Banja Luka on 3 April 1992, set up by the SOS in order to “force individual members of the ARK Government to resign and...pressure the JNA to make personnel changes...in keeping with the interests of the SDS.”²⁷⁶ Prosecution witness Radulovic confirmed that the SOS “blocked all life in Banja Luka.” He also recounted how one of the

²⁷¹ For an illustration of the power and autonomy of local SDS Crisis Staffs; See chapters on Indictment paragraphs 12(b), 12(f/g) and Zupljanin’s Knowledge.

²⁷¹ [REDACTED]; See chapter on Indictment paragraph 12(b).

²⁷² See chapters on Indictment paragraphs 12(b), 12(f/g) and Zupljanin’s Knowledge regarding breakdown in communications.

²⁷³ [REDACTED]; ST-110, TRBOJEVIC, T.4114-4117, (03/12/09); ST-113, DJOKANOVIC, T.3572-3575, (20/11/09). The adverse influence of local Crisis Staffs is set out in detail in the chapters on Indictment paragraph 12(b) and Zupljanin’s Knowledge.

²⁷⁴ P160, 11-Jul-92, p.7; 2D25, 30-Jul-92, pp.2-3

²⁷⁵ [REDACTED].

²⁷⁶ P1369, 2-Apr-92; ST-182, RADULOVIC, T.10758, (25/05/10), SZ-009, SAJINOVIC, T.25131, (17/10/11).

members of the CSB, Goran Bijelic, was killed on the Venezija bridge because he did not stop when he was hailed by the SOS.²⁷⁷

130. The Defence stress the importance of appreciating how the SOS were able to wield power in Banja Luka and, how some of them eventually became members of the military-led Banja Luka Special Police Unit.²⁷⁸ The Defence underline that the members of the SOS were the same individuals that formed part of the Red Berets, a paramilitary unit under the command of military officer, Colonel Stevilovic.²⁷⁹ They were, accordingly, members of the army.²⁸⁰ Indeed, in their “proclamation of demands”²⁸¹ they in fact declared themselves from the outset as members of the army. Another faction of the SOS which comprised mainly career criminals,²⁸² committed crimes at checkpoints and were duly arrested pursuant to Zupljanin’s orders.²⁸³
131. It is equally important to note that in early April 1992, the status of the JNA was unclear. The aim of the SOS, they stated, was to ensure that the JNA, in its state of ambiguity in April 1992, did not leave Banja Luka with weapons and equipment so as to leave the city unprotected.²⁸⁴ Furthermore, they demanded the formation of the RS MUP and positions within the CSB Banja Luka.²⁸⁵ The army advocated for the SOS to join the CSB Banja Luka – a course of action with which Zupljanin strenuously disagreed.²⁸⁶
132. In early April 1992, the SOS laid siege to the CSB building (which, importantly, housed the Banja Luka SJB) as they were aware that their biggest threat of police resistance in Banja Luka came not from Zupljanin but from prosecution witness Tutus, who was chief of the SJB and the only person with the power to mobilise uniformed police officers against the SOS as all of the uniformed police officers in Banja Luka were directly (and exclusively) under his

²⁷⁷ ST-182,RADULOVIC,T.10758,(25/05/10).

²⁷⁸ P591.

²⁷⁹ ST-182,RADULOVIC,T.10758-10759,(25/05/10); [REDACTED].

²⁸⁰ SZ-009,SAJINOVIC,T.25130-25131,(17/10/11);See also P1369 on formation of SOS.

²⁸¹ ST-123,TUTUS,T.7600-7601,(15/03/10);P1098.22,3-Apr-92;1D137,3-Apr-92,pp.4-5.

²⁸² ST-182,RADULOVIC,T.10758-10759,(25/05/10).

²⁸³ ST-123,TUTUS,T.7647,(16/03/10); ST-123,TUTUS,T.7932,(22/03/10);1D198.

²⁸⁴ SZ-009,SAJINOVIC,T.25130,(17/10/11).

²⁸⁵ P1098.22;SZ-009,SAJINOVIC,T.25131,(17/10/11).

²⁸⁶ See chapter on Indictment paragraph 12(c).

command.²⁸⁷ Indeed, any resistance to the SOS would have been Tutus' direct responsibility.²⁸⁸ However, such resistance was futile as the police simply did not have the resources to take on the heavily-armed SOS.²⁸⁹

133. The Defence submit that it is evident that Zupljanin and the CSB (and SJB) Banja Luka were effectively taken hostage by this group of heavily armed paramilitaries and had nothing to do with its formation or eventual transformation into the Special Police Unit. The fact that the SOS did not see the local police as allies is evident from the fact that they killed one of the local police officers, Bijelic, and even laid siege to the CSB building in a show of force against SJB chief Tutus.

Zupljanin was powerless to prevent members of the SOS joining the Special Police Unit

134. The Defence highlight the fact that Zupljanin made every effort to weed out those persons (including members of the SOS) with criminal backgrounds.²⁹⁰

135. The Defence further submit that members of the SOS were only able to join the Special Police Unit following negotiations to end the SOS siege. Prosecution witness Tutus acknowledged that Zupljanin had not been involved in the negotiations with the SOS that resulted in their partial amalgamation with the CSB Special Police Unit. He confirmed that this merger was orchestrated by Banja Luka Mayor Radic and the army.²⁹¹ He further acknowledged that Zupljanin objected to their integration into the CSB, but was powerless to prevent it.²⁹²

136. Defence Counsel for Mr. Zupljanin presented P591, a report on the SOS produced by the Army Main Staff. This military report confirmed that some of the members of the SOS came

²⁸⁷ SZ-009,SAJINOVIC,T.25340,(19/10/11); [REDACTED];P850;P169 pp.174-177,(SJB –and sub stations had total of around 160 uniformed policemen all under the command of SJB Chief Tutus).

²⁸⁸ SZ-009,SAJINOVIC,T.25340,(19/10/11); [REDACTED].

²⁸⁹ SZ-009,SAJINOVIC,T.21530,(17/10/11).

²⁹⁰ ST-123,TUTUS,T.7920-7921,(22/03/10);[REDACTED];ST-123,TUTUS,T.7629,(15/03/10).

²⁹¹ ST-123,TUTUS,T.7780 (18/03/10).

²⁹² ST-123,TUTUS,T.7652 (16/03/10).

to be part of the CSB Banja Luka Special Police Unit but were “not really under the control of the detachment’s command or the CSB.”²⁹³ As such, it is clear that Zupljanin was powerless to prevent the outcome of whatever agreement the army reached with the SOS.

Establishment of CSB Banja Luka Special Police unit

137. As the Defence will demonstrate in a subsequent chapter,²⁹⁴ the Special Police Unit was established, accommodated, equipped and, most importantly, commanded at all times by the army. The fact that Zupljanin sent through the paperwork to General Kukanjac for the army to deliver equipment to the Special Police Unit was simply because this was the most administratively expeditious procedure. Indeed, the appended note from Bozo Novakovic (the CSB staff member responsible for material and equipment) indicates that it made more sense to pass on the equipment through established channels of procurement.²⁹⁵ The key point to appreciate is that the Special Police Unit was armed by the army, with military weapons for combat purposes. The weapons and assets listed in Zupljanin’s request were not for ordinary police use.

138. The Trial Chamber will bear in mind that the leader of the Banja Luka Special Police Unit, from the start, was a military commander, Colonel Lukic.²⁹⁶ Likewise, their alleged activities in Kotor Varos were commanded by Colonel Stevilovic ...[REDACTED]. As such, the Special Police unit at all times fell under the exclusive authority and command of the army (indeed the purpose of the establishment and nature of their composition was exclusively for military operations). Zupljanin, accordingly, had no authority, knowledge or control over the actions of its members and if any of them committed crimes, it was the army’s responsibility to investigate this.²⁹⁷

²⁹³ P591,28-Jul-92,pp.4-5;ST-097,BROWN,T.18769,(17/01/11);1D368;ST-097,Brown,T.18913,(18/01/11).

²⁹⁴ Chapter on Indictment paragraph 12(c).

²⁹⁵ P548,23-Apr-92.

²⁹⁶ [REDACTED]; [REDACTED].

²⁹⁷ The army’s Authority over the CSB Banja Luka Special Police unit is set out in depth in the chapter on Indictment paragraph 12(c).

Conclusion

139. The Defence draw attention to the fact that at no stage in this trial has the Prosecution adduced any evidence to establish that Zupljanin participated in the formation of Bosnian Serb bodies and forces that allegedly participated in the crimes set out in the Indictment. Alternatively, if the Trial Chamber takes the view that Zupljanin did participate in the formation of one or more of such bodies or forces, this was not with the intent to further any common criminal agenda but was in furtherance of his duty as Chief of the CSB Banja Luka to comply with lawful directions and orders in the course of his duties.

INDICTMENT PARAGRAPH 12(B)

Introduction

140. The Prosecution have failed to establish to the requisite standard that Zupljanin in any way or form ordered, commanded or directed members of the RS MUP who were acting in co-ordination with local Crisis Staffs, the VRS and other Serb forces. If members of the RS MUP were involved in joint criminal actions with the VRS, it is submitted that Zupljanin either had no knowledge about such criminal activities or, to the extent that he did find out about such activities, he took action to punish those responsible and to prevent further crimes being committed. Where Zupljanin was unable to take action or where such action was ineffective, this was because he had no effective control over his subordinates as they were either under the command of the army (i.e. they were re-subordinated²⁹⁸) or they wilfully chose to ignore his orders and instead aligned themselves with the leadership of local Crisis Staffs or other extremist factions.

Any members of the RS MUP acting in co-ordination with local Crisis Staffs were ordered, commanded and directed by those Crisis Staffs

Zupljanin was aware of the problems regarding local Crisis Staffs and took action to address this

141. It is important for the Trial Chamber to note from the outset that Zupljanin's interaction with local Crisis Staffs changed dramatically over time when it became obvious to him that many local Crisis Staffs were working against, rather than with, the CSB Banja Luka. In early May 1992, Zupljanin had no reason (at that stage) to suspect that Crisis Staffs were engaging in criminal activity and defying his authority. Indeed, the Defence recall that the

²⁹⁸ See chapter on Indictment paragraph 12(d) on re-subordination.

establishment of local Crisis Staffs was entirely legal and that they were recognised bodies²⁹⁹ following a declaration of immediate threat of war on 15 April 1992.³⁰⁰

142. This context is essential in assessing Zupljanin's conduct during the meeting at the CSB Banja Luka on 6 May 1992 (the minutes of which contain a reminder to all SJBs to submit full and timely reports on their work), where he stated, "in all our activities we are obliged to observe all measures and apply all procedures ordered by the Crisis Staff of the Autonomous Region".³⁰¹ When Zupljanin later became aware that Crisis Staffs were engaging in illegal behaviour he took action to address this, as is evident from the 30 July 1992 dispatch in which Zupljanin explicitly ordered SJBs not to follow any orders or decisions from regional or municipal Crisis Staffs or any other bodies where such orders or decisions were not in accordance with the law and which fell within the competence and authority of the designated SJB.³⁰² It is also important to stress that any orders from the ARK Crisis Staff which Zupljanin did implement were lawful to the best of his knowledge at the material time.³⁰³

143. The above dispatch from Zupljanin to his police chiefs indicates that certain SJBs were wrongly following orders from other bodies instead of the CSB Banja Luka. In this dispatch Zupljanin warned his subordinate chiefs to conduct their duties professionally and competently and not fall prey to the influence of other local bodies that were allowing "policemen and the leading structures of the public security stations to be "pushed" by those currently holding power in the field into carrying out jobs ... not in accordance with the Law on the Interior".³⁰⁴ Zupljanin continued to lambast those individual police chiefs who "...instead of having a highly professional attitude towards the Service, give themselves the right to deal with issues which are beyond the scope of their jobs...asking for approval from

²⁹⁹ ST-113, DJOKANOVIC, T.3573-3574, (20/11/09); L1, Art.74; ST-097, BROWN, T.18845, 18847, (18/01/11).

³⁰⁰ P183, 15-Apr-92. See also chapter on Indictment paragraph 12(a) on the formation of local Crisis Staffs.

³⁰¹ P367, 6-May-92.

³⁰² ST-123, TUTUS, T.7917, (22/03/10); ST-158, HANSON, T.4635, (11/12/09); ST-182, RADULOVIC, T.11129-11131, (01/06/10); [REDACTED]; 2D25, 30-Jul-92.

³⁰³ See section "Zupljanin never implemented any orders from any of the ARK authorities that were illegal" in chapter on Indictment paragraph 12(a).

³⁰⁴ 2D25; ST-123, TUTUS, T.7917, (22/03/10); ST-158, HANSON, T. 4635 (11/12/09); [REDACTED].

certain political organs....”³⁰⁵ Indeed, Zupljanin expressly mentioned in his order that the victims were non-Serbs.³⁰⁶ Zupljanin further noted and strongly condemned those police officers who, although in the minority, damaged the reputation of the CSB by involving themselves in “horrendous criminal acts” against non-Serbs which he feared would lead to these ethnic groups losing faith in the police service as a whole – often with the CSB Banja Luka being blamed as a result.³⁰⁷ Given the state of war unfolding at the time, this was a highly significant act that ought to be given considerable weight by the Trial Chamber.

144. The Defence also refer to a periodic report dated October 1992 addressed to the RS MUP detailing the work of the CSB Banja Luka in the period between July and September 1992, in which Zupljanin specifically addressed the problem of SJBs becoming functionally detached from the CSB Banja Luka and attaching themselves instead to the local political leaders, in the process neglecting their legal and professional obligations.³⁰⁸

145. Prosecution witness Njegus confirmed “a certain number of SJBs detached themselves from the CSB Banja Luka, which considerably disrupted the unity and social role of the organs and security services.” He further agreed and had no doubt “that some of the SJBs attached themselves– to the local politic[ians] and leaders, neglecting their legal obligations and authorisations.” Indeed, Njegus empathised that he “could only imagine how hard it was for Zupljanin to co-operate with chiefs in his own area, such as Simo Drljaca and others.”³⁰⁹

Crisis Staffs usurped Zupljanin’s authority over local police

146. Notwithstanding Zupljanin’s attempts to impose his authority over local police forces, The Trial Chamber will be aware of the abundant evidence in support of the Defence position that local Crisis Staffs wielded enormous influence in their respective municipalities and that it was they, not Zupljanin, who (often in tandem with the army) ordered, commanded or

³⁰⁵ 2D25.

³⁰⁶ ST-158,HANSON,T.4635,(11/12/09); 2D25.

³⁰⁷ 2D25;ST-123,Tutus,T.7917,(22/03/10);ST-158,HANSON,T.4635,(11/12/09); [REDACTED].

³⁰⁸ P621,dated Oct-92;ST-165,NJEGUS,T.11462-11464,(09/06/10).

³⁰⁹ ST-165,NJEGUS,T.11464,(09/06/10).

directed those members of the local police forces who were allegedly involved in carrying out the crimes set out in the Indictment.³¹⁰

147. [REDACTED].³¹¹ Zupljanin, even though he tried to exercise control and command over local SJBs, was unable to do so due to the autonomous functioning of the local municipalities and the authority of local Crisis Staffs.

148. Njegus, another prosecution witness, also agreed that the biggest obstacle for the normal operation of the CSB Banja Luka lay with the renegade SJBs that were “in cahoots” with the powerful local Crisis Staffs.³¹² Trbojevic added that local Crisis Staffs became local power bases in and of themselves and were divorced from any real influence by or accountability to the RS MUP or to the CSB Banja Luka.³¹³

149. Trbojevic further confirmed that it was the combination of a breakdown of communicative ability due to a non-existent communications infrastructure in mid-1992, coupled with the resistance of local Crisis Staffs to MUP/CSB orders, that often hampered the proper functioning of the new RS MUP and the CSB Banja Luka.³¹⁴ He was shown a record of the government meeting that took place on 23 May 1992.³¹⁵ In this meeting, it was concluded that measures be taken to abolish Crisis Staffs. Trbojevic reiterated that the essence of the situation, reflected in this decision, was that the central government (as well as the CSB Banja Luka) could not exercise effective control over local Crisis Staffs.³¹⁶ Indeed, even these measures to abolish local Crisis Staffs proved unsuccessful.

³¹⁰ P371, 12-May-92; P362, Witness statements of ST-177, 12-Mar-2001 and 17-Nov-2008, (Nemanja Tripkovic, who was a member of the Crisis Staff, was in charge of running ad hoc centres); P356; [REDACTED]; 1D166, 31-May-1992; ST-159, MARKOVIC, T.12768, (13/07/10); ST-158, HANSON, T.4414-4415, (08/12/09); 2D117, 28-Jun-92; [REDACTED]; [REDACTED]; P1647, 28-May-92.

³¹¹ [REDACTED]; ST-110, TRBOJEVIC, T.4114-4117, (03/12/09); ST-113, DJOKANOVIC, T.3572-3573, 3575, (20/11/09).

³¹² ST-165, NJEGUS, T.11462-11463, (09/06/10), P621; ST-182, RADULOVIC, T.11087-11088, (31/05/10); ST-113, DJOKANOVIC, T.3572-3575, (20/11/09); ST-204, GAJIC, T.12905, (16/07/10).

³¹³ ST-110, TRBOJEVIC, T.4181-4183, (03/12/09), 1D60, 5-Nov-92, p.4.

³¹⁴ ST-110, TRBOJEVIC, T.4114-4117, (03/12/09). See chapter on Zupljanin's Knowledge regarding communications breakdown.

³¹⁵ P217, 23-May-92; ST-110, TRBOJEVIC, T.4173-4174, (03/12/09); P70, 26-Apr-92; P186, 30-Apr-1992.

³¹⁶ ST-110, TRBOJEVIC, T.4174, (03/12/09).

Local Crisis Staffs made decisions and issued orders to local police

150. There is an equally vast body of evidence that supports the Defence position decisions as to the functions and involvement of local police with local Crisis Staffs and the VRS were taken by the leadership of these powerful bodies. Zupljanin was not informed of their actions or, to the extent that he was informed, had no effective control over those local police who opted to join ranks with the local Crisis Staffs and functionally detach themselves from the CSB Banja Luka.³¹⁷ Prosecution witness Trbojevic claimed that Crisis Staffs even took it upon themselves to assume command of or influence over local military brigades and local police by installing key figures from these forces as members of the Crisis Staffs.³¹⁸ In respect of the police, he stated that “[the police]...were subject to the authority of local power brokers” – i.e. it was the Crisis Staffs who issued orders to local police to engage in activities outside the scope of their duties and/or work in conjunction with the army – not Zupljanin.³¹⁹

151. [REDACTED].³²⁰ [REDACTED].³²¹ [REDACTED]³²² [REDACTED].³²³
[REDACTED].

152. [REDACTED].³²⁴ [REDACTED].³²⁵ [REDACTED].

153. Even the Prosecution’s expert witness, Hanson, confirmed that local Crisis Staffs issued orders to local police and also exercised a degree of control over local armed forces.³²⁶ Importantly, Hanson verified that Zupljanin directed that all activities of local police stations

³¹⁷ [REDACTED]; ST-110, TRBOJEVIC, T.4114-4117, (03/12/09); ST-113, DJOKANOVIC, T.3572-3575, (20/11/09).

³¹⁸ ST-110, TRBOJEVIC, T.4178-4179, (03/12/09), ST-110, TRBOJEVIC, T.4237, (04/12/09); [REDACTED].

³¹⁹ ST-110, TRBOJEVIC, T.4179-4180, (03/12/09).

³²⁰ [REDACTED].

³²¹ [REDACTED].

³²² [REDACTED].

³²³ [REDACTED].

³²⁴ P2100 (Under Seal) [REDACTED].

³²⁵ P2100 (Under Seal) [REDACTED].

³²⁶ ST-158, HANSON, T.4679 (11/12/09).

stay within the provisions of the Law of Interior³²⁷ and that they refuse to follow orders from Crisis Staffs or other bodies that are not in accordance with the law.³²⁸

Zupljanin was opposed to personnel changes being made by local Crisis Staffs within the police force

154. Further evidence of the conflict between Zupljanin and local Crisis Staffs is evident in Zupljanin's opposition to policies that would result in the division of ethnic groups within the police force following the split of the MUP of Bosnia and Herzegovina.

155. The Prosecution will likely seek to rely on P577³²⁹, a dispatch forwarded by Zupljanin to SJB chiefs compelling all police officers to sign the RS sovereign declaration or face losing their jobs. This dispatch was issued pursuant to an order by Justice Minister Mandić³³⁰ and was not intended as a means of discriminating against non-Serbs but rather to simply implement a corollative legal requirement which followed the creation of the new state of Republika Srpska. Indeed, prosecution witness Tutus confirmed this point, stating that the RS sovereign declaration was no different from the previous sovereign declaration under the former SFRY.³³¹ What is important however, is that Zupljanin noticed the concern this spread amongst non-Serbs in the police force and he expressed his personal preference for a multi-ethnic police force. He stated, "it is in our interest to preserve the ethnic representation of the SJB employees in accordance with the ethnic structure of the population in the municipalities."³³² The Prosecution's argument that Zupljanin, by disseminating the order to sign the sovereign declaration, knowingly participated in the deliberate exclusion of non-Serbs from the police force is therefore not substantiated. Further evidence of this can be found in 2D25, a strongly worded criticism by Zupljanin sent to his SJB chiefs illustrating his frustration about the growing influence of Crisis Staffs in police matters. In it, he explicitly admonishes those local police chiefs who (under pressure from the local Crisis Staffs) carried

³²⁷ ST-158, HANSON, T.4635, (11/12/09); 2D25.

³²⁸ ST-158, HANSON, T.4635-4636, (11/12/09); 2D25.

³²⁹ P577.

³³⁰ P353, 31-Mar-92; ST-177, MAJKIC, T.3079, (13/11/09).

³³¹ ST-123, TUTUS, T.7600-7601, (16/03/10), TUTUS, T.7909, (22/03/10); P354; [REDACTED].

³³² P355, 6-Apr-92, p.6; ST-123, TUTUS, T.7909, (22/03/10).

out personnel changes within their respective SJBs without bothering to seek the CSB's approval.³³³

156. Furthermore, Zupljanin personally defied Mandic and delayed the implementation of this order (P577) until a more satisfactory agreement could be found for non-Serb employees.³³⁴ The Trial Chamber will appreciate however that his ability to continue doing so was not unfettered. In Prijedor, for example, he was obliged later on to follow his superior's orders despite his reluctance to do so as he had exhausted all the alternatives which were available to him. It is clear though that Zupljanin saw the signing of the declaration as a formality and urged all police employees to sign it simply so that they may "[declare their] wish to continue working."³³⁵ He did not want non-Serb staff to leave the police force.³³⁶

Zupljanin did not have operational control over the activities of RS-MUP officers operating in the ARK municipalities

Prijedor

157. The role of the Prijedor Crisis Staff, and in particular its main protagonist, SJB chief Simo Drljaca, was instrumental in detaching the SJB from the authority of the CSB in Banja Luka. Both the Crisis Staff and army exerted tremendous influence over the Prijedor SJB.³³⁷ A large volume of prosecution evidence supports the Defence's proposition that Drljaca, as a member of the Prijedor Crisis Staff which co-operated closely with the army, exercised complete control over everything that took place in Prijedor with respect to the local police.³³⁸

³³³ 2D25,para.11.

³³⁴ P353; ST-177,MAJKIC,T.3079-3082,(13/11/09).

³³⁵ P377, 28-May-92

³³⁶ P355.

³³⁷ See also chapters on Indictment paragraphs 12(d) and 12(e).

³³⁸ See also chapters on Indictment paragraphs 12(d),12(e),12(f/g) and Zupljanin's Knowledge.

158. Prosecution witness Gajic confirmed that, during the Indictment period, SJB chiefs frequently acted outside the scope of their duties.³³⁹ These chiefs refused to obey Zupljanin's orders and acted instead on orders issued by local Crisis Staffs and/or the army.³⁴⁰ He particularly emphasised the disobedience of the Prijedor SJB.³⁴¹ He went on to add that it was apparent that Simo Drljaca was not implementing decisions of the CSB Banja Luka, and had "ulterior" motives.³⁴² MS-002 also testified that Drljaca told him personally that he did not consider the Banja Luka CSB or the Ministry to be his superiors and that his true superiors were the local Crisis Staff and municipal authorities.³⁴³ According to Gajic, Drljaca defiantly boasted about the involvement of Prijedor police in combat operations while acknowledging that over the previous nine months no civilian criminal charges were filed in the area, despite a surge in criminal activity. This was in direct defiance of Zupljanin's orders that the police were to engage only in matters within their authority and as prescribed by the law.³⁴⁴

159. Gajic further testified that Drljaca wanted to be the boss of the whole area and showed blatant disrespect towards Zupljanin.³⁴⁵ He added that it was clear that Drljaca wanted limitless authority. Gajic even stated that such was Drljaca's proximity and co-operation with the powerful extremists within the local Crisis Staff and the VRS that he (with their support) exercised total control over the local police.³⁴⁶ Thus, it was impossible for Zupljanin, when he attempted to investigate crimes committed by Prijedor police³⁴⁷ to exert control over the police in Prijedor. Indeed, Srdic, in his interview, even described the extent of Drljaca's power as follows: "What God [was in] heaven, Simo was in Prijedor. Whatever he said had to happen." ³⁴⁸

³³⁹ ST-204,GAJIC,T.12910,(16/7/10);P595,CSB Banja Luka, Report on the Work of CSB Banja Luka for the Period 1-Jan to 30-Jun-92, dated Jul-92.

³⁴⁰ ST-204,GAJIC,T.12910,(16/7/10);P595.

³⁴¹ ST-204,GAJIC,T.12910,(16/7/10);P595.

³⁴² ST-204,GAJIC,T.12914,(16/7/10).

³⁴³ MS-003,MACAR,T.22972-22979,(07/07/11),23376-23382(15/07/11).

³⁴⁴ P595.

³⁴⁵ ST-204,GAJIC,T.12876,(15/7/10).

³⁴⁶ ST-204,GAJIC,T.12933,(16/7/10);[REDACTED];P1560,31-May-92. For more on Drljaca's authority, see chapters on Indictment paragraphs 12(e), 12(g) and Zupljanin's Knowledge.

³⁴⁷ See, for example, section on "Koricanske Stijene" in chapter on Indictment paragraph 12(g).

³⁴⁸ 2D194,Interview of Srdjo SRDIC,(92 quater),on 21,22-Aug-02,p.47.

Zupljanin had no real authority over Simo Drljaca

160. It is important to note that while Zupljanin did ratify the appointment of Drljaca as SJB chief, this was a temporary acknowledgement of the Prijedor Crisis Staff's appointment of Drljaca as SJB chief.³⁴⁹ Only the Minister of Interior had the authority to officially appoint and dismiss SJB chiefs.³⁵⁰ Indeed, Zupljanin's lack of authority to dismiss him was clear in that it was the local Crisis Staff which, in 1993, dismissed Drljaca – not the Minister of Interior in accordance with standard procedure. Also, the Defence remind the Trial Chamber that the personnel files of Drljaca³⁵¹ [REDACTED], were not found in police files but rather in departmental finance batches [REDACTED]. As such, temporary decisions on positions such as these were made on an *ad hoc* basis to cover specific limited periods. Accordingly, temporary ratification of his position as SJB chief was a practical formality with no actual legal basis (and thus no scope for Zupljanin to formally dismiss him).³⁵²

161. Notwithstanding his lack of authority, Zupljanin was personally keen to remove Drljaca. He discussed the issue with prosecution witness Radulovic. Radulovic informed Zupljanin however that it was impossible to remove Drljaca. He claimed that various attempts had been made (some by armed groups) but all were unsuccessful, as Drljaca was simply too powerful due to his close relationship with the local Crisis Staff and the army. Indeed, Radulovic even suggested that removing Drljaca from his power-base in Prijedor would have had a very uncertain outcome and may have caused even more trouble.³⁵³

162. The Defence highlights the importance of appreciating this key factor, as it meant that it was impossible for Zupljanin to fulfil his professional obligations. Furthermore, due to Drljaca's close nexus with the army, the activities of the police in Prijedor were dictated by the VRS and the Crisis Staff in tandem. Indeed, to show just how much control the army had in Prijedor, the Trial Chamber is invited to note that 612 policemen from the Prijedor SJB alone were re-subordinated to the army with many more counted as having participated in

³⁴⁹ P384 (Under Seal) [REDACTED]; P2463.

³⁵⁰ See P2462, Drljaca's file referencing Law on State Administration, Art. 39(1)(7) on Minister of Interior's exclusive authority to appoint and dismiss police chiefs.

³⁵¹ P2462.

³⁵² Chamber Witness KOVAC, T. 27240-27242, 27251-27255, (09/03/12).

³⁵³ ST-182, RADULOVIC, T. 11088, (31/05/10), T. 10854-10855, (26/05/11).

combat activities on an *ad hoc* basis.³⁵⁴ The excessive scale of re-subordination in Prijedor was clearly manifest.

163. If members of the police were in fact involved in military actions constituting crimes against non-Serbs in the area, it is clear that they were re-subordinated under military command. As such, Zupljanin is divorced from any authority over such persons or accountability for crimes they may have committed. Accordingly, the Defence maintain that there is no evidence to suggest that Zupljanin had any knowledge of crimes committed, and no effective control over those police officers in Prijedor who colluded with local Crisis Staffs and the VRS.

Sanski Most

164. [REDACTED]³⁵⁵ [REDACTED].³⁵⁶ [REDACTED]³⁵⁷ [REDACTED].³⁵⁸

165. It follows that Zupljanin, even if he had been informed of the activities of the police, was powerless to issue orders to SJB chiefs who were forced by the army to act outside the scope of their legitimate police duties. Furthermore, the Defence maintain that those local police officers who acted outside the scope of their regular police duties and performed duties under the instructions and direction of the army were clearly re-subordinated under the command of the army.

Kotor Varos

166. The Defence maintain that the army and the local SDS Crisis Staff together exerted full control over Kotor Varos and its official municipal bodies, including the local police.

³⁵⁴ P689.

³⁵⁵ [REDACTED].

³⁵⁶ [REDACTED].

³⁵⁷ [REDACTED].

³⁵⁸ [REDACTED]; [REDACTED]; See also chapter on Indictment paragraph 12(e) regarding detention facilities.

167. [REDACTED].³⁵⁹ The Defence submit that the Kotor Varos town commander took control of all municipal organs including the SJB.³⁶⁰

168. Alternatively, should the Trial Chamber find that the police did not fall under the command of the army in Kotor Varos, the Defence assert that the Prosecution has failed to prove that Zupljanin had effective control over the police in Kotor Varos. The evidence demonstrates that the authority of Tepic (Town Commander and a member of the army) and the influence of the Crisis Staff stifled Zupljanin's ability to control the police in Kotor Varos.

Zupljanin complained about the influence of local Crisis Staffs and re-subordination to RS MUP at the meeting on 11 July 1992

169. Prosecution witness Gajic testified that local Crisis Staffs tried to get local police to perform tasks outside of their authority which were contrary to the laws of the Serbian Republic of Bosnia and Herzegovina.³⁶¹ Even the Prosecution's own expert witness Nielsen confirmed that Zupljanin and the Minister of Interior, Mico Stanisic, wished to prevent situations which had been occurring where the Crisis Staffs had been ordering the police to engage in activities outside the jurisdiction of the police.³⁶² He affirmed that after the 11 July 1992 meeting³⁶³, various organisations within the RS MUP were specifically tasked by Stanisic to implement the conclusions of the meeting. The latter were drawn in large part from the demands and concerns raised by Zupljanin personally during the meeting in an effort to address a broad range of issues regarding criminal activity, the depletion of police authority through military re-subordination, and the adverse influence of Crisis Staffs in the Krajina.³⁶⁴ Nielsen corroborated the testimony of many other witnesses by confirming that one of the main problems faced by the CSB Banja Luka was that a number of SJBs did not obey its instructions and were instead ordered, directed and commanded by local Crisis

³⁵⁹ 2D132,25-Jun-92.

³⁶⁰ See chapter on Indictment paragraph 12(d) on Town Commands in various municipalities.

³⁶¹ ST-204,GAJIC,T.12907-12908,(16/07/10);P595.

³⁶² ST-092,NIELSEN,T.5552-5554,(26/01/10).

³⁶³ P160,11-Jul-92.

³⁶⁴ ST-092,NIELSEN,T.5553,(26/01/10).

Staffs, the army or individual police chiefs with personal agendas directed against non-Serb populations in the area.³⁶⁵

Conclusion

170. In light of the above, the evidence supports the Defence position that Zupljanin was not involved in ordering, commanding or directing police to engage with Crisis Staffs and Serb forces in committing the crimes set out in the Indictment.

³⁶⁵ ST-092, NIELSEN, T.5553-5554, (26/01/10). See section on 11 July 1992 meeting in chapter on Indictment paragraph 12(f/g).

INDICTMENT PARAGRAPH 12(C)

Introduction

171. The Prosecution have tried to suggest that Zupljanin's extremely limited association with the establishment of the Banja Luka Special Police Unit ("the Special Police Unit") was such as to render him liable as part of a JCE for the persecution and removal of non-Serbs from the Krajina region. The Defence maintain that while Zupljanin was aware of the formation of the Banja Luka Special Police Unit as well as its general mandate, he had no involvement in or control over its operations which were entirely military in nature. Nonetheless, despite his lack of authority and/or effective control over this unit, whenever possible, Zupljanin still attempted to take action (to the extent that he was able to do so) to ensure that its members were held accountable for any improper conduct that they were alleged to have taken part in.

Formation of CSB Banja Luka Special Police unit

CSB Banja Luka Special Police Unit was established as a military combat unit

172. A decision³⁶⁶ dated 27 April 1992 by Vojo Kupresanin (President of the ARK Assembly) stated that a Special Police unit was to be established within the Banja Luka CSB.³⁶⁷ While Zupljanin formally implemented the order from Kupresanin to make arrangements for the establishment of the Special Police Unit, this order was nothing out of the ordinary at the time, and certainly not unlawful. Given Kupresanin's order, Zupljanin was obliged to ask his SJB Chiefs for suitable members from the police force who were able to join with military members (of whom the latter made up the vast majority of the Special Police Unit). However, Zupljanin ensured that stringent vetting procedures were adopted for membership and that those with criminal records weeded out.³⁶⁸ It is important to note also that those SOS members who became part of the Special Police Unit were employed as a result of

³⁶⁶ 2D55,27-Apr-92.

³⁶⁷ ST-123,TUTUS,T.7628,(15/03/10). See also ST-204,GAJIC,T.12825-12826,(15/7/10); P631,5-Aug-92,(Special Unit-was-formed-by-the-Krajina-government).

³⁶⁸ ST-123,TUTUS,T.7920-7921 (22/03/10); [REDACTED].

negotiations between the SOS and the army. Zupljanin opposed this but had no say in the matter.³⁶⁹

Special Police Unit was commanded by military officers

173. [REDACTED].³⁷⁰ [REDACTED].³⁷¹ [REDACTED].

Special Police Unit had military-type IDs different from those of normal police officers

174. [REDACTED].³⁷² [REDACTED].³⁷³ [REDACTED].³⁷⁴

Structure and organisation of Special Police Unit demonstrates military control

175. [REDACTED].³⁷⁵ [REDACTED].³⁷⁶ [REDACTED].³⁷⁷ [REDACTED].³⁷⁸

Accommodation, facilities, equipment and armoury was provided by the military

176. [REDACTED].³⁷⁹ [REDACTED].³⁸⁰ [REDACTED].³⁸¹ [REDACTED].³⁸²
[REDACTED].

³⁶⁹ ST-123,TUTUS,T.7652 (16/03/10),T.7780,(18/03/10).

³⁷⁰ See section on the SOS in chapter on Indictment paragraph 12(a).

³⁷¹ [REDACTED]; [REDACTED].

³⁷² [REDACTED].

³⁷³ [REDACTED].

³⁷⁴ [REDACTED].

³⁷⁵ [REDACTED].

³⁷⁶ [REDACTED].

³⁷⁷ [REDACTED].

³⁷⁸ See section on re-subordination in chapter on Indictment paragraph 12(d).

Activities of Special Police were military in nature

177. [REDACTED].³⁸³ [REDACTED].³⁸⁴ [REDACTED].³⁸⁵

CSB Banja Luka had only minor logistical involvement with Special Police Unit

178. [REDACTED].³⁸⁶ [REDACTED].³⁸⁷ [REDACTED].

179. The Prosecution will undoubtedly also refer to the fact that Zupljanin sent a request to the army for equipment for the unit.³⁸⁸ This was merely for logistical expedience as the structures were in place at the CSB, as a regional centre, to facilitate the delivery of such equipment. This request has no bearing on Zupljanin's authority over the Special Police Unit.³⁸⁹

Zupljanin had no authority over the Special Police Unit

180. [REDACTED].³⁹⁰ [REDACTED].³⁹¹ [REDACTED].³⁹² [REDACTED].³⁹³
[REDACTED].³⁹⁴

³⁷⁹ [REDACTED].

³⁸⁰ [REDACTED].

³⁸¹ [REDACTED];P548,23-Apr-92.

³⁸² [REDACTED].

³⁸³ [REDACTED].

³⁸⁴ [REDACTED].

³⁸⁵ See section on re-subordination in chapter on Indictment paragraph 12(d).

³⁸⁶ [REDACTED].

³⁸⁷ [REDACTED].

³⁸⁸ P548.

³⁸⁹ See section on "Establishment of Special Police Unit" in chapter on Indictment paragraph 12(a) – see in particular the reasons for why the CSB paid the salaries and ordered the equipment for the unit.

³⁹⁰ [REDACTED].

181. Even prior to 10 August 1992 (the date of the unit's official disbandment), the Special Police always reported to the military alone.³⁹⁵ The chain of reporting clearly illustrates Zupljanin's lack of control and authority over the Special Police Unit. [REDACTED].³⁹⁶
182. Thus, although it may appear from its name that the Special Police Unit reported to and was ultimately under the authority of Zupljanin, this was simply not the case. In reality, they were just another arm of the military with only a geographic and minor administrative nexus to the CSB Banja Luka.³⁹⁷ [REDACTED].³⁹⁸
183. P631, a report on the inspection of the CSBs in the Krajina, offers further evidence of Zupljanin's lack of formal authority over the Special Police Unit. The report illustrates that Zupljanin in fact specifically asked the RS MUP to clarify the role and activities of the unit. He stated in the report that if the CSB Banja Luka was to have such a unit, then the MUP would need to formally authorise Zupljanin to assume its command.³⁹⁹ The Trial Chamber should further note that this dispatch is dated early August, days before the Special Police Unit was in fact formally disbanded. It follows that no such authority was ever vested in Stojan Zupljanin while the unit was attached to the CSB Banja Luka. Zupljanin's lack of authority is further substantiated by a different report from the Ministry of the Interior of the Serbian Republic of Bosnia Herzegovina on the formation and activities of the Special Police Unit. This report states that due to the unit's infiltration by improper members, "it would be better situated under the control of the CSB Chief."⁴⁰⁰ This report also dates from August 1992, which again implies that Zupljanin was not at any time in control of or officially responsible for the unit.

³⁹¹ [REDACTED].

³⁹² [REDACTED].

³⁹³ [REDACTED].

³⁹⁴ [REDACTED].

³⁹⁵ [REDACTED].

³⁹⁶ [REDACTED].

³⁹⁷ [REDACTED].

³⁹⁸ [REDACTED].

³⁹⁹ P631.

⁴⁰⁰ P865,5-Aug-92.

184. The Defence accordingly submit that the evidence demonstrates that for the entire time that the Special Police Unit was operational, Zupljanin did not have any formal authority to command their activities.

Special Police Unit confronted and threatened Zupljanin

185. [REDACTED].⁴⁰¹

Zupljanin was not informed of the activities of the Special Police Unit

186. [REDACTED]⁴⁰² [REDACTED].⁴⁰³

187. Prosecution witness Radulovic, who was subordinate to Bera and Kesic at the SDB in Banja Luka, confirmed that throughout 1992, information on a wide range of issues and crimes was not passed on to Zupljanin, including the particulars of the activities of the Special Police Unit. Radulovic claimed that “The Milos Group had an obstacle to overcome, and that obstacle was called Vojin Bera” who “took it upon himself to keep the information for himself... so a lot of the information that we collected never went further [in other words, never reached Zupljanin].”⁴⁰⁴ Prosecution witness Radulovic further illustrated the extent to which Zupljanin was unaware of the actions of the Special Police Unit. He stated that he first met Zupljanin when he visited Doboj and upon his return informed Zupljanin of the serious crimes allegedly committed by some members of the unit. Radulovic attested that Zupljanin’s reaction was one of genuine surprise – that he could not believe that the unit was involved in such activities. Radulovic explained that “...this was the impression I got; namely, that Stojan Zupljanin, when I first informed him, didn’t have true information about the activities of the special detachment...”⁴⁰⁵

⁴⁰¹ [REDACTED].

⁴⁰² ST-182,RADULOVIC,T.10760,(25/05/10),Closed Session.

⁴⁰³ ST-182,RADULOVIC,T.10796,(26/05/10).

⁴⁰⁴ ST-182,RADULOVIC,T.11073-11075,(31/05/10).

⁴⁰⁵ ST-182,RADULOVIC,T.10796,(26/05/10).

Zupljanin wanted Special Police unit disbanded but had no authority to do so

188. Prosecution witness Gajic confirmed that both the chief of the SJB, Tutus, and Zupljanin personally wanted the unit to be disbanded due to the lack of clear command authority from the MUP and, accordingly, their inability and lack of authority to control them.⁴⁰⁶ SZ-002 also claimed that he and Zupljanin were both in favour of disbanding the unit, but stated that they faced strong opposition from the commanders of the Special Police Unit (who had military backing).⁴⁰⁷ This is clear evidence that Zupljanin did not approve of the Special Police Unit and did not support it in any way or form. His inability to issue an order to disband the unit further shows his lack of authority over it.

189. Gajic [REDACTED] further verified that as of 10 August 1992, the entire Special Police Unit was officially put at the disposal of the 1st Krajina Corps, under the command of General Talic.⁴⁰⁸ The Defence maintain, however, that this transfer was merely a formality in order to characterise the pre-existing role of the Special Police Unit. It is notable that the unit's purpose, composition, command structure and military activities remained the same after the transfer.

190. [REDACTED].⁴⁰⁹ [REDACTED].

191. Accordingly, the Defence submit that Zupljanin is not responsible for any alleged crimes committed by members of the Special Police Unit. Although this unit was geographically and, to a very small extent administratively, "attached" to the CSB Banja Luka, it operated at all times under the authority and command of the army. Indeed, it was created specifically for the purposes of combat – not police duties. Prosecution witness Djekanovic (a former deputy at the Municipal Assembly in Kotor Varos⁴¹⁰) acknowledged that the Special Police Unit did not have any special powers or any other tasks apart from combat operations.⁴¹¹ The Prosecution's argument that Zupljanin, by virtue of his position as Chief of the CSB

⁴⁰⁶ ST-204,GAJIC,T.12829,(15/7/10); ST-204,GAJIC,T.12837,(15/7/10)-P1502,10-Aug-92.

⁴⁰⁷ [REDACTED].

⁴⁰⁸ ST-204,GAJIC,T.12915,(16/7/10), P1502.

⁴⁰⁹ [REDACTED].

⁴¹⁰ ST-181,DJEKANOVIC,T.974,(07/10/09).

⁴¹¹ ST-181,DJEKANOVIC,T.1162,(09/10/09).

Banja Luka, is accountable for the actions of the Special Police Unit not only distorts the ‘raison d’être’ and (military) command structure of the unit itself, but ignores the nature of the unit’s activities and Zupljanin’s lack of any formal authority or control of its operations.

Crimes listed in Indictment were not committed by the CSB Banja Luka Special Police Unit

192. The Defence submit that crimes in various municipalities were falsely attributed to the Special Police Unit. In actual fact, the evidence shows that such crimes were committed either by local criminals (who regularly blamed various special units for their crimes) or separate special units, such as the one led by military Captain Slobodan Dubocanin. Alternatively, if the Trial Chamber were to find that some police members of the Special Police Unit were involved in criminal activity, Zupljanin should not be held responsible for such acts which were committed under the command and control of the army.

Kotor Varos

193. The Prosecution’s attempt to indicate Stojan Zupljanin’s involvement with or knowledge of the alleged crimes committed by the Special Police Unit, was scuppered by Prosecution expert Brown. Throughout the entire trial, the Prosecution has focused on the alleged incident taking place outside the health centre in Kotor Varos as the most damning and irrefutable crime committed by the Special Police Unit. Under cross-examination by the Defence, Brown admitted however that this alleged crime had not taken place and that his initial testimony and expert report was incorrect on this issue. As will be shown below, this is not the only evidence which refutes the Prosecution’s allegations against Zupljanin and his alleged connection to the actions of the Special Police Unit in Kotor Varos.

Killings outside health centre in Kotor Varos & limitations of Brown’s report

194. Prosecution expert Brown noted in his report a “massacre of members of the Special Police detachment in Kotor Varos.” When confronted with the Prosecution’s argument that

suggested instead that it was the Special Police who were responsible for the killings of Muslims and Croats outside the health centre, Brown contradicted his earlier position and agreed.⁴¹² Under cross-examination however, Brown was shown a list of the names and positions of members of the Special Police Unit who were killed on 29 June 1992⁴¹³ in addition to video footage identifying the victims as members of the CSB Banja Luka Special Police Unit.⁴¹⁴ Following this presentation of evidence, Brown acknowledged that he was wholly mistaken and that it was indeed members of the Banja Luka Special Police Unit who were the victims and not the perpetrators in this incident.⁴¹⁵

195. Brown accepted that his conclusions were “incorrect” and conceded that his report as a whole “has limitations”, confirming that he would be “more than prepared to amend [his work].”⁴¹⁶ The import of Brown’s acknowledgment of serious errors in his report cannot be overstated when one considers the weight placed by the Prosecution on Brown’s evidence throughout this case. The Defence underline the fact that Brown entirely changed his position and unreservedly admitted that his research was narrow in scope and his conclusions erroneous. He also admitted his lack of knowledge regarding the Special Police Unit, as well as on basic matters relating to the MUP/CSB, explicitly conceding that he focused his research exclusively on documents relating to the 1st Krajina Corps.⁴¹⁷

196. [REDACTED].⁴¹⁸ [REDACTED].⁴¹⁹

*Special Police were made scapegoats for crimes committed by local criminals*⁴²⁰

197. Prosecution witness Djekanovic acknowledged reports that it was local criminals in Kotor Varos who had committed many of the crimes listed in the Indictment. Such local

⁴¹² ST-097,BROWN,T.18760,(17/01/11)(Brown believes the translation was a “typo” or “ambiguity” and interprets “massacre of a Special Police” to mean *by* members of a Special Police);ST-097,BROWN,T.19082-19092,(21/01/11)-P1803,21-Jul-02,para.280(Mistake in report regarding death of policemen);

⁴¹³ ST-097,BROWN,T.19084-19085,(21/01/11)-2D134,29-Jun-92.

⁴¹⁴ ST-097,BROWN,T.19092,(21/01/11),P45.

⁴¹⁵ ST-097,BROWN,T.19089-19090,(21/01/11).

⁴¹⁶ ST-097,BROWN,T.19089-19090,(21/01/11).

⁴¹⁷ ST-097,BROWN,T.19103,(21/01/11).

⁴¹⁸ [REDACTED].

⁴¹⁹ [REDACTED].

⁴²⁰ Prosecution witness ST-13 departed from majority of evidence on this issue by stating that local SJB officers in Kotor Varos were responsible for various crimes. The Defence submit however that there is no evidence of this and in any event, Zupljanin was not informed.

criminals had then attempted to shift the blame onto the various special units (some of whom quite possibly did commit crimes).⁴²¹ This chaotic situation casts doubt on the identity of those who committed the alleged killings. [REDACTED].⁴²² Thus, it would have been extremely difficult for anyone to accurately identify any of the “specials” belonging to one specific unit who had committed the crimes.

198. [REDACTED].⁴²³

199. [REDACTED].⁴²⁴ In addition, there were many rogue groups of criminals who proclaimed themselves to be special units to cover their tracks. These groups committed crimes which were then attributed to the Special Police Unit.

200. The Defence maintain that when Zupljanin was made aware of accusations against the Special Police Unit, he (notwithstanding his lack of authority over the unit) refused to allow such allegations to go unaddressed. Prosecution witness Djekanovic confirmed that Zupljanin, upon learning of the accusations against the Special Police Unit, pledged to do everything that was in his power to prevent the Special Police from behaving in the way that they allegedly did.⁴²⁵ [REDACTED].⁴²⁶ The fact that such actions were taken by Zupljanin was also corroborated by the testimony of prosecution witness Radulovic.⁴²⁷ For instance, prosecution expert Nielsen confirmed that a few members of the Special Police had committed robbery and aggravated theft for which they were the subject of a Banja Luka SJB criminal report (this was despite the fact that a civilian court could not legally exercise jurisdiction over them as they were under the authority of the army and accordingly, the military courts⁴²⁸).⁴²⁹

⁴²¹ ST-181, DJEKANOVIC, T.1463, (14/10/09); [REDACTED].

⁴²² [REDACTED]; [REDACTED].SZ-009, SAJINOVIC, T.25337, (19/10/11); P42 (Under Seal) [REDACTED].

⁴²³ [REDACTED].

⁴²⁴ [REDACTED].

⁴²⁶ ST-181, DJEKANOVIC, T.1108-1109, (08/10/09)

⁴²⁶ [REDACTED].

⁴²⁷ ST-182, T.11118, (01/06/10).

⁴²⁸ See section on “Civil versus military court jurisdiction” in chapter on Indictment paragraph 12(f/g)

⁴²⁹ ST-092, NIELSEN, T.5584-5585, (27/01/10)-P584, 21-Jul-92.

201. [REDACTED].⁴³⁰ While they suggested contacting Zupljanin to address these problems, this was simply because he was known as the head of the CSB and he was the most convenient point of contact in the area. The undefined nature of the unit also made it difficult for the Kotor Varos Crisis Staff to know whom to address their complaints to. Furthermore, Djekanovic made it clear that only a few individuals were behaving badly – not the entire Special Police Unit.⁴³¹

Zupljanin pressured Stevilovic to discipline those members of the Special Police Unit who committed disciplinary infractions

202. [REDACTED].⁴³² [REDACTED].⁴³³ However, none of the members of the police platoon were ever taken off war-time assignments or expelled from the unit, which suggests that there were no serious or criminal complaints made against them. Alternatively, if such police officers were alleged to have committed crimes, they did so whilst re-subordinated to the army and Zupljanin would not, in any event, have been responsible for disciplining or arresting them.⁴³⁴

203. [REDACTED].⁴³⁵ [REDACTED].⁴³⁶

Dubocanin special unit were the main perpetrators

Background of Dubocanin Unit

⁴³⁰ P81,26-Jun-92.

⁴³¹ ST-181,DJEKANOVIC,T.1152,(09/10/09).

⁴³² [REDACTED].

⁴³³ [REDACTED].

⁴³⁴ See chapter on Indictment paragraph 12(d).

⁴³⁵ [REDACTED].

⁴³⁶ [REDACTED]; ST-125,RODIC,T.8900-8901,(19/04/10)-2D72;See also section on “Civil versus military court jurisdiction” in chapter on Indictment paragraph 12(f/g).

204. [REDACTED].⁴³⁷ [REDACTED].⁴³⁸ [REDACTED].⁴³⁹ [REDACTED].⁴⁴⁰
[REDACTED].⁴⁴¹ [REDACTED].⁴⁴²

Zupljanin had no effective control or authority over the Dubocanin unit

205. Prosecution witness Raljic claimed that he sent a dispatch to the CSB Banja Luka from Kotor Varos SJB chief Tepic in the second half of June 1992 addressing the violent behaviour of the Dubocanin special unit.⁴⁴³ However, even assuming that this is correct, the dispatch confirms that neither Tepic nor Zupljanin could possibly have exercised any degree of effective control over this unit. They both lacked formal authority and effective control over the units. Prosecution witness Raljic was unsure if any official measures were taken against this unit, but suggested that doing so at the time would have been futile as they were armed and dangerous and were “ready to do anything.”⁴⁴⁴ In any event, only the army had the authority to investigate and take action against the Special Police Unit and the Dubocanin Unit.

206. Raljic confirmed when testifying about the above crimes, that he was referring throughout to the unit controlled by Dubocanin and not the Special Police Unit.⁴⁴⁵ He added that Dubocanin’s unit remained in Kotor Varos until some time in September 1992, well after the Special Police Unit had been disbanded.⁴⁴⁶

207. Raljic further asserted that he was not aware of any incidents in which the Banja Luka Special Police were involved.⁴⁴⁷ This strongly suggests that the crimes committed in Kotor Varos were committed entirely by the special unit led by Dubocanin. Prosecution witness Djekanovic also confirmed that the active “special unit” in Kotor Varos was that led by

⁴³⁷ ST-123,TUTUS,T.7923-7926,(22/03/10)-2D56.

⁴³⁸ [REDACTED].

⁴³⁹ [REDACTED];2D72. [REDACTED].

⁴⁴⁰ [REDACTED];P41 (Under Seal) [REDACTED];P42 (Under Seal) [REDACTED].

⁴⁴¹ [REDACTED].

⁴⁴² [REDACTED];See P42 (Under Seal) [REDACTED].

⁴⁴³ ST-167,RALJIC,T.12439,(30/06/10).

⁴⁴⁴ ST-167,RALJIC,T.12439,(30/06/10).

⁴⁴⁵ ST-167,RALJIC,T.12455,(30/06/10).

⁴⁴⁶ ST-167,RALJIC,T.12439,(30/06/10).

⁴⁴⁷ ST-167,RALJIC,T.12441,(30/06/10).

Dubocanin. He stated: “There were some people who had never been in the police, I’m talking about that unit that arrived in Kotor Varos. I mentioned Slobodan Dubocanin, who I believed to be the head of that unit.”⁴⁴⁸

Zupljanin determined that it was necessary to send ordinary duty police officers from Banja Luka to bolster the Kotor Varos police force

208. [REDACTED].⁴⁴⁹

209. [REDACTED].⁴⁵⁰ [REDACTED].⁴⁵¹

210. The Defence submit that there is no evidence to suggest that this detachment is the Special Police Unit, and that in any event, the unit in question was ordered to engage only in lawful police tasks.

If the Special Police Unit was active in Kotor Varos, it was re-subordinated under army command

211. The Defence deny that the Special Police Unit was involved in any of the crimes listed in the Indictment. Notwithstanding this assertion, it is submitted that even if criminal acts occurred during their combat duties in Kotor Varos, they were re-subordinated to the army during this time. When assessing events in Kotor Varos, the Trial Chamber should be mindful of the dominant role played by the army in events there which had effectively re-subordinated the entire police force by establishing a Town Command.⁴⁵² [REDACTED].⁴⁵³

⁴⁴⁸ ST-181,DJEKANOVIC,T.1498,(15/10/09).

⁴⁴⁹ [REDACTED].

⁴⁵⁰ [REDACTED].

⁴⁵¹ [REDACTED].

⁴⁵² ST-181,DJEKANOVIC,T.1453,(14/10/09),T.1477,(15/10/09)(“ he was the absolute commander...commanded all the military operations, he made all the decisions, and led all the military activity.”). See section on Kotor Varos in chapter on Indictment paragraph 12(d).

⁴⁵³ [REDACTED];See also testimony of ST-58 as to overall control of the army in Kotor Varos.

Special Police Unit did not commit crimes against detainees in detention centres in Prijedor

212. In mid-June 1992, Simo Drljaca wrote to the CSB Banja Luka regarding accusations of misbehavior and looting among certain members of the Special Police Unit, in Prijedor.⁴⁵⁴ [REDACTED].⁴⁵⁵ [REDACTED]. [REDACTED].⁴⁵⁶

Special Police Unit was not involved in attack on Kozarac

213. Prosecution witness Merdzanic “identified” the “blue camouflage uniform” in Kozarac on the day after the first attack. During cross-examination however, it was established that in his previous testimony in the *Stakic* case, Merdzanic had described the three soldiers who came into the clinic very differently. According to his testimony in that case: one was wearing a camouflage olive-drab uniform, while the other two were wearing green camouflage uniforms. There was no mention of any one of them wearing a blue camouflage uniform.⁴⁵⁷ Merdzanic had also testified that the soldiers spoke in an Ekavian accent, which is a Serbian accent and suggests that they were not from Bosnia.⁴⁵⁸ This clearly contradicts the evidence he has given in the present case and casts serious doubt on the reliability of his testimony. Finally, Merdzanic mentioned Dragan Skrbic⁴⁵⁹ as a policeman who was present at Kozarac. Prosecution witness Blazovic described the Skrbic present at the Kozarac attack as a young man of 20 years old. [REDACTED]⁴⁶⁰, plainly the Dragan Skrbic who took part in crimes at Kozarac was not the same Dragan Skrbic employed by the Banja Luka CSB.

Special Police Unit was not involved in crimes in Banja Luka

214. Prosecution witness Tutus explained that in July 1992, SZ-002, of the Special Police Unit, brought several members of the unit to the SJB in Banja Luka and asked Chief Josic to

⁴⁵⁴ P659,13-Jun-92;P1089.

⁴⁵⁵ [REDACTED].

⁴⁵⁶ [REDACTED].

⁴⁵⁷ ST-067,MERDZANIC,T.18446,18452,(09/12/10).

⁴⁵⁸ ST-067,MERDZANIC,T.18446,(09/12/10).

⁴⁵⁹ ST-067, MERDZANIC,T.18395,(09/12/10).

⁴⁶⁰ [REDACTED]. See P1777,CSB Payroll (Dragan Skrbic is listed as no.16).

detain them on the basis that they had committed a misdemeanor (car theft) in the area of Banja Luka.⁴⁶¹ Tutus stated that the next day Captain Lukic and Slobodan Dubocanin came to his home and demanded the release of these men. When Tutus refused to authorise their release,⁴⁶² members of Dubocanin's unit and some members of the Special Police forcibly freed these men from the prison.⁴⁶³ [REDACTED].⁴⁶⁴

215. It is noteworthy that the men were brought into custody by a member of the Special Police Unit and it was two members of the army, Lukic and Dubocanin, who pressured Tutus for their release. It is also important that the Trial Chamber appreciate that Zupljanin never asked for prosecutions against these men to be stopped.⁴⁶⁵ [REDACTED].⁴⁶⁶ [REDACTED].⁴⁶⁷ [REDACTED]⁴⁶⁸ [REDACTED].⁴⁶⁹

Conclusion

216. On the basis of the evidence set out above the Defence maintain that Zuplanin's mere regional and administrative association with special units in the Krajina clearly did not extend to sufficient participation in their formation, financing, supply or support for any military activities they may have conducted such as to lead to his criminal liability either pursuant to a joint criminal enterprise or under the doctrine of superior responsibility.

⁴⁶¹ ST-123,TUTUS,T.7709-7710,(16/03/10).

⁴⁶² ST-123,T.7710-7712,(16/03/10).

⁴⁶³ [REDACTED].

⁴⁶⁴ [REDACTED].

⁴⁶⁵ ST-123,TUTUS,T.7968,(22/03/10).

⁴⁶⁶ [REDACTED].

⁴⁶⁷ [REDACTED].

⁴⁶⁸ [REDACTED].

⁴⁶⁹ [REDACTED].

INDICTMENT PARAGRAPH 12(D)

Introduction

217. The Defence maintain that the Prosecution have failed to prove that Zupljanin assisted in the co-ordination of joint VRS/RS MUP operations in support of an alleged JCE. In this chapter, the Defence will demonstrate that the army, in co-ordination with local Crisis Staffs, exercised ultimate control over the Krajina municipalities and their civil bodies – including the local police. The collusion between the army and local Crisis Staffs, either directly or through re-subordination, resulted in many municipalities effectively operating as autonomous mini-states, severed from the central authority of both the RS MUP and, more importantly, the CSB Banja Luka.⁴⁷⁰ As the army was in command of military operations in the relevant municipalities, it was, by default, accountable for the actions of the units and individuals re-subordinated under its command – including those civilian police officers who took part in army-led tasks or operations.

Local police who co-operated with VRS/Crisis Staffs and took part in alleged crimes emanating from VRS operations were re-subordinated under army command

Introduction

218. Quite apart from Zupljanin's lack of effective control over local police arising from the influence of local Crisis Staffs, Zupljanin's authority over local police was further diminished due to the army's widespread practice of re-subordinating police officers.

219. The Prosecution have attempted to prove criminal conduct by Zupljanin based largely on their suggestion that he intentionally colluded, in one form or another, with the army in committing crimes throughout the Krajina during the Indictment period. While the Defence do not deny that crimes were committed, it is important that the Trial Chamber is mindful of the overwhelming amount of evidence in support of the Defence's submissions on the

⁴⁷⁰ P621, Report of CSB Banja Luka for 1-Jul to 30-Sep, Oct-92, p.43; ST-165, NJEGUS, T.11463-11464, (09/06/10); 2D25, p.3.; See chapters on Indictment paragraph 12(b) and Zupljanin's Knowledge for further evidence on the adverse influence of local Crisis Staffs.

application of the doctrine of re-subordination which the Defence suggests operates to absolve Zupljanin of criminal liability. This is because the effect of this doctrine was that Zupljanin had no authority over the activities of re-subordinated police units and, importantly, no legal authority to investigate and/or discipline members of the police who committed crimes whilst re-subordinated.

Defence expert witness General Kovacevic is fully qualified to testify as an expert on the topic of re-subordination

220. The Prosecution tried to suggest General Kovacevic was unsuitable to testify as an expert witness. However, little evidence was offered to dispute his testimony. The Defence underline that General Kovacevic has over thirty years of military experience and attained the highest military rank possible.⁴⁷¹ While his expert report was admittedly succinct, he was called as an expert primarily to testify orally as to his knowledge of re-subordination - knowledge that was clearly imparted through his testimony.

221. In *Prosecutor v Dragomir Milosevic*, the Trial Chamber defined an ‘expert’ as “a person whom by virtue of some specialised knowledge, skills or training can assist the trier of fact to understand or determine an issue in dispute. It need not be a legal issue”.⁴⁷² The Defence submit that the thrust of General Kovacevic’s evidence was to provide an expert opinion as to the principle of “singleness of command” which is the critical feature when one applies the legal test for effective control under the principle of re-subordination. The Defence trusts that this expertise will be given accorded appropriate weight by the Trial Chamber in its deliberations following its recognition of his expertise under rule 94.⁴⁷³ For the sake of contrast, the Defence highlight the myriad of inconsistencies, errors and admissions about how re-subordination was applied in Bosnia in 1992 by prosecution expert Brown, – who is, notwithstanding, also recognised by the Trial Chamber as an expert witness.⁴⁷⁴ The Defence

⁴⁷¹ 2D158,23-Nov-10.

⁴⁷² *Prosecutor v Dragomir Milosevic*, “Decision on Defence Expert Evidence,” 21 August 2007, para.6.

⁴⁷³ T.111007.

⁴⁷⁴ ST-097,BROWN,T.18723,18727,(12/01/11);ST-097,BROWN,T.19050-19051,(20/01/11),P411.13,27-Oct-92,p.1;ST-097,BROWN,T.19105-19106,(21/01/11). See also chapter on Indictment paragraph 12(e) regarding the

submit that Brown's report should be subject given anxious scrutiny by the Trial Chamber before seeking to rely upon its reasoning or conclusions in respect of the doctrine of re-subordination.

General principle of re-subordination

222. The principle of re-subordination must be understood against the legislative backdrop that distinguishes the separate institution and role of the police from that of the army. During his testimony General Kovacevic referred to Article 1 of the Law on the Army of June 1992 which defines the role of the VRS.⁴⁷⁵ He commented that pursuant to Article 1, the police and the RS MUP in general, contrary to the submissions of the Prosecution, were not an integral part of the armed forces of Republika Srpska. The role of the police was primarily to maintain public law and order. The fact that soldiers received specific combat training whereas police officers did not was illustrative of the divide between police and army.⁴⁷⁶ The Trial Chamber will therefore appreciate that the police and army were entirely separate institutions with completely distinct functions and command structures.

223. General Kovacevic also confirmed that during wartime, police could be re-subordinated to the army and to the TO, to carry out combat tasks.⁴⁷⁷ Indeed, this is legislatively recognised by the Law on All People's Defence. Article 104 provides that the police "may be used for carrying out combat activities for the armed forces in accordance with the law."⁴⁷⁸ While the legislation does not refer to the term 're-subordination' explicitly, Kovacevic emphasised that "[when] police are used for combat activities, they are always subordinated to the military officer in charge of those combat activities."⁴⁷⁹ This means that any conflicting orders by the civilian police would be disregarded by virtue of the principle of "singleness of command."

killings outside the health centre in Kotor Varos, where BROWN acknowledged that his Report contained serious errors.

⁴⁷⁵ L51,1-Jun-92; SZ-013,KOVACEVIC,T.23677-23688,(06/09/11).

⁴⁷⁶ SZ-013,KOVACEVIC,T.23677-23679,(06/09/11).

⁴⁷⁷ SZ-013,KOVACEVIC,T.23785,(07/09/11).

⁴⁷⁸ 2D159,Expert Military report by Vidosav KOVACEVIC,Mar-2011,§22; SZ-013,KOVACEVIC,T.23647,(05/09/11).

See L1, Law on All People's Defence, 13-Apr-82, art.104.

⁴⁷⁹ SZ-013,KOVACEVIC,T.23647-23648,(05/09/11).

Re-subordination applied regardless of whether an actual state of war was declared

224. Chamber witness General Lisica clarified that even though no state of war was formally declared during 1992, there was a factual state of armed conflict and as a commander, he affirmed that there was no difference in practice between a state of war and imminent threat of war with respect to military command.⁴⁸⁰ He claimed that military laws and regulations applied equally to soldiers and members of the police and that they were all subordinated to the highest military command.⁴⁸¹

The relationship between re-subordinated police officers and the army was based on the principle of “singleness of command”

225. Pursuant to the principle of “singleness of command”, once police are re-subordinated, they answer exclusively to the army and any hierarchy of authority, rules or regulations governing their roles as civilian police officers is suspended.⁴⁸² This proposition is supported by an overwhelming majority of prosecution and chamber witnesses; including prosecution expert Brown.⁴⁸³ Defence expert General Kovacevic also explained that the power to re-subordinate could be delegated from the Army Main Staff down to the level of brigade command.⁴⁸⁴ General Kovacevic emphasised that when police units were engaged in combat activities, the only relationship that existed between the police and the army was a single relationship of command as no parallel command was tolerated.⁴⁸⁵ All structures that were

⁴⁸⁰ Chamber Witness LISICA, T.26992, (02/03/12).

⁴⁸¹ Chamber Witness LISICA, T.26990, (02/03/12).

⁴⁸² L51, Art. 173 (“Command in the Army shall be founded on principles of a unified command regarding the use of forces and means, single authority, obligations to enforce decisions, command and orders issued by superior officers.”).

⁴⁸³ ST-097, BROWN, T.19106, (21/01/11); Chamber Witness LISICA, T.26957-26958, (01/03/12); Chamber Witness JOVICINAC, T.26737, (23/02/12); [REDACTED]; MS-007, BAJAGIC, T.20233-20234, (05/05/11); MS-001, BIJELOSEVIC, T.19652-19653, (15/04/11); ST-203, BASARA, T.1315-1316, (13/10/09);

⁴⁸⁴ SZ-013, KOVACEVIC, T.23773, (07/09/11).

⁴⁸⁵ 2D159, §217; SZ-013, KOVACEVIC, T.23812-23813, (08/09/11); MS-001, BIJELOSEVIC, T.19653, (15/04/11), 1D46, Order by STANISIC, 15-May-92,.

part of or which worked in co-ordination with the command unit were subordinated to the military commander of that unit.⁴⁸⁶

226. Chamber witness General Lisica also verified that this theory applied in practice in Bosnia during the Indictment period. He asserted that singleness of command meant that “an officer, or a commander of a certain unit, his orders must be obeyed.”⁴⁸⁷ During 1992, General Lisica specifically noted that “all police forces were subordinated to the [military] commander of the zone of responsibility ...this included the police force.”⁴⁸⁸ Indeed, he confirmed that he drafted commands daily to his subordinate units as well as police units in his zone of responsibility.⁴⁸⁹

Re-subordinated policemen lost their status as police and became soldiers

227. Chamber witness General Lisica affirmed that under Article 104 of the Law on All People’s Defence, when the civilian police join a military unit, their civilian authority ceased, and their duties and responsibilities became the same as any other soldier.⁴⁹⁰ He also insisted that if they were to commit a criminal offence whilst re-subordinated, whether an ordinary theft or a war crime, they would fall under the jurisdiction of the military judiciary and disciplinary bodies.⁴⁹¹ This is evidenced by Article 9 of the Law on Military Courts,⁴⁹² which General Lisica confirmed operated during both war and peacetime.⁴⁹³ He summed it up by stating that in all ways, the civilian police become military conscripts.⁴⁹⁴

228. Expert witness General Kovacevic also confirmed that as of the moment a police officer joins a military formation, he loses his police authority for the duration of his re-

⁴⁸⁶ SZ-013,KOVACEVIC,T.23685,(06/09/11); [REDACTED].

⁴⁸⁷ Chamber Witness LISICA,T.26957-26958,(01/03/12); Chamber Witness JOVICINAC,T.26737,(23/02/12); [REDACTED]; MS-007,BAJAGIC,T.20233-20234,(05/05/11); MS-001,BIJELOSEVIC,T.19652-19653,(15/04/11); ST-203,BASARA,T.1315-1316,(13/10/09);

⁴⁸⁸ Chamber Witness LISICA,T.26863,(01/03/12).

⁴⁸⁹ Chamber Witness LISICA,T.26880-26881,(01/03/12).

⁴⁹⁰ Chamber Witness LISICA,T.26970,26974,(01/03/12);L1,art.104.

⁴⁹¹ Chamber Witness LISICA,T.26961,(01/03/12).

⁴⁹² P1284.07,Decree on the Proclamation of the Law on Military Courts,24-Dec-76,p.2.

⁴⁹³ Chamber Witness LISICA,T.26972,(01/03/12).

⁴⁹⁴ Chamber Witness LISICA,T.26975-26976,(01/03/12).

subordination.⁴⁹⁵ The police officer would become a soldier under single, military command and there was no parallel control or parallel command by the RS MUP or CSB/SJB.⁴⁹⁶ It follows that from the moment they were sent to the army until the moment they officially returned to their designated SJB and resumed their normal police duties, the police officers within Zupljanin's *de jure* jurisdiction were under the sole competence and authority of the army.⁴⁹⁷

229. [REDACTED].⁴⁹⁸

230. Likewise, expert witness Bajagic claimed that a re-subordinated police officer:

“does not have the rights and responsibilities that he had under the Law on Internal Affairs until [he goes] back to that organisational unit from where [he] had left when [he] became re-subordinated to a particular military unit.”⁴⁹⁹

231. He went on to emphasise that when re-subordinated:

“members of the police lost their status as authorised officials and therefore they are subjected to military rules, not police rules...and [the only] laws that apply to them [are] those that deal with military issues.”⁵⁰⁰

232. The Defence submit that the evidence is unequivocal. When police are re-subordinated to the army, their status changes from that of a police officer to a member of the armed forces for the duration of their re-subordination. Accordingly, any crimes they may commit while re-subordinated fall under the authority of the army.

Re-subordination applied under different forms and contexts

⁴⁹⁵ SZ-013,KOVACEVIC,T.23684,23694,23715-23717,(06/09/11);MS-001,BIJELOSEVIC,T.19660.

⁴⁹⁶ SZ-013,KOVACEVIC,T.23685,23715-23717,(06/09/11).

⁴⁹⁷ [REDACTED]; SZ-013,KOVACEVIC,T.23716-23717,(06/09/11).

⁴⁹⁸ [REDACTED];ST-173,DRAGANOVIC,T.3953,(01/12/09); ST-165,NJEGUS,T.11344,(07/06/10); [REDACTED].

⁴⁹⁹ MS-007,BAJAGIC,T.20193-20194,(04/05/11).

⁵⁰⁰ MS-007,BAJAGIC,T.20234,(05/05/11);1D662,Expert report prepared by Mladen BAJAGIC,1-Jan-11,para.8.

233. The Prosecution are keen to establish that re-subordination only pertained to those instances where structured agreements were in effect. The Defence maintain that this was not the case and that *de facto* re-subordination was recognised and widely practised during 1992.

234. Past decisions by this Tribunal have recognised that superior-subordinate relationships can exist in various forms and contexts. They may be direct or indirect,⁵⁰¹ formal or informal,⁵⁰² or *de jure* or *de facto*.⁵⁰³ Expert witness General Kovacevic confirmed that re-subordination can take place either; (1) according to formal procedure (*de jure*); or (2) on an *ad hoc* basis where no authorisation from the MUP/CSB is obtained prior to a police unit or individual being re-subordinated (*de facto*). Kovacevic attested:

“One way, ... was the following. The army informed the CSB and requested a certain number of units....[which] would act in co-ordinated actions with units of the VRS.” Importantly, the Defence emphasise what he said next; that “...there were other ways too; namely, that local commanders, on their own, decided to re-subordinate police units on the ground ...[in] both cases, they were subordinated to the commander, the military commander.”⁵⁰⁴

235. Prosecution expert Brown was forced to concede that an order issued by General Talic,⁵⁰⁵ provided that police, in “exceptional circumstances”, may be used in a variety of different ways to support the army and that, importantly, they may be used for combat activities

⁵⁰¹ *Prosecutor v. Delalic, Mucic, Delic and Landzo*, Case No. IT-96-21-A, Appeals, 20 February 2001, para.197; *Prosecutor v. Clement Kayishema and Obed Ruzindana*, Case No. ICTR-95-1-A, Appeals, June 1, 2001, para.294; *Prosecutor v. Sefer Halilovic*, Case No. IT-01-48-A, Appeals, 16 October 2007, paras 59, 210.

⁵⁰² *Prosecutor v. Delalic, Mucic, Delic and Landzo*, Case No. IT-96-21-A, Appeals, 20 February 2001, para.197; *Prosecutor v. Clement Kayishema and Obed Ruzindana*, Case No. ICTR-95-1-A, Appeals, March 2000, paras 50, 56, 61; *Juvenal Kajelijeli v. Prosecutor*, Case No. ICTR-98-44A-A, Appeals, 23 May 2005, para.85; *Sylvestre Gacumbitsi v. The Prosecutor*, Case No. ICTR-2001-64-A, Appeals, 7 July 2006, para.143; *Prosecutor v. Nahimana et al.*, Case No. ICTR-99-52-A, Appeal, 28 November 2007, para.484, 605; *Prosecutor v. Enver Hadzijasnovic and Amir Kubura*, Appeals, 22 April 2008, para.20.

⁵⁰³ *Prosecutor v. Delalic, Mucic, Delic and Landzo*, Case No. IT-96-21-A, Appeals, 20 February 2001, paras.192-193, 195; *Prosecutor v. Clement Kayishema and Obed Ruzindana*, Case No. ICTR-95-1-A, Appeals, March 2000, paras 294; *Prosecutor v. Bagilishema*, Case No. ICTR-95-1A-A, Appeals, 3 July 2002, para.50, 56, 61; *Kajelijeli v. The Prosecutor (Appeal Judgment)*, ICTR-98-44A-A, 23 May 2005, para.85; *Sylvestre Gacumbitsi v. The Prosecutor*, Case No. ICTR-2001-64-A, Appeals, 7 July 2006, para.143; *Prosecutor v. Nahimana et al.*, Case No. ICTR-99-52-A, Appeal, 28 November 2007, para.484, 605; *Prosecutor v. Enver Hadzijasnovic and Amir Kubura*, Appeals, 22 April 2008, para.20.

⁵⁰⁴ SZ-013,KOVACEVIC,T.23681,(06/09/11).

⁵⁰⁵ ST-097,BROWN,T.18947-18948,(19/01/11);P1789,1st KK order to all units belonging to the CSB concerning the use of the civilian police in an armed conflict,19-June-1992.

without informing MUP organs or obtaining their approval.⁵⁰⁶ Pursuant to Talic's order, discretion to re-subordinate police in such circumstances was vested in the army.⁵⁰⁷ Such "exceptional circumstances" (i.e. war) were in fact the norm throughout the Indictment period. This is evidenced by the large number of combat situations in which the police were re-subordinated without CSB approval.⁵⁰⁸ The widespread nature of this practice was further confirmed by Chamber witness General Lisica when he was presented with a document⁵⁰⁹ that showed approval was needed by the RS MUP for the use of police troops in any area.⁵¹⁰ General Lisica took care to stress that while on paper this document appeared to suggest that an agreement between the RS MUP and military commanders was required, this was not the case in practice. In actual fact, he insisted that during 1992, approval by the RS MUP was neither needed nor sought.⁵¹¹ He explained that he would call an SJB chief himself and order him to do something, and, despite separate command hierarchies, the police chief had no choice but to obey his orders.⁵¹² In effect, although a police chief was occasionally notified of the re-subordination of their officers, this was only a matter of courtesy or logistical convenience. The police chief's consent was not necessary as a precursor to the re-subordination.⁵¹³

⁵⁰⁶ ST-097,BROWN,T.18732,(12/01/11);P1803,Ewan BROWN,(ST-097) Expert Military Report,21 July 2002,para.2.50; See also P1789,1stKK order to all units belonging to the CSB concerning the use of the civilian police in an armed conflict,19-Jun-92.

⁵⁰⁷ P1789; ST-097,BROWN,T.18947-18948,(19/01/11).

⁵⁰⁸ ST-097,BROWN,T.19079,(21/01/11). See P611,Report of 1stKK on the state of morale in August 1992,3-Sep-92; See also ST-097, BROWN,T.18929(19/01/11)-T19005(20/01/10)(Brown is shown a list of documents which he interpreted in his report as merely cooperation)-P1780,P1794(Both of these documents were sent to the military units only),P1789,1D406,1D99,1D100,1D76("Data information regarding police involvement in those combat actions where their involvement was not necessary should be gathered."),P1094,P427,item8("This has mostly to do with the fact that the police are still on the first combat lines, 100 per cent in Herzegovina, over 70 per cent in the Dobo region, although this was justified at the beginning, or that the army keeps civilian police within its ranks after their agreed engagement in combat activities as part of military police units: All this affects the discharge of their regular duties and tasks."),1D263(Example of de jure re-subordination to compare and contrast),1D407,1D408(military commander appointing SJB chief),1D409,1D266,410,P1668,2D119(Under Seal) [REDACTED].

⁵⁰⁹ P2458,VP 7469 Zvornik order redeployment of units of the SJB Zvornik, by Lt.Col. VASILIC,25-Aug-92,p.1; Chamber Witness LISICA,T.26943-26944,(01/03/12).

⁵¹⁰ Chamber Witness LISICA,T.26943-26944,(01/03/12).

⁵¹¹ Chamber Witness LISICA,T.26945,(01/03/12).

⁵¹² Chamber Witness LISICA,T.26931,(01/03/12).

⁵¹³ Chamber Witness LISICA,T.26866-26867,(01/03/12).

236. Zupljanin in fact complained about precisely this problem at the RS MUP Collegium in Belgrade on 11 July 1992⁵¹⁴ and the adverse impact it was having on the police as a whole as local police forces were being severely depleted. Indeed, over 80% of police officers in the Krajina region were re-subordinated during 1992.⁵¹⁵ Clearly, given the surge in crime brought on by the war, it is unlikely that any police force would have agreed to such a vast depletion in numbers at such a critical time.
237. Further evidence of the widespread practice of *de facto* re-subordination was put to prosecution military expert Brown. The Trial Chamber will recall that Brown, while at first reluctant to acknowledge the existence of this practice, upon being presented with clear evidence of its use,⁵¹⁶ eventually changed his view. One such example was when he was shown an s order issued by General Talic.⁵¹⁷ Upon reviewing this order, Brown admitted, "...it seems to indicate...a change from... [an instruction]...that requires the approval of the CSB and a procedure by which police can be used in combat operations. Why this came about, I do not know."⁵¹⁸ With the order, Talic unequivocally gave "exclusive right to command and employ units" to the military zone commander. According to the order, "all police forces shall be placed under the command of the zone commander who shall decide how they are used."⁵¹⁹ This order therefore demonstrates police were re-subordinated under military command, without the approval of the CSB.
238. Chamber witness General Lisica also specifically refuted prosecution expert Brown that the army had to enter into an agreement with the MUP/CSB for the use of police forces. General Lisica confirmed that he used police forces as and when he needed and that they

⁵¹⁴P160; P610,CSB Sarajevo, Report on the Implementation of Conclusions from the Meeting of Senior Personnel in the MUP,11-Jul-92; See 1D406,Order issued by General Talic for all police forces to be placed under the command of the zone commander,(military) who shall decide how they are used,1-Jul-92.

⁵¹⁵ P624, MS-002,Macar,T.23094,(11/07/11).

⁵¹⁶ ST-097,BROWN,T.18929-18940,(19/01/11)(Brown denies the principle of singleness of command)-1D405;P1787, Order of the Command of the Light Infantry Brigade at KotorVaros to the Command of the 82mm Mortar Platoon for the Conduct of Military Operations,23-Jul-92,p.3(illustrates re-subordination of police officers without MUP/CSB consent similar to 1D405).

⁵¹⁷ ST-097,BROWN,T.18944-18952,(19/01/11)-1D406.

⁵¹⁸ ST-097,BROWN,T.1895,18979,(19/01/11).

⁵¹⁹ 1D406,p.2.

were directly subordinated to him and reported to him.⁵²⁰ He referred to CSB Doboj Chief Bjelosevic as an example. As Doboj was within General Lisica's area of responsibility, Lisica always had the last word. He recounted that even when Bjelosevic objected to his police officers being re-subordinated, he had no say in the matter. Accordingly, the decision to re-subordinate police rested solely with the army.⁵²¹ As General Lisica explained, "there could simply be no situation in which [a police chief] would not execute my order".⁵²² This was not specific to him or his zone of responsibility. General Lisica stressed that re-subordination was applied generally by military commanders across the ARK region in the same manner.⁵²³

239. The evidence therefore shows that in utilising police officers to join the armed forces that the army did as they pleased according to the exigencies of the constantly evolving wartime situation, despite the fact that Zupljanin vehemently opposed this practice and in spite of the adverse impact that this practice had upon civilian police performance.

The meaning of coordination, cooperation & assignment within common military parlance

240. Kovacevic explained that "recruitment", "attachment", "co-ordination", "co-ordinated action" and "co-operation" were activities undertaken by the military together with the police but that the underlying relationship for all these activities was one of re-subordination.⁵²⁴ The terms "assignment" and "co-ordinated action" are defined in more detail below.

"Assignment"

241. Kovacevic explained that when a police unit was integrated within a military unit in order to perform a sole specific task, then it became an attachment to that military unit.⁵²⁵ The

⁵²⁰ Chamber Witness LISICA, T.26866, (01/03/12).

⁵²¹ Chamber Witness LISICA, T.26866, (01/03/12).

⁵²² Chamber Witness LISICA, T.26935-26936, (01/03/12).

⁵²³ Chamber Witness, LISICA, T.26990, (02/03/12).

⁵²⁴ SZ-013, KOVACEVIC, T.23719, (06/09/11).

⁵²⁵ SZ-013, KOVACEVIC, T.23713-23715, (06/09/11); 2D159, §§.207, 209, 210, 211.

command structure, he confirmed, would be identical to the re-subordination structure.⁵²⁶
 The attachment was only temporary, and thus only lasted for the execution of the task.⁵²⁷

“Co-ordinated action”

242. Expert witness Kovacevic clarified that “co-ordinated action” involved a number of units carrying out combat tasks in a co-ordinated manner. These units acted together and could include civil police units⁵²⁸ but such units always remained under the control of a single military commander.⁵²⁹ Accordingly, police officers involved in any type of co-ordinated action were always re-subordinated under army command.

243. By way of example, on 1 April 1992, the commander of the 5th JNA Corps ordered the 10th Partisan brigade to “establish full co-operation with the authorities” in Sanski Most, as well as co-ordinated action with TO and police units.⁵³⁰ Expert witness Kovacevic commented that the order on co-ordinated action necessarily implied that the TO and the police units had already been re-subordinated to the military, even though this does not explicitly appear in the document.⁵³¹

244. This is further supported by Chamber witness General Lisica who also clarified that the term “co-ordination”, whenever used, just meant that the police would be involved in co-ordination with military formations.⁵³² In order to perform any such activities, they would always first be re-subordinated to the military commander.

⁵²⁶ SZ-013,KOVACEVIC,T.23713-23722,(06/09/11);2D159,§§.213,214,215.

⁵²⁷ SZ-013,KOVACEVIC,T.23713-23722,(06/09/11);2D159,§§.211,212.

⁵²⁸ SZ-013,KOVACEVIC,T.23727-23731,23739-23742,(07/09/11); SZ-013,KOVACEVIC,T.24307-24316,(16/09/11); SZ-013,KOVACEVIC,T.24216-24230,(15/09/11);P1787,p.4;P1794,Directive for Further Operations,6 June 1992,p.2;1D405,paras.5.6,5.11;2D46,Order of Kljuc Military Post 2207 Command for future operations, by Lt.Col. SAMARDZIJA,9-Jul-92,para.2;P680,Dispatch of CSB Banja Luka to the Chief of SJB Prijedor containing instructions for training and using CSB Banja Luka war units,25-Aug-92,p.4;1D46,para.7,9;P1293,Transcript from program aired on Banja Luka TV regarding the liberation of the Posavina corridor;[REDACTED];ST-092,NIELSEN,T.4746-4751,(14/12/09).

⁵²⁹ SZ-013,KOVACEVIC,T.23726,(06/09/11).

⁵³⁰ P60.3,Order of the 5th Corps command to the 10th Partisan brigade. Replacement and deployment of units,1-Apr-92; SZ-013,KOVACEVIC,T.23741-23742,(07/09/11).

⁵³¹ SZ-013,KOVACEVIC,T.23741-23742,(07/09/11).

⁵³² Chamber Witness LISICA,T.26933-26934,(01/03/12).

Zupljanin is not accountable for crimes committed by police officers who were re-subordinated

245. [REDACTED].⁵³³

246. Chamber witness General Lisica confirmed this understanding. He explained that it was the commander's responsibility to remand in custody anyone who committed or attempted to commit a war crime, to prosecute and punish war crimes, as well as to take responsibility for any prisoners.⁵³⁴ He also insisted that it was the responsibility of the military prosecutor to deal with these matters.⁵³⁵ The Defence underline General Lisica's testimony that, if he were informed of a crime or breach of discipline committed by a re-subordinated police officer, he would personally instigate investigative procedures against that police officer.⁵³⁶ This again supports the Defence position that Stojan Zupljanin was not responsible for investigating or instigating criminal or disciplinary procedures against re-subordinated police officers.

247. To illustrate this even further, the Defence refer to an order from the VRS Main Staff to General Talic to file criminal reports against members of the Prijedor police units, who had abandoned their positions and fled back to their hometowns. As a matter of courtesy, the CSB Banja Luka was informed of the upcoming proceedings but rightly played no part in pursuing them.⁵³⁷ Indeed General Kovacevic commented that the criminal proceedings fell within the remit of the army, as the police officers were re-subordinated at the time of committing the desertion offence.⁵³⁸

248. In addition to General Kovacevic's testimony, the Defence highlight evidence given by other prosecution witnesses that substantiates the Defence case on re-subordination.

⁵³³ P1272, Procedure with perpetrators, (from 1st KK), 1-Jul-92; P1284.10, 1992, p.8; 2D159; ST.139, T.8501-8505, (12/04/10), Closed Session.

⁵³⁴ Chamber Witness LISICA, T.26869-26870, (01/03/12).

⁵³⁵ Chamber Witness LISICA, T.26870-26871, (01/03/12).

⁵³⁶ Chamber Witness LISICA, T.26939, (01/03/12).

⁵³⁷ 1D411, Order from VRS Main Command to file criminal reports against re-subordinated police unit from Prijedor, 16-Oct-92; SZ-013, KOVACEVIC, T.23727-23729, (06/09/11).

⁵³⁸ SZ-013, KOVACEVIC, T.23729, (06/09/11).

[REDACTED].⁵³⁹ Prosecution witness Njegus, the Chief of Legal and Personnel Administration at the RS MUP, also confirmed that where a police officer committed a crime whilst re-subordinated under army command and subsequently returned to the civilian police, it remained the responsibility of the military authorities to investigate and process the crime committed whilst the officer was under its command.⁵⁴⁰ Prosecution witness Vasic additionally affirmed that crimes committed during combat operations in the zone of responsibility of a military unit fell under the obligation of the military security organs to investigate and process.⁵⁴¹

249. [REDACTED].⁵⁴² [REDACTED].⁵⁴³ [REDACTED].

Prosecution military expert witness Brown admitted that he had no knowledge about the principle of re-subordination as it was applied by the army during 1992

250. The Prosecution have relied heavily on its expert Brown in an attempt to cast doubt on the validity of the doctrine of re-subordination as applied during 1992. Yet, as Brown himself accepted,⁵⁴⁴ he is not qualified to opine on these issues as an “expert”. Brown acknowledged limitations in his report and admitted that he knew little or nothing about the rules and regulations regarding the MUP and civilian police or, bizarrely, even about the principle of re-subordination.⁵⁴⁵ Brown further admitted that his report was based primarily on military documents pertaining only to the 1st Krajina Corps. Such a narrow scope of source material is clearly insufficient to enable him to offer expert testimony on a complicated and fact-based scenario involving the police and MUP. Furthermore, Brown based his views regarding the

⁵³⁹ [REDACTED]; [REDACTED]; ST-165,NJEGUS,T.11344,(07/06/10);P1284.07,art.14(“If a civilian has committed a crime falling within the jurisdiction of the military court in concurrence with a crime falling with the jurisdiction of another regular court, the military shall have jurisdiction over the court.”). *See also* P01284.10,Republika Srpska Army Main Staff, Military Prosecutor’s Office. Guidelines for establishing criteria for criminal prosecution,1992,p.8(“... that the officer [Army] in each unit be duty-bound to draw up reports on all cases possibly qualify as some of these crimes... the commands would be responsible also for informing the military prosecutor’s office which, ... would take the appropriate steps prescribed by law”).

⁵⁴⁰ ST-165,NJEGUS,T.11345,(07/06/10);[REDACTED];MS-002,MACAR,T.23312-23313,(14/07/11).

⁵⁴¹ ST-210,VASIC,T.13707-13708,(25/08/10).

⁵⁴² [REDACTED].

⁵⁴³ [REDACTED].

⁵⁴⁴ ST-097,BROWN,T.19024,(20/01/11); ST-097,BROWN,T.19050-19051,(20/01/11).

⁵⁴⁵ ST-097,BROWN,T.19050-19051,(20/01/11).

concept of re-subordination on a wholly irrelevant comparison with his own military experience in Northern Ireland.⁵⁴⁶ This is an extraordinary comparison to make as the Prosecution has not led any evidence to assert that the laws in the UK were remotely similar to those applicable in the former Yugoslavia in 1992. When Brown was asked by Defence Counsel for Mr. Stanisic what the military term of “co-operation” meant, Brown essentially relied on its ordinary meaning, as he did not know the operative legal definition within the Yugoslav military context. The Prosecution is, in effect, asking the Trial Chamber to ignore the evidence of Defence expert Kovacevic, an experienced and very senior officer of the former JNA, who has practical expertise on the relationship between the RS MUP and the VRS in Bosnia in 1992 and to instead apply principles from Northern Ireland dating back to the 1970s.⁵⁴⁷ If this is the proper standard to be applied then the Prosecution could well have dispensed with Brown’s services and instead made submissions about re-subordination as practiced in Sweden or Australia. Indeed, there is no account in Brown’s report of the rules or regulations setting out the principle of re-subordination. Transposing the Prosecution’s assertions concerning re-subordination from Northern Ireland to the war in Bosnia and Herzegovina is not a reliable basis upon which the Trial Chamber should consider the application of re-subordination during the Indictment period. As such, the Defence submit that no weight should be attributed to Brown’s opinions on this topic.

Conclusion

251. In summary, it is the position of the Defence that the existence of the actual state of re-subordination is a matter of fact and is given effect by military rules under the recognised principle of “singleness of command”. Once a police officer is re-subordinated he becomes a member of the army. Accordingly, responsibility for investigation and punishment of crimes committed by re-subordinated police officers also rests solely with the army.

Any crimes that ensued in furtherance or as a result of municipal takeovers were the responsibility of the army

⁵⁴⁶ ST-097,Brown,T.18722-18724,18727,(12/01/11).

⁵⁴⁷ ST-097,Brown,T.18725,(12/01/11).

Police were re-subordinated under Town Commands established by army

252. The Defence submit that the army established Town Defence Commands (“Town Commands”) in municipalities where the local organs were no longer functioning due to military operations, such as in Kljuc,⁵⁴⁸ Donji Vakuf⁵⁴⁹ and Kotor Varos⁵⁵⁰. In such situations, the army appointed a Town Commander from within its ranks and then appointed the remaining positions of the Town Command, including in some cases, the chief of police, from individuals who were either members of the municipality leadership or the army.⁵⁵¹ The key point is that all civilian bodies, including the police, were automatically re-subordinated under the army. Indeed, military reports from such municipalities make it clear that “All appointed organs and individuals shall be subordinated to the town commander.”⁵⁵² This state of re-subordination would continue until civil structures could once again operate normally.⁵⁵³

253. [REDACTED].⁵⁵⁴ During the functioning of a Town Command, the civilian organs, including the police, were re-subordinated and answered to the commander of the Town Command.⁵⁵⁵ Expert witness General Kovacevic also confirmed this, stating that the relationship during a Town Command between the army and police was that of re-subordination.⁵⁵⁶ It follows that in instances where Town Commands were established, the army exercised complete authority over those municipalities – including over the police.⁵⁵⁷ This position is evidenced by article 1 of the Law on All People’s Defence which shows that

⁵⁴⁸ P1783, Dispatch of the Command of the 30th Partisan Division to the 1st KK Command providing orders relating to the defence of Kljuc, 2-Jun-92.

⁵⁴⁹ 1D403, Dispatch of the Command of the 19th Partisan Brigade forming a Defence Command for the town of Donji Vakuf, 13-Jun-92.

⁵⁵⁰ 2D132, Excerpt of a meeting of the Crisis Staff of Kotor Varos, 25-Jun-92.

⁵⁵¹ MS-001, BIJELOSEVIC, T. 19662-19663, 19676-19677, (14/04/11); P1783; 1D403; 2D132; 1D470, VRS Tactical Group 3 Introduction of military administration in Derventa Municipality, 8-Sep-92; 1D473, VRS Tactical Group 3 Temporary appointments of Bosanski Brod Town Commanding officers, 7-Oct-92.

⁵⁵² 1D473.

⁵⁵³ MS-001, BIJELOSEVIC, T. 21185, (24/05/11); SZ-013, KOVACEVIC, T. 23760, (07/09/11).

⁵⁵⁴ [REDACTED]; ST-203.

⁵⁵⁵ SZ-013, KOVACEVIC, T. 23764, (07/09/11).

⁵⁵⁶ SZ-013, KOVACEVIC, T. 23684-23685, (06/09/11), T. 23766-23767, (07/09/11), T. 24205, (15/09/11).

⁵⁵⁷ MS-001, BIJELOSEVIC, T. 19663-19664, (15/04/11).

authority was vested in the army over civil organs upon the establishment of a Town Command.⁵⁵⁸

254. [REDACTED].

Donji Vakuf

Police were re-subordinated under the Town Command in Donji Vakuf

255. In early June 1992, a military order established a Town Command in Donji Vakuf and appointed Sefulo Sisic (an army Captain) as SJB police commander, with other leading positions in the SJB also filled by army personnel.⁵⁵⁹ Captain Sisic confirmed to Zupljanin, in a report dated 31 January 1993⁵⁶⁰ on the work of SJB Donji Vakuf, that during the entire Indictment period, the army was in charge of police work in Donji Vakuf.

256. This same report explicitly acknowledges that the police were re-subordinated under the command of the army during combat operations that lasted “practically until the end of the summer.”⁵⁶¹ In addition to actual combat operations the police were “searching houses and other buildings belonging to suspicious persons ...[and] dealt with everything concerned with their detentions and investigations together with the military security organs.”⁵⁶² The Defence submit that the activities of the police, including any involvement in the security of detention facilities⁵⁶³ and interrogation of prisoners, took place under the command of the army.

257. In the same report, Captain Sisic acknowledged that around thirty reserve officers had looted the property of those Muslims who had departed the area during combat operations

⁵⁵⁸ L1.

⁵⁵⁹ 1D403.

⁵⁶⁰ P1928, Report of SJB Donji Vakuf on the Work of the Donji Vakuf SJB Between, 1-Apr-92 and 25-Dec-92, 31-Jan-93.

⁵⁶¹ P1928; P1815, p.3-4 (Army combat order: the Police and TO were used by the army to control the territory and the army needed to establish a plan on how to use “subordinate forces”, including the SJB).

⁵⁶² P1928; Adjudicated Fact: 1154.

⁵⁶³ P1927, p.4 (Vrbaspromet facility was established by the 19th Brigade).

and that they were summarily dismissed by the army (not the police) for their crimes.⁵⁶⁴ The fact that Zupljanin was only informed of these matters in 1993 shows that Zupljanin was not contemporaneously informed of what was happening – a clear sign that reporting and crime processing followed military rather than civil police channels. Prosecution witness Rakovic also confirmed that Zupljanin was not informed of what was happening in Donji Vakuf. He explained that up until September 1992 there was no communication between the CSB Banja Luka and Donji Vakuf.⁵⁶⁵

Kljuc

Police were re-subordinated under the Town Command in Kljuc

258. Kljuc was similarly placed under the control of the army through the establishment of a Town Command following attacks against military personnel by Muslim forces on 27 May 1992.⁵⁶⁶

259. If crimes were committed against civilians during or immediately following army operations, and if members of the police were involved in these crimes, they were re-subordinated under army command.⁵⁶⁷ This is apparent from the combat order of Colonel Samardzija, ordering the use of reserve police forces for mopping-up operations and security against looting in the area.⁵⁶⁸ [REDACTED].⁵⁶⁹

⁵⁶⁴ P1928,p.2; Adjudicated Fact:1154.

⁵⁶⁵ ST-166,Rakovic,T.6939-6940,(25/02/10);P595,CSB Banja Luka, Report on the Work of CSB Banja Luka for the Period 1-Jan to 30-Jun-92,Jul-92,p.11.

⁵⁶⁶ P1783-Re-subordination of police in Kljuc under Town Command; [REDACTED]; ST-052,Dzafic,T.6247,6250-6251,6261,(05/02/10); 2D45,Omer Filopovic Statement to SJB Kljuc,29-May-92; 1D247,Dispatch from Kljuc SJB, summary of the Report on the work and activities of the Kljuc SJB during combat operations in the territory of Kljuc Municipality,25-Sep-92; P960.24,Information of SJB Kljuc on the Work and Activities of SJB Kljuc During Combat Operations on the Territory of Kljuc Municipality,July-92(Synchronised attacks against army and police personnel).

⁵⁶⁷ See P1284.31,Handwritten list of 79 individuals killed by Army of Republika Srpska members in a school building in the village of Velagici, municipality of Kljuc,1-Jun-92,(Killings at Veligici); See also P960.24; P698,Report of SJB Kljuc including information on crimes committed in the Municipality since the beginning of the armed rebellion on 27 May 1992, in particular, 36 murders, 106 fires and explosions, and 92 aggravated thefts..., 28-Sep-92(Crimes by soldiers).

⁵⁶⁸ 2D46; P1654,Official Note of SJB Kljuc relating to "mopping up" action in Sanica,10-Jul-92.

⁵⁶⁹ [REDACTED].

Kotor Varos

Police were re-subordinated under the Town Command in Kotor Varos

260. On 11 June 1992, the SDS and the army took control of Kotor Varos⁵⁷⁰ and on 25 June, the army established a Town Command⁵⁷¹ effectively re-subordinating “anyone that [could] carry a rifle.” Captain Tepic (an army officer) was appointed as Town Commander.⁵⁷² Consequently, the entire civil structure of Kotor Varos, including the police, was placed under the command and control of the army.⁵⁷³ The fact that the army established its command post at the SJB in Kotor Varos⁵⁷⁴ is further testament to the reality that the army exercised complete authority and control over the local police force in Kotor Varos. [REDACTED].⁵⁷⁵

261. The Defence point to the substantial evidence presented during this trial to show that the range of crimes in Kotor Varos listed in the Indictment were perpetrated by the army during, and in the aftermath of, combat operations.⁵⁷⁶ [REDACTED].⁵⁷⁷ Regular combat reports also described the mopping up of enemy combatants by the army.⁵⁷⁸

⁵⁷⁰ [REDACTED]; Adjudicated Facts:519,539-544,1198,(for military operations and municipal takeover by the SDS). See P1795,Order from 1stKK Command to acting commanders,9-Jun-92,pp.4-5; 2D1,Regular Combat Report of the 1stKK Command to SR-BiH Army Main Staff, Kotor Varos, 10-Jun-92,(Talic references rationale for military operations as the forthcoming armed uprising); SZ-008 BUBIC,T.25925,25967,(17/11/11)(BUBIC confirmed the armed combatants); P1818,1stKK report concerning the political-security situation in the ARK15-Jul-92,pp.1-2(Military confirmation of significant enemy combatants).

⁵⁷¹ ST-181,DJEKANOVIC,T.1048,(07/10/09)(attacks on Vecici ...[REDACTED]),T.1043-1044,(07/10/09);1D390(attacks on Hadrovci); 2D132.

⁵⁷² 2D132.

⁵⁷³ P1787,para.4;2D46,para.2.

⁵⁷⁴ ST-181,DJEKANOVIC,T.1194,(09/10/09); 2D133,1stKK Command Order,16-Jul-92,pp.2-3.

⁵⁷⁵ [REDACTED]

⁵⁷⁶ Adjudicated Facts:539,541,542,544; P1666,Combat Reportof the 1stKK Command to the SR-BiH Army Main Staff,29-Aug-92(looting had become increasingly frequent practice); 1D25,Record of the 28th session of the War Presidency, Kotor Varos Municipality,20-Jun-92; [REDACTED]; [REDACTED]; P1811,Regular Combat Reportof 1stKK Command to the SR-BiH Army Main Staff, Kotor Varos,9-Jul-92([REDACTED]).

⁵⁷⁷ [REDACTED].

⁵⁷⁸ P1810,Regular Combat Reportof the 1stKK Command to the SR-BiH Army Main Staff, Kotor Varos, 6-Jul-92; P1811, Regular Combat Report of 1stKK Command to the SR-BiH Army Main Staff, Kotor Varos,9-Jul-92.

262. The Defence maintain that if police were involved in the commission of any crimes in Kotor Varos (which is not admitted by the Defence), then they were re-subordinated by the army when doing so.

Sanski Most

263. The SDS Crisis Staff and the army wrested power from the Muslim police who had seized the municipal building in Sanski Most on 19 April 1992.⁵⁷⁹ Indeed, rather than being concerned with the combat operation, prosecution witness Majkic testified that when he met Zupljanin the day after the “liberation” of the municipal building, Zupljanin’s main concern was that nobody was injured on either side.⁵⁸⁰

264. As the takeover of Sanski Most was planned and executed by the SDS and army, it is clear that Zupljanin would not have been involved. Alternatively, if members of the police participated in combined operations with the 6th Krajina Brigade outside the scope of their regular duties, they were re-subordinated under the command of the army⁵⁸¹

The Army was responsible for crimes in Sanski Most during and after military operations

265. The Defence refer to prosecution evidence confirming that it was the army that conducted mopping-up operations in Sanski Most following combat operations.⁵⁸² This included the mopping up of civilians and their detention on suspicion of involvement in armed rebellion.⁵⁸³

⁵⁷⁹ P411.31, Report on the work and activities of the SOS Intervention Platoon attached to the 6th Krajina Brigade, 16-Sep-92; P411.18, Report of Milos Group regarding takeover of Sanski Most, 24-Apr-92; [REDACTED]; P60.13, Hand-written diary of RASULA covering the period from 28-Dec-91 to 30-May-92, 20-Dec-91 to May-92; ST-203, BASARA, T.1246-1247, (12/10/09). See [REDACTED]; (For Command and control of Red Berets), Closed session; See also Adjudicated Facts: 1126, 472.

⁵⁸⁰ ST-177, MAJKIC, T.3163, (16/11/09).

⁵⁸¹ P60.13, p.22; [REDACTED].

⁵⁸² P117, Telegram of SJB Sanski Most to CSB Banja Luka, regarding the detention of Muslim and Croatian extremists from paramilitary formations from 27-May-92 to 2-Jul-92, 2-Jul-92.

⁵⁸³ 1D162, Combat Report of the 1stKK Command to SR-BiH Army Main Staff, Sanski Most, 8-Jul-92. See Adjudicated Facts: 473, 474, 931-933, 1132-1134.

266. The Prosecution have asserted that police were involved in these operations and consequently, in the crimes against the non-Serb population in the area. However, their own witness, [REDACTED].⁵⁸⁴

267. Likewise, the Commission set up by Zupljanin to investigate detention facilities and whether non-Serbs were being forced out of the Krajina reported back to Zupljanin that, in Sanski Most, only “persons captured in combat zones” were brought in by “authorised employees of the SJB” on the basis of operative intelligence gathered at investigative centres.⁵⁸⁵ The Defence submits that the army was rounding up individuals in the field and the police were consequently forced to assist in processing those brought in. Accordingly, any crimes committed by police officers in the wider context of military activity would have fallen under the responsibility of the army as they would have been re-subordinated while undertaking such tasks.

268. The Prosecution further asserts that members of the police were involved in perpetrating other crimes against Muslims and Croat civilians in Sanski Most.⁵⁸⁶ The Defence submit that there is no evidence of this. [REDACTED].⁵⁸⁷ [REDACTED].⁵⁸⁸

Prijedor

The local Crisis Staff and the army were responsible for the takeover of Prijedor

269. A wide raft of prosecution witnesses testified to the autonomy of Prijedor and the absolute power in the municipality enjoyed by the Crisis Staff and, in particular, its SJB

⁵⁸⁴ [REDACTED].

⁵⁸⁵ 2D90, Report on Prisoners, Centres, Resettlement and role of SJB relating to Prijedor, Bosanski Novi and Sanski Most, 19-Aug-92.

⁵⁸⁶ ST-173, DRAGANOVIC, T. 3966-3967, (01/12/09); [REDACTED]; Adjudicated Fact: 1145.

⁵⁸⁷ P411.25, Dispatch of SJB Sanski Most to CSB Banja Luka reporting on paramilitary formations in Sanski Most planting bombs, burning houses, murdering people, plundering property and other crimes against, 5-Aug-92.

⁵⁸⁸ P693, Official Note of National Security Service Banja Luka by Operatives RADULOVIC, SAJINOVIC, and STJEPANOVIC on the situation in Sanski Most, 19-Oct-92; P118, Agenda of the Meeting of the Municipal Assembly Sanski Most Coordinating Committee, 17-Nov-92.

Chief, Simo Drljaca.⁵⁸⁹ Drljaca's contempt for Zupljanin was no secret in 1992.⁵⁹⁰ Drljaca - who was not previously a police officer, but instead an SDS member - was assigned by Crisis Staff to take over the municipality⁵⁹¹ and, in tandem with the army, achieved this on 30 April 1992. It is significant that Prosecution eyewitness Sejmenovic described the takeover in Prijedor as "a military coup."⁵⁹² It follows, the Defence submit, that Stojan Zupljanin would have had no involvement in or knowledge of the takeover.

The army and the local Crisis Staff, led by SJB chief Simo Drljaca, usurped Zupljanin's authority over the police in Prijedor

270. The army went far beyond re-subordinating the police in Prijedor. Drljaca aligned himself with military commanders.⁵⁹³ The influence of the military over Prijedor and Drljaca's close ties with the Crisis Staff and army are well documented in other areas in this brief.⁵⁹⁴

The army attacks on Hambarine and Kozarac

271. Evidence adduced during the Prosecution case demonstrates that the police were not involved in the attacks on Hambarine⁵⁹⁵ [REDACTED]⁵⁹⁶ [REDACTED].⁵⁹⁷ [REDACTED].⁵⁹⁸ [REDACTED].⁵⁹⁹ More, it is about who has ultimate command and authority in the area. In Prijedor, this was clearly the army. The Defence also underline that Adjudicated Fact 1077 confirms that it was members of the army who perpetrated crimes

⁵⁸⁹ See chapter on Indictment paragraph 12(b). See also ST-184, MISKOVIC, T.15273, (04/10/10) (Drljaca did not want to step down in 1993); ST-184, MISKOVIC, T.15334, (05/10/10) (Strong relations with army and Stakic); ST-182, RADULOVIC, T.10894, (27/05/10); ST-182, RADULOVIC, T.11087-11088 (28/05/10); 1D813, Crisis Staffs/Municipal organs. Conclusion that Drljaca, Travar and Rajlic propose to the Crisis Staff the criteria for payment of the army and police, 16-Jun-92; SZ-005, JANKOVIC, T.24857-24860, (12/10/2011) (For the paying of salary for police officers); ST-165, NJEGUS, T.11463-11464, (09/06/10); [REDACTED].

⁵⁹⁰ ST-123, TUTUS, T.7722, (16/03/10); ST-195, KREJIC, T.14067, (01/09/10); SZ-005, JANKOVIC, T.25074, (14/10/2011); ST-204, GAJIC, T.12876, (15/7/10).

⁵⁹¹ ST-184, MISKOVIC, T.15276, (04/10/10); SZ-005, JANKOVIC, T.24794-24796, T.24821-24822, (11/10/2011).

⁵⁹² ST-062, SEJMEVIC, T.17373, (12/11/10).

⁵⁹³ P1295.21 (Under Seal) [REDACTED]

⁵⁹⁴ See chapters on Indictment paragraphs 12(b), 12(g) and Zupljanin's Knowledge.

⁵⁹⁵ [REDACTED].

⁵⁹⁶ P2140 (Under Seal) [REDACTED], T.10997, (28/10/02), Closed Session.

⁵⁹⁷ P2140 (Under Seal) [REDACTED], 10993, 11002, (28/10/02), Closed Session.

⁵⁹⁸ [REDACTED].

⁵⁹⁹ ST-247, SELAK, T.18170, (06/12/10).

against non-Serb civilians in the area.⁶⁰⁰ Notwithstanding, if police officers were involved in any capacity they were re-subordinated under army command for the duration of their activities.

272. Alternatively, Zupljanin had no effective control of the local police in Prijedor. Zupljanin stated that he was powerless to do anything about the situation in Prijedor, as he did not have the support of the local Crisis Staff, SJB, army or judiciary.⁶⁰¹ Prosecution expert Nielsen and prosecution witness Radulovic corroborate Zupljanin's inability to exert control over the Prijedor SJB.⁶⁰²

Teslic

273. The actions taken by Zupljanin to end the reign of terror of the Mice group in Teslic are documented in the chapter on Indictment paragraph 12(g).

Banja Luka

The disarmament programme in Banja Luka was not targeted against non-Serbs

274. The Defence submit that the Prosecution's argument that the disarming of the civilian population in Banja Luka⁶⁰³ was a pre-text to the forcible removal of non-Serbs is at odds with the evidence presented in this trial. Prosecution witness Tutus confirmed that the disarming initiative was not in itself illegal.⁶⁰⁴ The reasons for doing so were legitimate and

⁶⁰⁰ ST-062, SEJMENOVIC, T.17436, (17/11/10); See Adjudicated Fact:1077.

⁶⁰¹ 1D112, Dispatch from ZUPLJANIN, CSB Banja Luka, to chief of SJB Prijedor, 19-Sep-91; ST-092, NIELSEN, T.5504, (26/01/10), T.5451, (25/01/10).

⁶⁰² ST-182, RADULOVIC, T.10894, (27/05/10); ST-182, RADULOVIC, T.11087-11088, (28/05/10). See also section on Prijedor in chapter on Indictment paragraph 12(b).

⁶⁰³ P561, Circular from CSB Banja Luka to Chief of all SJB(s) referring to the surrender of illegally-owned weapons, Prijedor, 14-May-92; ST-123, TUTUS, T.7656, (16/03/10).

⁶⁰⁴ ST-123, Tutus, T.7658-7659, (16/03/10). ST-123, TUTUS, T.7859, 7863-7864, (19/03/10); 1D235, Report of CSB/SJB Banja Luka to Executive Board of Municipal Assembly of Banja Luka regarding confiscation of illegal weapons from Jan-92 to 21-Sep-92. See also L1.

the order issued to disarm not in violation of Yugoslav law. Accordingly, the police were obliged to implement it.⁶⁰⁵

275. The Defence remind the Trial Chamber that Zupljanin expressly ordered his police chiefs to not obey unlawful orders issued by the ARK Crisis Staff (or any other body).⁶⁰⁶

No combat operations took place in Banja Luka

276. The Defence submit that for a majority of the indictment period there were no combat operations in Banja Luka. The Defence refer to evidence that it was soldiers who committed the vast majority of all crimes in Banja Luka.⁶⁰⁷ Indeed, this was not only the case in Banja Luka but across the entire Krajina region. [REDACTED].⁶⁰⁸ Accordingly, it was the army who was responsible for disciplining or prosecuting these perpetrators.

277. The Defence stress that Banja Luka, while caught up in the war, was comparatively calmer than other municipalities with the police conducting their duties to the best of their ability under the circumstances.⁶⁰⁹ The fact that this was the seat of the CSB (and Zupljanin) further supports the Defence position that Zupljanin was a man of integrity who conducted his professional duties consistently and diligently in order to protect all civilians (regardless of religion or ethnicity) even under extremely challenging circumstances.

Conclusion

278. Overwhelming evidence supports the Defence position that the military was responsible for the takeovers and the crimes committed during and in the aftermath of combat operations. If police were involved, they were acting under the command and control of the military in a re-subordinated capacity.

⁶⁰⁵ For further submissions on disarmament see Chapter on Indictment paragraph 12(a).

⁶⁰⁶ 2D25,P555,P561.

⁶⁰⁷ SZ-009,SAJINOVIC,T.25130-25131,(17/10/11); [REDACTED].

⁶⁰⁸ [REDACTED]; See also P390.

⁶⁰⁹ [REDACTED]; SZ-009,SAJINOVIC,T.25130-25131,(17/10/11).

INDICTMENT PARAGRAPH 12(E)

Introduction

279. The evidence presented in this chapter demonstrates the authority of the army over the various detention facilities across the Krajina. It shows that Zupljanin did not facilitate, establish and / or operate any of the detention facilities charged in the Indictment. This chapter also demonstrates that Zupljanin was not aware of any crimes being committed by police officers in the various detention facilities. On those occasions when he was informed of potential crimes involving detainees, he took prompt and decisive action to address this. Notwithstanding the foregoing, the Defence submit that due to the doctrine of re-subordination⁶¹⁰ as well as the jurisdiction of military courts,⁶¹¹ any war crimes or crimes against humanity committed within detention facilities, fell within the remit of the military organs to investigate and initiate criminal proceedings against perpetrators.

Zupljanin was not involved in the planning, establishment or operation of the detention facilities

280. The use by the army of *ad hoc* detention facilities was a logistical necessity in the context of the conflict raging within the Krajina during 1992. The army, pursuant to its duty under both international and domestic law,⁶¹² dictated that local police be re-subordinated to assist in detaining suspected militants as well as helping to interrogate them about their suspected involvement in the armed conflict as combatants or as potential threats to national security.

Police were not responsible for the arrest and detention of suspected POWs

281. The Third Geneva Convention (“the Convention”) provides for the treatment of prisoners-of-war (“POWs”) during an armed conflict.⁶¹³ Pursuant to domestic military

⁶¹⁰ See chapter on Indictment paragraph 12(d) on re-subordination.

⁶¹¹ See section on military versus civil court jurisdiction in chapter on Indictment paragraph 12(f/g).

⁶¹² L12, Regulations on the Application of International Laws of War in the Armed Forces of the SFRY, Section VIII; Geneva Convention III Arts.4,5(1949).

⁶¹³ Geneva Convention III, Arts.4,5(1949).

regulations then in force⁶¹⁴ the army was the responsible organ in respect of POWs as well those deemed a threat to national security and/or political stability.⁶¹⁵ The Defence refer to Article 25(h) of the Service Regulations of the SFRJ which sets out the role of the military police in providing security for POW detention facilities.⁶¹⁶ The Defence underline the fact that, while the treatment of POWs is detailed within the military regulations,⁶¹⁷ the Law on Internal Affairs (which governs the civilian police) is silent on this issue.⁶¹⁸ Similarly, the Mandatory Instruction on Organisation and Tasks of the Police Force during the War and Other Extraordinary Circumstances does not assign any responsibility to civilian police as regards the detention of POWs.⁶¹⁹ Indeed, prosecution witness Mandic testified that he was never aware of the police being responsible for the detention of prisoners. Instead, he claimed that the Ministry of Justice (for civilian prisons) and the military prosecution service (for military prisons) were responsible for the operation of prisons.⁶²⁰

282. Accordingly, the Defence submit that any involvement by civilian police in arresting, detaining, transporting, guarding or interrogating suspects during an armed conflict, occurred outside the legal parameters of normal police duties as set out in the Law on Internal Affairs. These are military tasks. It follows that the only situation in which the police could be ordered to engage in such tasks would be if they were re-subordinated to the army. Once this happened, military rules and laws applied to individual police officers involved and Zupljanin's practical and legal authority over them ceased.⁶²¹

⁶¹⁴ L12,Section VIII.

⁶¹⁵ See P1683,Army of Serbian BiH Main Staff confidential order,3-Aug-92.

⁶¹⁶ L7,Army rulebook on Military police,1985,p.15.

⁶¹⁷ L12,Arts.201-203,(Laws of War assigns instructions on the treatment of POWs and the granting of POW status).

⁶¹⁸ P530,Art.15.

⁶¹⁹ See L27,Mandatory instruction on organization and tasks of the police force during the war and other extraordinary circumstances,Feb-1989.

⁶²⁰ ST-187,T.9552,(04/05/10).

⁶²¹ See chapter on Indictment paragraph 12(d) on the principle and application of re-subordination.

Zupljanin was not involved in or responsible for the establishment and operation of detention facilities

283. As a consequence of the military conflict in 1992, the army adapted local buildings into temporary detention facilities to accommodate POWs. The Defence submit that at all times, the army exerted ultimate authority and control over these detention facilities.
284. The Defence position is supported in a 9 June 1992 order from General Talic where, commenting on the wider war situation throughout the region, he ordered that “prisoners of war ... be escorted to POW and the military investigative prisons” and that such prisoners “be processed by intelligence and security organs of the units.”⁶²² From this order, the Defence submit that it is clear, even from early summer 1992 that General Talic envisaged that the operation of these detention facilities was to be led entirely by the army and their respective security organs.
285. In further support of its position that Zupljanin was not responsible for the establishment or operation of detention facilities, the Defence refer to an order⁶²³ from the RS MUP clarifying the role of the police as regards detention facilities. The order explicitly stated that “the security of collection centres shall be the direct responsibility of the army and, if they do not have enough men for these duties, it shall therefore be necessary to engage members of the reserve police for these tasks and to place them at the army’s disposition”.⁶²⁴ Although this order was issued in early August 1992, the Trial Chamber will bear in mind that the RS MUP were only informed by Zupljanin at the meeting on 11 July in Belgrade regarding the conditions of specific detention facilities.⁶²⁵ It was Zupljanin’s submissions during that meeting that galvanised the MUP to properly address the issue. This order ties in with the conclusions from that meeting as well as the initiative taken by Zupljanin in August to form a

⁶²² ST-097,BROWN,T.19043,(20/01/11); P1795,Order from 1st Krajina Corps Command to acting commanders,9-Jun-92,p.11.

⁶²³ 1D55,RS-MUP Order on treatment of detained persons,10-Aug-92.

⁶²⁴ ST-123,Tutus,T.7869,(19/03/10); *See* 1D55.

⁶²⁵ *See* P160,pp.4-6.

Commission to investigate alleged police involvement in the removal and detention of non-Serbs, including involvement in guarding detention facilities.⁶²⁶

286. The Defence further submit that Zupljanin's actions were instrumental in the Omarska and Keraterm facilities being closed.⁶²⁷ The fact that Zupljanin formed this Commission showed that he was concerned that police officers should act lawfully in relation to such matters and wanted to find out what was happening regarding non-Serbs being forced to leave their municipalities or being arrested and detained.

Zupljanin's meeting with prosecution expert witness McLeod on detention facilities demonstrated his lack of awareness of them

287. The Defence refer to a meeting attended by Zupljanin with prosecution witness McLeod in Banja Luka on 20 August 1992 regarding the inspection of detention or POW facilities by the European Community Monitor Mission ("ECMM").⁶²⁸ This meeting was also attended by Mayor Predrag Radic and Colonel Vukelic of the 1st Krajina Corps.

Zupljanin's presence at this meeting cannot be relied on to infer knowledge of or responsibility for facilities. Indeed, the Defence note that Zupljanin did not speak as an authority regarding the facilities... his main talking points instead related to refugees in Banja Luka, the opening of the airport for emergency supplies and McLeod's safety during his visit to the region.⁶²⁹ It was evident that Zupljanin was at the meeting only to co-ordinate the safety of the ECMM team while in Banja Luka (a logical responsibility of the chief of police). It is revealing that Colonel Vukelic, a high-ranking member of the VRS, answered all questions regarding the detention facilities.⁶³⁰ The Defence also emphasise that nothing

⁶²⁶ 2D90, Report on Prisoners, Centres, Resettlement and role of SJB relating to Prijedor, Bosanski Novi and Sanski Most, p.3, 19-Aug-92; *See also* P601, Decision on Forming of the Commission That Will Visit Municipalities and Public Security Stations of Prijedor, Bosanski Novi and Sanski Most, 14-Aug-92.

⁶²⁷ See chapter on Indictment paragraph 12(g) for more evidence on the 11 July meeting.

discussed during this meeting would have indicated to Zupljanin that non-Serbs were allegedly being abused and killed at these facilities.

Banja Luka

The army was responsible for the establishment and operation of the Manjaca detention facility

288. The Manjaca detention facility was established and run by the army. Manjaca was originally established by the JNA in 1991 as a POW detention facility for the war in Croatia and on 15 May 1992,⁶³¹ it was designated by the army to accommodate POWs from the armed conflict engulfing the Republika Srpska.⁶³² Colonel Popovic, a military officer, was appointed commander of the Manjaca detention facility on or around 15 June 1992.⁶³³ The Defence submit that, accordingly, all matters relating to the operation of Manjaca and the treatment of detainees, including their escort to and from Manjaca from combat zones or other detention facilities, fell under the purview of the army.

Any involvement of civilian police in guarding or escorting prisoners to Manjaca took place under the command of the army

289. Although civilian police were involved in guarding the perimeter of Manjaca, this does not indicate that they were working in tandem with the army in furtherance of a JCE. In fact, the evidence shows that such was the military flavour of the Manjaca detention facility that civilian police were not even allowed within the barbed wire fence that separated the external and internal perimeter.⁶³⁴ [REDACTED].⁶³⁵

⁶³¹ 1D415, Order on establishment of Manjaca POW detention facility, 13-Sep-91, p.1.

⁶³² ST-097, BROWN, T.19041, (20/01/11); 1D415, p.2; [REDACTED]; 2D33 (Under Seal) [REDACTED].

⁶³³ [REDACTED]; ST-73, Sabanovic, T.935, (06/10/09); [REDACTED]; 2D33 (Under Seal) [REDACTED].

⁶³⁴ [REDACTED].

⁶³⁵ [REDACTED].

290. Indeed, it was pursuant to a request by Colonel Stevilovic to the chief of the Kljuc SJB that two Kljuc police inspectors were re-subordinated to assist in processing POWs at Manjaca from 24-26 June 1992.⁶³⁶ There were also a few short periods when civilian police from Sanski Most assisted the army in guarding the detention facility at Manjaca.⁶³⁷

291. Even if the Trial Chamber should find that civilian police officers involved in escorting prisoners to or guarding the perimeter of Manjaca were not re-subordinated, these individuals still fell within the investigative purview of the competent military prosecution organs as crimes in connection with POWs would constitute war crimes and would thus automatically fall under military jurisdiction.⁶³⁸

Zupljanin had no knowledge of police officers involved in security at Manjaca

292. [REDACTED].⁶³⁹ [REDACTED].⁶⁴⁰

293. Accordingly, any involvement of police with Manjaca was a military task that fell outside the regular duty of police officers. During such duties, police were re-subordinated and liability for any crimes committed by these police officers during their re-subordination cannot attach to Zupljanin.⁶⁴¹

Zupljanin was not aware of detainees being mistreated at the CSB/SJB Banja Luka

⁶³⁶ P478, Dispatch from Public Security Station Kljuc to the Command of the Prisoner of War Detention facility Manjaca informing the Command that Public Security Station Kljuc will send two inspectors to Manjaca to assist in processing prisoners of war pursuant to a request from Colonel Stevilovic, 24-Jun-92.

⁶³⁷ [REDACTED].

⁶³⁸ [REDACTED]; [REDACTED], P1284.55, Annual narrative and statistical report on the work of the Army of Republika Srpska Military Prosecutor's Offices for 1992, prepared by the Office of the Supreme Military Prosecutor and signed by Nebojsa SUPIC dated 10-Feb-93; 1D43, 1992 1st Krajina Corps Prosecutor Annual Report on criminal activities, 10-Jan-93, p.3 (Regarding the criminal reports on 84 civilians accused of violating international humanitarian law by the military authorities). See also chapter on Indictment paragraph 12(f/g) on jurisdiction of military courts.

⁶³⁹ [REDACTED].

⁶⁴⁰ P392.

⁶⁴¹ See chapter on Indictment paragraph 12(d) regarding re-subordination.

294. Prosecution witness ST-27 claimed to have been beaten while detained at the CSB Banja Luka prison. He described how he was on his way to work in Kotor Varos, when he was stopped by men “in camouflage uniforms” and taken to a military building guarded by men in “military olive-drab uniforms.”⁶⁴² ST-27 said that he and other members of the HDZ who had been arrested by the army were then driven to the CSB Banja Luka where he was interrogated by police although, importantly, he acknowledged that the army was in control during this entire period.⁶⁴³

295. [REDACTED].⁶⁴⁴ [REDACTED].⁶⁴⁵ [REDACTED].⁶⁴⁶ [REDACTED].⁶⁴⁷
[REDACTED].⁶⁴⁸ [REDACTED].⁶⁴⁹ [REDACTED].

296. Beatings of detainees at the CSB Banja Luka (or anywhere else) was not something Zupljanin would have accepted and he clearly had no knowledge that this was occurring.⁶⁵⁰

Prijedor

The local Crisis Staff (led by Simo Drljaca) and the army established and controlled the detention facilities in Prijedor

Simo Drljaca's influence stemmed from his allegiance to the local Crisis Staff and army

297. Critical to understanding what happened in Prijedor is appreciating the close nexus between Drljaca (the police chief), the Crisis Staff and the army. This usurped Zupljanin's authority and effective control over the local police in Prijedor.⁶⁵¹

⁶⁴² [REDACTED].

⁶⁴³ [REDACTED]; [REDACTED].

⁶⁴⁴ [REDACTED].

⁶⁴⁵ [REDACTED].

⁶⁴⁶ [REDACTED].

⁶⁴⁷ [REDACTED].

⁶⁴⁸ [REDACTED].

⁶⁴⁹ [REDACTED].

⁶⁵⁰ See section on “Zupljanin's good character” in the chapter on Role and Responsibilities.

Omarska was established by the Prijedor Crisis Staff in furtherance of military objectives without Zupljanin's knowledge

298. An order issued by Drljaca on the establishment of Omarska specifically refers to it being established “in accordance with the Decision of the Crisis Staff”.⁶⁵² This is important evidence as it demonstrates that Drljaca’s loyalty was with the local Crisis Staff and the army – not with Zupljanin. Equally important is the purpose for which the detention facility was established which was stated as “for persons captured in combat...and those detained on operational information”.⁶⁵³ The Defence reiterate its position that the tone, language and authority of this order indicate that the detention facility was for military purposes. This shows that Zupljanin would not have known anything about the purpose of the detention facility or the fact that detainees there were subjected to maltreatment and even killed.

299. The Prosecution will likely refer to the half yearly report from Simo Drljaca which included reference to police acting as guards at the Omarska and Keraterm “contrary to normal practice” as evidence of Zupljanin’s knowledge of the these detention facilities.⁶⁵⁴ It is clear however that the report, which could not have been produced before July 1992, would have taken time to compile and send to Zupljanin. By that time, Zupljanin had already been informed of the conditions of the detention facilities and had taken action to address this at the 11 July RS MUP meeting.⁶⁵⁵ Indeed, he even followed this up with a dispatch to form a Commission and investigate, amongst other matters, the issue of detention facilities in the Krajina.⁶⁵⁶

The army and local Crisis Staff controlled Omarska and Keraterm

300. The Defence submit that there is strong evidence of the army’s authority not only over Manjaca but also over the Prijedor facilities at the highest level. This can be deduced from an

⁶⁵¹ See chapters on Indictment paragraphs 12(b),(d) and Zupljanin’s Knowledge. See also chapter on Indictment paragraph 12(f/g) for evidence of Zupljanin’s condemnation of Drljaca and the action he took to close down the detention facilities.

⁶⁵² P1560, Order by Public Security Station Prijedor for the institution of Omarska as collection centre and for the handling of detainees, 31-May-92, p.1

⁶⁵³ P1560, p.1.

⁶⁵⁴ P657, Prijedor SJB report, Jan-Jun-92.

⁶⁵⁵ P160.

⁶⁵⁶ P595.

order⁶⁵⁷ issued by General Ratko Mladic to his military commanders, to prepare “POW” facilities for visits from delegates and journalists within their area of responsibility. General Mladic ordered his commanders to act through local organs, including the police, to accomplish this objective. It follows that in connection with combat tasks as well as with related wartime duties (such as the detention facilities where suspects rounded up from combat were held by the army), any police officers involved were re-subordinated under army command.⁶⁵⁸ Importantly, General Mladic specifically referred to Omarska and Trnopolje in the same sentence as Manjaca. Clearly Mladic saw these facilities each as falling under the ultimate purview of the army. Mladic’s position regarding detention facilities was apparent as he continued in his order adding the need to prepare “all other POW facilities” in the area of responsibility of the military commander.⁶⁵⁹ What is also revealing is that his order was addressed only to the VRS Main Staff – not to the MUP, police or local authorities.

Keraterm was established and operated by the army and local Crisis Staff

301. Again, the Defence reiterate the authority of the local Crisis Staff in establishing facilities like Keraterm.⁶⁶⁰

302. The Defence do not deny that crimes against detainees took place at Keraterm including, the “Room 3 Killings” where soldiers entered the detention facility on the night of 22 July 1992 and killed a large group of detainees. Prosecution witness ST-151, a detainee at Keraterm at the time, acknowledged that the perpetrators of the Room 3 killings were not guards at the detention facility, but soldiers who had come from outside the detention facility.⁶⁶¹ ST-151 indicated that the guards at the detention facility were mixture of reserve police officers and army,⁶⁶² and that those controlling Keraterm and Trnopolje wore olive drab and camouflage uniforms.⁶⁶³ [REDACTED].⁶⁶⁴

⁶⁵⁷ P1683.

⁶⁵⁸ [REDACTED].

⁶⁵⁹ P1683,p.1.

⁶⁶⁰ 2D90,p.28.

⁶⁶¹ ST-151,ISLAMOVIC,T.13151-13152,(21/07/10).

⁶⁶² ST-151,ISLAMOVIC,T.13123,(21/07/10),(He described the police uniforms as “blue and light blue” while the army had several types of uniforms including former JNA,(i.e. olive drab) and camouflage).

⁶⁶³ ST-151,ISLAMOVIC,T.13153-13155,(21/07/10).

Zupljanin was not informed about what was happening at the Omarska detention facility

303. [REDACTED].⁶⁶⁵

304. Zupljanin's lack of knowledge in relation to the detention facilities was made even more evident by Drljaca's strict orders that he was to be the sole point of contact for all issues arising out of or in connection with Omarska. He wrote:

"I most strictly prohibit giving any information whatsoever concerning the functioning of this collection centre. All official documents must be kept at the collection centre and may be taken out or destroyed only with the permission of the Chief of the Prijedor Public Security Station."

305. He emphasised the gravity of any breaches of this order by continuing, "I demand most energetically that all personnel and authorised officials in particular strictly observe these instructions. Failure to do shall result in severe disciplinary 'and other' measures."⁶⁶⁶ Drljaca was known throughout the region as "the boss" and Prijedor was known as his fiefdom.⁶⁶⁷ He was also known to be aggressive and volatile.⁶⁶⁸ The Defence submit therefore that nobody, including Jankovic, would have dared defy his authority. Accordingly, it is reasonable to assume that Jankovic did not pass any information back to Zupljanin. The Defence submit that it is evident from Zupljanin's response at the 11 July meeting after he discovered what was in fact happening in Prijedor that he did not know what was going on there until he was informed by prosecution witness Radulovic.⁶⁶⁹

306. [REDACTED].⁶⁷⁰ Accordingly, he would not have been in a position to relay any information back to Zupljanin (which the Defence submit he would not have done in any

⁶⁶⁴ [REDACTED];P1295.21 (Under Seal) [REDACTED],

⁶⁶⁵ [REDACTED].

⁶⁶⁶ P1560,p.3.

⁶⁶⁷ 2D194,("What God is in heaven Simo was inPrijedor"),p.47; [REDACTED];ST-163,AVLIJAS,T.15666,(08/10/10),("the untouchable boss of Prijedor");SZ-005,JANKOVIC,T.25047,(14/10/11)("[Drljaca] freed Prijedor alone");Chamber Witness Kovac,T.27068,(07/03/12),(Judge Delvoie quoted former statement that Drljaca ran Prijedor alone; Kovac confirmed by saying: "This demonstrates his overall attitude towards all these activities");ST-204,GAJIC,T.12876,(15/07/10),(Drljaca wanted Prijedor to become a centre and he wanted to become the boss of the whole area); [REDACTED].

⁶⁶⁸ ST-123,Tutus,T.7722-7723,(16/03/10).

⁶⁶⁹ See P160,Minutes of Ministry of Interior of the Republika Srpska meeting held in Belgrade,11-Jul-92,pp.5-8.

⁶⁷⁰ [REDACTED].

event as he was, according to prosecution witness Radulovic, consistently working to mislead and conceal information from Zupljanin).⁶⁷¹

307. [REDACTED],⁶⁷² [REDACTED].⁶⁷³ The Defence maintain that these officers, as was the case at Manjaca, were re-subordinated by the army for a task which was clearly outside the scope of their normal legal duties as police officers. Alternatively, if the Trial Chamber should determine that the police officers were not re-subordinated, the Defence submit that Zupljanin had no effective control over the local police in Prijedor and was, furthermore, not informed about any crimes taking place in relation to detention facilities.

308. In fact, prosecution expert Nielsen confirmed that Drljaca erased from his reports police involvement in detention facilities within Prijedor, when he was specifically asked by Zupljanin to declare which facilities existed and which facilities the police were involved in operating. Nielsen also confirmed that police documentation from the SJB in Prijedor in mid-1992 attempted to conceal police involvement in detention facilities.⁶⁷⁴

Župljanin was intentionally misled as to the conditions and mistreatment of POWs during his visit to Prijedor

309. Three days following the key meeting on 11 July during which Zupljanin presented information given to him about a variety of problems (including but not limited to conditions and treatment of detainees at detention facilities) Zupljanin and others from Banja Luka were invited to visit Omarska.⁶⁷⁵ The delegation was received by Colonel Arsic, Milomir Stakic (President of the Prijedor Assembly), Mico Kovacevic (Chairman of the Executive Committee) and Simo Drljaca at Omarska.⁶⁷⁶ The delegation did not see the actual areas in which the detainees were held as they were immediately guided upstairs to the conference

⁶⁷¹ See chapters on Indictment paragraph 12(b) and Zupljanin's Knowledge.

⁶⁷² [REDACTED]; See P1560,p.1.

⁶⁷³ [REDACTED]; See P1560,p.1.

⁶⁷⁴ ST-092,NIELSEN,T.5623,(27/01/10).

⁶⁷⁵ ST-184,MISKOVIC,T.15258,(04/10/10)-P2108, Kosarski Vjesnik newspaper "Representatives of the Krajina in Prijedor It is not easy for anyone ",17-Jul-92

⁶⁷⁶ P1378,Kozarski Vjesnik Newspaper article "It is difficult for everyone",17-Jul-92,p.2.

room where they were briefed about the investigative measures and criminal files being undertaken against a number of detainees.⁶⁷⁷

310. Prosecution witness Miskovic, who had worked as a Deputy Commander of Police at SJB Prijedor⁶⁷⁸ before the war and who during the war was a member of the SDS and part of the delegation, later described the operation at Omarska as “legitimate and legal, the way it was done”⁶⁷⁹ based on the information presented to them by those in charge. [REDACTED].⁶⁸⁰ Miskovic admitted that the detainees looked unshaven, dirty and unkempt (a point Župljanin had taken issue with during the 11 July meeting).⁶⁸¹ However, he did not mention any visible signs of actual physical abuse.⁶⁸² As Župljanin was with Miskovic on that occasion, Župljanin too would likely not have been able to visibly discern from what he was shown, that the detainees were being physically abused or mistreated. Clearly, Župljanin and the delegation were being kept in the dark as to what was really taking place at that facility.

311. Srdic (the head of the Red Cross in Prijedor) further confirmed that the Red Cross was able to visit and bring food and medicine to detainees at the Prijedor facilities.⁶⁸³ The involvement and presence of the Red Cross was publicly known and it would have again created a veneer of legitimacy which suggested that outsiders could have believed that the detention facilities, while unacceptable in some respects (which were addressed by Župljanin at the 11 July meeting), were at least being run in accordance with international humanitarian law and regulations and that the detainees were receiving adequate food and medical attention.

Župljanin was instrumental in securing the closure of Omarska and Keraterm

⁶⁷⁷ ST-184,MISKOVIC,T.15249,15252,(04/10/10);

⁶⁷⁸ ST-184,MISKOVIC,T.15143,(30/09/10).

⁶⁷⁹ ST-184,MISKOVIC,T.15252,(04/10/10).

⁶⁸⁰ [REDACTED].

⁶⁸¹ ST-184,MISKOVIC,T.15250,(04/10/10).

⁶⁸² ST-184,MISKOVIC,T.15250,(04/10/10).

⁶⁸³ 2D194,pp.33-34; [REDACTED].

312. The Defence remind the Trial Chamber of the evidence highlighting Zupljanin's instrumental role in condemning and eventually securing the closure of the Prijedor detention facilities.⁶⁸⁴

313. Once given general information by prosecution witness Radulovic and corroborated through other sources the true nature of what has happening in detention facilities in Prijedor,⁶⁸⁵ Zupljanin presented a damning indictment of the Prijedor Crisis Staff, police chief and army for their part in establishing and operating these facilities and the treatment of detainees in violation of international laws at the high-level RS MUP meeting in Belgrade on 11 July 1992.⁶⁸⁶ Župljanin directly confronted the MUP (with Minister Stanisic present) about the conditions at these facilities and the treatment of detainees within them. He added that the conditions in these facilities were poor, that there was no food that some individuals did not comply with international treatment standards and as such, the situation was inappropriate.⁶⁸⁷ As a direct result of Zupljanin's submissions at the meeting, conditions improved and the Prijedor facilities were eventually closed down.

The army had authority and control over the Trnopolje detention centre

314. Two prosecution witnesses ST-249 and ST-067 attested to the fact that Trnopolje was established under the authority of the Crisis Staff, and those involved were soldiers who wore the olive-drab green uniforms of the former JNA.⁶⁸⁸ Likewise, the detention facility commander, Slobodan Kuruzovic, was an army officer.⁶⁸⁹ Prosecution witness ST-067, a detainee at Trnopolje, explicitly acknowledged, "Everybody knew the army was there to

⁶⁸⁴ See P160, pp. 4-6. See also section on 11 July meeting and formation of Commission to investigate detention facilities in chapter on Indictment paragraph 12(f/g).

⁶⁸⁵ ST-182, RADULOVIC, T.11121, (01/06/10) (Zupljanin's words to the Collegium were a perfect match to what Radulovic told him); ST-182, RADULOVIC, T.10858, (26/05/10) (Bera was in charge of the investigations and hid the truth from Zupljanin).

⁶⁸⁶ See P160, pp. 5-8.

⁶⁸⁷ ST-123, TUTUS, T.7912, (22/03/10). See also section on 11 July meeting and formation of Commission to investigate detention facilities in chapter on Indictment paragraph 12(f/g).

⁶⁸⁸ [REDACTED]; ST-067, MERDZANIC, T.18404, (09/12/10); P671, 9-Aug-92, p.9, (The army controlled Trnopolje).

⁶⁸⁹ [REDACTED]; [REDACTED].

keep an eye on us.”⁶⁹⁰ Indeed, the report by Zupljanin’s Commission confirmed this. It stated that security at Trnopolje was provided by members of the army and not the police.⁶⁹¹

Soldiers committed crimes in Trnopolje

315. The Defence do not deny that crimes took place at Trnopolje, but emphasise that the army was accountable for their prevention and was legally bound to investigate any crimes committed there. [REDACTED].⁶⁹² Prosecution witness ST-067, who worked as a doctor at Trnopolje, heard of the physical abuse committed by soldiers against individuals at Trnopolje.⁶⁹³ He testified that rapes were carried out at the detention facility by men in army uniforms.⁶⁹⁴ He further attested that the group of men responsible for these crimes were known as “El Manijakos” and that they were military persons who arrived at Trnopolje in tanks.⁶⁹⁵

316. Prosecution witness ST-242 also testified that people at Trnopolje were beaten by soldiers.⁶⁹⁶ She said that it was the military that would take the people in and out of the rooms to get beaten.⁶⁹⁷ It is notable none of the prosecution witnesses claimed to have witnessed any police engaged in criminal acts at Trnopolje.

⁶⁹⁰ ST-067, MERDZANIC, T.18425, (09/12/10).

⁶⁹¹ 2D90, p.2.

⁶⁹² [REDACTED]. See Adjudicated Fact 899-901.

⁶⁹³ ST-67, MERDZANIC, I., T.18415, (09/12/10).

⁶⁹⁴ ST-67, MERDZANIC, T.18420, (09/12/10); P2291, Transcript of Testimony in IT-94-1, T.2528-2533, (12/06/96), (Knew of rapes taking place at the detention facility by soldiers).

⁶⁹⁵ ST-67, MERDZANIC, T.18420-18423, (09/12/10).

⁶⁹⁶ P2291, T.2515.

⁶⁹⁷ P2291, T.2515-2516.

Kotor Varos

Army/Town Command was the ultimate authority in Kotor Varos and had full authority over local police

317. Kotor Varos was under the full control of the army as of June 1992.⁶⁹⁸ Accordingly, all civil organs (including the police) were automatically re-subordinated under his authority.⁶⁹⁹

318. Both prosecution testimony and documentary evidence substantiate the Defence position that the authority of the army over the SJB in Kotor Varos was absolute. For instance, a combat order, [REDACTED], established the 122 Light Brigade command post on the premises of the Kotor Varos SJB.⁷⁰⁰

The remand prison and TO warehouse in Kotor Varos were under the control of the army

319. Detention facilities, other than the SJB, included the remand prison and a TO warehouse, all of which were under army control.⁷⁰¹ Although prosecution witness ST-19 initially believed that the prison in Kotor Varos was under the authority of the police, he acknowledged that those men may in fact have been working under army command and accepted that he did not actually know who was in charge.⁷⁰² [REDACTED].⁷⁰³

The Pilana Saw Mill was established by the Kotor Varos Crisis Staff and operated by the army

320. On 29 June 1992, the Crisis Staff authorised the use of the Pilana Saw Mill as a temporary building for housing suspected combatants.⁷⁰⁴ [REDACTED]⁷⁰⁵ [REDACTED].⁷⁰⁶

⁶⁹⁸ 2D133,1 Krajina Corps Command Order,16-Jul-92

⁶⁹⁹ See chapter on Indictment paragraph 12(d) on Town Commands.

⁷⁰¹ [REDACTED].

⁷⁰² [REDACTED].

⁷⁰³ [REDACTED].

⁷⁰⁴ P46,Extract from the Minutes of the 47th Meeting of the Crisis Staff of Kotor Varos Municipality,29-Jun-92.

⁷⁰⁵ [REDACTED].

⁷⁰⁶ [REDACTED].

321. Prosecution witness ST-181 implied that the Banja Luka Special Police unit were among those guarding the Pilana saw mill and were either involved in or acquiesced to the abuse of detainees there.⁷⁰⁷ [REDACTED].⁷⁰⁸ The Defence submit that there is no evidence that those guarding the sawmill were members of the Special Police Unit.

322. However, if the Trial Chamber were to consider that this unit may have been present, the Defence submit that they were re-subordinated under the army.⁷⁰⁹ Alternatively, Zupljanin had no effective control over the Special Police Unit.⁷¹⁰

Kljuc

The Town Command and local Crisis Staff controlled and operated detention facilities in Kljuc including the SJB remand prison and the Nikola Mackic primary school

323. Like Kotor Varos, Kljuc was also placed under a Town Command.⁷¹¹ It follows that the army became the authority in the region and the local police were re-subordinated.⁷¹²

324. The army began rounding up suspected armed combatants towards the end of May 1992.⁷¹³ When space became an issue, the Crisis Staff decided to accommodate POWs at the Nikola Mackic primary school.⁷¹⁴ This is important evidence in that it illustrates the priorities of the work of the local Crisis Staff – everything was geared to deal with the military activity going on in Kljuc.

⁷⁰⁷ ST-181, DJEKANOVIC, T.1139, (09/10/09).

⁷⁰⁸ [REDACTED].

⁷⁰⁹ The Defence refer to the chapters on Indictment paragraphs 12 (a) and (c) that demonstrates that the Special Police Unit were at all times instructed, equipped and commanded by military officers.

⁷¹⁰ See chapter on Indictment paragraph 12(c).

⁷¹¹ [REDACTED]. See Section on Town Commands in paragraph 12d.

⁷¹² P960.24, p.4, (SJB report where Kondic, chief of the Kljuc SJB, reported that the police were now re-subordinated to the town defence system ("Town Command") commanded by the army).

⁷¹³ P960.24, p.7.

⁷¹⁴ Adjudicated Fact:545.

325. Several prosecution witnesses substantiate the Defence position that the police were re-subordinated under the army in Kljuc. Prosecution witness ST-239, for instance, explained that men in camouflage uniforms arrived in Kljuc and took over the police station.⁷¹⁵ He testified that he, with around forty others, was taken to the police station at Sanica⁷¹⁶ where the army subsequently released thirty of the men while the remaining seven POWs were taken to the SJB Kljuc and finally Manjaca.⁷¹⁷ The proximity between Manjaca (an undisputed military detention centre) and other municipal detention facilities further supports the Defence position that all the detention facilities across the Krajina were controlled, co-ordinated and operated by the army.

326. Prosecution witness Subasic claimed that he did not know whether the men who transported him from Sanica to Kljuc and who beat him were police or military. The Defence however refer to his previous statement taken in 2001 where he confirmed that the five men in charge of his detention were members of the military.⁷¹⁸ This was evidenced by the fact that he recalled them wearing white belts (descriptive of the distinct uniforms of the military police).⁷¹⁹ This, and the evidence of other prosecution witnesses, illustrates that the police were entirely under the command and authority of the army in Kljuc.⁷²⁰

The army instructed police from SJB Kljuc to assist in combat-related tasks

327. Chief Kondic, in a status report to the CSB Banja Luka⁷²¹ wrote about the work and activities of SJB Kljuc during combat operations. He confirmed that the police were acting in cooperation with military security organs with a view to arresting and processing suspects to send to Manjaca as POWs. In this report, Kondic specifically states, “There are grounds for instigating criminal proceedings against all these persons and they should be tried for crimes committed by a military court as soon as possible”.⁷²² It follows, since the charges relate to

⁷¹⁵ ST-239,SUBASIC,T.16018,(15/10/10).

⁷¹⁶ ST-239,SUBASIC,T.16021,(15/10/10).

⁷¹⁷ ST-239,SUBASIC,T.16021,(15/10/10).

⁷¹⁸ ST-239,SUBASIC,T.16029-16031,(15/10/10).

⁷¹⁹ ST-239,SUBASIC,T.16028,(15/10/10).

⁷²⁰ ST-52,T.6264,(05/02/10).

⁷²¹ P960.24.

⁷²² P960.24,p.8.

matters that should be tried in military courts, that the police were clearly acting outside of their regular scope of authority. The Defence maintain however that they had no choice as the army exercised complete control over the Kljuc police and were re-subordinated under its command.

Sanski Most

The army and local Crisis Staff controlled detention facilities in Sanski Most and usurped Zupljanin's authority over local police

328. The Trial Chamber will recollect that Colonel Basara exercised control over the SJB when the military police began operating out of Sanski Most SJB from 11 May 1992.⁷²³ [REDACTED].⁷²⁴ [REDACTED].⁷²⁵ [REDACTED].⁷²⁶

329. [REDACTED].⁷²⁷ It is clear however that Zupljanin was powerless to do anything as the army's authority negated his own.

330. In addition to the army exerting control over the SJB, the Defence draw attention to the fact that several members of the SDA leadership were arrested pursuant to Crisis Staff orders on suspicion of preparing for armed conflict.⁷²⁸ This is important in that it illustrates the co-ordination between the local Crisis Staff and army. The Defence accordingly submit that the overarching authority of the army and local Crisis Staff in Sanski Most, meant that Zupljanin had no authority and/or effective control over local police.

⁷²³ P60.13, Hand-written diary of RASULA covering the period from 28 Dec 91 to 30-May-92, p.28; P60.07, Signed orders of the Commander of the Serb Territorial Defence, (STO) for the action "Grmec, 92" to take place on 26/05/92 by the commander of the Serb Territorial Defence Colonel ANCIC, p.3, (STO Command Post at SJB building).

⁷²⁴ [REDACTED].

⁷²⁵ [REDACTED].

⁷²⁶ [REDACTED].

⁷²⁷ See P160; [REDACTED]; P390, p.2.

⁷²⁸ P60.13, p.38.

The Crisis Staff and army established and controlled detention facilities in Sanski Most

331. Common to many of the charged municipalities, the coalition between the local Crisis Staff and army again played a pivotal role with regards to detention facilities in Sanski Most. The Defence submit that the army forced the police and SJB to take on POWs contrary to their prescribed duties under the Law on Internal Affairs.⁷²⁹ The Crisis Staff also established and unilaterally appointed wardens for these facilities.⁷³⁰ The personnel appointed by the Crisis Staff to provide security for these facilities were former TO members and a handful of reserve police officers who answered to wardens (who were military).⁷³¹ The Defence submit that Zupljanin was not aware of this at the time and this is evidenced by the fact that he formed a Commission in August 1992 to investigate what exactly was occurring in Sanski Most (and other areas) in respect of detention facilities.⁷³²

332. The military emphasis of the local Crisis Staff in Sanski Most was all-pervasive. One clear example of this was its instruction to Colonel Anicic to make a determination regarding the possible release of detainees where there were no legitimate grounds to detain them.⁷³³ This shows that authority over the detention facilities was clearly vested in the local Crisis Staff and the army.

Army and Crisis Staff controlled Betonirka

333. While it is not denied that crimes occurred at Betonirka, the Defence submit that Zupljanin was not involved in or made aware of these. The police had no authority regarding

⁷²⁹ P411.21.

⁷³⁰ [REDACTED]; 1D816, Dispatch of SJB Sanski Most to National Security Service of CSB Banja Luka providing a Report about detention facilities in Sanski Most, 18-Aug-92; P60.10, Conclusions of the Crisis Staff of the Serbian Municipality of Sanski Most, 4-Jun-92; P2257, Memorandum from RAFFONE to International Committee of the Red Cross Zagreb on meeting with representative of the 850 displaced persons from Sanski Most, 20-Jun-92, p.1 (Evidence of [REDACTED]'s authority at the Sports Hall); 2D90, p.6 (Where the different detention facilities were established by the Crisis Staff and Betonirka was established as a prison).

⁷³¹ P391, Dispatch of Public Security Station Sanski Most to National Security Service of Security Services Center Banja Luka providing a Report about detention centers in Sanski Most, 18-Aug-92, p.1.

⁷³² 2D90.

⁷³³ 2D22, Order of the Crisis Staff of the Serbian Municipality of Sanski Most to Colonel ANICIC of the Municipal Staff of the Territorial Defence ordering him to screen and then release some detainees at the Sports Hall, 18-Jun-92; 2D23, Order given by the Crisis Staff of Serb Municipality, Sanski Most to release some prisoners from the Sports Hall, 19-Jun-92.

Betonirka as the warden, put in place by the Crisis Staff, reported to the military command.⁷³⁴ Any involvement that police may have had was under the authority of the Crisis Staff or army.⁷³⁵

The army controlled and operated the Hasan Kikic centre

334. The Defence submit that similar to Betonirka, the centre at Hasan Kikic also had its own military administration. The guards at the gym were described as “younger men...in these multicoloured uniforms with weapons.”⁷³⁶ Clearly, these were not the uniforms of the civilian police, but the uniform of the army.

The army was in charge of Krings Hall detention centre

335. [REDACTED].⁷³⁷ [REDACTED].

The sports hall was under the authority of the Crisis Staff

336. Following military operations in Sanski Most, displaced persons were escorted to a sports hall where they were guarded by TO members.⁷³⁸ Nemanja Tripkovic, a member of the Crisis Staff, was in charge of screening at the sports hall.⁷³⁹ [REDACTED].⁷⁴⁰ The Defence therefore submit that the Crisis Staff and army were in control of the sports hall.

Local police tried to do their jobs professionally and organised the release of detainees where no evidence against them was found

⁷³⁴ [REDACTED]; [REDACTED].

⁷³⁵ [REDACTED]; [REDACTED]; [REDACTED]

⁷³⁶ ST-73, Sabanovic, T.907, (06/10/09).

⁷³⁷ [REDACTED].

⁷³⁸ P60.08, Order of the Territorial Defence Municipal Staff of Sanski Most providing for the transfer of displaced persons to the sports hall for care and accommodation, 6-Jun-92.

⁷³⁹ P381, Conclusions of Crisis Staff of the Serbian Municipality of Sanski Most reached at meeting, 8-Jun-1992.

⁷⁴⁰ [REDACTED].

337. [REDACTED].⁷⁴¹ This illustrates that local police were under the control of the army. Furthermore, upon receiving an order from the government on 19 August 1992 to co-operate with the army to filter out detainees at Manjaca “whose further detention in the detention facility cannot be confirmed by material evidence” this was a legal and necessary measure to assist in releasing innocent suspects. Accordingly, Zupljanin ordered his subordinates in a dispatch on 22 August to implement these instructions.⁷⁴²

Conclusion

338. The Defence submit that the evidence demonstrates the authority of local Crisis Staffs and the army over detention facilities across the Krajina. Equally important, is the fact that Zupljanin took active steps to find out what the truth was and what was occurring in these municipalities. The evidence presented throughout this trial demonstrates that, armed with the truth, Zupljanin always took appropriate action.

⁷⁴¹ P124, Dispatch from SJB Sanski Most to CSB Banja Luka, 10-Aug-92; 2D90.

⁷⁴² P608.

INDICTMENT PARAGRAPH 12(F/G)

Introduction

339. The Defence submit that the evidence presented during this trial (as set out this chapter) underlines the consistent efforts made by Zupljanin to protect all citizens and take action against perpetrators of crimes – regardless of the religion or ethnicity of the perpetrators or victims.⁷⁴³ In making such efforts, Zupljanin upheld his duties under the laws and regulations applicable to the Ministry of Internal Affairs to protect the entire civilian population within the Krajina region and took adequate steps to ensure that RS MUP forces would act to protect the Bosnian Muslim, Bosnian Croat and other non-Serb populations residing in those areas. The Prosecution is wrong to suggest that Zupljanin encouraged and facilitated the commission of crimes by Serb forces against non-Serbs. On the contrary, he consistently took adequate steps to investigate, arrest and / or punish perpetrators of such crimes and, in short, did everything possible to prevent a culture of impunity in respect of such crimes during the Indictment period.

Zupljanin's lack of knowledge of crimes

Breakdown in communications across ARK region

340. The Defence maintain that Zupljanin did all he could to maintain his control and authority over local SJBs in the face of overwhelming opposition from local Crisis Staffs and the army.⁷⁴⁴

341. Furthermore, nearly all of the evidence (including that originating from the Prosecution) confirms that communications, infrastructure and transport systems were so severely

⁷⁴³ For the purposes of this brief, this chapter combines the Defence submissions on Indictment paragraphs 12(f) and 12(g).

⁷⁴⁴ For more on the impact of local Crisis Staffs and the army see chapters on Indictment paragraphs 12(b) and 12(d).

disrupted that it would not have been possible for Zupljanin to be adequately informed of crimes committed in the charged municipalities during the Indictment period.⁷⁴⁵

Police versus military jurisdiction for investigation and punishment of crimes

Separate jurisdiction of civilian and military courts

342. One of the key arguments put forward by the Prosecution is that there were no civil prosecutions against Serbs for war crimes.⁷⁴⁶ Prosecution witness Draganovic initially claimed that war crimes fell under the jurisdiction of the civilian courts.⁷⁴⁷ He also stated that there were certain individuals who committed war crimes who were either members of the police or the VRS.⁷⁴⁸

343. While Draganovic's testimony may, at first blush, support the Prosecution's case on this issue, namely that civilian courts have jurisdiction to hear such cases, the Defence underline the evidence documented by the laws and regulations in place at the time, and supported by the vast majority of other prosecution witnesses, that only military courts had jurisdiction over these matters. This evidence establishes that war crimes, crimes against humanity under international law and crimes committed under Articles 9 and 13 of the Law on Military Courts under the former SFRY, fell under the exclusive remit of the military courts.⁷⁴⁹ [REDACTED].⁷⁵⁰

344. In practice, these laws and regulations became obfuscated as the military courts, due to the wartime context, could not function normally. [REDACTED].⁷⁵¹ Accordingly, many

⁷⁴⁵ ST-169, DELIC, T.1589,1590,(19/10/09); ST-181, DJEKANOVIC, T.1426-1427(14/10/09),1013,(07/10/09); ST-167, RALJIC, T.12428,12451-12452,(30/06/10); ST-212, RODIC, T.14481,(13/09/10); ST-126, KEZUNOVIC, T.11690-11691,(14/06/10). For more on the impact of the disruption to communications see chapter on Zupljanin's Knowledge.

⁷⁴⁶ [REDACTED].

⁷⁴⁷ [REDACTED].

⁷⁴⁸ ST-173, DRAGANOVIC, T.3944,(01/12/09).

⁷⁴⁹ [REDACTED]; [REDACTED].

⁷⁵⁰ [REDACTED]. For crime trends, see P1284.55, Annual narrative and statistical report on the work of the Army Republika Srpska Military Prosecutor's Offices for 1992, 10-Feb-93; P1284.07, Decree on the Proclamation of the Law on Military Courts, 24-Dec-76, Art.9.

⁷⁵¹ P1284.07, Art.13; [REDACTED].

cases where criminal reports were filed, were suspended indefinitely because civil judges refused to accept such cases.⁷⁵²

345. Zupljanin was extremely frustrated at the lack of an operational military judiciary in July 1992 and made his concern known that this meant that some cases were not being adequately processed due to the lack of an operational military judiciary.⁷⁵³ [REDACTED].⁷⁵⁴

346. [REDACTED]. Accordingly, many cases ended up being dealt with in the civilian courts as straightforward murder cases although they ought to have been heard in the military courts. Another reason for this inappropriate classification of war crimes as civilian crimes was due to the stigma associated with such acts. This was technically in breach of the law but was a pragmatic solution designed to prevent impunity for perpetrators of war crimes. [REDACTED].⁷⁵⁵

347. What this meant in practice however was that a vastly increased number of crimes were “shifted” to fall under the responsibility of the civilian police and civilian court system.

348. [REDACTED].⁷⁵⁶ [REDACTED].⁷⁵⁷

349. Prosecution witness Kovacevic also confirmed that crimes falling into certain categories, such as war crimes, fell under the jurisdiction of the military courts even where the perpetrator was a civilian.⁷⁵⁸ This is important in that it demonstrates that the police did not have a duty to even investigate civilians engaging in such crimes.

350. [REDACTED].⁷⁵⁹ As such, it was the military police and/or the military commander in charge of the unit that had the responsibility to investigate and file a criminal report for any

⁷⁵² 1D198, Operation plan on discovering crimes of robberies, terrorism, extortion, etc, 25-May-92, p.4; [REDACTED]; P1541, Decision of Bijeljina Military Court dismissing case against LUKIC, et al. because the Military Prosecutor abandoned the prosecution of the case, 24-Aug-92, pp.1-2; ST-134, SIMEUNOVIC, T.13377-13380, (18/08/10).

⁷⁵³ P160.

⁷⁵⁴ 2D25, Dispatch by CSB Banja Luka to all SJB Chiefs, Command of 1st and 2nd KK and RS-MUP providing information on the security situation, 30-Jul-92; [REDACTED].

⁷⁵⁵ [REDACTED].

⁷⁵⁶ [REDACTED].

⁷⁵⁷ [REDACTED]; ST-169, DELIC, T.1583, (19/10/09).

⁷⁵⁸ ST-128, KOVACEVIC, T.14210, (03/09/10).

⁷⁵⁹ [REDACTED]; ST-136, GACINOVIC, T.15076-15077, (30/09/10).

crimes committed that fell within military jurisdiction.⁷⁶⁰ [REDACTED].⁷⁶¹ Zupljanin was, accordingly, not responsible for any failure to investigate and report such crimes. To further illustrate the distinction between military and civil jurisdiction, the Defence draws attention to the testimony of prosecution witness Kovacevic regarding an incident that took place on 17 September 1992 in the village of Serdari near Kotor Varos. During this incident, a large number of Serbs were killed by a civilian, Jozo Baric.⁷⁶² The key point is that the jurisdiction for dealing with such a case, which Kovacevic confirmed would be categorised as a crime against humanity, fell under the exclusive jurisdiction of the military courts, even though the perpetrator was a civilian.

Zupljanin ordered that all war crimes be documented despite this not being legal duty of civilian police

351. While documentation of war crimes may have been necessary to assist the military judiciary prior to them obtaining functional capacity to take over such duties, the Defence emphasise that 1D63, a document dated 19 July 1992, which set out the conclusions endorsed by the RS MUP at the collegium on 11 July 1992, establishes that this was not a “normal” police duty and only came about following Zupljanin’s proactive suggestions at the 11 July meeting.⁷⁶³ Zupljanin took this task seriously and ensured that police under his authority followed the resulting order to detect and document war crimes (regardless of the ethnicity of the perpetrator). His diligence was acknowledged by Minister Stanisic who noted, “We wish to point out that data on perpetrators and victims have been submitted ... only by Banja Luka Security Services Centre and Bijeljina Public Security Station.”⁷⁶⁴

⁷⁶⁰ See also Chamber witness General Lisica’s confirmation of this in the section on filing criminal reports against re-subordinated police officers in the chapter on Indictment paragraph 12(d).

⁷⁶¹ [REDACTED].

⁷⁶² ST-128, KOVACEVIC, T.14238-14239, (06/09/10).

⁷⁶³ 1D63, MUP to all CSBs - questionnaire on perpetrators of war crimes and war crime victims, 19 July 1992; [REDACTED].

⁷⁶⁴ 1D63; [REDACTED].

352. To the extent that Stojan Zupljanin and the civilian police across the Krajina acted over and beyond the normal scope of their duties, this was done with the straightforward objective to combat soaring crime and to prevent impunity.

Crimes listed in the Schedules to the Indictment illustrate the separation between military and civil jurisdiction

353. The Defence case on this issue can be illustrated by reference to several examples of crimes listed in the Indictment.

The incident in Celinac was initially processed by police and then transferred to military courts when these became functional

354. [REDACTED].⁷⁶⁵ [REDACTED].⁷⁶⁶ [REDACTED].⁷⁶⁷ [REDACTED].

Killing of Muslims at Velagici and Biljani were perpetrated by soldiers and thus fell under military jurisdiction

355. The incident that took place at Velagici, in which several Muslims were murdered, was carried out by Serb soldiers and responsibility for the arrest and prosecution of the perpetrators accordingly rested with the army. [REDACTED].⁷⁶⁸

356. [REDACTED].⁷⁶⁹

Killing of Muslim civilians near the Hrustovo bridge was by members of the army and thus fell under military jurisdiction

⁷⁶⁵ [REDACTED].

⁷⁶⁶ [REDACTED].

⁷⁶⁷ [REDACTED].

⁷⁶⁸ 2D42, Stamped request by the Assistant Military Prosecutor, addressed to the Banja Luka Military Court Investigating Judge to open investigation of 12 individuals (names listed), charged with the murder of civilians in the village of Velagici; ST-054, EGRIC, T.6115-6116, (03/02/10).

⁷⁶⁹ [REDACTED].

357. Prosecution witness Colonel Basara acknowledged that a Serb paramilitary group murdered a group of Muslim civilians by the bridge in Hrustovo, Sanski Most.⁷⁷⁰ The Prosecution attempted to cast the blame on the civilian police who were manning the checkpoint at the bridge. The Trial Chamber should take note however that the perpetrators were identified by Colonel Basara as being part of the military. Accordingly, the responsibility to report the incident and make an attempt to find and punish the perpetrators was the responsibility of the army – not the civilian police.⁷⁷¹

Zupljanin had no authority to investigate crimes committed by members of the Serb army, paramilitaries or the TO

358. Prosecution witness Colonel Basara confirmed if a perpetrator was part of a military unit, it was the responsibility of the military police (under order by the commander of the unit) – not the civilian police – to launch an investigation and take action to apprehend and punish the perpetrator.⁷⁷² To illustrate this, the Defence draws attention to the fact that prosecution witness Colonel Basara confirmed that he sent a criminal report⁷⁷³ from his own brigade to the Banja Luka military prosecutor office regarding a crime committed by a member of the 6th Krajina Brigade.⁷⁷⁴ This supports the Defence position that Stojan Zupljanin did not have responsibility for ordering an investigation into a crime and/or for ordering the arrest of

⁷⁷⁰ ST-203,BASARA,T.1319,(13/10/09).

⁷⁷¹ ST-203,BASARA,T.1319,(13/10/09).

⁷⁷² ST-203,BASARA,T.1319,(13/10/09). *See also* ST-210,VASIC,T.13674,(25/08/10) where prosecution witness VASIC confirmed that paramilitary groups fell under military jurisdiction; 2D159, Expert Military Report,pp127-135; SZ-013,KOVACEVIC,T.23697,23717-23718,(06/09/11). *See* P1284.07,Art.14,("If a civilian has committed a crime falling within the jurisdiction of the military court in concurrence with a crime falling with the jurisdiction of another regular court, the military shall have jurisdiction over the court.") *See also* P1284.07,Art.9(Definition of "Serviceman"),Art.12(Jurisdiction of military personnel as well as "other" who committed crimes subject to Art.13); P1272,Procedure with perpetrators,(from 1st KK),1-Jul-92; P1284.10,VRS Main Staff, Military Prosecutor's Office. Guidelines for establishing criteria for criminal prosecution,1992,p.8("... that the officer [Army] in each unit be duty-bound to draw up reports on all cases possibly qualify as some of these crimes... the commands would be responsible also for informing the military prosecutor's office which, ... would take the appropriate steps prescribed by law"); 2D159,paras.134-137; [REDACTED].

⁷⁷³ 1D40,Criminal Report filed by BASARA against member of the 6th Krajina Brigade,7-Dec-92; ST-203,BASARA,T.1322,(13/10/09). *See also* Chamber Witness LISICA,T.26939,(01/03/12).

⁷⁷⁴ ST-203,BASARA,T.1322,(13/10/09).

an identified perpetrator where that person was a member of the military or part of a paramilitary group.⁷⁷⁵

359. Indeed, even prosecution expert Brown noted that General Talic was keen to exercise a degree of command over paramilitary groups and that they fell under the jurisdiction and command of the army. Talic had in fact ordered that those paramilitary groups or members who committed crimes were to be arrested by the relevant military authorities and charged in military courts.⁷⁷⁶

360. [REDACTED].⁷⁷⁷

Zupljanin could not investigate crimes committed by police officers under re-subordination

361. The doctrine of re-subordination and its application is set out in depth in elsewhere in this Final Brief.⁷⁷⁸ The Defence reiterate that where the army did not discipline police officers who were re-subordinated, Zupljanin refused to let them go unpunished and, even though he lacked authority to do so, he attempted to discipline a number of police officers who left their posts with the VRS. Despite his best efforts, due to the operation of the principle of re-subordination, Zupljanin found himself unable to authorise any disciplinary measures against them as this was the duty of the army.⁷⁷⁹

Zupljanin took action against paramilitary groups notwithstanding the absence of authority and jurisdiction

⁷⁷⁵ It is important to note that while Stojan Zupljanin had no actual authority or duty to order investigations into crimes committed by military or paramilitary perpetrators, it is noted that he often ordered his police officers to perform such investigations regardless. His purpose in doing so was simply to protect the population as far as he possibly could given the context of war and the resources he had at his disposal. 1D236, Request by ZUPLJANIN to initiate the procedure for establishment of disciplinary responsibility against GAGULA, 24-Aug-92; P1002, Complaints by ZUPLJANIN regarding the work ethics of Security Services staff members and the execution of orders by CSB Banja Luka, 30-Apr-92; 2D35, Criminal report for killings in Koricanske Stijene, 8-Sep-1992.

⁷⁷⁶ P539, 1st KK Command offering paramilitary groups the opportunity to join the VRS, 30-Jul-92, (see Item 2); ST-097, BROWN, T.18847, (18/01/11).

⁷⁷⁷ [REDACTED].

⁷⁷⁸ See Chapter on Indictment paragraph 12(d).

⁷⁷⁹ See P1888.

362. The Prosecution allege that Zupljanin co-ordinated his civil police duties with the army by engaging in dialogue with military commanders. Indeed, prosecution expert Brown noted that co-operation between Zupljanin and General Talic was evidenced by correspondence between them.⁷⁸⁰
363. The Defence maintain that these communications were merely an effort by Zupljanin to address crimes committed by paramilitary units or members of the army where such crimes were not being adequately addressed by the military commander in charge of the area. This is illustrated in a meeting at the CSB Banja Luka on 10 August 1992, attended by prosecution witness Streto Gajic, the Minister in charge of police organization and mobilization at MUP level. Gajic's report of that meeting⁷⁸¹ noted that Zupljanin complained that Serb forces and paramilitaries were involved in a range of criminal activities and, as the brigades were under General Talic's command, the latter must take action to address this. It also transpires from the report that local municipalities were treating these light brigades as their own private armies.⁷⁸² This again illustrates the co-ordination between local Crisis Staffs and the army and Zupljanin's opposition to their activities.
364. Prosecution witness Zepenic further confirmed that he, along with Zupljanin, took active steps to arrest and detain paramilitaries who committed crimes.⁷⁸³ By way of example, the apprehension and disarmament of a Serb paramilitary group led by Milinkovic was a significant undertaking,⁷⁸⁴ carried out under the joint command and control of Zepenic and Zupljanin.⁷⁸⁵ This strongly indicates that Zupljanin was a man of integrity who did not compromise his principles to appease those who promoted an anti-Muslim or anti-Croat agenda. Instead, he consistently sought to investigate and bring to justice those involved in any criminal activity (even where those committing criminal acts were Serbs or when their punishment was outside the scope of his personal responsibility).

⁷⁸⁰ ST-097,BROWN,T.18729,(12/01/11).

⁷⁸¹ ST-204,GAJIC,T.12911,(16/07/10),P1502,Report on the visit to the CSB and SJBs in the ARK signed by GAJIC,10-Aug-92.

⁷⁸² ST-204,GAJIC,T.12912,(16/07/10).

⁷⁸³ ST-171,ZEPENIC,T.5867,5874-5875,(01/02/10).

⁷⁸⁴ 2D41,Report on the criminal and other unlawful activities of MILANKOVIC and other members of the paramilitary formation from the area of Prnjavor,2-Dec-91.

⁷⁸⁵ ST-171,ZEPENIC,T.5875,(01/02/10).

The army usurped Zupljanin's authority to take any action against the SOS in Banja Luka

365. Notwithstanding the negotiations between the Banja Luka Municipal Assembly and the army with the SOS in Banja Luka,⁷⁸⁶ Zupljanin refused to accept that the SOS would also have their way in Sanski Most. Prosecution witness Majkic confirmed that, during a meeting with Zupljanin on 14 April 1992, he was ordered by Zupljanin to try to resolve the matter with the SOS in Sanski Most in a peaceful way and, if a shoot-out did occur, to minimise the number of casualties on both sides.⁷⁸⁷ This demonstrates that Zupljanin took all action available to him in Sanski Most by ordering his police chief to take all measures to reign in the SOS there while conceding that it had been impossible for him to do the same in Banja Luka.

366. Zupljanin was far from complicit in any agreement that the criminal element among the SOS and other paramilitary groups be tolerated. [REDACTED].⁷⁸⁸ Crimes apparently committed by this group included damaging six catering and other facilities owned by non-Serbs in May 1992.⁷⁸⁹ [REDACTED].⁷⁹⁰

367. [REDACTED].⁷⁹¹ [REDACTED].

Zupljanin took action to prevent Serb paramilitary groups committing crimes near Teslic

368. [REDACTED].⁷⁹² [REDACTED]⁷⁹³

369. This again demonstrates that when Zupljanin received reliable information from his subordinates he took decisive action to uphold the law and protect non-Serbs. This was despite the fact that it was technically not his duty to do so as it was the army's responsibility to investigate and prevent crimes committed by paramilitaries.

⁷⁸⁶ See section on SOS in chapter on Indictment paragraph 12(a).

⁷⁸⁷ ST-177, MAJKIC, T.3135, (16/11/09).

⁷⁸⁸ 1D198; [REDACTED].

⁷⁸⁹ 1D200, Second criminal file against Palackovic-entire file, 25-Jun-92; [REDACTED].

⁷⁹⁰ [REDACTED]; see 1D234, SJB Banja Luka information regarding overview of victims of murders in 1992 and 1993, 25-May-93; [REDACTED].

⁷⁹¹ [REDACTED].

⁷⁹² ST-182, RADULOVIC, T.11020, (28/05/10), Closed Session.

⁷⁹³ ST-182, RADULOVIC, T.11020, (28/05/10),.

Extent to which civilian and military disciplinary matters fell within Zupljanin's ambit of responsibility

Police disciplinary sanctions for police officers were limited as they fell under military jurisdiction for any crimes they committed

370. Prosecution witness Borovcanin explained that if police reservists committed crimes, they would be taken off the reserve list and immediately put at the disposal of the army. This was the harshest disciplinary action which could be taken by the police.⁷⁹⁴

371. Prosecution expert Brown confirmed the Defence position that conscripts (i.e. reservists) fell under the jurisdiction of the military courts for criminal offences.⁷⁹⁵ The Trial Chamber should, in this context, note Borovcanin's statement that it was reservists on wartime assignment to the police (not the professional police officers) who were the most undisciplined and responsible for the commission of offences.⁷⁹⁶ Prosecution witness ST-125 verified that a large number of reserve police officers were dismissed.⁷⁹⁷

372. It is also important to note the evidence supporting the fact that Zupljanin had little authority to discipline reservists other than dismissing them (i.e. he could not charge or discipline them). This was because they remained, technically, members of the army. This is illustrated by the fact that reservists' personnel files remained at all times with the Ministry of Defence, even during their wartime assignment to the police.⁷⁹⁸ Chamber witness Lisica further confirmed that the police had no authority to even impose financial sanctions (such as forfeiture of salary) as often, if the reservists had previous employment prior to joining the

⁷⁹⁴ ST-164,BOROVCANIN,T.6816,(24/02/10); ST-125,RODIC,T.8850-8851,(16/04/10).

⁷⁹⁵ ST-097,BROWN,T.19013,(20/01/11).

⁷⁹⁶ ST-164,BOROVCANIN,T.6814-6815,(24/02/10).

⁷⁹⁷ ST-125,Rodic,T.8898-8900,(16/04/10).

⁷⁹⁸ ST-125,RODIC,T.8850,(16/04/10).

police on wartime assignment, the practice was that the previous employer would continue to pay his salary – not the police.⁷⁹⁹

Cut-off point between responsibilities of police and court/prosecutors

373. The Prosecution allege in paragraph 12 of the Indictment that the police did not adequately “punish” perpetrators once they were arrested and that police investigations were therefore a “sham.”⁸⁰⁰

374. It is important to note that there is a cut-off point between the duties of the civilian police and the duties of the civilian prosecutor and court system. The responsibility to record and issue indictments (as well as to issue prison sentences or other punishment) fell within the remit of the prosecutor and courts. Zupljanin therefore cannot be found at fault where suspects, once arrested, were either released or not adequately punished.

375. In this regard, the Defence draws the Trial Chamber’s attention to the three-day statutory limit on detention before trial which operated in Bosnia during the Indictment period. This rule meant that if a suspect was detained for three days and was not yet put before a judge, the police could not legally detain him beyond that point. This rule caused difficulties for Zupljanin in trying to prevent impunity for perpetrators especially considering the huge backlog of criminal cases, the lack of military courts and the limited operative capacity of civil courts during the Indictment period.⁸⁰¹

Zupljanin adopted at all times a professional and unbiased approach to dealing with crime prevention and punishment

Zupljanin’s orders to his SJB Chiefs emphasized strict adherence at all times to the law

⁷⁹⁹ Chamber Witness LISICA, T.27022, (02/03/12).

⁸⁰⁰ See Indictment paragraph 12(g).

⁸⁰¹ P120, Art.196.

376. Many prosecution witnesses asserted that Zupljanin never issued orders which were immoral or illegal, and that he in fact always took action to protect citizens and punish perpetrators, regardless of ethnicity.⁸⁰²

Zupljanin took action to investigate crimes and arrest perpetrators as much as he was able given the circumstances

Obstacles faced by police in performing their duty

377. Prosecution witness Krulj acknowledged that carrying out criminal investigations and documenting crimes during the war was hampered by the difficulty in tracking down victims and witnesses after the commission of the crime as it would very often happen that they would leave the municipality to seek refuge in a Muslim-dominated area or would leave the country altogether. This made it increasingly difficult for the police to carry out and complete criminal investigations.⁸⁰³

378. Prosecution witness Njegus recalled a RS MUP meeting in 1993⁸⁰⁴ at which there was a discussion of certain problems with operative lines of work at the CSB Banja Luka.⁸⁰⁵ Njegus insisted however that such criticism of the work of the CSB Banja Luka was baseless.⁸⁰⁶ His assessment of Zupljanin's performance during 1992 is overwhelmingly positive.⁸⁰⁷ Furthermore, the whole point of the 1993 meeting was to identify things that were ineffective and so it was unsurprising that certain areas for improvement were identified. The Defence submit that, as illustrated in the report on work in the period April-December 1992, Zupljanin performed his duties very well given the difficult circumstances in which he was forced to operate. For example, most criminal reports for common crimes

⁸⁰² ST-166, RAKOVIC, T.6985-6986, (26/02/10); ST-158, HANSON, T.4635-4636, (11/12/09), 2D25. See generally, section on Zupljanin's role within the ARK Crisis Staff in chapter on Indictment paragraph 12(a) and his good character as set out in the chapter on Roles and Responsibilities.

⁸⁰³ ST-202, KRULJ, T.2112, (27/10/09). [REDACTED].

⁸⁰⁴ P625, RS-MUP Annual Report on Work in the Period April-December 1992, dated Jan-93; ST-165, NJEGUS, T.11468-11469, (09/06/10).

⁸⁰⁵ ST-165, NJEGUS, T.11330, (07/06/10).

⁸⁰⁶ ST-165, NJEGUS, T.11331, (07/06/10).

⁸⁰⁷ ST-165, NJEGUS, T.11328, (07/06/10).

were filed by SJBs under the CSB Banja Luka.⁸⁰⁸ Also, almost all operational and investigative activities with the goal of collecting information and documenting crimes were carried out in the CSB Banja Luka catchment area.⁸⁰⁹ In addition, 78% of police officers' requests for initiation of misdemeanour procedures were carried out by the CSB Banja Luka.⁸¹⁰ This snapshot illustrates the dedication and professionalism of Zupljanin as well as that of the police within his jurisdiction.

379. In a dispatch sent on 5 June 1992, the RS MUP Assistant Minister, Planojevic, acknowledged the difficulties faced by the police in performing their duties during the Indictment period. Importantly, the dispatch stated that it would not always be possible, given the circumstances and myriad obstacles faced by the police, to immediately identify and apprehend suspected perpetrators but that they should conduct their duties to the best of their abilities with the resources at their disposal.⁸¹¹ Such a clear acknowledgment from the highest levels of the RS MUP supports the Defence position that the Prosecution's argument that Zupljanin failed to sufficiently respond to a large amount of crimes is unreasonable as it takes no account of the difficulties on the ground during 1992.

Wartime conditions and movements of populations made it very difficult for police to identify perpetrators and/or witnesses

380. Prosecution witness Kovacevic confirmed that it was common, even in peacetime, for a high volume of criminal reports to be filed against unknown perpetrators.⁸¹²

381. [REDACTED].⁸¹³ [REDACTED].⁸¹⁴

⁸⁰⁸ P625,p.16.

⁸⁰⁹ P625,p.17.

⁸¹⁰ P625,p.18.

⁸¹¹ 1D84,RS-MUP to all CSBs – "Start fight against crime" - signed by PLANOJEVIC,5-Jun-92; ST-113 ,DJOKANOVIC,T.3619-3620,(23/11/09).

⁸¹² ST-128,KOVACEVIC,T.14222-14223,(03/09/10).

⁸¹³ [REDACTED].

⁸¹⁴ [REDACTED].

382. Prosecution witness Vasic also acknowledged that the police were not adequately resourced to deal with the huge surge in serious crimes brought about by the war (this was compounded by the army re-subordinating the majority of police officers).⁸¹⁵ This affected their ability to conduct proper on-site forensic examinations and more generally to maintain a consistent level of professionalism and due diligence when investigating crimes.⁸¹⁶ Vasic added that there were many crimes which were never even reported to the police. In addition, he stressed that there was also a serious lack of funding which meant that there was a significant shortage of staff and equipment.⁸¹⁷

Zupljanin presented his concerns publicly on a wide range of matters at the meeting with the RS MUP leadership in Belgrade on 11 July 1992

383. Prosecution witness ST-202 (chief of the SJB in Ljubinje) explained that the principal aim of this meeting was to provide an opportunity for CSB and SJB Chiefs to voice their concerns regarding the problems they were encountering in performing their duties.⁸¹⁸ ST-202 confirmed that this was a legitimate and proper way to indicate concerns in an effort to resolve problems pursuant to the laws that were in effect at the time.⁸¹⁹

Zupljanin addressed the disruptions that hampered the legal process and prevented the normal functioning of police stations and civil courts

Lack of functional military courts

⁸¹⁵ See chapters on Roles and Responsibility and Indictment paragraphs (d) and (e).

⁸¹⁶ ST-210, VASIC, T.13682, (25/08/10).

⁸¹⁷ ST-210, VASIC, T.13683, (25/08/10).

⁸¹⁸ ST-202, KRULJ, T.2182, (28/10/09).

⁸¹⁹ ST-202, KRULJ, T.2182, (28/10/09).

384. Zupljanin informed the collegium that military courts were not operating and nor had judges been elected.⁸²⁰ The consequence of a lack of military courts was a hugely increased burden on the civilian courts to process crimes committed by members of the army. Zupljanin also stated at the meeting that several thousand court cases had not been completed, and that there was a dearth of judges for criminal cases as they were afraid to sentence Serbs due to threats by Serb extremists.⁸²¹

Limitations in police authority to conduct investigations due to malfunctioning civil courts

385. Orasanin acknowledged that the police could not, on their own, conduct investigative activities without the approval of a judge or the prosecutor's office. This rule applied, for instance, to on-site investigations. Accordingly, if the prosecutor's office and courts were not functioning properly, the police were most often unable to investigate criminal offences.⁸²²

386. The inability to hold suspects longer than three days further contributed to the lack of punishment meted out by the courts. Several prosecution witnesses confirmed that the police had no choice but to release suspected criminals until further investigations could be made.⁸²³

387. Zupljanin addressed these issues at the 11 July meeting.⁸²⁴ Zupljanin also raised the problem that there were general issues with jurisdiction, between military and police, over crimes that needed to be addressed.⁸²⁵

388. Krulj confirmed that the collegium adopted as conclusions the complaints conveyed by Zupljanin concerning the need for proper guidance on army and police jurisdiction in respect of the detention and collection facilities as well as the role of investigative judges.⁸²⁶ He held that it was clear that Zupljanin was keen not to shirk his duty and wanted clarification on the

⁸²⁰ See P160.

⁸²¹ P160,p.8; See also ST-169,DELIC,T.1561-1562,(19/10/09); ST-202,KRULJ,T.2188,(28/10/09).

⁸²² MS-008,ORASANIN,T.22105-22107,(09/06/11).

⁸²³ ST-164,BOROVCANIN,T.6827,(24/02/2010); confirmed by ST-185,SKIPINA,T.8409,(31/03/10).

⁸²⁴ P160,p.8

⁸²⁵ P160.

⁸²⁶ ST-202,KRULJ,T.2184,(28/10/09).

jurisdiction of MUP organs pursuant to the Law on Criminal Procedure and the Law on Internal Affairs.⁸²⁷

Zupljanin addressed severe operational problems brought about by re-subordination

389. The Defence have adduced an abundance of evidence to show that police officers re-subordinated under the army were under military jurisdiction and this practice was widely applied by the army throughout the ARK region during the period of the Indictment.⁸²⁸ Indeed, Zupljanin declared openly during the meeting on 11 July the difficulty that this practice presented for him and his police chiefs.⁸²⁹

390. Prosecution witness ST-164 commented on the huge impact of re-subordination on the police. He stressed, “It is very difficult for someone who was not there, who had not experienced it himself [to understand the situation]... and, of course, that being so, it is easy to criticise in hindsight [the actions of the police].”⁸³⁰

Zupljanin raised the problems caused by paramilitary groups amid an environment of ethnic intolerance and revenge-seeking

391. Zupljanin additionally addressed the security problems caused as a result of the arming and violent behaviour of paramilitaries and other armed groups amid heightened feelings of ethnic intolerance across the region.⁸³¹ The minutes of the 11 July meeting state that, “The Chief of the Banja Luka Security Services Centre said that the paramilitary organisation and violence of a number of armed groups, and the large quantity of weapons unlawfully possessed by citizens in an atmosphere of ethnic exclusion, chauvinism and revenge-seeking constituted a great threat to the peace and security of citizens.”⁸³² It was established from the

⁸²⁷ ST-202,KRULJ,T.2184,(28/10/09).

⁸²⁸ See chapters on Role and Responsibilities and Indictment paragraphs 12(c), (d) and (e).

⁸²⁹ P160.

⁸³⁰ ST-164,T.6823,(24/02/2010).

⁸³¹ ST-202,KRULJ,T.2183,(28/10/09).

⁸³² P160,p.6

minutes of the meeting that the Collegium accepted his views and took responsibility for taking measures to deal with these problems.⁸³³ Thus, this was subsequently a matter for the MUP to deal with but, nevertheless, Zupljanin followed this up in two subsequent reports in September and December 1992. It is clear therefore that he persistently did all that he could to address this issue.⁸³⁴

Zupljanin addressed the problem concerning investigative judges jurisdictional issues and detention facilities and insisted that jurisdiction of criminal courts must match that of police so that cases could be processed

392. Prosecution witness ST-202 confirmed that the Collegium adopted the issues conveyed by Zupljanin concerning the need for proper guidance on army and police jurisdiction in respect of the detention and collection facilities as well as the role of investigative judges.⁸³⁵ Zupljanin stated at the 11 July meeting that "... ..on the subject-matter and territorial jurisdiction of courts, the MUP needs to adopt a new instruction whereby the remit of public security stations and the jurisdiction of courts of first instance match each other."⁸³⁶

Detention facilities were under the direct responsibility of the army

393. Zupljanin stressed that the detention facilities were jurisdictionally "undefined" and did not fall under any existing legal provisions (although in practice, the army controlled them).⁸³⁷ He further lamented that "the conditions in these camps are poor: there is no food, some individuals do [not] comply with international standards [regarding treatment of detainees]...[and] the ... camps are not appropriate".⁸³⁸

394. Prosecution witness Krulj noted that a later dispatch from the Minister of Interior in respect of the issues raised by Zupljanin at the meeting on 11 July confirmed that the

⁸³³ ST-202, KRULJ, T.2184, (28/10/09).

⁸³⁴ P621, Report of CSB Banja Luka on the Work of the SJB Banja Luka for the Period from 1-July to 3-Sep-92; P624, Report on the Work of the Banja Luka CSB from 04-Apr-92 and 31-Dec-92.

⁸³⁵ ST-202, KRULJ, T.2184, (28/10/09).

⁸³⁶ P160, p.8

⁸³⁷ See chapter on Indictment paragraph 12(e).

⁸³⁸ P160, p.8.

detention facilities were under the authority of the army.⁸³⁹ That dispatch stated that “the security of collection centres shall be the direct responsibility of the Serbian Army...”⁸⁴⁰ This is important evidence. It establishes beyond doubt that the police, if they had any involvement in activities involving detention facilities (including transportation or guard duty) even prior to this confirmation, were re-subordinated under the command of the army.⁸⁴¹

Zupljanin had no effective control over police due to adverse influence of local Crisis Staffs amid breakdown in communications

395. Zupljanin emphasised during the meeting that the “functional communications system [was] destroyed” (demonstrating the crippling effect of the breakdown in communications across the area during 1992).⁸⁴² The Defence refer to the large volume of evidence supporting its position regarding the breakdown of communications and the adverse influence of local Crisis Staffs.⁸⁴³

Zupljanin fulfilled his professional obligations

396. Prosecution witness Krulj confirmed that Zupljanin fulfilled his obligations pursuant to the regulations of the work of the police by addressing his concerns to those at the top level of the RS MUP. He further confirmed that it was the RS MUP who was responsible for the implementation of effective measures to deal with the concerns set out by Zupljanin.⁸⁴⁴

Zupljanin took action against members of the police who committed crimes

Zupljanin stood up to local Crisis Staffs and demanded that officers who committed crimes be punished

⁸³⁹ 1D55,RS-MUP Order on treatment of detained persons,10-Aug-92; ST-202,KRULJ,T.2186,(28/10/09).

⁸⁴⁰ ST-202,KRULJ,T.2186,(28/10/09).

⁸⁴¹ See chapter on Indictment paragraph 12(e).

⁸⁴² ST-202,KRULJ,T.2186,(28/10/09).

⁸⁴³ See chapters on Zupljanin’s Knowledge and Indictment paragraph 12(b).

⁸⁴⁴ ST-202,KRULJ,T.2190,(28/10/09).

397. Prosecution witness Radulovic confirmed that a dispatch dated 30 July 1992 signed by Zupljanin and circulated to all SJBs, detailing the types of serious crimes being committed across many of the ARK municipalities⁸⁴⁵ reflected the reality on the ground. Zupljanin stated in the dispatch that he had been informed of gross violations of the law in the work of a number of employees of the Public Security Service.⁸⁴⁶ This is reflected primarily in their participation in various criminal acts, acting outside the scope of their duties and a tolerant attitude toward criminal incidents and other anti-social phenomena.⁸⁴⁷ The dispatch ordered police chiefs to clamp down on crime in their areas and to take appropriate legal measures against any member of the police violating the law or in dereliction of their duty.⁸⁴⁸
398. On 31 July 1992, Zupljanin convened a meeting⁸⁴⁹ to discuss disciplinary issues within the police force. During this meeting, Zupljanin sharply criticised the work of the disciplinary organs in place and ordered that the new disciplinary committees take their roles more seriously. Prosecution witness Rodic recalled that Zupljanin's dissatisfaction with the current state of affairs at that time was palpable.⁸⁵⁰
399. The Defence stress that Zupljanin was not just reactive, but proactively and consistently held his own police officers to the highest standards of professionalism. This is demonstrated by an earlier dispatch sent by Zupljanin to his police chiefs that made it clear that he did not tolerate any police officer breaking the law and in fact ordered his chiefs to take firm action if this occurred. Zupljanin emphasised during a convened CSB Council meeting "we have to identify...those among us who are involved in criminal activities and we must take rigorous steps against them (i.e. to immediately commence disciplinary proceedings)." ⁸⁵¹ When prosecution witness ST-123 was asked who "those among us" referred to, he responded that Zupljanin was referring to all employees of the police force "in

⁸⁴⁵ 2D25.

⁸⁴⁶ 2D25,p.1

⁸⁴⁷ 2D25,p.1

⁸⁴⁸ ST-182,RADULOVIC,T.11129-11136,(01/06/10),2D25.

⁸⁴⁹ See P1986,Letter from president of Disciplinary Commission, Nunic, to head of Third Disciplinary Chamber at the CSB Banja Luka referring to CSB disciplinary meeting on 31-Jul-92,24-Aug-92.

⁸⁵⁰ ST-125,RODIC,T.8883,(19/04/10).

⁸⁵¹ P367,Conclusions of expanded meeting at CSB Council,6-May-92,para.5; ST-123,TUTUS,T.7677,(16/03/10).

the broader sense”.⁸⁵² This is clear evidence that Zupljanin was not afraid to and indeed did take action against members of the police who committed crimes.

Examples demonstrating that Zupljanin took action against police officers alleged to have committed crimes

400. [REDACTED].⁸⁵³ [REDACTED].⁸⁵⁴ [REDACTED].⁸⁵⁵

401. [REDACTED].⁸⁵⁶ [REDACTED].

Stojan Zupljanin consistently demonstrated that he acted promptly and decisively to combat any criminal activity – including those against non-Serbs

Zupljanin took action against the “Mice” group in Teslic

402. [REDACTED].⁸⁵⁷ [REDACTED].⁸⁵⁸

Zupljanin was not responsible for the actions or omissions of the Teslic police as the SJB fell under the authority of the CSB Doboј

403. The Prosecution’s suggestion that the CSB Banja Luka was responsible for the work of the Teslic police is false. In fact, that the prosecution evidence shows that the Teslic SJB fell under the authority of the CSB Doboј throughout the period of the Indictment. The Defence acknowledges that a decision dated 6 April 1992⁸⁵⁹ put measures in place for Teslic to join the ARK (after which the Teslic SJB would fall under the authority of the CSB Banja Luka). During the summer of 1992 however, this transition had not yet fully materialised.

⁸⁵² ST-123,TUTUS,T.7677,(16/03/10).

⁸⁵³ [REDACTED].

⁸⁵⁴ [REDACTED]; [REDACTED].

⁸⁵⁵ 2D126,Criminal Charge against Gataric(“Gavrin”),12-Mar- [REDACTED].

⁸⁵⁶ [REDACTED].

⁸⁵⁷ [REDACTED].

⁸⁵⁸ [REDACTED].

⁸⁵⁹ P1353.04,Decision of Teslic Municipality to join the ARK,6-April-1992; See P1353.21-Conclusions of Teslic Assembly meeting,24-July-1992; P1353.23,Statute of municipality confirming Teslic part of ARK.

Accordingly, the Teslic SJB still fell under the authority of the CSB Doboj. The Defence submit that Zupljanin, regardless of whether or not he had responsibility for the Teslic SJB, took action against the Mice as he refused to stand idly by once he learned that non-Serb civilians were being killed and arbitrarily detained.

The Mice Group were led by military commanders from Doboj who laid siege to the municipality of Teslic

404. [REDACTED].⁸⁶⁰

405. [REDACTED].⁸⁶¹ [REDACTED].⁸⁶² [REDACTED].⁸⁶³

Zupljanin planned and ordered the arrest of the Mice Group in Teslic

406. Prosecution witness Radulovic confirmed that in late June 1992 Zupljanin arranged for him to head a group to travel to Teslic and arrest the Mice Group.⁸⁶⁴ A day or two prior to the operation to arrest the Mice Group, Radulovic confirmed that a meeting was held at the CSB Banja Luka in late June 1992 at which prosecution witnesses Kovacevic, the president of the lower court in Teslic; Peric, the public prosecutor; and [REDACTED], [REDACTED]; were summoned by Zupljanin to confirm information about the events in Teslic and to ensure that the Teslic court detained the Mice after their arrest.⁸⁶⁵ This shows that Zupljanin went to great lengths to covertly arrange for these people to come to Banja Luka so as to ensure that not only were the Mice arrested but that they would be prosecuted and punished for their crimes following their arrest.

407. Radulovic further attested that Zupljanin ordered everything to be done in accordance with the law. He also confirmed that he was, immediately prior to the operation, appointed

⁸⁶⁰ [REDACTED]. [REDACTED]; see also P1363, Case file on Criminal Proceedings against Mice Group, 6-Jul-92.

⁸⁶¹ [REDACTED].

⁸⁶² [REDACTED].

⁸⁶³ [REDACTED].

⁸⁶⁵ ST-182, RADULOVIC, T.11079, (31/05/10).

interim chief of the SJB in Teslic so as to be able to carry out Zupljanin's orders and bring order back to the SJB.⁸⁶⁶

408. Following the arrest of the Mice group a criminal report was filed against them on 9 July 1992.⁸⁶⁷ [REDACTED]. [REDACTED].⁸⁶⁸ Both prosecution witnesses [REDACTED] Peric added that subsequent to the arrest of the Mice group, the Banja Luka team followed up "really well" with regard to the ensuing criminal investigation ordered by the prosecutor once the Mice had been arrested.⁸⁶⁹ Peric further clarified that, in the period after the arrest of the Mice Group in Teslic, there were no further arbitrary arrests of, or discrimination towards Muslims or Croats in that area.⁸⁷⁰

409. [REDACTED].⁸⁷¹ [REDACTED].⁸⁷²

The release of the Mice was ordered by the Doboj judiciary

410. A ruling by a Teslic Court, on 21 July 1992, ordered the release from detention of a large number of the Mice Group.⁸⁷³ [REDACTED] ST-008 both confirmed that their release had nothing to do with the CSB Banja Luka or the Teslic SJB as it was a judicial decision and therefore out of the hands of the police.⁸⁷⁴ [REDACTED].⁸⁷⁵

⁸⁶⁶ ST-182,RADULOVIC,T.11080-11083,(31/05/10).

⁸⁶⁷ 2D27 - CSB Communication to the Prosecutors Office Regarding Mice Group in Teslic,9 July 1992; [REDACTED].

⁸⁶⁸ [REDACTED].

⁸⁶⁹ [REDACTED]; Evidence on the identification of the perpetrators as members of the Mice group can be found in exhibits P1361.06,Request for Criminal Investigation from Teslic Basic Prosecutor's Office,10-Jul-92; P1363; P1312,Decision of the Teslic Lower Court ordering that an investigation be conducted into sixteen members of the police and military police relating to their actions in Teslic signed by Kovacevic,11-Jul-92; *See also* ST-176,PERIC,T.10599,(20/05/10).

⁸⁷⁰ ST-176,PERIC,T.10600,(20/05/10).

⁸⁷¹ [REDACTED]; ST-176,PERIC,T.10599,(20/05/10).

⁸⁷² [REDACTED].

⁸⁷³ 2D88; *See also* P1313 - Register of data no 70/94 re detention and exemption dates of detainees for period from 1989 to 1994, Doboj; ST-182,RADULOVIC,T.11092-11093,(31/05/10).

⁸⁷⁴ [REDACTED]; *See* ST-182,RADULOVIC,T.11079,(31/05/10). P1353.09 - "Glas" Newspaper Article entitled "The Notorious Mice Are Free," referring to the release of the Mice Group gang from prison,23 July 1992; 2D88.

⁸⁷⁵ [REDACTED] [REDACTED].

Zupljanin ordered an investigation into the killings at Mount Vlasic/Koricanske Stijene

411. The Prosecution have suggested that Zupljanin was late in issuing a dispatch to Simo Drljaca at the Prijedor SJB ordering a full investigation into the killings of a large group of Muslims at Koricanske Stijene by police officers from the Prijedor SJB.⁸⁷⁶

412. Prosecution witness Krejic's testimony about the incident however, refutes this. Krejic (the duty police officer in Skender Vakuf) maintained that a delay was not surprising given that Simo Drljaca, the chief of the Prijedor SJB (who openly celebrated the killings), was notoriously disobedient. Krejic confirmed that Drljaca and his police force in Prijedor "did what they wanted" and they had strong political backing of the entire region as well as from part of the ARK leadership and the army. He confirmed that "Chief Stojan Zupljanin found it nigh impossible to deal primarily with the Prijedor public security station".⁸⁷⁷ This substantiates the Defence argument, augmented in other areas in this brief,⁸⁷⁸ that Zupljanin did not have effective control over the Prijedor police. This impeded his attempts to conduct a thorough investigation.

413. [REDACTED].⁸⁷⁹ [REDACTED].⁸⁸⁰ [REDACTED].

414. The Defence maintain that Zupljanin acted promptly and professionally to instigate an investigation into the killings. As soon as Krejic informed Zupljanin of the incident, Zupljanin ordered him to immediately attend the crime scene and to take with him the chief of the crime service, Milorad Veleusic.⁸⁸¹ This demonstrates that Zupljanin wasted no time in taking action to investigate the crime scene and ascertain what happened. Importantly, Krejic informed Zupljanin of a survivor of the massacre and Zupljanin explicit ordered him to personally ensure that this person was brought safely to Banja Luka. This is compelling

⁸⁷⁶ P1380, Dispatch of ZUPLJANIN to the Chief of SJB Prijedor ordering a full investigation of the killing of 150 Muslims in area of Skender Vakuf municipality, 11-Sep-92; ST-195, KREJIC, T.14067, (01/09/10).

⁸⁷⁷ ST-195, KREJIC, T.14067, (01/09/10).

⁸⁷⁸ See in particular chapters on Zupljanin's knowledge and Indictment paragraph 12(b)

⁸⁷⁹ P609, Dispatch of 1st KK Command providing information on the massacre at Koricanske Stijene, 22-Aug-92; ST-169, T.16170-16171, (19/10/10).

⁸⁸⁰ [REDACTED].

⁸⁸¹ ST-195, KREJIC, T.14037, (01/09/10).

evidence not only of Zupljanin's non-racist character but of his efforts and actions to protect non-Serbs.⁸⁸² Krejic explained that his unit informed him that the Prijedor police admitted to killing the people at Koricanske Stijene.⁸⁸³ This was also confirmed in a report from 1st Krajina Corps Command to the Main Staff of the VRS.⁸⁸⁴

415. During a meeting at the CSB in Banja Luka a few days after the incident, prosecution witness Krejic confirmed that Simo Drljaca expressed his delight that these killings had occurred.⁸⁸⁵ Krejic emphasised however that Zupljanin was firmly on the side of the victims, that he was "visibly shaken" and strenuously condemned the crime.⁸⁸⁶ Zupljanin stated to Drljaca: "Are you aware that one murder, one crime, cannot be concealed, let alone a crime on this massive scale? Forget about it. We have to be serious and get our act together and deal with it in the proper way. This is a crime."⁸⁸⁷ This is very strong evidence. It proves that Zupljanin had no knowledge of the actions of the Prijedor police and refused to cover up any crimes regardless of the ethnicity of the perpetrators or whether they were members of the police. His lack of advance knowledge as to the commission of the crime is supported by Krejic who confirmed that Zupljanin only learned about the incident when he called him to inform him what had happened.⁸⁸⁸

416. Krejic confirmed that Zupljanin ordered an investigation into the incident despite Simo Drljaca's defiance. He further confirmed that an investigation team had been set up which included designated officers to secure the site and conduct forensic examinations of the bodies.⁸⁸⁹ Krejic claimed, "Simo Drljaca again reacted with contempt towards what Stojan Zupljanin said. And I must say I had never seen Stojan Zupljanin lose his calm. This time he was really wagging his finger and saying that somebody will answer for that crime, that the perpetrators would be tried."⁸⁹⁰ Krejic stated that after much quarrelling, Zupljanin ordered Drljaca to arrange that the bodies be recovered and provide for a dignified burial of those

⁸⁸² ST-195,KREJIC,T.14094-14096,14131,(02/09/10).

⁸⁸³ ST-195,KREJIC,T.14044,(01/09/10).

⁸⁸⁴ P676,Combat Report of 1st KK reporting on killings at Koricanske Stijene,22-Aug-92; ST-195,KREJIC,T.14099,(02/09/10).

⁸⁸⁵ ST-195,KREJIC,T.14048,(01/09/10).

⁸⁸⁶ ST-195,KREJIC,T.14048,(01/09/10).

⁸⁸⁷ ST-195,KREJIC,T.14079,(01/09/10).

⁸⁸⁸ ST-195,KREJIC,T.14077,(01/09/10).

⁸⁸⁹ ST-195,KREJIC,T.14080,(01/09/10).

⁸⁹⁰ ST-195,KREJIC,T.14078-14079,(01/09/10).

killed.⁸⁹¹ Krejic added that at one point Zupljanin reacted very harshly to what Drljaca was saying and informed him “in no uncertain terms” that he insisted on arresting and prosecuting the perpetrators of the crime.⁸⁹²

417. In a response to Zupljanin’s order for an investigation⁸⁹³, Drljaca claimed that an investigation could not be carried out because the police officers who were part of the convoy had been sent to Hans Pijesak for combat activity and were consequently re-subordinated under army command.⁸⁹⁴ Zupljanin continued to press Drljaca on this but Drljaca’s second dispatch to Zupljanin on 13 October 1992 stated that the policemen involved were still at the battlefield and could therefore not be called back for questioning (inevitably delaying the investigation).⁸⁹⁵ Clearly, Zupljanin was making every attempt to undertake an investigation despite Drljaca’s efforts to cover up the crimes committed by his officers.

418. Prosecution witness Kovacevic acknowledged that the public prosecutor’s office usually received good cooperation from the CSB Banja Luka.⁸⁹⁶ He reiterated his view that the CSB Banja Luka did everything they could at the time to process and document the evidence in respect of the killings at Koricanske Stijene.⁸⁹⁷ Likewise, prosecution witness Traynor, a journalist and the author of the US news network ABC’s video report⁸⁹⁸ was shown 2D35, the criminal report for those charged with the killings at Koricanske Stijene.⁸⁹⁹ The criminal report was, Traynor agreed, comprehensive, and it confirmed that around 140 victims were found at Vlasic Mountain.⁹⁰⁰

419. Prosecution witness Kovacevic further explained that Operation Septembar 1993 (as well as Operation Hurricane) were events relating to incursions by the army into the CSB Banja

⁸⁹¹ ST-195,KREJIC,T.14050,(01/09/10).

⁸⁹² ST-195,KREJIC,T.14048,(01/09/10).

⁸⁹³ P1380.

⁸⁹⁴ P682,Dispatch of Drljaca, SJB Prijedor, to CSB Banja Luka regarding investigation into killing of Muslims in the area of Koricanske Stijene,14-Sep-92.

⁸⁹⁵ P618,Reply of SJB Prijedor to CSB Banja Luka about a policemen who escorted convoy to Knezevo. Koricanske Stijene incident,13-Oct-92.

⁸⁹⁶ ST-128,KOVACEVIC,T.14186,(03/09/10).

⁸⁹⁷ ST-128,KOVACEVIC,T.14278,(06/09/10).

⁸⁹⁸ P1359,ABC Nightline report on camps in Nov-92 featuring ZUPLJANIN saying that the Vlasic Mountain massacre is under investigation; ST-189,TRAYNOR,T.10367,(17/05/10).

⁸⁹⁹ 2D35; ST-189,Traynor,T.10398,(18/05/10).

⁹⁰⁰ ST-189,TRAYNOR,T.10399,(18/05/10).

Luka, the purpose of which was to remove any incriminating evidence against the army. As a consequence, the full picture of events that took place during the war only started to become clear after the war ended. This, Kovacevic confirmed, directly contributed to significant delays in processing crimes that took place during 1992.⁹⁰¹

An investigation was made into non-Serb detainees who suffocated on a bus en route to Manjaca from Sanski Most

420. The Defence refer to the statement of His Honour Judge Harhoff who agreed that if those escorting the detainees from Sanski Most to Manjaca were military (or under military command) then the civilian police were not responsible for investigating this incident. He stated, “[those who were] escorting the detainees to Manjaca who suffocated and died during transportation, if they were military personnel, they would, of course, be tried by the military court, and they would come under the jurisdiction of the military Prosecutor.”⁹⁰² This statement by the Honorable Trial Chamber ties in with the Defence’s position on the jurisdiction of military and civilian courts. The Defence maintains that any police involved in the escort were re-subordinated under military command.⁹⁰³

421. [REDACTED].⁹⁰⁴ [REDACTED].

Zupljanin ordered an investigation into the Manjaca/Vrbas river killings

422. [REDACTED]. Bozidar Popovic⁹⁰⁵, the military commander responsible for admitting people into the Manjaca camp, ordered that the police should take away the dead bodies.⁹⁰⁶

⁹⁰¹ ST-128,KOVACEVIC,T.14281-14282,(06/09/10).

⁹⁰² [REDACTED].

⁹⁰³ [REDACTED]; [REDACTED].

⁹⁰⁴ [REDACTED]; [REDACTED].

The fact that this order came from a military officer provides that those police were re-subordinated for the duration of their grisly task.⁹⁰⁷

423. [REDACTED]. [REDACTED].⁹⁰⁸ [REDACTED].⁹⁰⁹ [REDACTED].

424. In any event, even if the Trial Chamber should determine that the police did carry out the killings, Zupljanin had no effective control over the police in Prijedor as outlined elsewhere in this Final Brief.⁹¹⁰ [REDACTED].⁹¹¹ Notwithstanding the re-subordination of the police officers involved, Zupljanin requested an investigation which, after the criminal report⁹¹² was submitted to the public prosecutor's office. The Defence maintain that it is apparent from the report that all necessary steps were taken by Zupljanin to properly investigate this incident.

*Zupljanin formed a special Commission to investigate the existence of detention facilities throughout the Krajina*⁹¹³

425. The Defence highlight that following his speech at the 11 July 1992 RS MUP meeting, Stojan Zupljanin established a Commission to visit the municipalities of Prijedor, Bosanski Novi and Sanski Most to investigate whether detention camps existed and if so, the conditions of the camps and treatment of detainees within them.⁹¹⁴ Zupljanin ordered that every aspect of treatment of non-Serbs be investigated. Zupljanin also ordered the Commission to establish if any citizens were moved out from those municipalities and if so, what ethnicity they were, how many were removed and whether they were relocated

⁹⁰⁵ Manjaca was a POW camp commanded by the army and Bozidar Popovic held the rank of Lieutenant-Colonel - [REDACTED]; 2D33 (Under Seal) [REDACTED]; ST-172,T.5265,(21/01/10).

⁹⁰⁶ [REDACTED].

⁹⁰⁷ [REDACTED].

⁹⁰⁸ Adjudicated Fact:470; [REDACTED],2D113,Court ruling by RIDJEŠIC, Sanski Most Municipal Court Judge declaring CRNALIC dead, 7-Feb-97.

⁹⁰⁹ [REDACTED].

⁹¹⁰ See chapters on Indictment paragraphs (12b), 12(d), (12e) and Zupljanin's knowledge.

⁹¹¹ [REDACTED]; Adjudicated Fact:470; [REDACTED].

⁹¹² 2D71,CSB Banja Luka - criminal report regarding dead bodies found in the Vrbas river,26-Aug-92.

⁹¹³ The Defence position on detention facilities is covered in more depth in the chapters on Zupljanin's Knowledge and Indictment paragraph 12(e).

⁹¹⁴ P601,CSB Banja Luka - Decision on forming of the Commission to visit municipalities and SJBs in Prijedor, Bosanski Novi and Sanski Most,14-Aug-92; ST-212,RODIC,T.14538,(13/09/10); ST-185,Skipina,T.8403,(31/03/10)-2D26.

voluntarily or by force.⁹¹⁵ The Defence stress that Zupljanin ordered the Commission, among other things, to address the specific criminal purpose underlying the alleged JCE (i.e. the forcible removal of non-Serbs from the Krajina), countering the accusation that he was himself part of the JCE.

426. Prosecution witness ST-212 was shown a report on the findings of the Commission.⁹¹⁶ Rodic agreed that the report concluded that the Prijedor Crisis Staff set up the investigation/detention centres in Omarska, Keraterm and Trnopolje.⁹¹⁷ As Rodic himself conceded, the report presented a whitewashed view of the detention facilities and described the facilities and treatment of detainees in a positive light.⁹¹⁸ He added that the report corroborated his belief that Zupljanin was exposed to a lot of lies.⁹¹⁹

427. Importantly, prosecution witness ST-185 accepted that it was not within Zupljanin's power to counteract the operation of detention camps as they fell under the authority of the army. Rather, the army's involvement was an issue which the government, Presidency and/or Supreme Command ought to have addressed.⁹²⁰ Equally, the involvement of the Crisis Staffs in these detention centres should have been controlled by civilian authorities such as the Presidency or government.⁹²¹ It is therefore clear that the only option available to Zupljanin was to bring the issue to the attention of the RS MUP in order that something could be done to remedy this situation at a higher level.⁹²²

Zupljanin formed an operative work-plan to arrest and punish persons accused of committing crimes, many of whom were Serbs

⁹¹⁵ ST-212, RODIC, T.14539, (13/09/10).

⁹¹⁶ P602, Report of CSB Banja Luka Concerning the Situation as Found and Questions Relating to Prisoners, Collection Centres, Resettlement, and the Role of the SJB in Connection With These Activities, 18-Aug-92

⁹¹⁷ ST-212, RODIC, T.14542, (13/09/10).

⁹¹⁸ ST-212, RODIC, T.14551, (14/09/10).

⁹¹⁹ ST-182, RADULOVIC, T.11128, (01/06/10).

⁹²⁰ ST-185, SKIPINA, T.8401, (31/03/10).

⁹²¹ ST-185, SKIPINA, T.8402, (31/03/10).

⁹²² ST-185, SKIPINA, T.8402, (31/03/10).

428. Prosecution witness Mandic acknowledged that a police operational work plan⁹²³ drawn up to deal with the rising level of crime in Banja Luka was professionally produced. In addition, the crime status report compiled by the CSB Banja Luka⁹²⁴ read: "...Until the military prosecutor's office and military court are set up, there are no proper conditions for the realisation of the plan, as far as military conscripts, members of the former TO, consent [*sic*]." Zupljanin made it clear in his report⁹²⁵ that to effectively implement his action plan against a wide range of perpetrators, detention facilities within military courts must be agreed.⁹²⁶ he states: "To implement this plan efficiently, we need to have prior agreement with the regular and military courts and keeping all of the arrested persons in detention, the reasons for detention exist for almost all of them because of the danger that they may repeat their offence, abscond for procedural reasons, disturbing the public..."⁹²⁷

429. Prosecution witness Mandic confirmed that the police in Banja Luka, under the direction of Zupljanin, always made every effort to arrest suspects of Serb ethnicity who were engaged in violent behaviour against non-Serbs.⁹²⁸ Furthermore, the Defence adduced a status report of the work of the CSB Banja Luka produced by Zupljanin.⁹²⁹ The report demonstrates that Zupljanin personally set out detailed plans to deal with the wide variety of crimes committed against non-Serbs in Banja Luka.

Zupljanin took action against perpetrators who destroyed property and religious institutions

430. [REDACTED].⁹³⁰ Various reports by Zupljanin document 76 instances of Serbs planting explosive devices.⁹³¹ While Zupljanin actively investigated such incidents with a view to

⁹²³ 1D198; ST-187,MANDIC,T.9757,(07/05/10).

⁹²⁴ P860,CSB Banja Luka, Information on Security Incidents and the Increase in Crime on the territory in April 1992,17-Apr-92; *See also* 2D65,CSB Banja Luka information on activities from 16-Nov-91 to 23-Sep-1991, dated 23-Sep-91,p.5.

⁹²⁵ 1D198.

⁹²⁶ [REDACTED].

⁹²⁷ [REDACTED].

⁹²⁸ ST-187,MANDIC,T.9753,(07/05/10).

⁹²⁹ P595,CSB Banja Luka, Report on the Work of CSB Banja Luka for the Period 1-January to 30-Jun-92, dated Jul-92; [REDACTED].

⁹³⁰ [REDACTED].

⁹³¹ 1D198; *See also* 2D127,CSB Banja Luka - Information about crimes committed from 1-Jan-92 until 25-Nov-92; dated 18-Dec-92; [REDACTED].

identifying the perpetrators, the evidence regarding munitions (supported by prosecution expert Riedlmayer) strongly indicates that the perpetrators were members of the army.⁹³²

431. [REDACTED].⁹³³ [REDACTED].⁹³⁴ [REDACTED].⁹³⁵

432. Numerous criminal reports were submitted to the public prosecutor's office during 1992 by the CSB Banja Luka which were signed by Zupljanin.⁹³⁶ This demonstrates his consistent dedication to investigating and solving crimes irrespective of the ethnicity of the perpetrator or victim as well as his commitment to ensuring that public prosecutors were kept abreast of evidence in cases where the perpetrator had not yet been identified. Also presented was a forensic analysis report forwarded to the prosecutor's office in connection with the killing of two Muslims and three police officers.⁹³⁷ This refutes the OTP's allegation that the police were unresponsive in forwarding information to the public prosecutor's office regarding the possible identity of perpetrators.⁹³⁸ Finally, the Defence adduced a decision, signed by Zupljanin, to remand in custody seven Serbs for the commission of a range of crimes including robbery, murder, racketeering, causing public danger as well as the destruction of business premises with explosives. Among those killed was Mustafa Smajlagic, a Muslim from Banja Luka.⁹³⁹

Given the context of the war, it was not realistically possible for the heavily depleted civilian police force to deal with every incident that arose during the Indictment period

433. The Defence refers to the testimony of prosecution witness Njegus who confirmed that there were "no problems with the CSB Banja Luka" in terms of their efficiency and it was

⁹³² ST-094, RIEDLMAYER, T.11273, (02/06/10).

⁹³³ [REDACTED].

⁹³⁴ [REDACTED].

⁹³⁵ [REDACTED].

⁹³⁶ 1D371, Crime committed against Kadro Vehabovic, 15-Sep-92; 1D372, Case against unknown perpetrator for crime against Husref Smajlagica, 1-Sep-92; 1D373, Case against unknown perpetrator for crime committed against Emir Nezirevic, 1-Sep-92; ST-128, KOVACEVIC, T.14215-14219, (03/09/10).

⁹³⁷ 1D375, CSB Banja Luka to Basic Court Banja Luka - Fire arms expertise re murder of Adnan Kobaslic, Zihad Makic and three police officers with request and cover letter, 30-Sep-92.

⁹³⁸ ST-128, KOVACEVIC, T.14220, (03/09/10).

⁹³⁹ 1D199, CSB Banja Luka to Public Prosecutor criminal file re murder of Sjalagic Mustafa, 6-Jul-92; ST-128, KOVACEVIC, T.14224-14225, (03/09/10).

established that they filed 6.082 (75%) of all criminal reports between April and December 1992 and conducted 2,481 out of 2.500 forensic examinations. The CSB Banja Luka was also credited with filing 9,611 (78%) of all misdemeanours.⁹⁴⁰ [REDACTED].⁹⁴¹ This echoes a broad consensus among the vast majority of prosecution witnesses that the police, and Zupljanin personally, did everything within their power to fulfil their obligations.

Crimes committed in 1992 but not recorded until 1993 were excluded from prosecution witness analysis

434. Prosecution witness ST-210 was shown a criminal report of four persons who committed crimes against Muslims, Croats and Serbs which was only entered in the KU register of Teslic SJB in March 1993, despite the crimes having taken place in 1992.⁹⁴² ST-210 acknowledged that this is a clear indicator that regardless of when the crime was committed, the police worked to resolve those crimes.⁹⁴³ It can be inferred that similar gaps or omissions would be apparent across the RS MUP police force.

Inaccurate reflection of disciplinary statistics recorded in CSB Banja Luka logbook

435. Prosecution witness ST-125 acknowledged that there were probably many more disciplinary reports filed than those recorded (and reviewed during examination-in-chief) in the logbook.⁹⁴⁴ ST-125 further confirmed that without the full register of disciplinary proceedings (many of which were destroyed in 2006 as the deadline for keeping such records had expired), and without the books and meeting minutes from the SJBs as well as the reserve police files which were removed from the Registry, it was impossible to get a clear

⁹⁴⁰ P625; ST-165, NJEGUS, T.11468-11469, (09/06/10).

⁹⁴¹ [REDACTED].

⁹⁴² 2D99, SJB Teslic - Criminal report against Nedeljko Vukojevic et al re murder of Ivka Cosic and other crimes, 6-Mar-93. For crimes committed in 1992 and reported later, see also 2D100, SJB Teslic - Criminal report against Mirko Kitanovic regarding burning down houses owned by Croats, 8-Jan-93.

⁹⁴³ ST-210, VASIC, T.13806, (27/08/10).

⁹⁴⁴ ST-125, RODIC, T.8859-8860, (16/04/10).

picture of how the police conducted disciplinary procedures and applied measures.⁹⁴⁵ ST-125 also confirmed that the picture presented by the OTP of how disciplinary proceedings were conducted, the statistics and the general discipline of the police during 1992, was based on incomplete and inaccurate information.⁹⁴⁶

436. Prosecution witness ST-136, who worked as a prosecutor during 1992, was called by the Prosecution to illustrate the argument that very few Serb perpetrators were arrested. However, ST-136 was also forced to acknowledge a significant flaw in her methodology. She admitted that she “only counted the number of criminal reports, regardless of the number of perpetrators.”⁹⁴⁷ His Honour Judge Harhoff acknowledged the position of the Defence when confirming with the witness that “...it would seem that the number of perpetrators would for sure exceed ...[the number of criminal reports].”⁹⁴⁸

437. If more evidence was needed of Zupljanin’s genuine efforts to conduct his work professionally and not only record crimes but identify and arrest the perpetrators, the Defence underline Zupljanin’s criticism of his own investigative services (and those of the army) in failing to secure sufficient evidence or undertake specific activities to help identify the perpetrators.⁹⁴⁹

Conclusion

438. As the evidence set out above demonstrates, Zupljanin did everything that was within his power (and beyond) to protect the entire civilian population within the Krajina region including by taking every possible measure to investigate, arrest, and / or punish the perpetrators of crimes against Bosnian Croats, Bosnian Muslims and other non-Serbs.

⁹⁴⁵ ST-125, RODIC, T.8813, (16/04/10).

⁹⁴⁶ ST-125, RODIC, T.8860-8862, (16/04/10).

⁹⁴⁷ ST-136, GACINOVIC, T.15023; 15042, (29/09/10).

⁹⁴⁸ ST-136, GACINOVIC, T.15023; 15042, (29/09/10).

⁹⁴⁹ 2D127; [REDACTED].

CONCLUSION

439. The Prosecution have not proven beyond a reasonable doubt that Zupljanin participated in a joint criminal enterprise with a common criminal purpose of permanently removing all non-Serbs from the territory of the Krajina. Likewise, the Prosecution have failed to establish to the requisite standard that Zupljanin is individually criminally responsible for the acts or omissions of subordinate members and agents of the RS MUP who are alleged to have participated in the crimes charged. Accordingly, it is the Defence submission that as the Prosecution have not discharged their heavy burden of proof Zupljanin should be acquitted of all 10 counts in the Indictment.

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