

DISTRICT COURT OF GJILAN/GNJILANE

28th NOVEMBER 2003

P. No. 17/02

IN THE NAME OF THE PEOPLE

The District Court of Gjilan, in the panel composed of Timothy Clayson, Presiding Judge, International Judge Vinod Boolell and Professional Judge Fahredin Ymeri, assisted by the minutes takers Cecilia Takoff and Robina Struthers, in the criminal case against the accused Momcilo Trajkovic from the village of Carakovc (K. Kamenica Municipality), for the criminal acts of War Crime, defined and penalized under Article 142 of the Criminal Code of the Federal Republic of Yugoslavia, Attempted Murder, two counts, defined and penalized under Article 30, par 1 of the Kosovo Criminal Code in relation to Article 19 of Criminal Code of the Federal Republic of Yugoslavia, and Illegal Possession of Weapons defined and penalized under Article 199 par 3 in relation to par 1 of the Criminal Code of Kosovo, defended by Olivera Jovanic from Subotica and Zivojin Jokanovic from Pristina, according to the indictments raised by the Public Prosecutor of Gjilan respectively No. 84/2000 of 03 April 2000 and No. 115/2000 of 21 September 2000 and as subsequently amended by the International Public Prosecutor Cecilia Tillada, initial trial session taking place on the 27th May 2002 and further trial sessions on 28th May, 26th June, 27th June, 28th June, 18th July, 22nd July, 23rd July, 25th July, 6th August, 6th September, 30th September, 11th October, 17th October, 12th November, 2nd December, 17th December, 17th January 2003, 3rd February, 5th February, 7th February, 6th March, 7th March, 2nd April, 30th April, 27th May, 28th May 2003, and after completing the main trial held in public on the 30th May 2003, in the presence of the parties, and after deliberating and voting, pronounced this

VERDICT

The defendant Momcilo Trajkovic, father Lazar and mother [REDACTED] born [REDACTED], born on [REDACTED] in the village of Carakovc, municipality Kamenica, permanent resident of Kamenica, Serb, citizen of Federal Republic of Yugoslavia, married, father of three children, graduated from a High School, completed regular military service, of medium economic status, no criminal record, in custody since 07th September 1999, released on bail on 26th July 2002, is

ACQUITED

Of the criminal acts of war crimes, as set out in Counts 1 to 11 inclusive of the amended indictment of the International Public Prosecutor dated the 26th February 2003, and defined and penalized under Article 142 of the Criminal Code of the Federal Republic of Yugoslavia, in conformity with Article 350 (3) of the Law on Criminal Procedure.

And is

GUILTY

1. On June 27, 1999, in Kamenica at around 1700, the accused with intent to kill and motivated by ethnic hatred and prejudice fired and shot at M█████ F█████ while he with A█████ P█████ was placing an Albanian flag in front of the building of the Department of Internal Affairs in Kamenica in the same place where Serbian flag was hoisted. The accused came out on the balcony of his apartment which was across from the building of the Department of Internal Affairs and screamed how it was possible for Albanian terrorists to place a flag there. Accused then fired and shot at M█████ F█████ from the accused balcony. M█████ F█████ was hit and wounded on the right leg.

By which he committed a crime of attempted murder under Article 30, par 1 of the Kosovo Criminal Code in relation to Article 19 of Criminal Code of the Federal Republic of Yugoslavia.

The court did not consider the second charge of attempted murder of A█████ P█████ because according to the Article 378 of the Law on Criminal Procedure the basic legal principle reformatio in peius would be violated, as an appeal was filed only on behalf of the accused and thus the verdict may not be modified to his detriment with regard to the legal assessment of the act and penal sanctions.

2. Of the charge that on unknown date he acquired one automatic rifle, 300 bullets for the rifle and two hand grenades and kept them without license in his apartment in K. Kamenica until September 7, 1999, which the citizens are not allowed to keep at all

By which he committed a crime of illegal possession of weapons defined and penalized under Article 199 par 3 in relation to par 1 of the Criminal Code of Kosovo

Therefore, pursuant to Article 351 of the Law on Criminal Procedure, the Court passes the following

SENTENCE

The defendant is sentenced to a term of three years of imprisonment for the crime of attempted murder in violation of Article 30, par 1 of the Kosovo Criminal Code in relation to Article 19 of Criminal Code of the Federal Republic of Yugoslavia and a sentence of four months imprisonment for the crime of illegal possession of weapons in violation of Article 199 para 3 in relation to para 1 of the Criminal Code of Kosovo.

The Court sentences the defendant to a total combined sentence of imprisonment of Three years and three months imprisonment according to the Article 48 para 1 and 2 item 3.

The sentence includes the time the defendant has already spent in pre-trial custody namely from the 7th September 1999 to the 26th July 2002.

The court orders the confiscation of the automatic rifle, the 300 bullets and the two hand grenades, according to Article 69 of the Criminal Law of Yugoslavia.

The accused will pay one half of the costs of these criminal proceedings.

The injured party may present his claims to the civil courts.

In accordance with the decision of this Court of the 26th July 2002 the terms and conditions of bail, which were imposed on the defendant by the said decision, shall remain in effect until this verdict becomes final.

REASONING

Introduction

This trial took place following the verdict of the Supreme Court of Kosovo dated the 30th November 2001. By that verdict the Supreme Court overruled the first verdict of the District Court of Gjilan, in which Momcilo Trajkovic (hereinafter “the defendant”), was convicted of offences of War Crime against the civilian population, attempted murder (one charge) and illegal possession of weapons, and for which offences he was sentenced to twenty years imprisonment.

During the trial the Court heard the following witnesses: M [redacted] R [redacted], R [redacted] R [redacted], Xh [redacted] L [redacted], N [redacted] V [redacted], T [redacted] I [redacted], K [redacted] I [redacted], F [redacted] Sh [redacted], B [redacted] K [redacted], A [redacted] R [redacted], L [redacted] L [redacted], B [redacted] M [redacted] F [redacted], M [redacted] F [redacted] K [redacted], F [redacted] Th [redacted], H [redacted] Th [redacted], B [redacted] S [redacted], B [redacted] S [redacted], B [redacted] K [redacted], T [redacted] K [redacted], Z [redacted] [redacted], B [redacted] K [redacted], B [redacted] D [redacted], B [redacted] K [redacted], R [redacted] B [redacted], Sh [redacted] K [redacted], L [redacted] S [redacted], Sh [redacted] I [redacted], Q [redacted] K [redacted], N [redacted] Sh [redacted], Xh [redacted] K [redacted], D [redacted] G [redacted], D [redacted] T [redacted] S [redacted] N [redacted], R [redacted] J [redacted], B [redacted] F [redacted], T [redacted] D [redacted], T [redacted] R [redacted], N [redacted] S [redacted], A [redacted] T [redacted] Z [redacted] J [redacted].

Pursuant to Article 333 paragraph 2, the Court decided, after the parties consented, that the statements of the following witnesses given at previous stages of the proceedings be considered read into the record: B [redacted] H [redacted], F [redacted] Sh [redacted].

The Court accepted into evidence a number of documents including the Decree on the Internal Affairs during the state of war (Belgrade, 7th April 1999), and those documents set out in the minutes of the trial of 30th April 2003, p2. In the event however, having carefully considered those documents the Court found that they did not answer the critical questions in this case, namely who in fact committed the atrocities that the Court found did take place in the municipality of Kamenica during the period of the war, and secondly, under whose control were those persons acting. Whilst it is clear that the competencies of the Ministry of Internal Affairs were increased during wartime that is not to say that the defendant was the person who ordered that atrocities be carried out in the municipality.

On the 7th March 2003, the Court conducted an ocular examination of the scene of the incident upon which the two charges of attempted murder were based. As well as the members of the panel, the defence attorney Zivojin Jokanovic, and the defendant, the witnesses A [redacted] P [redacted], M [redacted] F [redacted] and Xh [redacted] K [redacted] were also present.

In explaining its reasons for the verdict the Court will deal firstly with the charge of War Crime against the civilian population, then the two allegations of attempted murder, and finally with the charge of illegal possession of weapons.

War Crime against the civilian population.

The amended indictment of the International Public Prosecutor, dated 26th February 2003, divided the factual issues in relation to this charge into a series of eleven separate counts.

The indictment further alleged that during the period when the events were said to have happened all the necessary conditions were in place for each proven act to be qualified as the offence of War Crime, thus at all times material to the indictment:

A state of internal armed conflict existed in the territory of Kosovo between the KLA (Kosovo Liberation Army – UCK), and the armed and security forces of the Federal Republic of Yugoslavia, including the forces of the Yugoslav army (VJ), and of the Republic of Serbia, including the forces of the Ministry of the Interior and Serbian paramilitary groups, and an international armed conflict existed alongside the internal armed conflict during the period 24th March 1999 to 12th June 1999;

Both opposing forces were under responsible command exercising control over part of the territory of Kosovo to enable them to carry out sustained and concerted military operations;

All the victims were expressly protected members of the civilian population;

A nexus existed between the acts committed by the accused and the internal and international armed conflicts, the existence of the armed conflict played a substantial part in the ability of the accused to carry out the offences, and the actions of the accused were directly linked to the armed conflict;

The acts of the accused took place during the armed conflict and were closely linked to the armed forces of the Federal Republic of Serbia and the Federal Republic of Yugoslavia, parties to the conflict with the KLA which had declared itself a legal army on the 15th or 16th May 1998.

That each of the acts concerned was accompanied by the necessary intent in the mind of the perpetrator.

The conduct alleged against the defendant was said to be contrary to Article 142 of the Criminal Code of Yugoslavia, as read with Articles 22, 24, 26, and 30 of the same, namely committing, ordering, acting in complicity with others, aiding, participating in a joint criminal design, and committing by omission, for the purpose of committing war crimes, and that the defendant was criminally liable both personally and by virtue of his command responsibility.

Further the conduct alleged was said to involve violation of the applicable international law, including Common Article 3 to the four Geneva Conventions of 1949, customary international law, as applicable in internal and international armed conflict, the Hague Conventions of 1899 and 1907, the four Geneva Conventions of 1949, Additional Protocol I of 1977 to the Geneva Conventions of 1949, as applicable in international armed conflict, and Additional Protocol II of 1977 to the Geneva Conventions of 1949 as applicable in internal armed conflict.

Relevant legal provisions.

The terms of Article 142¹ of the CCY provide that a person will commit an offence if he/she orders or commits one of the proscribed acts and such act or order is also a violation of the

¹ “Whoever in violation of rules of international law effective at the time of war, armed conflict or occupation, orders that civilian population be subject to killings, torture, inhuman treatment, biological experiments, immense suffering or violation of bodily integrity or health, dislocation or displacement or forcible conversion to another nationality or religion; forcible prostitution or rape; application of measures of intimidation and terror,

rules of international law effective at the time of the order or act. Thus, the order or conduct must contravene a dual test: both the applicable state and international law must condemn the event in order for criminal liability to apply.

In order to establish criminal responsibility under international law of any accused for the offence of War Crimes the Court must be satisfied of the following matters:

- a. The existence of an armed conflict, either internal or international, and the participation of the accused in the armed conflict;
- b. A nexus between the alleged crime and the armed conflict;
- c. The “civilian” status of the victim;
- d. That the order or conduct concerned is in violation of international law effective at the time of the conduct;
- e. That the order or conduct concerned falls within those criminal acts identified as war crimes within Article 142;
- f. The participation of the accused in the offence.

Not all the rules of international law applicable to international armed conflict apply in cases of internal armed conflicts. In internal armed conflicts the essential features of the term “armed conflict” are (1) that protracted armed violence takes place between governmental authorities and organized armed groups or between such groups within a State, (2) that those groups under responsible command, exercise such control over a part of the territory of the State as to enable them to carry out sustained and concerted military operations and to implement Protocol II to the Geneva Conventions of August 1949, and (3) that hostilities take place at a level in excess of that which could be characterized as merely internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature².

Armed Conflict.

That an armed conflict so defined existed in Kosovo for some period(s) during 1998 and 1999 is not in doubt and has not been disputed in any of the evidence or arguments heard by the panel, and the evidence of the defendant supports this conclusion. The trial panel refers to the case of P v V [REDACTED], Mitrovica District Court, verdict dated 25th October 2002, and agrees with the conclusions expressed therein regarding the existence of an internal armed conflict throughout the period covered by this indictment alongside which an international armed conflict co-existed during the period of NATO intervention and thus for at least the period 24th March 1999 until 10th June 1999.

taking hostages, imposing collective punishment, unlawful bringing into concentration camps and other illegal arrests and detention, deprivation of rights to a fair trial; forcible service in the armed services of enemy’s army or its intelligence service or administration; forcible labour, starvation of the population, property confiscation, pillaging, illegal and self-willed destruction and stealing on a large scale of property that is not justified by military needs, taking an illegal and disproportionate contribution or requisition, devaluation of domestic currency or the unlawful issuance of currency, or who commits one of the foregoing acts, shall be punished by imprisonment for not less than five years or twenty years of imprisonment”.

² See Protocol II to the Geneva Conventions of 12th August 1949, P v Tadic, Appeal on Jurisdiction Judgment, Case No. IT – 94-1-A73.1, Appeal Chamber, 2nd October 1995, para70, P v Akeyesu, Trial Judgment, Case No. ICTR – 96 – 4 – T, Trial Chamber 1, 2nd September 1998, paras 620 and 625, and see the ICRC Commentary to Protocol II.

Nexus.

All the acts alleged in the indictment are said to have, by their very nature, a nexus with the armed conflict, that is to say³ a close connection or link with the armed conflict. By reason of its assessment of the evidence the trial panel felt sure that a sufficient nexus had been established between the acts alleged, and which the trial panel found proved, and the armed conflict. It was, in the opinion of the trial panel, impossible to understand the events about which so many witnesses spoke, otherwise than in the context of those events being closely related to the armed conflict.

The “civilian” status of the victims.

Although the defence did not concede this matter there was in fact really no evidence to show that any of the victims was a person taking an active part in hostilities.

The order or conduct concerned was in violation of international law effective at the time of the conduct.

The conduct established in this case involved the severe beating, inhumane treatment, torture, forcible expulsions, and destruction of property on a large scale not justified by military needs, and killing by murder. Most of these types of conduct are in clear breach of the provisions of Common Article 3 to the four Geneva Conventions, and Protocol II of 1977, and are further established as capable of prosecution pursuant to the Statute of the International Criminal Court. Whilst the Statute of the International Criminal Court is not determinative of pre-existing or current customary international law, the fact of inclusion within its prohibition is a significant indication that the conduct there proscribed was already well-established as contrary to customary international law at the time when the Statute came into force. The trial panel found that each of the incidents that was established included at least one instance of conduct that was a clear breach of those provisions. Accordingly, the trial panel is satisfied that the proven conduct was in breach of international law applicable at the time of the events.

Concerning command responsibility, ICTY jurisprudence has held that violations of the humanitarian law of internal armed conflict amounts to war crimes proper as a result of evolution of customary rules in the international community with the rationale of a gradual passage from a State-sovereignty-oriented to a human-being-oriented approach. Following this reasoning it is logical to accept that the same gradual process has led to an acceptance of the principle of command responsibility to the point that it is now established as a customary rule of international law in internal as well as international armed conflicts. Command responsibility is pivotal within any military unit engaged in any form of conflict: a) for ensuring discipline and compliance with national and international humanitarian law, and b) in order to protect civilians and human beings against abuses and unnecessary suffering. No credible reasoning can support a difference of approach as to the application of criminal liability in this field based on nothing more than whether the conflict should be assessed as internal or international in character – a factor that is wholly irrelevant in humanitarian terms. Command responsibility in internal armed conflict is also a natural consequence of the principle of responsible command included in Article 1 of the 1977 Geneva Protocol II, as

³ See ICTY *Kunarac* AC judgment, par 55 (“closely related to the armed conflict”); ICTY *Tadic* AC jurisdiction decision (1995), par 70 (“closely related to the hostilities”); ICTY *Kunarac* TC Judgment, pars 402 and 407 (“a close nexus”), ICTY *Delalic* TC judgment, 16 Nov 1998, par 193 (“an obvious link”), and *id.*, par 197 (“a clear nexus”).

explained in the *Hadzihasanovic*⁴ Appeal decision on Jurisdiction, where the court succinctly states that, “the duties comprised in responsible command are generally enforced through command responsibility, the latter flows from the former”.

The order or conduct must be contrary to the provision of Article 142 of the CCY

There is no doubt that all the matters alleged in this indictment, which are not subsequently found proven were in breach of article 142 CCY.

The defendant must be proved to have participated in the criminal offence.

It was in this area that the major challenge arose in this case. It is a fundamental principle of both domestic and international criminal law that before any accused person may be convicted of a criminal offence his individual participation in the offence by one of the means provided by law must be shown. There is no mystery as to the different means by which a person may participate in a criminal offence. Under the domestic law of Kosovo participation may be direct or by way of an accessory in one of the instances identified as attracting criminal liability and set out in Article 22, 24, 26 and 30 of the CCY (complicity, aiding, member of a group, or omission). For the purposes of this verdict there is no significant difference between the applicable domestic law and international law.

The defendant admitted that he was the most senior member of staff at Kamenica police station throughout the period in question. His precise title was either “Head” of Police or “Chief of Police”, but the difference is of no real significance. As such, the main thrust of the prosecution’s case against him was that he was by definition the man who must have been responsible for the atrocities that had allegedly occurred in various villages within the Kamenica municipality during the armed conflict and particularly during the period of the NATO intervention. The prosecution pointed to the large amount of evidence from witnesses in the locality who themselves asserted that the defendant must be guilty, and alleged that at the least, even if it could not be shown that the defendant had given the specific orders that resulted in the crimes, it was established that he must have known of the terrible events, was in a position of superior command and able to punish those responsible, yet took no steps so to do.

On careful analysis of this argument however, it is the view of the trial panel that the arguments of the prosecution both as to direct and command responsibility are unsound. The trial panel, for the reasons set out below, had little difficulty in reaching the conclusion that the vast majority of events about which witnesses gave evidence had taken place essentially as described. Whilst the accounts of witnesses included many discrepancies, the basic nature of the events that they described was, in the view of the trial panel, a reasonably accurate description of facts that they had either witnessed, or about which they had heard shortly afterwards. One remarkable feature of those accounts was that there was hardly a single incident during the whole of the evidence in which any witness alleged that he or she had seen the defendant at or near the crime scene at the time when the event took place. Further, in relation to any such occasion the trial panel was left in doubt that that the evidence was sufficiently reliable for the trial panel to accept and act upon.

The defence case was relatively simple. In essence the defendant alleged that although he had the title of Chief of Police or similar, the functions of the Kamenica branch of the Ministry of Internal Affairs (“OUP”), were split into two quite separate parts; the defendant asserted that active policing issues were the domain of the Commander of Police whilst the defendant was

⁴ See above

concerned with essentially administrative matters such as issuing identity cards, driving licenses, and passports. The defendant said that there was little overlap between the two sections of the police station. Whilst at first sight such an explanation might seem all too convenient, the fact is that there was a deal of credible evidence in the case to support it and an absence of credible alternative evidence. Furthermore, it has to be observed that similar functional divisions occurred in other institutions of the former Yugoslavia. The defendant's assertion that he knew little of the actions of the regular police based in Kamenica whilst to a degree suspicious was not disproved.

A further and perhaps even more fundamental difficulty concerns the identity and origin of those persons who did carry out the criminal events. The Court was concerned throughout the entire trial proceedings as to whether those who had perpetrated the atrocities could confidently be identified and if so whether they could be shown to have any link with the defendant. There were many instances where forces of multiple types took part in joint operations; this feature of the case pointed towards high-level organization, well above the level at which the defendant was employed, and with obvious consequences concerning both the direct and command responsibility allegations leveled against him. In the final analysis the Court found that this difficulty was not overcome in the evidence, and that in truth the dreadful events that took place in the Kamenica municipality during the period of the war, which were in distinct contrast to the general pattern of events in the period immediately prior thereto, were not instigated, ordered, nor perpetrated by the defendant, and the fact that it is likely that he knew of at least some of them afterwards does not alter that conclusion.

After summarizing the evidence of the defendant, the Court will assess the evidence relating to each count independently.

The Defendant's account. The defendant stated that at the relevant time he was the Chief of the "OUP" in Kamenica. As such, he was in charge of administrative matters including travel documents, ID cards, car registration and economic and general criminal activities and in respect of these tasks he received his orders from the Chief of the "SUP" in Gjilan. According to the defendant he had no part in the activities of the uniformed police of Kamenica police station, which were directed by the Commander of police, D [REDACTED] S [REDACTED].

The defendant stated that he did not normally wear a uniform, nor was he involved in investigation of scenes of crime. He said that from time to time Albanians would come to his office to ask for his assistance concerning missing persons. He was in charge of the administrative section of the police station although he admitted that he was of higher rank than the police commander. The defendant was well known in Kamenica as the Chief of Police, although the effect of his evidence was that this was more of a formal title than a real reflection of his everyday work. The defendant stated that during the period 24th March 1999 until the entry of NATO into Kosovo on the 10th June 1999 there was no armed conflict in the Kamenica area between Serbs and Albanians. He stated that what he meant by this remark was that if policemen from Kamenica had taken part in any of the allegations made against him in the indictment he felt sure he would have heard of them at the time. He stated that his employees had continued to perform their duties in the police station until the 17th June 1999.

The defendant confirmed that he had signed various orders for the hire of bus transportation for policemen from Kamenica to other areas of Kosovo during the period March to May 1999.

The defendant further stated that he had heard of some bad events in the Kamenica region during the period March to June 1999 but had received no detailed reports about any of them. He stated that he was not in a position to give orders to prevent such events from being

repeated if the Yugoslav army might undertake them, as the army was not under the control of the police.

The defendant accepted that in the event of him learning of an offence committed by a subordinate to him at Kamenica police station then he would have been under a duty to investigate the matter.

The defendant stated that it was possible for police to work outside their normal territory during times of war.

The defendant further explained his background in the Kamenica region over many years, which included work as a teacher and from 1991/2 until 1995 as Chief of National Security, which involved him dealing with extremism, terrorism and similar topics.

In short, the defendant denied that he had participated in any way whatsoever in the commission of any of the events alleged against him in the indictment.

Count 1.

The witness M [REDACTED] R [REDACTED]⁵ stated that whilst standing by his gate at Mocare village, Kamenica municipality, on the 1st April 1999, he was shot by a neighbour of his, D [REDACTED] T [REDACTED], and that he suffered injuries to his shoulder. This witness stated "*I believe he (the defendant) gave the orders for me to be shot because of his position as chief of police*". Later in his testimony the witness added that he believed this to be so as the person who shot him stated that he was doing so on the orders of the defendant.

There was no other evidence in support of this count.

In the opinion of the trial panel, this evidence is wholly insufficient for a conviction. Accepting that the incident took place, and that the offender stated that he was carrying out the offence on the orders of the defendant, the panel cannot in any sense be sure that such a declaration represented the true facts. Accordingly, it is not established that the defendant either ordered or participated in the offence in any manner.

Count 2.

F [REDACTED] Sh [REDACTED]⁶ gave evidence to the effect that she had been at her home in Kamenica on a date that was not specified but which in view of the allegations made the trial panel concludes was within the period of the armed conflict between NATO and SFRY and Serbian forces. On that occasion the witness stated that she had seen the defendant at her family home and that he asked for the key to the driving school building, which was the family business. Later, during the evening the driving school and the family home were burnt. Although the witness stated that she was frightened of the defendant she could not give any more detail as to what he had said or done.

There was no other evidence in support of this count, save for the statement of the sister of this witness, F [REDACTED] Sh [REDACTED]⁷, which was read due to the fact that she was in Switzerland and with the consent of the parties. That witness stated that the defendant had visited the family home and threatened that the family business and bus would be burnt down at night. This trial

⁵ Trial Minutes (TM), 26.06.02

⁶ TM 18.07.02.

⁷ TM 06.03.03.

panel considers that the statement of this witness given in the previous main trial is neither sufficiently detailed nor coherent for it to be relied upon against the defendant. In particular, the Presiding Judge was wrong to stop the defence from exploring whether inconsistencies existed between what the witness was stating to the trial panel as compared with what she had said to the investigating judge.

Again, in the opinion of the trial panel this evidence is insufficient for a conviction. Whilst accepting that the defendant visited the family house as claimed by the witnesses, and that the business premises and family home were burnt later that same day, the suggestion that the defendant is therefore guilty speculation; again, it is not established that the defendant either ordered or participated in the offence in any manner.

Count 3.

Xh█████ L█████⁸ stated that on the 17th April 1999 he was stopped by the police and ordered to deliver up his car to the police. In addition a number of documents belonging to his son and himself were seized. On either that or the following day he was shot near his house on the outskirts of Kamenica by a policeman from Kamenica named S█████ S█████. The panel was able to see physical evidence of a bullet wound on the leg of the witness close to his ankle. The witness stated that he had had problem with the defendant in 1993 when he had been arrested and sentenced to thirty days imprisonment. Whilst he had been in custody the witness alleged that the defendant had visited him and had insulted him.

As to the incident in April 1999, the witness stated that *“I believe it was done through the accused because he was chief and he gave orders, so my conclusion is that he must have ordered, simply because he was the chief of police”*.

Accepting that the incident of shooting took place as described by the witness, and even bearing in mind the previous event in 1993, the trial panel cannot support the conclusions of the witness. There is nothing in the circumstances so described that lead to the conclusion that the defendant ordered the shooting to take place, or that he gained knowledge of it afterwards so as to place him under a duty to investigate and punish as appropriate. Accordingly, again, it is not established that the defendant either ordered or participated in the offence in any manner.

Counts 4, 8, 9 and 11.

The trial panel was not able to obtain any evidence in respect of any of these Counts.

Count 5.

B█████ S█████⁹ stated that on a date during the war (which the trial panel accepts relates to the period 24th March 1999 to 10th June 1999), whilst in her village of Leshtar, she was shot at and wounded with two bullets one of which was extracted and one of which remains in her body. The witness stated that her husband was also shot at and that others in the village were surrounded with the men being forced to lie on the floor, houses being burned and shots being fired. The witness could not describe the clothes of the persons who had attacked her and the other villagers, save to say that the persons responsible were wearing uniforms and were speaking in Serbian of which she understood nothing.

⁸ TM 27.06.02.

⁹ TM 25.07.02.

The witness stated *“I believe the defendant is responsible for these events, everyone in the area knows the defendant is responsible for the area. I did know that he worked in Kamenica but I cannot say what position he held”*.

B██████ H██████¹⁰ also from the village of Leshtar, stated that it was on the morning of the 18th April 1999 that the village was surrounded by *“paramilitaries”*. The persons concerned told them to get out as *“This is not Albanian it is Serbian”*. After they had been expelled from their houses the villagers went up a hill and into a meadow, where they found *“police and military”* had surrounded them. Then some shots were fired and the mother of the witness (the previous witness) was injured. The witness described the attackers as wearing uniforms with a distinctive Serbian symbol on the arms. The witness further described the attackers as including paramilitaries and police personnel.

This witness stated, understandably in the view of the trial panel, that on the critical day he did not recognize anyone as he was too upset and frightened, especially as his mother had been injured, and further, the attackers had masks on their faces. The witness stated that the invading forces had arrived in trucks. The witness stated that four of his relatives had later told him that they had been sent to Kopenica, in the Kamenica region, after being detained on that day in the village.

The trial panel has no difficulty in concluding that on the 18th April 1999 the village of Leshtar, in the Kamenica municipality, was surrounded by Serbian and/or Yugoslavian forces including military, paramilitary and police forces, and that the villagers were expelled from their homes, houses were burnt, considerable shooting took place, and that B██████ S██████ was shot and injured.

However, there is no evidence that any of the police forces concerned were based at Kamenica police station. The trial panel accepts the evidence of the defendant that during wartime police personnel were not restricted to their allocated territory and further at any time might be under the direction of the army. In this instance there is no evidence that any of the dreadful activities that took place in the village were ordered by the defendant or carried out with his knowledge and approval. In the view of the trial panel the involvement of the defendant in the form of ordering these events is not an inevitable inference from the facts. Further, there is no evidence to demonstrate that the defendant became aware of these events during the period of the war, and even if he did become so aware, it is not established that at that time he had any ability to impose any investigation and/or punishment upon the perpetrators. Accordingly, whilst the events themselves are established the culpability of the defendant remains unproved.

Count 6.

This Count relates to other events on the 18th April 1999. B██████ K██████¹¹ stated that on the 18th April 1999 he was passing through the village of Rahovice with two other persons when three policemen got out of a car; they were wearing blue camouflage uniforms. The witness was able to hide and then saw his two relatives being pursued by the policemen. He saw his cousin R██████, being confronted by one of the policemen and R██████ had his hands up. R██████ was never seen again and some months later part of his remains, including his jacket, were found at the football stadium in Kamenica. The other relative, L██████, survived and now lives in Pristina.

¹⁰ TM 25.07.02.

¹¹ TM 18.07.02.

The witness stated that the family had heard that R [REDACTED] was killed on the road to Strezovc, and that the record of the earlier trial, where it was recorded that the witness had said that R [REDACTED] was killed in Kamenica police station, was incorrect.

The witness stated that although he had seen the defendant with other policemen in the villages in 1998 he had not seen him in such circumstances in 1999, saying that people were afraid to go out. However, the Court notes that the incident that the witness describes to the Court on the 18th April 1999 happened while the witness and his relatives were not at their homes.

Lastly, the witness confirmed that when previously he had said that two persons in his village were killed on the orders of the defendant “..this is my conclusion as he is the chief of police”.

N [REDACTED] V [REDACTED]¹² stated that on the 18th April 1999 she was at her mother’s house in Rahovice. This witness described how the attacking forces wearing green uniforms forced people from their houses. The witness stated that she knew some of the persons from Kamenica but at the same time did not seem clear as to whether they were army, [paramilitary or police personnel. The witness described many instances of very severe maltreatment and robbery of villagers, and the killing of her brother Sh [REDACTED] I [REDACTED]. The witness at one point stated that the men were forced to lie on the ground and that the attackers began to kill them there. Later she altered this to say that the attackers attempted to kill the men at that place.

The witness identified one policeman as “Zh [REDACTED]”, also known as “P [REDACTED]”, and stated that she saw three other policemen from Kamenica police station, being “B [REDACTED], S [REDACTED], and Z [REDACTED]”, and that there were others whom she knew by sight.

The witness stated that she believed that the defendant must have ordered the events as he was in charge at the police station. It eventually became clear that the witness was saying that this was effectively a joint operation involving police, military and paramilitary personnel.

T [REDACTED] I [REDACTED]¹³ stated that on the 18th April 1999 she was with her family in Rahovice. She said that there were army and paramilitary forces present, but did not describe any police personnel or persons dressed in police uniforms as being present. She confirmed the essential nature of the incident but described her husband being taken, hearing shots, and later finding his body.

She stated that she believed that the defendant was responsible, even though she could not offer any reasons to support her view. This witness was understandably very upset when giving her evidence.

K [REDACTED] I [REDACTED]¹⁴ stated that he was at his home in Rahovice on the 18th April 1999, and that the village was surrounded by forces of territorial defence, persons in police uniforms, persons wearing army camouflage uniforms and paramilitary, all stationed in a horseshoe formation early in the morning. The witness described maltreatment of himself and others and the manner in which villagers were forced to leave the village. He saw his brother Sh [REDACTED] being taken into a courtyard and heard shots fired, and later saw smoke rising. The witness stated that he saw three policemen from Kamenica police station and named them as “P [REDACTED]”, “S [REDACTED] M [REDACTED]”, and “M [REDACTED] B [REDACTED] V [REDACTED]”. The witness gave contradictory evidence

¹² TM 28.06.02.

¹³ TM 28.06.02.

¹⁴ TM 28.06.02.

concerning whether or not he had seen another person whom he knew, “N■■■■ B■■■■ S■■■■”, participating in the event.

Again, the trial panel finds that the events happened largely as described by these witnesses. It is clear that on the 18th April an extensive operation was launched against the village of Rahovice but it is not clear under whose command the various forces were event thought the nature of the operation clearly suggests that there would have been one overall commander. It is in no way established that the defendant was that commander or that he had any power to stop the events from happening. The Court accepts that some police from Kamenica were involved in the events but that does not prove that the defendant ordered or permitted their participation. Therefore, the Court concludes that participation of the accused, whether by ordering that the events take place or by actual participation in one or other of the forms provided by law, has been established.

Count 7.

L■■■ L■■■¹⁵ from the village of Petrovc stated that on the morning of the 19th April 1999 police and military forces surrounded his village. Together with his family he prepared to leave but his uncle and cousin, M■■■ Sh■■■ and F■■■ Sh■■■ refused to go. As they left the village with in a column others they could hear shooting from the village and saw smoke. Later they were robber of their gold and valuables and told to go to Macedonia. The persons responsible were military, para-military and police forces. He recognized one person, A■■■ V■■■. The villagers were forced to stay at Slatina village for twenty-eight days and only returned to their homes after the war. He never saw his uncle and cousin again. The witness fairly stated that he could not say who was commanding the forces, but added that although he had never had any problems with the defendant “*no one in the police could have done anything without his permission*”. In all some 37 houses and 10 haystacks were burned in Petrovc.

Concerning this witness, the defendant stated that at the relevant time the military was in control of the area where these events were alleged to have happened.

B■■■ K■■■¹⁶ stated that on the 19th April 1999 he too was at his home in Petrovc. He had spoken to V■■■ A■■■, who was the head of civil protection and A■■■ confirmed that all the villagers had to leave by 11.00 am. The village had been surrounded and all were compelled to leave. This witness confirmed the account of L■■■ L■■■ as to the fact that army, paramilitary and police forces were acting against the villagers and that the villagers were treated in a very aggressive and hostile manner. Many people from the village were robbed and maltreated.

The witness stated that the police had interviewed him on approximately ten occasions. He described the different styles of the uniforms of army, paramilitary and police personnel. The witness stated, “*The police who surrounded our village were I believe from Kamenica but I did not recognize any of them*”. The witness was not able to provide any reason for this expression of belief.

The trial panel accepts that on the 19th April 1999 the villagers from Petrovc were driven out of the village by a combination of Serb and SFRY forces consisting of army, paramilitary and police personnel. Further, there is strong circumstantial evidence to the effect that those who

¹⁵ TM 22.07.02

¹⁶ TM 22.07.02.

did not leave were killed, and in view of this fact the trial panel concludes that those who attacked the village murdered F█ and M█ Sh█.

Once again, however, no link is established between these events and the defendant. It simply is not enough to assert that merely because these events happened in the Kamenica municipality the defendant must be held responsible in one manner or another. The point can be demonstrated by reference to the fact that it is impossible to ascribe any particular form of criminal responsibility to the defendant for these acts: even assuming, as so many witnesses sought to persuade the trial panel to accept, that the defendant was in some way culpable, there are no facts established that would enable the trial panel to identify the specific qualification for such liability. In these circumstances the trial panel cannot conclude that guilt has been established.

Count 10.

A considerable number of witnesses gave evidence concerning the allegations set out in Count 10. The trial panel has no doubt that on the 11th May 1999 a considerable number of grave incidents happened in various villages in the municipality of Kamenica. The issue in the case was whether there was any reliable evidence to demonstrate that the defendant was criminally involved in any or all of those incidents.

F█ Th█¹⁷ stated that on the 11th May 1999 the village of Karaceve was surrounded by police forces. Some of the attackers entered her house and took her husband, A█ Th█ and her father in law outside. Her father in law was maltreated and her husband was taken away; she never saw her husband alive again. Some two and a half months later her husband's body was found in a lake. The witness did not recognize any of the men who attacked her village although she described them as policemen. This witness also said of the defendant "*no one in the police could act without his order*".

This witness stated that five other persons from the village were taken away, including M█ S█, R█ L█, I█ I█, and N█ R█, and the next day the villagers heard that all of them had been killed.

H█ Th█¹⁸ confirmed the details of the attack on the village of Karaceve. He stated that the military and police forces attacked the village and that the police forces came inside his house asking for his son, A█. One of those present was D█ S█, the police commander and friend of the defendant. Slavkovic had a piece of paper with him. The witness stated that two of the other police present were "*Mija from Berivojc*" and "*J█ F█ known as 'P█'*". A█ was present and was out against a wall; both father and son were physically abused; he last saw his son being taken away. The witness stated that in order to try to trace his son he had gone to the offices of the defendant but was unable to see him so spoke to a deputy who in turn referred him to an Albanian called F█ S█. The witness went on to say that he received confirmation that his son was at the Kamenica police station. According to the witness he was able to speak to the defendant on five occasions as to the whereabouts of his son, and the defendant stated, "*The army (from Pristina) took him away*". The witness went on to say that he did not know S█ on the day of the incident but that someone had used the name "*D█*" whilst the attackers were in his house and that thereafter he had seen him once with an automatic weapon near the defendant's office.

¹⁷ TM 23.07.02.

¹⁸ TM 23.07.02.

Later the witness stated, *“The only way to find out how my son was killed is to make the defendant talk by force”*.

The witness gave a detailed account of the recovery of his son’s body from the lake. The witness further stated that he had not previously described the attacking forces of that day as *“military, paramilitary and chetnik”* forces.

The defendant stated that the witness had complained to him during the war that the military had taken away his son, and that it was only after the war when the witness had come to see him with KFOR that the witness had for the first time alleged that the defendant was responsible for the death of his son.

The witness concluded by saying that *“if this man is not sentenced and convicted then the children of the judges will have the same destiny as my son”*.

In the opinion of the trial panel, those who took him from his home murdered A█ Th█. Whilst there is some evidence from this witness that A█ Th█ was held at Kamenica police station after being taken from his home, the evidence of this witness alone is not sufficiently reliable for the trial panel to act upon it. As is evident from his final reply, the witness was very emotional and hostile to the defendant. The panel could not conclude that the identification of D█ S█ was accurate, as he did not know him prior to the day in question, and he only heard the name “D█”. In those circumstances the trial panel felt the benefit of the doubt should favour the defendant.

B█ K█¹⁹ stated that on the 11th May 1999 she was in the fields near her village of Rogacice with her husband when a total of seven policemen came. They had automatic weapons and were banging on the doors of the houses. The police confronted her husband N█ K█ and then he was taken to a house. Shortly after she heard some shots and the houses were burned. The police left and a little later she found her husband’s body in a storeroom at a neighbour’s house; he had been beaten and shot.

The witness stated that the defendant had taken her sons for interview on many prior occasions. They had been summoned and then taken to the police station, beaten and then returned home. The witness stated that she had sent the defendant *“come with other policemen”* in order to arrest her sons, but then said she had not in fact seen him *“but I heard his voice”*. Following this change of account the witness further amended her evidence by saying that she had not seen her sons being arrested but had been told about this by her daughters.

On the occasion when her husband was killed the police had been wearing black scarves over their faces. The witness could not offer any reason as to why her husband had been killed but stated that after the event villagers had found a piece of paper in the street with the names of certain men from the village written thereon.

T█ K█²⁰ confirmed that the village was attacked in terms that were consistent with the previous witness. She described the attackers as *“eight paramilitaries or police”*. They asked her father in law, N█, as to the whereabouts of his two sons, B█ and R█. She was forced to leave the house whilst N█ was kept there; just a short while later there was much shooting and when the attackers had left the village the family returned to the houses, some of which had been burnt, and found that N█ had been killed.

¹⁹ TM 06.08.02.

²⁰ TM 06.08.02.

As to who was responsible for this atrocity, the witness stated that she had heard that the order to kill those named on the piece of paper found after the attack had come “from Kamenica”.

L [REDACTED] K [REDACTED]²¹ stated that on 11 May 1999 he was at his house in Rogacice. Four persons wearing masks called him. He was searched and he was asked for his ID. They took out the list and asked him for his name. The persons wearing masks were looking for B [REDACTED] and R [REDACTED] K [REDACTED] whose names were on that list. They asked him where house number 171 that belonged to B [REDACTED] and R [REDACTED] was located.

The persons forced him to accompany them in order to locate the house. On their way three others joined the four masked persons, and a fourth one joined them after they had crossed the bridge in the center of the village. All along the way the witness said that he was being beaten, harassed and threatened with reference being made to his family.

When they reached the house, the persons went inside and ordered the women and children out. The witness then heard the shots inside the house. Later he learnt that N [REDACTED] K [REDACTED] had been killed in the basement of the house from where the shots came. He himself did not see who killed N [REDACTED] K [REDACTED]. He added that the masked persons were wearing the military uniforms but he could not say where they were from.

B [REDACTED] K [REDACTED]²² from Rogacice stated that on the 11th May 1999 a large number of “military police and paramilitary forces” were stationed close to the village. He confirmed the account of the previous two witnesses as to the nature of the incident including the fact that all the attackers were masked save for one. The witness described how his father had been killed by those persons, and further stated how he had been questioned by the accused in earlier years and that he, his brother and others had been maltreated during the 1990’s due to their humanitarian activities. According to the witness he had suffered physical violence at the hands of the defendant on previous occasions. The witness stated that it was Serbian police who had committed human rights violations on those including the witness who complained about their misconduct.

The defendant denied ever having maltreated the witness.

Whilst the trial panel accepts that the witness is telling the truth concerning prior maltreatment of himself by the defendant, this cannot be the basis for concluding that the defendant was responsible for the events of the 11th May 1999. In the absence of evidence demonstrating a connection between those events and the defendant the only logical conclusion is that his culpability has not been established.

The panel accepts that the incident took place substantially as described by these witnesses, and that N [REDACTED] was killed by the attackers. In the view of the trial panel, however, this evidence does not establish that the accused was involved wither by way of command or active participation in the events described.

Z [REDACTED] I [REDACTED]²³ from Kopernice stated that in the morning of 11th May 1999 the police surrounded her house in Kopernice. Her husband, I [REDACTED], was taken outside. A policeman came with a piece of paper in his hand and demanded to know the whereabouts of I [REDACTED] house. I [REDACTED] came out of his house and then his hands were bound and he was led away

²¹ TM 02.12.02.

²² TM 30.09.02.

²³ TM 06.09.02.

down the hill. A little later she heard three shots and at about 1.00 pm she found her husband's body. She confirmed that the piece of paper in the hands of one of the attackers had been shown in the newspaper. She stated that her husband had a position of some respect and influence in the community, a feature that was also present in the case of many of the other victims of the events of the 11th May 1999.

B█████ D█████²⁴ was the wife of R█████ L█████ and both were at home in the village of Hogosht on the 11th May 1999. Her account of that day is that two persons in uniform entered her house and asked if there were any weapons there. The men then took her husband away. One of the men was referred to as "D█████". She was shown a piece of paper on which a number of names were written which included the name of her husband and she was told that these were the names of persons who were to be liquidated. Within the next few hours her home was burned, and she also heard a number of shots.

The witness stated, "*The man behind this is Momcilo Trajkovic*" but did not give any reasons in support of her view other than that he was chief of police in Kamenica. She gave a number of the names to the Court from the written list, and stated that from those names only her husband and M█████ S█████ had been killed.

The witness went on to state that she could not say whether the attackers were police or army, and the defence pointed out that the witness appeared to have described the uniforms as army uniforms in the investigation.

R█████ B█████²⁵ stated that on the 11th May 1999 he was apprehended in the village of Hogosht. He described maltreatment by what he said were "*special forces*" of his brother. In all he said there were five persons who were heavily armed, and one of who was a Roma. He was accused of being a member of the UCK, which he denied, and made accusations towards others of a similar nature, threatening to shoot those who were affiliated to the UCK. The witness saw that one of these men had a list of names, and they proceeded to set houses on fire and to use violence towards him and others.

According to the witness, at the end of the day he was taken in a truck containing 32 paramilitaries and others from the village to Gjilan police station. During the journey further maltreatment was perpetrated on R█████ L█████. The witness clearly explained that the events in the village on that day had been truly dreadful. Although the witness stated that he recognized some of the persons responsible he did not state that any of them came from Kamenica police station, but that the most dangerous ones came from Ferizaj. Again, this witness like others stated that he considered the defendant responsible, as he was the chief of police in Kamenica. The witness stated that someone called J█████ K█████, believed living somewhere in Pristina, had told him that he had seen the defendant in the village on that day. As the Court was not able to confirm this, it was considered that this hearsay evidence was not sufficiently reliable to be accepted.

Sh█████ K█████²⁶ from Karaceve stated that he was going towards the mountains when the police who were wearing police uniforms and some of who were wearing masks stopped him. He heard some shots and a little later discovered the bodies of R█████ and M█████ nearby. The witness did not recognize any of the police personnel. The witness asserted that the police were from Kamenica police station but without giving any persuasive reason for that opinion.

²⁴ TM 30.09.02.

²⁵ TM 11.10.02.

²⁶ TM 11.10.02.

L ■ S ■²⁷ also spoke of the events that occurred on 11th of May 1999 in the village of Hogosht.

He said that on that day at about 10 or 10.30 a.m. Serbian forces consisting of army and police started attacking the village. Some wore camouflage uniforms with the inscription Polici, and some of them had masks. The witness believed that they were policemen from the area and that they were wearing masks in order to hide their identity. The police had a list of the names of the people who were to be executed. The witness believed, but gave no supporting reasons, that the list had been prepared in Kamenica Police station. The list contained 11 names and the houses of 10 of the persons whose names were on the list were burnt.

At about 11.15 on the same day Serbian forces surrounded his house and the witness managed to escape. He learnt later from his mother that the Serbian forces set fire to the house and took away his father M ■ S ■ and R ■ L ■. The next morning he learnt that his father and R ■ L ■ had been executed.

The witness also stated that he knew that the accused was a chief of police. He believed that the accused was responsible for all the killings in the territory of Kamenica because he was a chief of police.

Sh ■ I ■²⁸ gave evidence concerning the events of 11 May 1999 that occurred in the village of Kopernice. He stated that at about 10.30 a.m. 7 policemen came to his courtyard. They searched all members of his family. They then asked him the whereabouts of I ■ I ■, a cousin of the witness. Three of the police officers remained at his house. The other four accompanied him at gunpoint to look for the house of I ■ I ■, which was at about 60 meters from the house of the witness.

When they reached the house of I ■ I ■, the witness saw him in the company of the police officers with handcuffs. According to the witness the police chief was giving orders to the police officers on the radio to eliminate I ■ I ■. At the time that the orders were being given by radio the witness was close to the policemen to whom the orders were given. He said that he knew the accused well and that they lived in the neighboring villages. He was of the opinion that the police chief who gave the orders by radio could only be the accused because according to him nobody else other than the accused could give such an order to a policeman.

The witness heard shots and learnt later that I ■ I ■ had been killed. His body was recovered at about 3 p.m.

The Court found that the purported recognition of the accused's voice over the radio was not reliable as the witness simply assumed that due to the fact that the voice appeared to be that of a commander it necessarily must have been the voice of the accused, a conclusion that in the opinion of the trial panel is wholly unsafe.

Xh ■ K ■²⁹ also spoke of the events that occurred on 11 May 1999 in the village of Hogosht. He stated that on that day he and his family were expelled from their home which was then set on fire. He explained that he and his family had always been persecuted under the Serbian regime and he was made to suffer because he opposed that regime.

²⁷ TM 17.10.02.

²⁸ TM 12.11.02.

²⁹ TM 02.12.02.

On the critical day he did not see the forces that came to the village. He referred to the list of names that had been given to him by one S█████ N█████ J█████ from Dardica. A shepard allegedly found that list two days after the events that took place. Two persons whose names appeared on that list were captured and executed, namely R█████ L█████ and M█████ S█████. He also added that his name was on that list also.

The witness knew the accused since the time the accused worked as a teacher, and also knew that later he became a police chief. The witness said that he avoided the accused because he had suffered persecution at the hands of the Serbian regime.

B█████ K█████³⁰ stated that he was in the fields near Upper Karaceve on the 11th May 1999 when he saw a police vehicle arrive, and some policemen got out. He was spoken to by the policemen who told him he had to go with them otherwise they would kill him and burn his house. He stated that he then saw the policemen force R█████ and M█████ from Hogosht out of the car, and they were both killed about 100 meters from him at a time when he was being held by another of the policemen who had a radio and he heard the words “*We killed the two dogs*” over the radio. The witness stated that he had been beaten badly and was unable to move for two weeks.

This witness stated that he believed everything was done on the order of the defendant. The trial panel could not establish any persuasive reasons to support this view other than that the defendant was the “chief of police” and was thus considered responsible for any atrocity that happened in the municipality.

In these circumstances, and having carefully reviewed all the evidence relating to the events of the 11th May 1999, the Court concluded that R█████ L█████, M█████ S█████, N█████ K█████, A█████ Th█████ and I█████ L█████ had been abducted and murdered by those who took them from their homes on the 11th May 1999, but was not able to reach a conclusion that the defendant has been shown to have taken any part either direct or indirect in those events.

Evidence of other witnesses as to the defendant’s duties and alleged involvement in the acts set out in this indictment.

R█████ R█████³¹ stated that he has known the accused for 20 years and that he was the police chief of Kamenica. According to him the police station was under the command of the accused. Before the NATO bombing started the accused used to escort the police from Kamenica to other parts of Kosovo every two weeks. The police officers were transported in buses and whenever they would come back to Kamenica the defendant would greet them with words “welcome brave men”. Whenever he saw the accused with the other police officers getting off the bus he was wearing civilian clothes but he has never seen boarding any of the buses. He knew the accused was an inspector for national security in 1998 and according to him the accused was involved in going against the people who did not like the Serbian regime.

Concerning the defendant’s duties as the chief of police, the witness stated that he was aware of the duties of the chief of police. The police forces were under the command of the police chief. He knew this because he had been the chairman of the municipality himself in Kamenica from 1995 to 1998, and he asserted that during the period of the war in 1999 police from Kamenica were mistreating citizens.

³⁰ TM 30.09.02.

³¹ TM 26.06.02.

The witness stated that there were neither military activities nor war as such in the region at that time and therefore there was no need for the police to mistreat anyone. He asserted that as chief of police *“nothing could be done without his (the defendant’s) orders”*.

The witness gave much hearsay evidence of events in the Kamenica municipality during the war and roundly stated that *“the people”* blamed the defendant for these events, alleging that police from Kamenica were responsible.

In the view of the trial panel this evidence was neither helpful nor reliable: it had all the hallmarks of an account that had been brought together from a number of separate sources and contained little relevant evidence based upon the witness’ own knowledge. Further, the account of this witness was essential undermined by the evidence of another Albanian witness, N█████ Sh█████, who gave highly relevant evidence with great courage and disregard for his personal safety.

N█████ Sh█████³² stated that he had been working for the defendant at Kamenica for about four years from 1989 to 1994. After that time he continued to see the defendant on occasions and he stated that *“From the end of 1994 to 1999 I was personally not aware of any complaints about his conduct”*. The witness described the defendant’s duties as *“chief of administration workers...he dealt with car registrations, and issuing driving licenses”*.

The witness continued by saying that during the period of the war he spent time in his flat in Kamenica and also in Hogosht, where his family was living, although he was not in the village on the 11th May 1999. He stated that during the war he was *“not aware of anything concerning Momcilo Trajkovic”*. Further, the witness stated that after he had given evidence in the first main trial he had been the subject of an attempt on his life.

The trial panel regards the evidence of this witness as highly significant. The witness gave his evidence despite the attempt on his life. He did not exaggerate, and the trial panel considered him to be very independent. The trial panel considers his evidence to be very supportive of the trial panel’s general conclusion that there is no satisfactory evidence of guilt against the defendant in relation to Counts 1 to 11 inclusive on this indictment.

A█████ R█████³³ stated that he knows the defendant very well. This witness stated that he had been regional chief of security based in Gjilan until 1990 when he was forced out of his job by the Serbian regime. He stated that the defendant as chief of internal affairs in Kamenica was responsible for public order and that actions could only be taken by the police with his knowledge.

The witness produced a copy of the order of 7th April 1999 issued by the president of the Republic of Serbia, which extended the competencies of the OUP in wartime. The witness was determined to assert that the defendant would have known of the actions of the uniformed police but later in his evidence he conceded that the defendant was head of public security and as such was not uniformed, and was concerned with investigation of serious crime, missing persons and documentary issues; according to him, nonetheless the uniformed police under the commander were still accountable to the defendant.

In the view of the trial panel this witness was ready to place too much weight on his own experience in a similar position to the defendant and which had ended in 1990. The witness

³² TM 17.12.02.

³³ TM 18.07.02.

was not in a position to speak of any individual incident during the war, and nor could he indicate what if any change in the defendant's obligations and responsibilities had occurred as a result of the involvement of the army in the Kamenica region, a fact to which many witnesses testified. Accordingly, the trial panel considered that it would not be appropriate to judge the defendant according to the suppositions of this witness.

M█████ F█████ K█████³⁴ had been an inspector of police until removed from his job in 1990. He alleged that during the early 1990's the defendant had harassed and maltreated him on more than one occasion. According to the witness he was eventually sentenced by a Court to one-year imprisonment. The witness stated that the defendant's position as chief of police was to stay in close touch with what was happening in the municipality: the witness accepted that the accused had worked in public security whereas the witness had worked in state security.

The trial panel found that the witness gave no evidence that was relevant to any of the charges. In particular, the trial panel found that allegations of misconduct against the defendant relating to a much earlier period in time and which the defendant denied did not assist the trial panel to reach a view either way as to the defendant's guilt or innocence.

D█████ G█████³⁵ spoke about the work of the Secretariat of the Internal Affairs in Gjilan and the duties of the accused. This witness is a police officer, and has known the accused since 1 January 1999. On that day the witness was appointed as the Head of the Secretariat of Internal Affairs in Gjilan (SUP). He was the chief of the accused who was the Head of Internal Affairs in Kamenica. This is OUP. The accused had to report to him.

The witness stated that the organizational unit of the SUP was a branch of the Ministry of Internal Affairs of Serbia (MUP). The MUP was itself into Public and State Security. The division of Internal Affairs was responsible for administrative issues such as identification cards, driving licenses and passports. There were also different sections of the police divided into public security, traffic, criminal division, fire department, border police and administrative department. According to the witness, even at the start of the war the OUP continued with their normal duties. The daily activities of the accused were to organize work, identify problems and deal with any disciplinary matter.

The witness said he was aware that serious crimes were occurring in the Municipality of Kamenica. He added that it was the coming of NATO that "created an atmosphere where basic instincts were encourage". He denied that men in police uniforms had carried out the atrocities in the villages of Kamenica. He also said that if such atrocities had occurred he would have become aware of them. He had no reason to believe that the internal affairs covered up any atrocities. He admitted, however, that as head of SUP of Gjilan he expected to be informed of any serious offences that took place in the area. If the accused had heard of any such events it would have been his duty to report such matters to him.

Whilst the trial panel views this evidence with caution the important point to note is that there is no compelling evidence to the contrary in the case.

D█████ S█████³⁶ gave evidence about his work in the OUP in Kamenica. He stated that during the first half of 1999 he was a member of the police service within the OUP in Kamenica. He was the commander of the police station and was in charge of about 100 police officers. He used to have daily contacts with the accused. There was a unit that was

³⁴ TM 23.07.02.

³⁵ TM 03.02.03 (heard in Belgrade).

³⁶ TM 03.02.03 (heard in Belgrade).

receiving daily reports of serious crimes that occurred in the villages during the war. He added that the police did not commit any atrocities in the villages. He himself did not have any knowledge of atrocities. If he had received reports of such atrocities he would have taken appropriate actions. He could not explain why the villagers were making the allegations against the police. Even after the proclamation of the war the duties of the police remain the same.

With regard to the police force the witness stated that he was not aware of anybody who was wearing the police uniform illegally, but he could not rule out such a possibility. The witness used to have working sessions with the accused, and he and the accused would share information. He would also inform the accused about the activities of the police. Although the accused had the authority to stop the witness from taking any action if such an order was in compliance with police rules, the accused never gave such an order. The police in Kamenica was obliged to submit written reports to SUP in Gjilan. The accused was in charge of compiling reports for his area.

Although the trial panel harboured grave suspicions as to the evidence of this witness, who had been implicated as directly involved in certain incidents by some witnesses in the case, there was nothing in his evidence that implicated the defendant in the atrocities that occurred in the villages and which have been summarized above.

R [REDACTED] J [REDACTED]³⁷ stated that he was deputy head of SUP in Gjilan both before and after the war in 1999. He confirmed the defendant's account as to the nature and scope of his duties. The witness stated that there were no significant reports of terrible events in the Kamenica region although he heard that the army had "*carried out an operation in Kamenica municipality about which it was said that there were about 4 or 5 dead bodies*".

In the opinion of the trial panel the witness had sanitized his account of the events of which he had knowledge but it is impossible to say that anything he stated in any way implicated the defendant.

B [REDACTED] F [REDACTED]³⁸ stated that he first met the defendant in 1985 and had been the President of the Municipality of Kamenica from 1993 until he left Kosovo in August 1999. The witness stated that he was aware of some atrocities in the local villages during the war but had not heard talk of who was allegedly responsible. He had received a number of delegations of Albanians from villages but had never heard it alleged that the regular Serb police were involved. According to him, the police had been a "*stabilizing force*".

The trial panel found that this witness was telling the truth in that he had not received complaints of atrocities being committed by Serb police. In the opinion of the trial panel this was not because no Serb police had been involved in any such incident but is an indication that the army and paramilitary forces were seen as being in overall command.

T [REDACTED] R [REDACTED]³⁹ spoke of his work at the Kamenica Police Station. He stated that he worked as cleaner at the Kamenica Police Station for 35 years. He knew the accused and he added that the behaviour of the accused was normal behavior in the months preceding the war. According to him the accused had a good relationship with the local community including the Albanians. The witness stated that he had never seen the accused in the police uniform.

³⁷ TM 03.02.03 (heard in Belgrade).

³⁸ TM 03.02.03 (heard in Belgrade).

³⁹ TM 07.02.03.

The trial panel considered that the evidence of this witness provided some small support for the proposition that in general the accused did not have a bad reputation in the community prior to the war.

N█████ S█████⁴⁰ also spoke of her work at the Kamenica Police Station. She stated that she worked as a cleaner in the Kamenica Police Station for 17 years. She came to know the accused when he was chief of the station. She could not say anything about the nature of the relationship that the accused had with the local community including Albanians. She had never seen any uniformed policeman in the office of the accused.

The trial panel considered that the evidence of this witness was of no assistance.

The Court also heard from a former monitor⁴¹ of the OSCE/KVM monitoring mission, who gave evidence of his contacts with the defendant and other local Serbs during a period of about four months between 2nd January 1999 and 19th March 1999. The identity of this witness was kept secret pursuant to Article 289 para 3 of the LCP. In brief, the witness was assigned the task of regional MUP liaison officer, and as such had contact with a number of persons in the MUP and OUP in the Gjilan/Kamenica region. He understood that the defendant had the rank of “Major”, and he made it plain that Kamenica police station was distinctly a subordinate unit of Gjilan.

The witness gave important evidence in two particular areas of the case. First, he stated, “*I can say clearly that nothing came to my attention during the period that I was here which suggested or might suggest to me that the defendant was acting outside my understanding of his duties*”. In other words, he heard nothing bad about the defendant. Second, he stated that when he left Kosovo on the 18th March, “*our teams operating in the field had seen a high number of VJ and MUP forces entering Kosovo from the Serbian side and being deployed more or less all over the region*”.

The integrity of this witness is not in question. Whilst he could not shed any direct light on the events alleged in the indictment, his evidence assists the defence in tending to show that the defendant had not acquired an unusual reputation in the two months just before the war, and, more importantly, that large number of extra military and security personnel were moved into the Gjilan region of Kosovo from Serbia shortly before the atrocities began. This fact strongly supports the view of the trial panel that much if what happened in the villages in the region during the war occurred at the hands of persons who were not local, and that to the extent that local police were involved that this may well have been at the instigation and under the control of higher and more distant authorities.

Conclusion. In short, a fair review of the evidence of the witnesses in this section has led the trial panel to conclude that there is nothing that significantly incriminates the defendant and a good deal of credible evidence that supports the view that events in the villages were not directed locally nor, in the main, carried out by local police. This conclusion itself leads inescapably to the view that even if the defendant knew of some or all of the events either before or after they occurred, it is most unlikely that he would have been in a position to stop them from happening or afterwards to investigate and punish any of those responsible.

⁴⁰ TM 07.02.03.

⁴¹ TM 05.02.03.

The Allegations of Attempted Murder (2) of the 27th June 1999

It was only in the amended indictment that the International Public Prosecutor charged the defendant with the second charge relating to Arif Pireva. The International Public Prosecutor did not seek to appeal the original trial verdict. Accordingly, the trial panel considered that the prosecutor could not seek a conviction upon the additional count by reason of the principle of *reformatio in peius*.

As to the charge of attempted murder of M [REDACTED] F [REDACTED], the Court heard from a number of witnesses as follows.

M [REDACTED] F [REDACTED]⁴² stated that on the 27th June 1999 he, together with A [REDACTED] P [REDACTED], raised the Albanian flag at the police station in Kamenica. After the flag had been raised he saw the accused on his balcony on the third floor of the building opposite to the police station. The witness started to move away because he saw the accused carrying something. Then he heard burst of shots and he was hit by one bullet in right leg. He added later that it was an automatic gun that he saw with the accused on the balcony. The distance between him and the accused when he fired was about 20 to 30 meters. He was positive that it was the accused who fired the shots and nobody else. He identified the accused because he had seen him before, as Kamenica is a small place. At the precise moments of the shots nobody had a gun except the accused. His back was turned towards the accused when the shots were fired. He spent five days in the hospital following the injuries.

When he was questioned by the defense counsel as to why he had not mentioned that the accused said “there they are, fuck his mother, I am going to kill him” he said that he had forgotten certain things. According to him the shots came from third floor. When he realized that he was going to be shot at he told his friend that he should run away. There was nobody else on any other balcony at the material time. The witness also stated that he reported this criminal act to the American KFOR about one and a half months later because he was staying at home recovering and his telephone did not work during that time.

The accused stated that on 27 June 1999 he was in his village of Caracovc from 7 a.m. with his friend Nedeljko and came back at 9 p.m. He also mentioned that during the previous hearing the witness stated he was shooting from the balcony and now he was saying from the window. He also referred to the ocular inspection of 15 January 2000 when the Prosecutor took him and the witness to a part of his apartment and there the Prosecutor pointed to some flats without balconies and asked the witness from where he was shooting. He explained that the flats without balconies face south whereas his own apartment faces west and has a balcony.

A [REDACTED] P [REDACTED]⁴³ stated that on that day he went to the Kamenica police station in the company of his friend M [REDACTED] F [REDACTED]. They hosted an Albanian flag at the place where the Serbian flag used to be. At one time a man appeared on the balcony opposite the police compound. He was shouting, “How could it be possible for Albanian terrorist to host the flag there”. The word that was used was “Albanski”.

The witness and his friend started walking towards the kindergarten. He heard the loading of the gun, as the whole area was quiet. He then noticed the accused at the window. He started shooting in their direction. The bullets flew around the legs of the witness. His friend M [REDACTED] was hit. The witness added that he had known the accused for several years. When

⁴² TM 22.07.02.

⁴³ TM 06.03.02.

the witness mentioned that his friend had been hit in the right knee he used the Albanian word “kamben” which can mean either the full leg or foot. The witness saw only part of the weapon that was used for shooting.

In answer to this evidence the accused raised an alibi and stated that on 27 June 1999, which was a Sunday, he was in the village where he was born from 7 a.m. to 8 p.m. The name of the village is Cerovac. He also explained that he stayed in his apartment opposite the police compound until 7 September 1999. He was communicating both with Serbs and Albanians. KFOR had interviewed him three or four times about this allegation. He emphasized that during the time he stayed in his apartment between June and September 1999 nobody talked about any shooting.

Xh█████ K█████⁴⁴ stated that on the 27th June 1999 he heard some shots fired from the balcony of a floor of the building that he occupied just below the defendant’s apartment. He heard the accused call somebody. He heard something being mentioned about trenches. When he was asked whether he heard anything else he said that he heard the accused say “I cannot even imagine that in the middle of the day someone can raise the Albanian flag in the police building.” He did see the Albanian flag.

The witness also stated that he learnt later that somebody had been injured. When he was asked whether he looked at the direction of the balcony when he heard the shots, he answered that was impossible to see because the terraces were on a top of each other. When he was questioned by the defense attorney he mentioned that shell casings were found on the road at the distance of two meters from the terrace. He also stated that at the time nobody else was living on the floor occupied by the accused.

In answer to this evidence the accused stated that he was surprised that the witness could come and give such testimony against him. He repeated that on that day he was out of the village in the company of his neighbor S█████ N█████. He also emphasized that about 100 meters away from the building in which his flat was situated there was the KFOR checkpoint. Since he had lived in his apartment until 7 September 1999, he found it strange that nobody made a report of the shooting to the KFOR.

S█████ N█████⁴⁵ stated that the 28th June 1999 was St. Vidovdan’s day and that the day before, meaning the 27th, he accompanied the accused to his village. They took some sacks of flour and some other items with them. At around noon he went to the place of the father in law of the accused. They left for Kamenica from the village at 7 or 7.30 p.m. He had dinner at the accused’s house on that day.

Z█████ J█████⁴⁶ stated that on the 27th June 1999, the day before St. Vidovdan’s day, she was in the village of Caracovc and that the defendant was also there. She stated that on the following day she and other celebrated the Saint’s day at the defendant’s apartment in Kamenica. According to her, the defendant was in the village during the early morning of the 27th, loading sacks onto a tractor.

As mentioned above, the defendant himself had given a similar account in trial on the 6th March 2003.

⁴⁴ TM 17.01.03.

⁴⁵ TM 03.02.03 (heard in Belgrade).

⁴⁶ TM 02.04.03.

The trial panel had the benefit of an ocular inspection on the 7th March 1999, which showed that the defendant's apartment was directly opposite the police station and with a clear view of the place where the injured party and his friend were raising the flag.

The trial panel also accepted into evidence the medical records relating to the treatment received by M■■■■ F■■■■ on the 27th June 1999 at Gjilan hospital.

Assessment of evidence relating to attempted murder.

The trial panel had no doubt that this offence was proved. In addition to the evidence of the injured party and his friend, the Court had the benefit of the evidence of Xh■■■■ K■■■■ who was an independent witness to the defendant's presence in his flat at the relevant time, who heard the defendant utter words of annoyance at the actions of the injured party and his friend, heard the shots, confirmed that no one save the defendant was living on that floor of the apartment block at that time, and found gun cartridges beneath the flat.

This evidence strongly corroborates the evidence of the injured party and his friend and fatally undermines the evidence of the defendant and his alibi witnesses.

Accordingly, the Court is convinced that the defendant, motivated by ethnic hatred and prejudice fired and shot at M■■■■ F■■■■ in the circumstances described, and causing a serious injury to the leg of M■■■■ F■■■■.

In these circumstances the nature of the defendant's actions accompanied by the words he spoke that were heard by Xh■■■■ K■■■■, show beyond any doubt that the defendant was intending to kill the two young Albanian men. For the reasons explained previously, the Court records a conviction only in the case relating to M■■■■ F■■■■.

The charge of unlawful possession of weapons.

With the consent of the parties, the Court read into the record the statement of B■■■■ H■■■■ given before the investigating judge on the 20th September 1999⁴⁷.

In that statement the witness stated that although he could not recall the exact date, sometime during the month of September, together with two other soldiers, he had knocked on the door of a house in Kamenica with a view to performing a search therein as someone had informed KFOR that a person had been wounded. The person immediately denied having any guns in the house and said that he had given all his guns to KFOR. The person then showed the officer a certificate issued by KFOR confirming receipt of an AK 47 and a revolver.

The search of the house then took place and as it was being performed, the defendant suddenly said he did have something to reveal. The defendant then produced a basket from underneath a bed and from which he took an AK 47, two bombs (which the trial panel interprets as grenades) and 300 bullets. The defendant then stated that these items did not belong to him but that he "*found them at his apartment thirty minutes ago*". The defendant was arrested.

The defendant's account of this matter was that he had obtained these weapons from the apartment of T■■■■ D■■■■, who at the relevant time had an apartment one floor above his

⁴⁷ TM 06.03.03.

own in Kamenica. According to the defendant he “*happened to walk in (to the apartment of D[REDACTED]) whilst a break-in was in progress, and I then took the weapons to my apartment*”. The defendant stated that he had tried to get D[REDACTED] to come the first main trial in Gjilan but he had refused.

T[REDACTED] D[REDACTED]⁴⁸ stated that he had the weapons found in the apartment of the defendant belonged to him and that at that time he had gone away in order to stay with relatives and had left the keys to his apartment with the son of the defendant. His account was that although he did not know exactly what had happened he was sure that the defendant had taken the weapons to his own flat for “*safe-keeping*”.

In addition, the defence argued that even if the Court found that the defendant was the unlawfully in possession of the weapons he nevertheless should be given the benefit of an amnesty that was in force at the time when the weapons were discovered.

In the opinion of the trial panel the defence to this charge is without substance. Firstly, the weapons were located inside a basket underneath the defendant’s bed: this indicates that he intended to and had concealed them with a view to keeping them in his custody. Secondly, he lied to Officer H[REDACTED] when first confronted about whether or not he had any weapons in his apartment. This indicates to the trial panel that the defendant’s account of having found the weapons shortly before is not credible. Lastly, the Court did not accept the evidence of T[REDACTED] D[REDACTED]; this witness was uncertain and unconvincing in his account. The Court therefore concluded that the defendant was unlawfully in possession of the weapons.

As to the amnesty issue, it is true that immediately after the war strenuous efforts were made by KFOR to achieve the demilitarization of armed individuals in Kosovo. The defence argument was to the effect that the State (meaning the Serbian or Yugoslavian authorities) had given weapons to the civilians for the purposes of defence and therefore that the State by its actions had imposed “*some sort of obligatory possession of weapons and ammunition*”⁴⁹ upon civilians. Even accepting that such an argument may be legitimate in relation to a person who alleges that weapons in his possession were given to him by the State, the Court does not accept that this argument can apply to weapons obtained from other sources. In this case the defendant did not suggest that the weapons in question had been provided to him by the State, and the Court concludes that the defendant’s account of finding the weapons just a half hour before his apartment was searched was untrue. In these circumstances the Court concludes that the argument advanced by the defence is not relevant.

The defendant was able to produce a certificate from KFOR relating to other weapons that he had handed in. Accordingly, he knew that in order to comply with amnesty provisions applicable in Kosovo at that time the correct course of action was to hand the weapons over to the authorities. Deliberate concealment of weapons continued to be unlawful, and indicates the intention of the defendant unlawfully to conceal and maintain possession of the weapons, and accordingly he is guilty of the offence.

SENTENCING

In the absence of any appeal by the Prosecutor, the Court was bound by the prior sentences imposed by the first verdict of the District Court. In that verdict the Court convicted the defendant of the offence of War Crime (requalified as Crimes against Humanity), and

⁴⁸ TM 03.02.03.

⁴⁹ Final speech of Mr. J[REDACTED], 28.05.03, p 19.

imposed the maximum sentence of 20 years for that offence. The sentences allocated for the offences of attempted murder and illegal possession of weapons (3 years and 4 months respectively) were simply imposed concurrently with the major sentence. The first trial panel did not impose any cumulative penalty in respect of these latter offences.

In these circumstances this Court considers that pursuant to Article 48 Para 1 of the LCP the defendant must be sentenced to a combined penalty less than 3 years and 4 months. In the view of the trial panel this sentence is certainly very moderate indeed for these offences.

The trial panel could see no mitigating circumstances for these offences.

Accordingly, the trial panel imposed the same sentences as the original trial panel, but for the reasons outlined considered that a combined penalty of 3 years and 3 months was the correct penalty to be imposed for these offences.

Court Recorder

Robina Struthers

Presiding Judge

Timothy Clayson

DISTRICT COURT GJILAN
28th November 2003

Legal remedy: An appeal is allowed against this decision within 15 (fifteen) days from receipt of this decision to the Supreme Court of Kosovo in Pristina through this Court.