

PRISTINA DISTRICT COURT  
P 26/2001  
23 November 2001

## **IN THE NAME OF THE PEOPLE**

Pristina District Court, in a panel composed of Presiding Judge Agnieszka Klonowiecka-Milart and two international judges, Birgit Lange-Klepsch and Vagn Joensen, panel members, assisted by court recorder Maria Lenie Velasquez, in the trial against Aleksandar Mladenovic, son of [REDACTED] and [REDACTED], born on 25 April 1972 in Pristina, residing in Niš, a Kosovo-Serb and citizen of FRY, married, graduate of electro-technical high school, with average economic status, without prior criminal record, in detention since 17 November 2000, accused for war crimes against civilian population as in Article 142 of CCFRY and according to the indictment of Pristina Public Prosecutor, PP no. 315/2000, filed on 2 February 2001 as amended on 5 July 2001, after public hearings held on 14 June, 26 June, 16 July, 24 July, 3 August, 31 August, 11 September, 12 September, 5 October, 11 October, 12 October, 22 October, 29 October 2001 with the verdict pronounced on 23 November 01, in Pristina District Court, in a public session in the presence of Pristina Public Prosecutor, Kamudoni Nyasulu and Jane Mitchell<sup>1</sup>, international prosecutors, and in the presence of the accused and his defense counsels Živojin Jokanović and Vladimir Bozović, pronounced the following

## **VERDICT**

Aleksandar MLADENOVIC is ACQUITTED pursuant to Article 350 item 3 of the LCP.

Pursuant to Article 99 paragraph 1, the Panel decides that all costs of the proceedings will be borne by the budget of the administration of justice.

## **REASONING**

### **The charges**

1. Originally, by Indictment Pp.no. 315/2000, of 2 February 2001, Pristina Public Prosecutor charged Aleksandar Mladenovic for jointly committing the criminal act of causing general danger, in a place where a large number of people were gathered, as per Article 157, Para 1 and 2 of CLK, damaging another person's property as per Article 145 of CLK in connection with Article 22 of CCFRY, the act of armed robbery, as per Article

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<sup>1</sup> Prosecutor Jane Mitchell appeared for Prosecutor Kamedoni Nyasulu only at the pronouncement of the verdict.

137 of CLK, and finally the criminal act of aggravated theft, as per Article 135 of CLK in connection with Article 22 of CCFRY.

2. After the commencement of the trial, on 5 July 2001, Public Prosecutor amended the indictment, thus charging the defendant for War Crimes against civilian population because the criminal acts attributed to him in the original indictment were committed while Kosovo entered a state of war (24 March until 12 June 1999) and because all the crimes alleged were committed by the accused as part of an organized group with the purpose of expelling Kosovo Albanians out of Lipjan and Kosovo.

### *Statement of Offence*

3. The statement of offence submitted by Pristina Public Prosecutor alleges the following events, specified as counts:

#### Count 1

4. On 24 March 1999, unidentified masked perpetrators launched a grenade into the coffee bar “Marigona” in Lipjan, which was being run by the Kosovar Albanian, A [REDACTED] G [REDACTED] who was forced to leave Lipjan. When he returned three days later, he found the accused together with S [REDACTED] and D [REDACTED] K [REDACTED] stealing from the coffee bar “Marigona”. They had taken a stereo system with speakers, refrigerators and an ice-making machine. The accused and his accomplices committed the criminal acts of dislocation of the civilian population, confiscation of the property, illegal destruction of the property and stealing, by use of intimidation and terror.

#### Count 2

5. On 4 April 1999 in Lipjan, with other individuals, Aleksandar Mladenovic participated in burning the houses of R [REDACTED] and H [REDACTED] S [REDACTED] and three houses of the H [REDACTED] family, as well as setting fire to two tractors (brands: “Rakovica” and “Fergusson”) owned by Sh [REDACTED] J [REDACTED] in the Banulla village. While one of the houses owned by R [REDACTED] and H [REDACTED] S [REDACTED] were burning, about 33 women, members of the family and refugees were in houses about five to six meters away.

6. The accused therefore seriously jeopardized other people’s lives, their physical integrity and property and committed the criminal act of damaging another person’s objects. His actions were a clear measure of intimidation, which caused the dislocation of, and immense suffering and terror to the victims, their families and their neighbors. This was inhuman treatment. The destruction of the houses itself was illegal.

7. On the same date in Lipjan, the accused used force by hitting R [REDACTED] S [REDACTED] in his face and on his head with the butt of a gun in order to take 1200 DM from him. He used force to pull a female member of the Salihu family into a separate room where he took off her clothes and took from her 1000 DM. Furthermore, he used force to take away jewelry from 33 refugee females present in the house before he set fire to it. The accused

and his accomplices applied intimidation and terror to perpetrate on their victims immense suffering and inhuman treatment. They also committed the criminal act of stealing which was aggravated by their violence.

### Count 3

8. On 22 April 1999, in the area Glllogovac village, the accused together with two others stopped Kosovar Albanian M [REDACTED] F [REDACTED] on his way from Lipjan to Gumnasella, hit him in the stomach with a fist and kicked him in the chest, before taking 5120 DM from him. The accused and his accomplices used intimidation again and terror to perpetrate inhuman treatment and suffering, accompanied by the criminal act of stealing which was aggravated by violence.

### Count 4

9. On the night of 31 May 1999, in implementing a plan to expel Kosovo Albanians, a part of the civilian population, out of Lipjan and out of Kosovo, the accused, together with two other persons attempted to destroy by fire the house of F [REDACTED] D [REDACTED] a Kosovar Albanian in Lipjan, by throwing “Molotov cocktails” onto the house, while the D [REDACTED] family were inside. Later, the accused and his accomplices are alleged to have set the house on fire. The destruction of the house was itself illegal. The accused committed the criminal acts of unlawful damage to another person’s property, causing general danger by using intimidation and terror in the execution of the plan to expel the Kosovar Albanian civilian population out of Lipjan and out of Kosovo.

### Count 5

10. On 4 June 1999, the accused together with male persons participated in the burning of houses belonging to several Kosovo Albanians in Lipjan, including: the houses of the B [REDACTED] family, the house of A [REDACTED] B [REDACTED], B [REDACTED] K [REDACTED] and F [REDACTED] D [REDACTED]. The destruction of the houses was illegal and self-willed. The accused committed the criminal acts of unlawful damage to another person’s property and dislocation of the civilian population, causing immense suffering, inhuman treatment, intimidation and terror.

### Count 6

11. On 5 June 1999, the accused jointly with unidentified accomplices entered into the house of a Kosovo Albanian, A [REDACTED] [REDACTED] in Lipjan at [REDACTED], demolished the house and stole a tape recorder, a telephone and a water pump. This amounted to the criminal act of illegal destruction of property, stealing and dislocation of the civilian population using intimidation and terror, causing immense suffering.

### Legal qualification by the Prosecutor

12. The Prosecution submitted that all the foregoing criminal acts fell under the statutory definitions of the underlying offences of war crimes, determined by Article 142 of Criminal Law of FRY, and at the same time amounted to violations of Geneva Convention on the Protection of Civilians During the War of 1949, that had been ratified by FRY together with Additional Protocol I in 1978. These criminal acts were committed by the accused when Kosovo was in a state of war, between 24<sup>th</sup> March and 12 June 1999.

13. Further in his argument the Prosecution articulated two attendant elements of a war crime that needed to be proven: [a] that the commission of the criminal acts was organized as a part of the war, and [b] that the offender took part in that organization. The Prosecution pointed out that all acts were committed by a group of co-perpetrators that comprised different types of people [military, police, paramilitary], wearing different types of uniforms, utilizing different equipment, however always arriving or accompanied by state-owned vehicles. This group was defined by the Prosecution under a collective term of “Serb forces”. Notwithstanding whether they were military, police or persons identified by the victims as “paramilitary”, their course of conduct in all incidents was always the same: in that they applied intimidation by beating, looting, and burning houses. All being the implementation of an overall plan of intimidation of Albanian population with the main objective to expel this population from Lipjan.

14. The Prosecutor argued that although only 4 out of 11 witnesses saw the accused in uniform, another one saw him in “black clothes” associated with a paramilitary outfit. According to some witnesses, the accused himself was not seen in uniform, but other members of the group wore uniforms and/or were identified as persons holding positions in the army or police, or were dismissed from the army and became paramilitary. The group, as defined by the Prosecutor, consisted of all three types of forces combined, but their conduct resulted with the same effect and followed the same pattern, facilitated by the State’s supplying of equipment, weapons and vehicles. Therefore acts charged in this case cannot be considered as isolated incidents, but belonging to an overall plan. The Prosecution did not maintain that the accused committed all the acts himself, but that he participated in the State’s plan and thus was responsible for the acts of the group based on accomplice responsibility. Therefore from ordinary crimes his acts grew to the grievance of the war crime.

#### **Evidences and Law Pertaining to the War Crimes Qualification.**

15. The Court was surprised when the Prosecution amended the Indictment to allege War Crimes under Article 142 of the FRY Criminal Code, but then did not prove, and for many issues did not even attempt to prove, the necessary elements of that qualification.

16. The Prosecution during the case appeared to take for granted the existence of critical elements of a war crime, contrary to the need to prove such elements. Upon reading SFRY CC Article 142, the applicable Legal Commentary, and reviewing pertinent international humanitarian law agreements and law, it is obvious that the elements of an Article 142 war crime which must be proven are:

1. An act or omission, *actus reus*, of the perpetrator, as listed in Article 142, with the accompanying
2. *Mens rea* of the perpetrator,
3. Status of the perpetrator, that is, who orders or commits,
4. Status of the victim,
5. Armed conflict, in particular its
  - a. existence
  - b. parties and
  - c. character [internal or international];
6. Nexus of the perpetrator's acts to the Armed Conflict;
7. That this criminal conduct must also be a violation of international law

The Prosecution did not even argue or attempt to prove most of these elements.

17. *Actus Reas, Mens Rea, and Status of the Perpetrator*: These separate requirements seem to be merged by the Prosecution, which requests the Court to find the accused criminally liable for all crimes done by "Serb Forces" in the area, even if the accused himself did not personally do those acts. Yet Article 142 requires the accused to either order or commit. It is also true, however, that criminal liability may also be found against the accused even if he has not ordered or personally committed the proscribed acts, through the principles of complicity, Art 22 SFRY CC; Incitement, Art 23 SFRY CC; or Aiding, Art 24 SFRY CC. Yet these bases of liability must also be proven based on facts. The Prosecution does not prove the accused's liability under any of these theories.

18. Rather, the Prosecution simply assumes the accused's liability based on assumptions which were built upon other assumptions. The Prosecution first made the unproven assumption that the 3 groups of the military, police, and vaguely-defined paramilitary forces are all part of one group with apparently one overall plan of intimidation and goal of expulsion, also referred to as the 'State's plan,' which is then classified without more evidence as "Serb forces." Neither this plan of intimidation or goal/State plan of expulsion is proven.

19. Second, the Prosecution then assumes that the accused is part of the "Serb forces" group, without clearly identifying which subgroup to which he belongs, since he is seen in uniforms, paramilitary black, and civilian clothing, these witnesses thus giving contradictory testimony. Indeed, the accused is also seen with and without a firearm.

20. Third, the Prosecution then assumes that the accused had the *mens rea* of intimidation of the Albanian population, apparently with the objective to expel the population from Lipjan, and thus was part of the "Serb forces" and accordingly liable for all acts of the group based on accomplice liability, although the Prosecution does not attempt to prove the *mens rea* and *actus reas* requirements of Art. 22, such as joint participation.

21. In sum, the Prosecution simply assumes that a Serb who is in proximity of the police or military or paramilitaries is automatically one of that group with the aims and *mens rea* of that group, whatever they may be. However, during this time, when the Serbian government called up and armed many of its civilians with past military experience, and declared war against NATO, it cannot be assumed that the mere presence near or around others in such groups, even if armed, can be in itself equated to physically and mentally joining them for purposes of criminal liability. No attempt was made to prove more than mere proximity to such “group,” which was in itself consisting of different groups and individuals, which were not necessarily homogeneous in purpose or action.

22. Armed Conflict. The Prosecution does not even discuss the issues involved with the need to prove the existence, parties to and character of an Armed Conflict. That there was a declaration of war by Yugoslavian authorities against NATO does not automatically cause this to be an Armed Conflict as between the Kosovar-Albanians and Serb authorities, and the issue of Nexus also requires proof of an Armed Conflict involving the Kosovar-Albanian victims, at least as relating to the war effort to the advantage of the Serbs. Thus the parties to the conflict must be articulated in the proof. Yet the Prosecution did not even articulate any of the parties. Even if the Prosecution had claimed that the Kosovar-Albanian “party” is acting on behalf of or in concert with NATO, that must be proven. Otherwise, the character of the conflict concerning the Albanian-Kosovar and Serb forces may be only internal.

23. As to the existence of an armed conflict, it must be proven that it is not a situation of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as defined in Additional Protocol II, Art 1(2). Once there is proven a conflict exists, the issue is at what level. Article 3 common to four Geneva Conventions directly applies to non-international armed conflicts, but the level of hostilities required to “qualify” under Article 3 is lower than that defined in the Additional Protocol II, Art. 1, which is harder to prove, but accordingly provides a higher level of protection for civilians.

24. Nexus. There must be a nexus between the alleged crime and the relevant armed conflict. Where the Prosecution has not yet attempted to prove whether it was an international or internal conflict, it could then hardly have proven this nexus requirement.

25. This is also a requirement under international law. See ICTY *Tadic* Appeals Chamber jurisdiction decision (1995), para. 70 (“closely related to the hostilities”); ICTY *Kunarac* Trial Court Judgment, paras. 402 and 407 (“a close nexus”), ICTY *Delalic* Trial Court judgment, 16 Nov. 1998, para. 193 (“an obvious link”), and *id.*, para. 197 (“a clear nexus”). The existence of an armed conflict must, at a minimum, have played a substantial part in the perpetrator’s ability to commit it, his decision to commit it, the manner in which it was committed or the purpose for which it was committed. Hence, if it can be established...that the perpetrator acted in furtherance of or under the guise of the armed conflict, it would be sufficient to conclude that his acts were closely related to the armed conflict.” ICTY *Kunarac* Appeals Chamber judgment, para. 58.

26. In determining whether or not the act in question is sufficiently related to the armed conflict, the following *factors*, amongst others, may be relevant: the fact that the perpetrator is a combatant (or a member of the armed forces or an armed group); the fact that the victim is a civilian or a non-combatant; the fact that the victim is a member of the opposing party; the fact that the act may be said to serve the ultimate goal of a military campaign; and the fact that the crime is committed as part of or in the context of the perpetrator's official duties. See ICTY *Kunarac* AC judgment, par 59.

27. This is the applicable law, but unfortunately the Prosecution did not even argue or attempt to prove the factual circumstances that would support an argument on this Nexus requirement.

28. Violation of International Law. Each act committed by the accused must be proven to be a violation of international law. For example, the scope of international law relating to non-international armed conflicts is more limited than the law relating to international armed conflicts. If the Serbian/Kosovar-Albanian conflict is characterized as an internal conflict, not all of the conduct otherwise listed in Art 142 is prohibited by international law. If conduct referred to in Art 142 is not prohibited in Article 3 common to four Geneva Conventions, or Additional Protocol II, it cannot be a war crime in an internal armed conflict pursuant to Art 142.

## **Evidences pertaining to individual counts**

### Count 1

29. Witness A■■■■ G■■■■ owned a two-story house in Lipjan, which had a coffee shop on the first floor. On 24 March 1999, while the air strike against Yugoslavia had started, A■■■■ G■■■■ heard people outside his house, calling him. By looking discretely outside the window he saw three unknown people. Three cars drove by. Half an hour later, two masked men came and threw a grenade at his coffee shop, which exploded, breaking all the windows. He left his house the next day and sheltered elsewhere.

30. Three days later, when he returned to his house he found Aleksandar Mladenovic and two others, D■■■■ K■■■■ and S■■■■. Dejan was taking a coffee maker, a stereo with speakers, two refrigerators, an icemaker and other valuables out of the coffee shop. D■■■■ told A■■■■ G■■■■ that he was taking his items to safeguard them for him. When A■■■■ told Aleksandar Mladenovic to take some items, Aleksandar Mladenovic replied he did not need anything.

Then thirty other Serbs surrounded him carrying a flag. A■■■■ G■■■■ pleaded them to take his things but not to hurt him. D■■■■ K■■■■ announced that G■■■■ owed him money and the items taken from the cafeteria served to secure that debt. A■■■■ G■■■■ agreed for such representation, according to him, out of fear. A few days later his house was

completely burned. A [REDACTED] G [REDACTED] does not know who burned his house, but he suspected Aleksandar Mladenovic and his friends because of what he had seen.

*Statement of the accused*

31. The accused confirmed having approached G [REDACTED]'s cafeteria at the time when Dejan Kostic was taking things belonging to G [REDACTED]. It was however explained to him as being part of an agreement between G [REDACTED] and K [REDACTED], concerning the execution of G [REDACTED]'s debt. The accused further confirmed that he was aware of the fact that D [REDACTED] K [REDACTED] was utilizing items originating from G [REDACTED]'s cafeteria.

Count 2

32. R [REDACTED] S [REDACTED] begins his narration of events, which took place two years previously, by stating that these events commenced at 13.25 p.m. when the defendant "and his friends" arrived on tanks and trucks and broke into his yard. At first he testified that all the attackers wore black clothes and bandanas; later he changed his testimony claiming that they had "police, military and paramilitary uniforms", all of them black. According to one of his versions he recognized only Aleksander Mladenovic who wore black civilian clothes and two bandanas, one wrapped around the top of his head, the other wrapped around his chin, showing however his nose and his eyes. Other persons from his group wore black masks. The witness believes they were locals. Later he adds, however, that not all of the attackers wore masks. Those who did not wear masks remained outside the yard. The witness saw them and knew that they were all from the same place. The witness further changes his testimony and states that Mladenovic wore a black paramilitary uniform. All these versions though differ from his testimony in the investigation, when R [REDACTED] S [REDACTED] characterized the attackers as the police and claimed to have recognized among them, in addition to the defendant, persons called C [REDACTED] C [REDACTED] I [REDACTED] and S [REDACTED]. When confronted with this testimony in trial, R [REDACTED] S [REDACTED] stated that at a certain point, when in the yard, Mladenovic had taken off his mask. Earlier, however, when asked whether the accused was sporting a beard, he claimed he could not see it because of the mask.

33. According to the witness, during this time, Aleksander Mladenovic took him to the corridor of the so called "new house", took 1200 DM from him and then led him out to the yard, hit him with the butt of his gun causing him to fall to the ground. Then Mladenovic tied the witness' hands behind his back with a rope and left him there. Together with the others, the defendant then entered the other house in the yard, the "old house", where at the time around 30 refugees were staying. R [REDACTED] S [REDACTED] did not see what happened in the old house. He was released by one C [REDACTED] and escorted out together with his brother B [REDACTED]. He returned after around 1,5 hour, having escaped Serb escort. He was not present when the houses were set on fire. Based on what he heard from family members, however, he accuses Mladenovic of robbing valuables from the refugees, beating B [REDACTED] S [REDACTED] and burning down the houses.



34. In the investigation R████ S████ stated to have seen Mladenovic taking items stolen from the house and loading them into a Pitzgauer. In trial, however, he said that he had been immediately taken away, and what he had said in the investigation was actually seen by his brother. Several times in his trial testimony R████ S████ defers to his brother H████, who allegedly had seen the event in more detail.

35. Regarding the involvement of H████ S████ in the event, R████ S████ testifies that he came from his own house to warn them about the Serb forces coming. Having warned R████ H████ S████ left the yard and went to a safe place before the Serbs entered the yard. B████ S████ maintains he does not know where H████ was staying during the events that followed, because H████ never told him. The witness gives contradicting statements concerning whether or not he and Hasim discussed the event later on.

36. According to H████ S████ on the critical day, which this witness determines as 3 April 1999 at 1:25 p.m. Serb forces arrived equipped with a tank, armed personal carriers and trucks. They consisted of three groups: military in green uniforms, police in blue uniforms and paramilitary wearing black uniforms and scarves tied on their heads, the latter outfit being worn by Aleksander Mladenovic. According to H████ S████'s testimony given in the investigation, however, the whole group, the defendant included, was characterized as the police, wearing police uniforms.

37. H████ S████ claims to have been in his brother R████'s yard when four policemen broke the gate and entered the yard. H████ S████ and his other brother, B████, started to run away. B████ got caught but Hasim managed to escape by jumping over a wall into the adjacent yard and hiding in a haystack. Serb policeman followed him, but gave up having reached the wall. After some time H████ S████ came out of the haystack, approached the wall and removed one brick from it. From that location he watched the defendant take R████ into the new house, while another Serb, called Svetar, took a jacket and a ring from B████ S████. At that moment H████ S████ could see that the skin was peeled off B████'s finger. When R████ emerged out of the house, there was blood on his face; he was forced to lie down on the ground and handcuffed.

38. The witness testifies that next the police beat B████ S████ and robbed the remaining family members of their valuables and set the new house on fire. R████ and B████ both tied up, were brought close to the tank positioned at the gate of the house. Then the defendant returned to the yard and set the old house on fire.

39. The witness admitted in trial that an incident which he had described in the investigation as seen by him personally – an assault on a young female, in the course of which her mother intervened, got hit and 1000 DM was robbed from the young female – was hearsay. The witness failed to explain based on what information he had determined and stated before the investigating judge that Aleksander Mladenovic was the perpetrator in that incident.

40. H [redacted] S [redacted] had seen Aleksandar Mladenovic wear a uniform only on the day described above because he says he did not go out during the war. He says he saw him singing songs and cursing Albanians because of his brother's death. He did not know the whereabouts of the defendant after the war ended. He said he assumed Aleksandar Mladenovic was gone, and heard the Mladenovics sold the house but does not know exactly when. He recognized Aleksandar Mladenovic the day he was arrested and denounced him to the police.

41. The last of the brothers, B [redacted] S [redacted] places the event on 3 April 1999 exactly at 1.25 p.m., a fact which the witness states with certainty, because "we had watches on our wrists". According to B [redacted] Aleksander Mladenovic arrived dressed in black uniform-type clothes, was heavily armed and had a scarf wrapped around his head as a band, so that his face remained uncovered. At that moment B [redacted] S [redacted] was in the yard together with his wife and his daughter.

42. Mladenovic searched B [redacted] and sent him into the old house. There, in the corridor, he hit him several times and took 300DM from him. Next, according to the witness, Mladenovic took the witness' wife to a separate room, stripped her down to her underwear in search for valuables. Then, in another room he did the same to the witness and on this occasion took a leather jacket from him. Afterwards, B [redacted] S [redacted] was lead out to the yard where Mladenovic took a ring from him. B [redacted] S [redacted] found himself beside his brother R [redacted] both were made to lie down on the ground and tied. Later, Mladenovic untied their hands and both R [redacted] and B [redacted] were escorted out of the yard. They did not see the houses being set on fire, B [redacted] found out about it only the next morning.

43. B [redacted] S [redacted] cannot state anything about the appearance and acts of other persons who arrived together with Mladenovic, because he was shocked and concerned about his family. However he assures that from the moment when the Serbs invaded the yard of their house until he and R [redacted] were taken out, Aleksander Mladenovic was beside him the entire time and thus could see all his acts. Apart from that day B [redacted] S [redacted] did not see Aleksander Mladenovic wear a uniform.

44. Witness S [redacted] S [redacted], wife of B [redacted] S [redacted], and alleged victim of Mladenovic's assault, stated that the incident occurred without other persons present in the room, just the perpetrator and her, [i.e. it did not involve her mother]. Further, the perpetrator wore a black mask, which excluded recognizing him. In trial the witness did not identify Aleksander Mladenovic as a participant to any part of the events of 4 April 1999.

45. Witness N [redacted] H [redacted] stated that a group of people went into R [redacted] S [redacted]'s house, whereas others went to H [redacted]'s house, where they broke some items and took away other items such as electric appliances, VCR, computer and jewelry. They burned it afterwards with explosives shot from their guns. They were in military and police uniforms and had masks. The witness identified only a person called I [redacted] among them.

46. According to the testimony of S [REDACTED] I [REDACTED], the troops that pillaged and burned houses in Lipjan on 4 April 1999 wore one type of uniform, common for police and military and some of them wore masks. He saw them go to the house of H [REDACTED] S [REDACTED] and burn the house of R [REDACTED] S [REDACTED] and subsequently to a third house and to a fourth, belonging to Sh [REDACTED] J [REDACTED] where they burned two tractors and a car. Further, they burnt three houses belonging to Nj [REDACTED] H [REDACTED]. Those whom he saw exiting S [REDACTED]'s yard were wearing masks. He did not identify Aleksandar Mladenovic on that occasion.

47. Witness B [REDACTED] I [REDACTED] J [REDACTED] was proposed by the Prosecutor to testify about work obligations pending the conflict. Instead he volunteered information according to which a group consisting of police military and paramilitary had come to Banulla and looted the house of his neighbor, H [REDACTED] S [REDACTED], beat him and maltreated his family. B [REDACTED] I [REDACTED] J [REDACTED] does not explain how was he able to see what happened in his neighbor's house.

48. A [REDACTED] B [REDACTED] says he happened to be in Banulla by coincidence on 3<sup>rd</sup> or 4<sup>th</sup> of April and saw that R [REDACTED] and H [REDACTED] S [REDACTED]'s houses were burned. He did not see though who set them on fire.

### Count 3

49. On 22 April, witness/injured party M [REDACTED] F [REDACTED] was traveling to Gumnaselle village. Close to the village of Glogovc, while approaching the house of one R [REDACTED], he saw Aleksandar Mladenovic with two other individuals exiting the house at issue. They were all wearing masks and dressed in uniform, but among them M [REDACTED] F [REDACTED] recognized Aleksandar Mladenovic, recognition that he says he had the chance to confirm later on that same occasion.

50. M [REDACTED] F [REDACTED] while close to R [REDACTED]'s house saw that it was emitting smoke, as was the house of H [REDACTED] B [REDACTED]. A third house, belonging to H [REDACTED] B [REDACTED] was crumbling from fire.

51. Aleksandar Mladenovic grabbed M [REDACTED] F [REDACTED] and beat him, asking for money. Then his other companions joined Aleksandar Mladenovic in beating M [REDACTED] F [REDACTED] and pulled from his shirt pocket an amount of 5120 DM. At that point, Aleksandar Mladenovic called upon one of the paramilitaries and while doing that he pulled up his facemask to his brow line. On that moment, M [REDACTED] F [REDACTED] confirmed his earlier guess on the identity of Aleksandar Mladenovic. Then Aleksandar Mladenovic told M [REDACTED] F [REDACTED] "straight to Skopje."

### Count 4

52. According to Sh [REDACTED] D [REDACTED] on the 31<sup>st</sup> of May, he and his family, while in their house, were unexpectedly attacked by what appeared inflammable liquid, a.k.a. Molotov cocktails, pre-ignited and thrown against their residence. The bottles did not hit

the house. At some point during the attack, the group started firing shots. Only one shot hit the house, striking down the chandelier of one of the rooms.

53. On 1<sup>st</sup> of June, the defendant visited the D█████'s house, ostensibly to inquire about damages in the electric network. However, while he was leaving the yard, the defendant was heard to have commented in Serbian: “fuck his mother, we did not do anything to him!”

54. Witness A█████ I█████ confirms what Sh█████ D█████ stated. A█████ I█████ stated to have seen the defendant shooting at the house of Sh█████ D█████ on the night of 31<sup>st</sup> May. In addition, he says he saw smoke rising from the house of the D█████'s, but eventually the fire was extinguished and it was not burnt. A█████ I█████ saw all events from a manhole, located in his yard, where he would spend nights during the war in Kosovo, in an attempt to guard his house. He also witnessed Aleksandar Mladenovic visit Sh█████ D█████ the morning of 1<sup>st</sup> of June to find out about any electricity problems caused by the night before.

55. The accused confirmed having visited F█████ D█████'s yard on the next day after the attack, he stated however that this was within his official duties as an electrician.

#### Count 5

56. Sh█████ D█████'s family was sheltered in another accommodation after the incident of 31 May. On the 4<sup>th</sup> of June, they decided to leave Lipjan, having heard that the Serb police forces urged other members of the community to leave. That night, Sh█████'s wife and mother – who were not residing in the house any longer -- saw a vehicle close to their house, while the house was on fire. Sh█████ went to check on the house himself and noticed Aleksandar Mladenovic leaving the yard of his house.

57. A█████ B█████'s house was burned on the 4<sup>th</sup> of June. On the 4<sup>th</sup> of June, sometime around 21:30, a group of policemen and paramilitary, armed with automatic weapons came to his brother's house. They were wearing bandanas in their foreheads. A█████ B█████ however was unable to give a clear description of the uniforms worn by the people he saw in the yard. He commented that he could distinguish between the different troops through insignia particular to each group and because paramilitaries were thought to have clean-shaven heads or sport beards. None of them was wearing masks.

58. A█████ B█████, along with his father, was present at his brother's house when six or eight people in uniform entered the yard, set fire to the animals feed and burned the house. He identified among the group; the defendant, an old policeman, whose name is P█████ or P█████ as well as Z█████ P█████. After burning the house, they threatened the B█████ family and told them to leave Lipjan. The group, sang nationalistic songs, such as “The beautiful house is burning!” The commander of the police and the chief for Lipjan watched these events. After setting the house on fire, the group burned the animal feed as well. A█████ B█████ does not know who exactly entered the house or set it on fire.

59. From the light emitted by the fire, A [redacted] B [redacted] was able to distinguish the defendant, his father [redacted] and P [redacted] the old policeman. The defendant was wearing a paramilitary uniform. A [redacted] B [redacted] does not recall anything specific on how Aleksandar Mladenovic looked, especially with regards to his clothing or haircut. He had known Aleksandar Mladenovic for ten years by then due to the defendant engaging in what he called “threatening” and “provocative” behavior.

60. He did not see Aleksandar Mladenovic after the war ended or wearing a uniform after the 4<sup>th</sup> of June. He says he had seen Aleksandar Mladenovic carrying always a handgun and cursing, swearing or demonstrating ethnic hate. A [redacted] B [redacted] does not remember seeing the defendant after the war, but knew that his house was sold awhile after the war ended. He learned that Aleksandar Mladenovic was arrested through unidentified sources. He was told that “one of the most active perpetrators in Lipjan” was arrested. He attributed to the defendant and Z [redacted] P [redacted] the instigation of all crimes that happened in Lipjan.

61. Af [redacted] I [redacted] On 4<sup>th</sup> of June he saw Aleksandar Mladenovic with S [redacted] D [redacted] and Z [redacted] P [redacted] approaching the D [redacted]’s house and calling out, but no one answered.

62. A group of about 30 people set the D [redacted] house on fire. They continued with the house of M [redacted] B [redacted] and subsequently did the same with the house of A [redacted] B [redacted] and B [redacted] K [redacted]. Afterwards, they talked to B [redacted] A [redacted] at his house and instructed him to tell every inhabitant of that street to leave their houses.

63. Witness B [redacted] E [redacted] states that a reserve policeman, Z [redacted] P [redacted], with three other individuals went to his house and told them to leave, or they would be shot. Z [redacted] was in civilian clothes. B [redacted] E [redacted] does not remember any detail about the other two men, as they were not close to him. B [redacted] E [redacted] does not provide any further details about their weapons, only that they were large weapons.

64. Later that night, Sh [redacted] D [redacted] came and told him that he had seen his house in flames. In addition, Sh [redacted] D [redacted] said he saw three individuals, the defendant being one of them. It is unclear how many individuals, Sh [redacted] D [redacted] commented to have seen because B [redacted] E [redacted] is inconsistent in his recollection. (??verify with minutes). Later in his statement, B [redacted] E [redacted] made an unclear comment suggesting that Sh [redacted] D [redacted] did not tell him the name of the defendant specifically, it being unnecessary because the same people, quote: were involved in “these things” and at the same time mentioned that Sh [redacted] D [redacted] did mention Aleksandar Mladenovic’s name that same evening.

#### Count 6

65. According to A [redacted] I [redacted], the morning after the burning of Sh [redacted] D [redacted]’s house, Aleksandar Mladenovic came with other people and took a tape recorder, a

telephone and a water pump from the house of A [REDACTED] I [REDACTED]'s brother. In the end, they demolished the house.

66. The next morning, on 5<sup>th</sup> of June, Sh [REDACTED] D [REDACTED] saw the accused and another individual entering another house (belonging to one S [REDACTED]) from where they stole some items.

67. On the following day, B [REDACTED] E [REDACTED] at some point of time which he is unable to remember precisely, says he saw the defendant from a distance of 100-120 meters while he and another unidentified person entered the house of Sh [REDACTED] I [REDACTED]. The defendant was wearing civilian clothes. He specified he never saw Aleksandar Mladenovic in uniform, but knew he was in the reserve. He never saw him armed either. He saw Aleksandar Mladenovic arrive by a civilian car, white or beige color. The following morning, the defendant and Z [REDACTED] P [REDACTED] went to the house of Sh [REDACTED] I [REDACTED]. However, B [REDACTED] E [REDACTED] did not see what they did inside. He left before they exited the house.

68. B [REDACTED] E [REDACTED] says he knew the defendant from before. While he never recalls to have had any personal experience of conflict with Aleksandar Mladenovic, he claims to have seen him beat some teenagers on one occasion. B [REDACTED] E [REDACTED] did not speak to any of the S [REDACTED] brothers on the issue while, on the other hand, he meets and talks to Sh [REDACTED] D [REDACTED] everyday.

### **Supporting evidence**

69. Sometime at the end of March 1999, witness/injured party B [REDACTED] A [REDACTED] alleges he had a power cut. The defendant, who at the time was an employee of the Elektro-Kosova Company, came to cut the electric connection of the house because the witness had not paid his overdue bills. On that occasion, B [REDACTED] A [REDACTED] says the defendant commented that he [B [REDACTED] A [REDACTED]] would not need power because the house would be burned anyway.

70. B [REDACTED] A [REDACTED] left Lipjan around the time of April 1999 after the Serb police forces told his uncle's family to leave. His house was burned while they were away. The witness does not know who burned his house but suspects the defendant and his accomplices, based on his prior comments from March.

71. According to I [REDACTED] H [REDACTED] Aleksandar Mladenovic lived in the same building where the witness worked. The witness knew him for a long time and never saw him in a uniform. The witness maintains however that in 1998 he saw Aleksander Mladenovic participate in an anti-Albanian demonstration. During the conflict Mladenovic would host in his cafeteria one Dragan Dejanovic, a paramilitary who harassed H [REDACTED] I [REDACTED]. H [REDACTED] states that on that occasion Aleksander Mladenovic saved him, but on other occasions he would hurt other people. The witness does not explain how Mladenovic hurt other people; he only states that as a civilian the accused was responsible for the acts of others. Further, the witness blames Aleksander Mladenovic, based upon a hearsay, that in

his cafeteria Mladenovic consumed meat from the cows that were stolen from the witness' farm.

72. I [redacted] H [redacted] saw the defendant and spoke to him after the war ended. He was approached by injured party, H [redacted] S [redacted] who urged him to testify. Following that, the witness expressed his willingness to provide his testimony.

73. In the end of his testimony pertaining to Count 2, H [redacted] S [redacted] mentions seeing, the defendant together with several other Serbs entering the house of B [redacted] I [redacted] J [redacted] two days after the event of 3 April. This incident was reported for the first time in trial, the witness did not mention it in the investigation.

74. B [redacted] I [redacted] J [redacted] testified that on the day after the houses belonging to the S [redacted] were burned, a group of paramilitary, former reservists of Serb army, sporting "chetnik" stars on their hats, looted his house and maltreated his family. The witness did not recognize anyone among them hence he assumes that they were strangers to the area. He claims however that his father told him that he had recognized "Blaza's" son [i.e. the accused] among the perpetrators.

#### **Aleksander Mladenovic's defence of alibi**

75. According to D [redacted] R [redacted] D [redacted] M [redacted] V [redacted] G [redacted] and M [redacted] K [redacted] colleagues or co-workers of the accused, Aleksandar Mladenovic was never drafted during the conflict or indeed during the any point while the state of war was declared. The witnesses never saw him in uniform. Aleksandar Mladenovic worked as an electrician and after the proclamation of the state of war fell under work obligation. Similarly, V [redacted] R [redacted] who was a co-worker of Aleksandar Mladenovic, confirmed his daily presence at work during the conflict as a work obligation

76. G [redacted] M [redacted] was Aleksandar Mladenovic's supervisor in the electric company. They worked before, during and after the conflict in Kosovo, ensuring the running of the electric supply in all areas. G [redacted] M [redacted] himself was mobilized during the war for few days. Afterwards, he was released from the obligation to attend his work obligations. Aleksandar Mladenovic was not drafted. Rules effective during the conflict instructed employees to refrain from leaving the premises of the company during working hours and/or to be close in the case the need would arise. The employees were given permission to leave for a few hours for family emergencies or whenever they had worked long shifts the day before. They were forbidden to work at nighttime. Normally the electricians used a Lada car of the company to get around. Their uniforms, when they were used, consisted of a blue blouson with insignia and khaki trousers.

77. As a result of the bombing campaign, many facilities were destroyed, which meant a higher workload for their company. At times they repaired power lines, at other times after a fire or burned fuses they were engaged in repairing those. G [redacted] M [redacted] recalls about 10-12 cases of this nature. Houses in Lipljan's Ciganska

Mahala were burned too, their wires falling on the ground. After the police informed them, the witness with a team – Aleksandar Mladenovic among them – went in to repair. The police were always present during the repairs. In several villages, his unit handled bill collections upon the request of the inhabitants. Inhabitants tried to avoid accumulation of bills for high consumption of energy in those villages where refugees were sheltered. As a rule, when 60 percent to 70 percent of the village did not pay bills, the electricity was cut for the entire village. However, during the bombing all villagers had their power supply up and running.

78. The witness and other members of his unit worked even after KFOR entered in Kosovo, until 28 June. Aleksandar Mladenovic worked with him as well and remained in Lipljan until winter.

79. Witness G [REDACTED] M [REDACTED] was a co-worker of Aleksandar Mladenovic at Elektro-Kosova, including the time of conflict in Kosovo, when their workload was especially heavier because of the bombing. They covered power-cuts, restrictions of electricity and blackouts. Occasionally, they would also take care of repairs or installations that were hit by bombs or broken wires that resulted from it. Sometimes they also intervened at sites of burned houses – when witnesses were unable to provide names of their owners. Their job consisted in removing anything that might cause damage to persons who may come across burned or fallen wires. M [REDACTED] recalled their intervention in Staro Gradsko, Lepina, and Lipljan as well. All those repairs took place during daytime. Aleksandar Mladenovic and witness G [REDACTED] M [REDACTED] were there as well, all them freed from other tasks.

80. The witness excluded the possibility of the defendant being mobilized in any military unit; indeed none of their team was because their work obligations required them to maintain the electric system in their municipality. In fact, the witness stated none of the Elektro-Kosova employees of Lipljan were in the police reserve.

81. When NATO entered, the employees, both Serbs and Albanians, continued to serve until they were expelled from their jobs. This is true for both Aleksandar Mladenovic and his father who worked as well until that time.

82. D [REDACTED] K [REDACTED] worked in Lipljan for a period during the bombing campaign, as an electrician. He described that during the bombing, in order to cope with the workload they provided an arrangement whereby the electricians and the billing officers who were not engaged in the mobilized unit would be part of a mobile team which in addition to the normal maintenance of the network, would also be in charge of immediate intervention in the field whenever the need arose, and disconnect any damaged part of the network to prevent possible injury to the people from the contact wires. Aleksandar Mladenovic worked in one of these teams.

83. Several of the employees of Elektro-Kosova were mobilized at first, but they were released to attend to their work. To the best knowledge of the witness Aleksandar



Mladenovic was not mobilized at any time. The defendant's father was part of the working unit of the civil defense; at work he came in civilian clothes. The witness requested the release from military obligations for some of the employees of his enterprise but Aleksandar Mladenovic was not among those he requested to be released.

84. All employees moved out of the office on 28<sup>th</sup> of June. The witness knows that Aleksandar Mladenovic remained in Lipljan even after that date until a time unknown to him. However, he saw Aleksandar Mladenovic again after the latter left Lipljan, when he visited his parents in town.

85. D [REDACTED] A [REDACTED] testified that he himself was drafted in the territorial defense units, as were many others. The territorial defense members would often hang out at Aleksandar Mladenovic's coffee shop, usually after changing uniforms to civilian clothes. Aleksandar Mladenovic was never drafted; D [REDACTED] A [REDACTED] never saw him in uniform.

86. Regarding Aleksander Mladenovic's out of work routine, D [REDACTED] R [REDACTED] V [REDACTED] K [REDACTED], L [REDACTED] T [REDACTED] V [REDACTED] G [REDACTED], M [REDACTED] K [REDACTED], A [REDACTED] P [REDACTED] and D [REDACTED] A [REDACTED] confirm that during the conflict, Aleksandar Mladenovic worked and ran his coffee shop at all times. He never wore any kind of uniform besides his working gear. Normally everybody worked only during daytime, and during nights sheltered from bombing. Aleksandar Mladenovic and his family sheltered at his father-in-law's house. Aleksandar Mladenovic and his family were sharing it with other in-laws at night.

87. B [REDACTED] S [REDACTED] testifies that her grandchildren were sheltered in the same place where Aleksandar Mladenovic was with his wife and children. Aleksandar Mladenovic often stayed in the room next to the basement. The cellar was mostly assigned to the children and their mothers. She saw Aleksandar Mladenovic every night in the room preceding the cellar where the children were staying. At times, the defendant offered his help to escort her home. She met Aleksandar Mladenovic after the war again. Before she left Lipljan, at the beginning of August 1999 she was under the impression she met him in the churchyard where a funeral were held.

88. D [REDACTED] M [REDACTED] attests that Aleksandar Mladenovic stayed in Lipljan after the bombing at his father's house. Also V [REDACTED] G [REDACTED] confirms that Aleksandar Mladenovic and his family left Kosovo several months after the war ended but he returned to visit his parents who moved out of Kosovo only after they sold the house – about a year or more after KFOR entered in Kosovo. The witness met Aleksandar Mladenovic several times after the latter left Kosovo. Those days he either stayed at his parents' in Lipljan or at his uncle's out of Lipljan.

89. In addition to Defence's witnesses quoted *supra*, some Prosecutor's witnesses confirm that Aleksander Mladenovic was not seen in uniform. A [REDACTED] H [REDACTED] attests that at work or even out of work [the witness saw him once after the bombing] Aleksander Mladenovic would wear his working gear. S [REDACTED] R [REDACTED] saw Mladenovic during the

collection of outstanding electricity fees, in civilian clothes. B [redacted] I [redacted] and B [redacted] A [redacted] also testified that they had never seen the accused wear a uniform.

## FINDINGS

### General factors of impact on witness credibility

90. It was reported by several witnesses and undisputed that Aleksandar Mladenovic and his father were generally known among the inhabitants of the municipality of Lipjan. This was due to the older Mladenovic's position as a head of one of the departments of KEK; Aleksandar Mladenovic's job with the KEK that required his personal dealings with the consumers; and the fact that Aleksandar ran a business – a cafeteria in the town center. During the conflict Aleksandar Mladenovic would participate in the collection of outstanding electricity payments, which made him unpopular [A [redacted] B [redacted] B [redacted] A [redacted], S [redacted] R [redacted]]. There is, however, no evidence of any conflict between the Mladenovics and their Albanian co-workers or neighbors. On the contrary, A [redacted] H [redacted] testified that B [redacted] M [redacted] offered assistance and actually helped Kosovo-Albanian employees. Also B [redacted] I [redacted] remembers B [redacted] M [redacted] efficiently handling problems with electricity supplies for Albanian-populated areas during the conflict. Family M [redacted] owned what was, considered by some, as the most beautiful estate in the town.

91. After the entry of NATO forces, Aleksander Mladenovic and his father reported to work in "Elektrokosova", but soon, as with all other Serbian employees, were removed by a new director, M [redacted] S [redacted]. Several witnesses testified that they continued to work until 28 June 1999 [G [redacted] M [redacted], G [redacted] M [redacted], D [redacted] K [redacted], V [redacted] R [redacted]]. The whole Mladenovic family remained in Lipjan for several months before they moved to Serbia [ B [redacted] S [redacted], V [redacted] G [redacted], D [redacted] M [redacted]]. In summer 1999, Aleksander Mladenovic let his apartment to a co-worker A [redacted] H [redacted] and moved to Nis. His parents remained until they sold the house in November 1999 and then moved to Serbia as well. The fact of the sale was well known within the community [A [redacted] B [redacted] Sh [redacted] D [redacted], A [redacted] H [redacted]]. The date was stated by the accused and no evidence was offered to the contrary.

92. Even after the sale, Aleksandar Mladenovic would come to Lipjan in order to visit other family members and attend to the remaining family property there. According to the accused, he visited several times since the sale [also: D [redacted] K [redacted], L [redacted] T [redacted]]. A [redacted] H [redacted] saw Aleksander several times, driving his car. A [redacted] G [redacted] confirms having seen Aleksandar three days before his arrest, and confirms that he did not decide to lodge complaints against him until he saw other people do so.

93. Notwithstanding the severity of the crimes now alleged and Mladenovic's presence in Lipjan for several months after the NATO entry, prior to the arrest of the defendant, none of alleged acts had ever been registered or reported to the police. On the

contrary, N. B. whose house had been burnt along with the houses of Sh. D. A. B. and B. K., testified that when he returned to Kosovo after the war he heard the rumors according to which persons responsible for burning houses in Lipjan were some “Russki” and “Shishani”, whereas Aleksandar Mladenovic was not implicated in these events until a couple of months before his arrest. During his last visit to Lipjan, Aleksandar Mladenovic was arrested by UNMIK Police upon H. S.’s pointing at him as an alleged criminal. This happened during the daytime at a busy place in the town, when Mladenovic was traveling with a colleague of his, in the absence of any indication that he had been hiding. Police reports show that immediately after the arrest all remaining injured parties called at the police station in order to file their complaints.

94. The coincidence of Mladenovic’s arrest and the phenomenon of all injured parties filing their claims against him raises suspicion that it was an action resulting from a collective decision, or even a conspiracy. These fears are fortified by the fact that virtually none of the injured parties, including those who claimed to remember events from two years before in utmost detail [such as exact time in hours and minutes], could state from whom had they learnt about Mladenovic’s arrest. All answers were either “from a child in the street” or “everyone talked about it” or “from the street”. The Court has found it quite improbable that the same specific circumstance concerning the quite recent past was so uniformly forgotten by the injured parties. On the other hand, there is evidence that an agitation against Mladenovic was carried out by H. S. and his party among the witnesses. I. H. was told that there were already 15 witnesses ready to testify against the accused and therefore he decided to join them; the same concerned B. I. J.

95. Another regularity occurring in the injured parties testimony concerns alleged fortuity of the injured parties’ presence in the vicinity of the criminal events. A. B. who as a KLA activist and therefore had “restricted movement” and for safety reasons did not overnight in his own house, just happens to be in a house across the street to watch Aleksandar Mladenovic and other Serbs set his house on fire. After this incident, B. leaves his position and comes out of his shelter notwithstanding the danger posed by the continued presence of the perpetrators in front of his house. A. G. incidentally, regardless of the danger, decides to go to see his burnt cafeteria just as D. K. is taking the items. A. B. by coincidence finds himself in B. when S.’s houses were burned down. Sh. D. who is hiding from the Serbs in B. E.’s house, decides, again - regardless of the danger, to return to his yard exactly at the time when Aleksandar Mladenovic is exiting the burning house. A. I. is hiding in a sewage manhole because of general danger from the Serbs. He just happens to witness Aleksandar Mladenovic arrive and throw Molotov cocktails at the neighboring house of D. When the crime is accomplished, A. I. abandons his shelter and returns to his house although the danger would have appeared greater after the attack had occurred than before. The Court again finds all these alleged fortuities improbable.

96. In addition, there are indications of strong ethnically motivated bias against the accused, which was clearly stated by some of the injured parties and witnesses. For example A█ B█ begins his statement with the wish that the defendant receives punishment, and blames him for instigating all crimes in Lipjan; A█ I█ states that the defendant and his friends are responsible for every destroyed building and coffee bar in Lipjan; I█ H█ expressed readiness to testify against every Serb; N█ J█ says that all Serbs were wearing some kind of uniform and says that he came to testify regardless whether Mladenovic was one of them or not, because the Serbs burned his home, not the Albanians. A█ G█ does not know who burned his house, but he suspects Aleksandar Mladenovic based on his presence during another incident. B█ A█ declares that he started suspecting Mladenovic of having participated in the burning of his house since he heard of Mladenovic's arrest. S█ S█ begins her testimony, answering to a question whether she knows Aleksander Mladenovic, by saying: "I don't know him and hardly remember what he has done", thus manifesting a prejudice that anyway the accused has done something. Eventually, B█ I█ expresses deep concern that, since he said nothing against the accused, people might think that he came to the court to defend the Serb.

97. Further, some of the witnesses show particular interest in Mladenovic's estate in Lipjan and request that it be used for compensation [A█ B█]. N█ J█, who proved to have no knowledge whatsoever of facts relevant to the case, declared that he "came only for his lost wealth". Indeed, according to A█ H█, it was only after Aleksander Mladenovic's arrest that his father decided to sell his Lipjan apartment to the witness.

98. Due to all above stated circumstances, indicating a combination of ethnic bias, conspiracy and probability of economic motivation behind the accusations, the Court was particularly cautious in the evaluation of the injured parties' credibility.

### **Findings concerning individual counts**

#### **Count 1**

99. Notwithstanding divergences between the version of the accused and that of A█ G█, the charges regarding Count 1 must be found untenable even based on G█'s testimony alone. According to G█ he arrived at the cafeteria and found Dejan's car there, several items belonging to the cafeteria already loaded in the car. He saw Dejan remove other items and carry them to the car and Dejan confirmed that he intended to take possession over the items in order to "secure them". Further, G█ confirms that after the conflict, when K█ family moved to Serbia, he took over K█'s apartment and his cafeteria, considering it compensation for damages suffered from Dejan. At the time of the trial the families of G█ and K█ were in the process of negotiating final settlement.

100. A█ G█ repeatedly states that he did not see Aleksander Mladenovic take any item from the cafeteria, or in any way participate in, or facilitate D█ K█'s actions.

Neither does he allege that Mladenovic verbally encouraged or supported what D█████ K█████ was doing. On the contrary, G█████ testifies that when he invited Mladenovic to take something for himself, the latter answered: “I do not need other persons property”. Further, he does connect Mladenovic to a group of Serbs that allegedly arrived on the spot during his dealings with Dejan.

101. In the light of this testimony, Aleksander Mladenovic could only be blamed as a by-stander to a theft, and in such case his behaviour does not constitute a criminal offence. Even such a scenario, however, would have to be treated with skepticism, given that during the event A█████ G█████ consented to support Dejan’s concept of “securing debts”.

102. As regards the grenade attack on A█████ G█████’s cafeteria, the Prosecution did not offer any evidence whatsoever to support the claim that Aleksander Mladenovic should be held responsible for that act.

103. Accordingly, charges pertaining to Count 1 have been found not proven.

## Count 2

104. In witness evidence presented to support the charges, the Court observed numerous contradictions, occurring among the witnesses, as well as inherent to individual testimonies. In particular, alleged eye-witnesses and victims of the acts attributed to Mladenovic appear quite inconsistent in their stories.

105. R█████ S█████’s statement that all the attackers wore black clothes contradicts the description given by S█████ I█████ and B█████ I█████ J█████, according to whom the attackers wore military uniforms. R█████ S█████ is not, in addition, consistent himself: first he says black civilian clothes, then uniforms, before eventually claiming that the attackers wore black uniforms. All these versions in addition differ from his testimony during the investigation, according to which the attackers were the police [and four among them were known to him].

106. The Court has found that, as much as it is possible and understandable that a victimized witness may not have memorized the clothes of the attackers, it is rather the continuous attempt on the part of R█████ S█████ to improve his story and conform to the versions of others that makes his testimony non credible. The Court also noted that R█████ S█████ repeatedly defers to – allegedly - better knowledge of events possessed by his brother, H█████, although H█████ was not a direct victim of the event and, in addition, R█████ specifically denied having discussed the event with H█████. Further, his expressed conviction that there were persons who were taking pictures of the event and who have not yet come forward – indicates strongly that the witness might be a part of a conspiracy against the accused.

107. There are further contradictions between R█████ S█████ and other alleged eyewitnesses, discussed *infra*. However the Court identified additional elements in R█████

S█'s testimony that amount to its overall unreliability. First, he implies circumstances that are highly improbable. For example, he attributes to Mladenovic a disguise consisting of two bandanas that however did not cover the middle part of his face and made him recognizable; Mladenovic is alleged to have worn such an outrageous disguise whereas, judging from the witness' description, all other attackers must have been issued black masks. Further, the witness claims to have recognized Mladenovic by his voice, although he denied having had previous contacts with the accused.

108. Second, in his testimony the witness does not differentiate between events actually seen and those heard of, for example, he repeated hearsay about what happened inside the house and after he had left the yard as if he had experienced the events himself. Lastly, several times the witness manifested prejudice and lack of criticism through attributing, without any criticism, criminal intentions to the accused and his ethnic group, for example " The defendant had an automatic rifle, ready to kill me anytime" or "[The Serbs] took us out to kill us, but we managed to escape. [...] When they entered another house to rob it and set it on fire, we walked away".

109. In sum, the Court has found it could not accept R█'s S█ testimony as basis for findings on criminal responsibility of the accused.

110. As regards the testimony of H█ S█ it is replete with statements that manifestly contradict R█ S█'s version. To begin with, H█ S█ at the moment of the arrival of Serb forces places himself in the yard of R█ S█ whereas according to R█ he had left before the S█ arrived. Further, according to H█'s description, the perpetrators were not uniformly dressed in black, but – those who dealt with R█ - wore military uniform [two of them], police uniform [one of them] and only one wore black [ Mladenovic]. Only one of the perpetrators wore a mask and that was one policeman called B█

111. H█ S█ maintains that R█ was robbed on the second floor of the new house, whereas according to R█ it happened on the ground floor. In the course of that incident H█ places four Serbs beside R█ although according to R█ the incident occurred between him and Mladenovic only. Hasim further claims that B█ was handcuffed, not tied. He further places R█ and B█ S█ respectively in front of the house and in the yard at the moment when the houses were set on fire, while R█ S█ said that the houses were burnt after he and B█ had been escorted out to the village center. Eventually, differing from R█'s testimony, H█ S█ states that they talked about the incident almost every day, in particular he had told R█ that during the incident he had been hiding in a haystack and had seen everything.

112. Apart from contradictions with R█ S█'s description of the attackers, H█ S█ departs from his own testimony given in the investigation, where he characterized the whole group of the attackers, Mladenovic including, as policemen wearing police uniform. In addition, he states the names of four Serb policemen that entered their yard differently from R█, the only commonly mentioned names being the accused and one S█. In the end, some parts of the story presented by H█ S█ the Court has

found unbelievable, i.e., that he, at the time a 48 year old man and short, escaped a pursuit of the police by jumping over 1 m wall and that from his hiding place he could see all recounted details, including skin abrasion on the finger of his brother B█████

113. In addition to the above referenced reservations the Court bore in mind H█████ S█████'s connections to M█████ S█████, Mladenovic's antagonist, and his role in agitating against the accused among the witnesses. The combination of all these factors made the Court deny credibility to H█████ S█████'s testimony.

114. When evaluating the testimony of B█████ S█████ the Court critically considered the alleged selective perception and memory of this witness, in that the entire event made him notice and remember exclusively the acts of the accused. In addition, in comparison to the testimony of his other brothers the Court noted several significant contradictions. Regarding the stealing of the leather jacket in the old house, B█████ contradicts H█████ S█████ who claimed to have seen this act being committed in the yard by a person called S█████. Further, B█████'s description of the assault on his wife differs significantly from the version presented by R█████. Regarding the factual element: who untied R█████'s arms in the yard, B█████'s version attributing it to Mladenovic differs from R█████'s, according to which it was done by a person named Ceda. In the end, B█████ S█████'s recount of events and his insistence that Mladenovic remained beside him at all times does not allow any possibility for Mladenovic to rob R█████ of his money, as maintained by R█████ and H█████ S█████.

115. S█████ S█████'s testimony, according to which the attacker wore a black mask, obviously contradicts versions of all three S█████ brothers.

116. In sum, the Court had to conclude that, given the degree of inconsistencies and contradictions among the witnesses of the S█████ family, with the only commonly repeated element being the inculcation of the accused, not only was the S█████ brothers' testimony not reliable as the basis for the conviction, but also indicated a high probability of conspiracy aimed at false accusation of Aleksander Mladenovic. Other witnesses heard for the circumstances of Count 2 do not allege Aleksander Mladenovic's participation in the charged event.

### Count 3

117. M█████ F█████'s testimony is the only evidence of the crime alleged. The Court has found that F█████'s story, given the detail of his narration, probably pertained to real events. However, the Court could not accept the part of his testimony according to which Aleksandar Mladenovic, after committing the criminal act of robbery, would lift his mask and thus reveal his identity to the victim. Such gesture, illogical and dangerous for the perpetrator, has no explanation in F█████'s version. In addition, rejecting Mr. F█████'s testimony as regards the identification of the accused, the Court bore in mind that a theme of a perpetrator pulling off a mask in front of the victim had been used by witnesses in other cases against Serb defendants [eg. the case of Igor Simic in DC Mitrovica, the case

of D████ K████ in District Prosecutor's Office Mitrovica] and therefore may indicate a pattern of false accusation.

#### Count 4

118. The testimony of Sh████ D████ appears to be based on a presumption of Mladenovic's guilt, e.g., testifying about the event of 1 June 1999 the witness states that Aleksandar "pretended" to have come to check the electricity after the fire and "kept looking at places where bottles were thrown". Testifying about this event in trial, D████ omits the previously reported factual element that on that occasion, Mladenovic brought electric equipment with him. Furthermore, while Mladenovic's inspection of D████'s house on the day after the attack is undisputed, the Court has found it difficult to believe that the accused would have admitted his responsibility for the attack before D████. The Court finds it illogical that Mladenovic would seek a pretext to check on the results of the attack and at the same time explicitly confirm his involvement in the crime.

119. Witness A████ I████ observed the burning of F████ De████'s house at night and from an almost impossible position, a sewage manhole. At times, he would peek out of the manhole and in that situation he claims to have seen unbelievably many details. According to his testimony, the defendant wore a green camouflage uniform, which is a detail that no one else reported. In the investigation he stated that the defendant was leaning on the fence of his house, but at the trial that he was shooting from the corner of the yard. In the investigation, he did not mention that the defendant was throwing Molotov cocktails, however he provides a detailed description of almost every step taken by the accused. Given the conditions in which the alleged observation was made, the Court finds it improbable that so many details could have been noticed and remembered. Further, the conditions of the observation – at night, from the ground level, with the only source of light being the flame - would in any case make the identification of the accused unreliable. The reliability of the identification could not be verified by a re-enactment given the impossibility to recreate similar lighting and that I████ claims to have rebuilt the manhole.

120. Having found so many reservations about the witnesses' testimony the Court decided that the participation of the defendant in the criminal event charged under Count 4 had not been proven.

#### Count 5

121. A████ B████ testimony is striking as a learned story, which loses precision and consistency whenever a specific question is asked. For example, B████ commences by saying: "during the past two years of war we could distinguish all sorts of uniform, [...] there is no Albanian who could not distinguish the uniforms", only to find out that he is unable to describe a paramilitary uniform and ends up saying that a distinct feature of paramilitary are clean shaven heads, beards and bandanas, while the uniform is



unimportant. His testimony is replete with general statements, imprecise albeit always pejorative when referring to the accused, *e.g.*: “[The Serbs] entered my house arrogantly. They were nationally focused”, “ I recognized the defendant by his threatening behaviour”.

122. A [REDACTED] B [REDACTED] further maintains that on the night of 4th June 1999 the defendant wore a paramilitary uniform [that he cannot describe], he cannot tell whether other attackers had clean shaved heads, sported beards and/or bandanas, specifically whether the defendant wore a bandana. However, he claims that on that night, looking out of a toilet window, he recognized the defendant’s face. In addition, he recognized the defendant’s father, also wearing a paramilitary uniform. Notwithstanding his not being able to recall the attackers’ outfits, A [REDACTED] B [REDACTED] managed to precisely memorize that Aleksandar Mladenovic and others arrived at his house at 9.30 p.m. and stayed there until midnight, leaning against a garage wall and singing nationalist songs.

123. Given that the witness presented himself as an educated person, moreover a member of an intellectual elite of the town, the Court has found that B [REDACTED]’s stilted and awkward phrasing could not be attributed to difficulties in expressing himself; rather, they manifested a lack of spontaneity and prejudice against the accused.

124. Witness Sh [REDACTED] D [REDACTED] who also offers a testimony about the evening of 4<sup>th</sup> June 1999, is also similarly precise about the time. According to him, however, on the critical night between 9.30 and 9.45 p.m. Aleksandar Mladenovic was not singing at Bahtiri’s garage, but participating in burning D [REDACTED]’s house. He was not wearing a paramilitary uniform, as reported by B [REDACTED] but civilian clothes including his regular jeans trousers. He did not have a weapon on him and he was not accompanied by his father wearing a paramilitary uniform, but by two unknown persons, one wearing an army uniform and one wearing a police uniform. Sh [REDACTED] D [REDACTED] claims to have recognized Aleksandar Mladenovic by his face, notwithstanding the darkness and the distance [one courtyard away].

125. The Court has found that, while there is no reason to question that the injured parties’ houses had indeed been burned down during the conflict, there was however no sufficient evidence for the defendant’s participation in these acts. First, the Court considered that the conditions in which the witnesses claimed to have recognized the accused, *i.e.* at night, with the only source of light being a glimmering flame, from inconvenient observation points; such as a toilet window or another yard, render the identification of the accused unreliable. Second, discrepancies between A [REDACTED] B [REDACTED] and Sh [REDACTED] D [REDACTED], taken together with A [REDACTED] B [REDACTED]’s demeanor before the Court, discussed *supra*, caused the Court to reject B [REDACTED]’s testimony in its entirety.

126. As a result, the charges concerning Count 5 has not been found proven.

Count 6

127. Testimony of Sh█████ D█████ even assuming *arguendo* that his identification of the accused made from a distance of 100 meters could have been correct, indicates only Aleksandar Mladenovic's presence in the area, but does not allow a conclusion about his participation in the crime alleged. The identification, however, raises doubts as to its reliability, given that D█████ knew the accused only from sporadic occasions of checking an electric meter in his neighbor's store and had never talked to him. Notably, this witness has doubts whether he correctly remembered the make of the car by which the persons arrived on the 5<sup>th</sup> of June 1999, he is not sure whether there were two or three of them, but somehow he exclusively memorized the presence of the accused and the way he was dressed. In the Court's opinion, such a selective memory, after the elapse of two years and in the absence of any particular reasons for memorizing the event, render the testimony of Sh█████ D█████ non credible.

### **Findings concerning supporting evidence**

128. H█████ S█████'s testimony, implicating the accused in the pillaging of the house of B█████ I█████ J█████, raises suspicion of being a mirror favour to I█████ J█████, rendered in exchange for J█████'s trial testimony, in which B█████ I█████ J█████ gave evidence in support to charges defined as Count 2 with S█████ brothers as injured parties. This suspicion is based in overall low credibility of H█████ S█████ and the fact that H█████ S█████ volunteered information regarding B█████ I█████ J█████'s house in trial only, without any previous mention of such incident from any of the witnesses.

130. Moreover the Court has noted that J█████'s testimony, on the other hand, was similarly volunteered at the end of the trial and similarly superficial and brief. The witness, for example failed to explain reasons for his contention that all the persons who looted his house had been reservists of Serb army who became paramilitary. Further, he did not explain how was it possible that his father had recognized Aleksander Mladenovic while the witness had not, although the witness claimed to have known Maldenovic from Lipjan. In any case this isolated recognition of Maldenovic appears improbable in light of this witness's earlier statement that the attackers were strangers to the area.

131. The testimony of I█████ H█████ has been found vague and muddled, manifestly tinted by ethnic hatred [as mentioned supra]. Taken together with the fact that this witness decided to testify pursuant to H█████ S█████'s persuasion and at the end of the trial, all the circumstances resulted in the Court's rejecting this testimony as basis for any findings.

132. The testimony of B█████ A█████ contains allegations too remote to be considered in the aspect of causality of crimes charged or as a factor strengthening other witnesses' credibility

### **Findings regarding the alibi evidence**

133. In light of the presented testimony as well as documents admitted and examined during the trial [specified in detail in trial minutes] the Court has found it proven that Aleksander Mladenovic during the conflict fell under work obligation in Elektrokosova, he was not drafted in the army and he did not serve in police forces. The Court has further found that the Prosecution failed to prove that in the period relevant for the charges Aleksander Mladenovic was a member of a paramilitary organization, the territorial defence or any organization or formation directly linked to belligerents in an armed conflict.

134. The Court has found, however, that witness testimony and documents do not provide for the accused a *sensu stricto* alibi, in that they do not positively exclude a possibility on the part of the accused to have participated in some or all criminal acts alleged. However, this evidence further decreases a probability that Aleksander Mladenovic acted on behalf or under the auspices of a belligerent party in alleged circumstances, and reliability of witnesses who claimed to have seen him in a police or in a military or paramilitary uniform is thereby challenged to an even greater degree.

## **CONCLUSION**

135. Given the lack of evidence of a war crime as per Article 142 of the Criminal Law of FRY and lack of convincing evidence concerning each of the underlying offences, the accused has been acquitted based on Article 350 para 3 of the Law on Criminal Procedure.

136. The decision on the costs of the proceedings is based on Art. 99 para 1 of the Law on Criminal Procedure

Recording Clerk

Presiding Judge

Maria Lenie A. Velazquez

Agnieszka Klonowiecka-Milart