

## **VIEW FROM THE HAGUE**

### **THE TRUTH ABOUT THE INDICTMENT AGAINST PAVKOVIĆ, LAZAREVIĆ, LUKIĆ, AND ĐORĐEVIĆ**

Since 22 October 2003, when the indictment against Nebojša Pavković, Vladimir Lazarević, Sreten Lukić, and Vlastimir Đorđević was made public, politicians and the accused have repeatedly misrepresented it. Here are the most common fallacies:

Many politicians claim Mssrs. Pavković, Lazarević, Lukić, and Đorđević are only indicted for command responsibility. This statement implies that the indictment does not accuse them of personally committing any crimes, but that their responsibility stems **solely** from the fact that they were military commanders. Although legally possible to be indicted only for command responsibility, in their case this is not true.

The indictment charges Mssrs. Pavković, Lazarević, Lukić, and Đorđević of planning, instigating, ordering, and otherwise aiding and abetting the commission of very serious crimes - the persecutions of the Kosovo Albanian population. These crimes include the following: the forcible transfer and deportation of some 800,000 Kosovo Albanian civilians, killing of over 700 named individuals, sexual assaults against many women, the wanton destruction or damage of Kosovo Albanian religious sites and other inhumane acts committed in Kosovo in 1999. In addition to this direct participation, the indictment *also* charges them for command responsibility, which means that as high ranking commanders, they can be held responsible for the acts of their subordinates.

#### **The Generals are not indicted just because they were doing their job**

Some are of the opinion that the four generals are indicted because they were "doing their job". This is not true. A commander's responsibility under international and domestic law is to maintain discipline over his troops, to take all possible measures to protect the civilian population, to prevent his troops from committing crimes against civilians and to punish every soldier under his command who committed a crime against a civilian. To indict military and police commanders the Prosecutor's office must be able to demonstrate, *inter alia*, that they failed to take any or all reasonable measures within their authority to prevent crimes from occurring and to punish those responsible for perpetrating them.

The media often states that the indictment against Mssrs. Pavković, Lazarević, Lukić, and Đorđević is actually an indictment against the Serbian state. This is not possible. According to its Statute, the ICTY does not have jurisdiction to try organizations, legal persons or any other collective body. Therefore, the indictment against Mssrs. Pavković, Lazarević, Lukić, and Đorđević cannot and does not charge the entire Serbian police force or the Yugoslav army. The indictment charges them as *individuals*, for their *personal* participation in persecuting, deporting, and killing Kosovo Albanian civilians.

Some politicians are of the opinion that if Sreten Lukić and the others were indicted for command responsibility, anyone can be indicted in this way. This is incorrect. As stated above, the Prosecution can indict military and police commanders only if it can demonstrate, *inter alia*, that they failed to take any or all reasonable measures to prevent their troops from committing a crime or to punish them for doing so.

It should be noted that the Prosecution's mandate is to focus on the highest level leadership figures who are responsible for crimes under its jurisdiction. In relation to crimes committed in Kosovo in 1999, the Prosecutor has indicted nine senior military, police and political leaders from

Serbia and three senior Kosovo Albanian leaders, all three of whom are in custody awaiting trial this year.

While the Prosecutor has said that investigations against other Kosovo Albanian leaders are still on-going, she has also stated that she is not conducting any further investigations against active military and police personnel in Serbia and Montenegro for crimes committed in Kosovo. However, this does not mean that the Prosecutor has identified and charged *all* those who may be responsible for crimes committed in Kosovo. The Tribunal shares jurisdiction with local courts and encourages them to continue investigating who perpetrated, planned, instigated, ordered or aided and abetted these crimes.

The media reported the views that the indictment against the four generals is the same as that against Slobodan Milošević, Nikola Šainović, Dragoljub Ojdanić, Milan Milutinović, and Vlajko Stojiljković, which was issued in 1999, so there must have been political reasons why this indictment was not issued then.

In relation to issuing indictments at the ICTY, one must keep in mind the following procedure: To issue an indictment, the Prosecutor must gather witness testimony and documentary evidence against *each* accused. In addition to that, after the Prosecutor signs an indictment, it has to be confirmed by an independent judge, in order to become an official document of the court. Before confirming an indictment, a Tribunal judge must be satisfied that the Prosecutor has presented sufficient evidence to establish that a *prima facie* case against *each* accused exists. The evidence on the basis of which the Tribunal issued the indictment against Pavković, Lazarević, Lukić, and Đorđević is on file with the court, and will be presented to the accused once they are in the Tribunal's custody.

#### **There is no agreement to transfer the case to Serbian courts**

Some politicians claim that the Office of the Prosecution agreed not to issue any further indictments for command responsibility, and that this indictment contravenes that agreement. This is not true. The Office of the Prosecutor has stated that it made no such agreement with any party in the conflict in the former Yugoslavia. Such an agreement would violate the basic principles of international and domestic criminal prosecutions. Besides, as stated above, Pavković, Lazarević, Lukić, and Đorđević are indicted for direct participation, not only for command responsibility.

There were assertions that discussions are held to try Pavković *et.al.* in local courts in Serbia. This is also not true. Contrary to assertions that have been made in the press, there is no agreement to transfer the case against the four generals to Serbian courts, and there are no negotiations to that effect. Senior leadership figures such as Pavković, Lazarević, Lukić, and Đorđević, will be tried in The Hague. As is the case with all other accused, the Tribunal expects the four generals to be arrested and transferred, in as much as they do not voluntarily surrender, at the earliest opportunity.

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