

Special Prosecution Office of the Republic of Kosovo
Prokuroria Speciale e Republikës së Kosovës
Kancelarija Specijalnog Tužilaštva Republike Kosovo

Pristina, 5 August 2010

GjPP No. 65/09

PPS. No. 08/09

To the District Court of Mitrovicë/Mitrovica

Pursuant to Articles 304-305 of the Kosovo Code of Criminal Procedure (KCCP) the undersigned public prosecutor respectfully submits the following:

INDICTMENT

Against:

Sabit Geci; Kosovar-Albanian male; date of birth, 20 August 1958; place of birth, Lausha Village, Skenderaj Municipality; residence, Rr. Mbreti Zugu, no. 9, Pristina; presently held in Detention on Remand by order of the court since 6 May 2010, and

Riza Alija (“Commander Hoxhaj”); Kosovar-Albanian male; date of birth, 21 January 1960; place of birth, Gjakova; residence in Ponoshec Village in Municipality of Gjakova; presently held in Detention on Remand by order of the court since 23 June 2010.

The above two defendants¹ are hereby indicted and accused of having committed: **War crimes against the civilian population** as more fully set forth below:

Description of Criminal Offenses and Explanation of Grounds for
Filing the Indictment
(KPPC Art. 305 (1) 3), 4), 5))

During the course of the conflict in Kosovo during 1998 and 1999, many persons left Kosovo and sought refuge elsewhere. Many Kosovar-Albanians sought safety in Albania. A number of persons who sought refuge in Albania were met by and questioned by agents and officers of the Kosovo Liberation Army (KLA). Some of these civilians were taken and kept in detention for varying periods of time.

By late March or early April of 1999 and continuing through mid-June of 1999, the KLA had established and operated several logistic, training, and supply bases in northern Albania. Two of these establishments were located in the towns of Kukes and Cahan.

¹ A third suspect, Xh [REDACTED] K [REDACTED]; Kosovar-Albanian male; date of birth 12 December 1963; place of birth Leskovac Village, Prizren Municipality, is currently at large and is therefore not charged in this indictment. For the sake of clarity, X [REDACTED] K [REDACTED] name will appear during the factual explanations with the understanding that he is not charged under this indictment and that references to him are solely for the purposes of accurate presentation.

At these two locations, certain personnel of the KLA detained civilians and non-combatants for various reasons. Some detainees were suspected of collaborating with the Serbian government. Others held political beliefs contrary to the beliefs of certain officers in the KLA. Others did not demonstrate adequate loyalty to the KLA cause. In the Kukes and Cahan facilities, certain individuals of the KLA regularly mistreated certain civilians detained there over a period of time, specifically between April and mid-June of 1999. The three identified and targeted suspects in this case were directly involved in ordering and participating in the mistreatment of the persons held in detention these facilities.² In addition, prisoners were kept in inhumane conditions and were beaten and tortured by the defendants and other named and unnamed individuals of the KLA. Witnesses testified that they suffered severe bodily injuries and immense anguish, physical as well as mental, due to the conditions in which they were kept and as a result of the beatings and torture they received. One person detained in Kukes died as a result of the beating and torture inflicted upon him.

On 6 May, 2010, when **Sabit Geci** was arrested in Pristina, Kosovo on war crimes charges, he was in possession of a firearm.

Sabit Geci:

- 1) **War crime against the civilian population**, provided for and punished by **Articles 22 and 142 of the Criminal Code of the Socialist Federal Republic of Yugoslavia (CCSFRY)**, currently criminalized under Articles 23 and 120 of the Criminal Code of Kosovo (CCK), because, in violation of **Article 3 common** to the four Geneva Conventions of 12 August 1949, and of **Articles 4 and 5(1) of Protocol II** of 8 June 1977, Additional to the 1949 Geneva Conventions, all rules of international law effective at the time of the internal armed conflict in Kosovo and at all times relevant to the present indictment, **the defendant**, in his capacity of member of the Kosovo Liberation Army (KLA) holding a command position in an improvised prison located within a KLA military compound in the town of Kukës (Kukës prison), and jointly with Xh██████t K██████ and other members of the KLA, **treated inhumanely** (e.g. filthy living conditions, lack of adequate sanitation, food and water) an undefined number of civilian prisoners, including Witness H, Witness A, Witness B, A██████ B██████, Witness C, Witness D, Witness E and Witness F;

- In Kukës (Republic of Albania) from April 1999 until mid-June 1999

- 2) **War crime against the civilian population**, provided for and punished by **Articles 22 and 142 of the CCSFRY**, currently criminalized under Articles 23 and 120 of the CCK, because, in violation of **Common Article 3** and **Articles 4 and 5(1) of APII**, all rules of international law effective at the time of the internal armed conflict in Kosovo and at all times relevant to the present Ruling, **the defendant**, in his capacity as member of the KLA holding a command position in the Kukës prison, in co-perpetration with Xh██████t K██████ and other members of the KLA, **tortured** Witness H, Witness A, Witness B, A██████ B██████, Witness C, Witness D, Witness E and Witness F, all of them civilian prisoners by attempting to obtain information and confessions

² From the evidence, it appears that defendant Sabit Geci and Xh██████t K██████ had access to and some measure of control over persons held in Kukes and Cahan. Defendant Riza Alija had access and control over persons held in Cahan only.

from the victims while repeatedly using violence against them and ordering other KLA members to do the same;

- In Kukës (Republic of Albania) on or about 19 May 1999

- 3) **War crime against the civilian population**, provided for and punished by **Articles 22 and 142 of the CCSFRY**, currently criminalized under Articles 23 and 120 of the CCK, because, in violation of **Common Article 3** and **Articles 4 and 5(1) of APII**, all rules of international law effective at the time of the internal armed conflict in Kosovo and at all times relevant to the present Ruling, **the defendant**, in his capacity as member of the KLA holding a command position in the Kukës prison, in co-perpetration with Xhemshit Krasniqi and other members of the KLA, on several occasions **violated the bodily integrity** of an undefined number of prisoners (in any case higher than 10, including Witness H, Witness A, Witness B, A■■■■ B■■■■, Witness C, Witness D, Witness E and Witness F, all of them civilian prisoners) by means of severe ill-treatments and beatings occurred inside the makeshift cell where such prisoners were detained;

- In Kukës (Republic of Albania) on undefined dates between April 1999 and mid-June 1999.

- 4) **War crime against the civilian population**, provided for and punished by **Articles 22 and 142 of the CCSFRY**, currently criminalized under Articles 23 and 120 of the CCK, because, in violation of **Common Article 3** and **Articles 4 and 5(1) of APII**, all rules of international law effective at the time of the internal armed conflict in Kosovo and at all times relevant to the present Ruling, **the defendant**, in his capacity as member of the KLA holding a command position in the Kukës prison, in co-perpetration with Xh■■■■ K■■■■ and other members of the KLA participated in the **killing** of A■■■■ B■■■■, a civilian held captive in Kukës, who died as a result of a gun shot wound to the leg caused by a shot fired by a so far unidentified KLA soldier; more precisely, the defendant participated in the killing by keeping A■■■■ B■■■■ detained at his and other perpetrators' disposal for the torturing, beating and any sort of ill-treatment, although he knew or could easily foresee that the systematic violence that he and other perpetrators inflicted daily on the prisoners could result in the death of one or more of the victims;

- In Kukës (Republic of Albania) on or about 5 June 1999.

- 5) **War crime against the civilian population**, provided for and punished by **Articles 22 and 142 of the CCSFRY**, currently criminalized under Articles 23 and 120 of the CCK, because, in violation of **Common Article 3** and **Articles 4 and 5(1) of APII**, all rules of international law effective at the time of the internal armed conflict in Kosovo and at all times relevant to the present indictment, **the defendant**, in his capacity as member of the KLA, in co-perpetration with Riza Alija **violated the bodily integrity** of Witness L, a civilian detained in an improvised prison located within a KLA military compound in the town of Cahan ("Cahan prison"), by repeatedly and severely beating him with a crutch and with a wooden stick;

- In Cahan (Republic of Albania) on or about 12 April 1999.

- 6) **War crime against the civilian population**, provided for and punished by **Articles 22 and 142 of the CCSFRY**, currently criminalized under Articles 23 and 120 of the CCK, because, in violation of **Common Article 3** and **Articles 4 and 5(1) of APII**, all rules of international law effective at the time of the internal armed conflict in Kosovo and at all times relevant to the present indictment, **the defendant**, in his capacity as member of the KLA, in co-perpetration with Riza Alija **violated the bodily integrity** of an undefined number of civilians, including Witness L, Witness O, Witness K, Witness M, and Witness N, detained in the Cahan prison, by ordering the direct perpetrator Riza Alija to use violence against them;

- In Cahan (Republic of Albania) on unspecified dates between 12 April and mid-June 1999.

Riza Alija

- 1) **War crime against the civilian population**, provided for and punished by **Articles 22 and 142 of the CCSFRY**, currently criminalized under Articles 23 and 120 of the CCK, because, in violation of **Common Article 3** and **Articles 4 and 5(1) of APII**, all rules of international law effective at the time of the internal armed conflict in Kosovo and at all times relevant to the present indictment, **the defendant**, in his capacity of member of the Kosovo Liberation Army (KLA) jointly with other so far undefined members of the KLA, **treated inhumanely** (e.g. filthy living conditions, lack of adequate sanitation, food and water) an undefined number of civilian prisoners, detained in the Cahan prison;

- In Cahan (Republic of Albania) between April 1999 and mid-June 1999.

- 2) **War crime against the civilian population**, provided for and punished by **Articles 22 and 142 of the CCSFRY**, currently criminalized under Articles 23 and 120 of the CCK, because, in violation of **Common Article 3** and **Articles 4 and 5(1) of APII**, all rules of international law effective at the time of the internal armed conflict in Kosovo and at all times relevant to the present indictment, **the defendant**, in his capacity as member of the KLA, in co-perpetration with Sabit Geci **violated the bodily integrity** of Witness L, a civilian detained in an improvised prison located within a KLA military compound in the town of Cahan (Cahan prison), by repeatedly and severely beating him with a crutch and with a wooden stick;

- In Cahan (Republic of Albania) on or about 12 April 1999.

- 3) **War crimes against the civilian population**, provided for and punished by **Articles 22 and 142 of the CCSFRY**, currently criminalized under Articles 23 and 120 of the CCK, because, in violation of **Common Article 3** and **Articles 4 and 5(1) of APII**, all rules of international law effective at the time of the internal armed conflict in Kosovo and at all times relevant to the present indictment, **the defendant**, in his capacity as member of the KLA, in co-perpetration with Sabit Geci and other unidentified KLA members, acting upon the order of Sabit Geci, **violated the bodily integrity** of the following civilians detained in the Cahan prison:

- a. Witness L, by beating him in a number of ways, including by striking him with a heavy-duty shoe, **on or about 14 April 1999**; and by ordering other so far

unidentified KLA soldiers to punch and kick Witness L on an undefined number of occasions, (especially when the latter was on his way from the cell where he was detained to the toilet), **on unspecified dates between 12 April and mid-June 1999.**

- b. Witness M, by repeatedly striking him on his back with an iron bar, **on or about 17 April 1999.**
- c. Witness O, Witness K, Witness M, and Witness N, by beating them in a number of ways, including by striking them with a wooden stick, and by ordering other so far unidentified KLA soldiers to beat them, **on unspecified dates between 12 April 1999 and mid-June 1999.**

Count 3 – Unauthorized Possession of Weapon (Sabit Geci)

On 6 May 2010, while being arrested for the war crimes charge described herein, **Sabit Geci** did have in his personal possession a weapon, a semi-automatic pistol, specifically, a Crvena Zastava M-57 Lux caliber 7.62x25 mm pistol. This was a fully functioning and loaded firearm and his possession of this weapon was unauthorized. On 10 June 2010 at a hearing, Sabit Geci, with counsel present, admitted that he possessed a weapon. His comment was in response to the prosecutor advising him that the investigation against him was likely to be expanded to include the weapon charge. His unauthorized possession of this weapon on 6 May 2010 constitutes a violation of CCK Art. 328(2) with punishment of a fine of up to 7.500 EUR or by imprisonment of one to eight years.

Further Considerations:

1. The acts of the defendants took place during a period when an internal armed conflict existed within Kosovo. With respect to those acts which occurred during the period of approximately April 1999 to 12 June 1999, they took place while an international armed conflict existed within Kosovo. At all times relevant to this indictment, a state of internal armed conflict existed between the KLA and the Federal Republic of Serbia and the Federal Republic of Yugoslavia, including the Yugoslav Army (VJ), the forces of the Federal Republic of Yugoslavia (FRY) Ministry of the Interior, forces of the Republic of Serbia Ministry of the Interior and Serbian paramilitary soldiers in the territory of Kosovo. Both armed 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. An international armed conflict co-existed alongside the internal armed conflict during the period 24 March 1999 to 12 June 1999.³
2. Conduct set forth in CCSFRY Article 142, and as listed in this indictment, constitutes war crimes, as each of the key identified acts constitute a violation of applicable

³ That there was an internal armed conflict in Kosovo during 1999 until mid-June of 1999 is well-documented in contemporary literature and well recognized by courts. The armed conflict between NATO states and FRY constituted an international armed conflict. It started on 24 March 1999 at the beginning of NATO's air campaign, and lasted at least until 12 June 1999, when FRY forces withdrew from Kosovo at the end of NATO's air campaign. See *Tadic*, Appeals Chamber Decision on Jurisdiction 1995, par 84 which states: "*It is indisputable that an armed conflict is international if it takes place between two or more States. In addition, in the case of internal armed conflict breaking out on the territory of a State, it may become international (or, depending upon the circumstances, be international in character alongside an internal armed conflict) if i) another State intervenes in that conflict through its troops, or alternatively if ii) some of the participants in the internal armed conflict act on behalf of that other State.*" See also Supreme Court of Kosovo – *Latif Gashi, et al.*, AP-KZ 1 39/2004 at p. 10-11 ("*Clearly there was an internal armed conflict in Kosovo within the meaning of Article 3 Common to the Geneva Conventions and its Related Protocol II.*")

international law, including Common Article 3 to the four Geneva Conventions of 1949, as applicable in internal armed conflict; the Hague Conventions of 1899 and 1907, the four Geneva Conventions of 1949, and Additional Protocol II of 1977 to the Geneva Conventions of 1949, as applicable in internal armed conflict.⁴

3. CCSFRY Article 142 is the law applicable to Kosovo in accordance with UNMIK Regulation 1999/24, which states that the law applicable to Kosovo is that law which was in force in Kosovo on 22 March 1989. In conformity with the requirements of the Socialist Federal Republic of Yugoslavia Constitution 1974, Article 181, part of the applicable law in Kosovo, (that criminal offences and criminal sanctions can only be based on a legal provision that defines the offence and threatens a punishment), CCSFRY Article 142 defines the offences of war crimes against the civilian population and establishes a punishment thereto.
4. All of the victims of war crimes referred to in the charges of this indictment are expressly protected members of the civilian population, as prescribed in CCSFRY Article 142 and pursuant to the above-mentioned international law.
5. There is a nexus between the war crimes committed, as charged in this indictment and the internal armed conflicts. The existence of the armed conflict played a substantial part in the ability of the defendants to carry out the offenses and the actions of the defendants were directly linked to the armed conflict.
6. Although the acts alleged took place in Albania, the courts of Kosovo have jurisdiction over any person who commits a war crime outside the territory of Kosovo. CCK Art. 100 (1).⁵ Furthermore, CCSFRY Art. 106 provides that “Yugoslav criminal law applies to a citizen of SFRJ (Socialist Federal Republic of Yugoslavia) when he commits abroad a criminal act other than those referred to in article 105 of this law, provided he is found on the territory of the SFRJ or has been extradited to the SFRJ.” Clearly, there is a legal basis for the courts of Kosovo to prosecute alleged war crimes committed during the 1998-1999 conflict in Kosovo by persons from Kosovo and found and arrested in Kosovo.

Proposals for Trial **(KCCP Art. 305 (1) 6) and 7)**

7. It is proposed that the main trial of this case be scheduled and held **either in the District Court of Prishtinë/Priština or the District Court for Mitrovica/Mitrovicë**. The investigation of this matter was initiated by a Ruling filed against Sabit Geci in the District Court for Mitrovica/Mitrovicë. This was filed pursuant to KCCP Art. 30 which provides that when the offense occurs outside the territory of Kosovo, “...the court within whose territory the defendant has a permanent or current residence shall have jurisdiction.” The Central Registry records at the time (as of 3 July 2009) showed that

⁴ See Supreme Court of Kosovo – *Latif Gashi, et. al AP-Kz 39/2004* at p. 4-8.

⁵ “The criminal laws of Kosovo apply to any person who commits a criminal offense provided for in Articles 116-121...of the present Code outside the territory of Kosovo.” CCK Art. 101 (1). CCK Articles 120 and 121 are the successor provisions of CCSFRY Art. 142.

Sabit Geci resided in Skenderaj Municipality, which is within the District of Mitrovica/Mitrovicë.⁶ Since the defendant **Sabit Geci** has now been charged and indicted with Unauthorized Possession of a Weapon (in violation of CCK 328 (2)). This offense was committed in Pristina. KCCP Art. 31 provides that “[i]f a person commits criminal offenses both in Kosovo and outside Kosovo, the court that has jurisdiction over the act committed in Kosovo shall have jurisdiction.” From this it appears that the District Court of Prishtinë/Priština may have jurisdiction over this matter. KCCP Art. 32 provides that the Supreme Court can designate the appropriate court to conduct proceedings in the event that jurisdiction cannot be established. Either District Court is acceptable to the prosecution, but the court is hereby on notice of the jurisdictional issue does require resolution.

8. The following persons are to be summonsed⁷ to attend the main trial:
 - International Prosecutor Maurizio Salustro of the Special Prosecutor’s Office of the Republic of Kosovo
 - The accused Sabit Geci and his counsel
 - The accused Riza Alija and his counsel.
 - The Witness-Injured Parties: A, B, C, D, E F, G, H , K, L, M, N, and O.
 - Witnesses – I, J and 1,2,3,4,5,6, and 7.
 - Claudio Scipione – EULEX – War Crimes Investigation Unit
 - Francesco Duminuco – EULEX – War Crimes Investigation Unit
 - Victor Odom – EULEX – War Crimes Investigation Unit
 - Joni Voutila – EULEX - War Crimes Investigation Unit.
 - Robert Castellow – EULEX – War Crimes Investigation unit
9. It is proposed that the Court at trial consider the testimony presented by the witnesses, injured parties, and co-defendants as well as the prior statements made to investigators and prosecutors.
10. It is proposed that the Court at trial consider the evidence seized during the searches of the residences of the three suspects in this case. On 6 May 2010 a search order was executed at the residence of Sabit Geci. During the arrest of Sabit Geci, a firearm was seized and submitted for examination. See item 11(c) below. On 12 May 2010 a search order was executed at the residence of Xh██████ K██████. On 23 June 2010 a search order was executed at the residence of Riza Alija. During the course of the searches, police confiscated computers, related equipment, books, and photographs. The computers and related discs and memory storage devices are being examined by computer forensics experts and the results will be provided to the court when available. Specific relevant material will be identified prior to the trial

⁶ It was later determined that Sabit Geci was residing in Pristina. He was arrested outside his residence in Pristina on 6 May 2010.

⁷ A separate Confidential Addendum to Indictment has been provided to the court. The confidential addendum identifies by name the injured parties and witnesses. On 30 July 2010, the undersigned filed a Petition for Measures to Protect Injured Parties and Certain Witnesses in which the prosecution seeks to have the identity and information regarding the witnesses kept confidential by the court and counsel for defendants. The procedure proposed by the prosecutor restricting disclosure of the identity of the injured parties and witnesses is consistent with and sanctioned by the provisions set forth in KCCP Art. 307(4).

11. It is proposed that the court accept, consider, and read into evidence the following forensic reports:
 - a. Autopsy Report – 18 August 2009 – A [REDACTED] B [REDACTED] – Case No. MA – 09-216 -
 - b. DNA Report – 22 December 2009 – AN KUP 11847
 - c. Firearms Examination Report – 16 June 2010 – 2010-1043
 - d. Forensic computer examination on computers and data storage devices – Pending.

12. It is proposed that the court accept, consider, the copy of list of deceased immigrants (refugees) from Kosovo from Kukes Supervisor of Public Services – Municipality of Kukes - covering the dates of 28 March 1999 through 17 June 1999 – entry number #138 showing death of A [REDACTED] B [REDACTED] from Prizren on 6 June 1999.

13. The undersigned proposes that the court receive and accept into evidence the following documents: (1) *Kosovo/Kosova as Seen as Told*, Volume 1, published by the OSCE; (2) *Under Orders*, published by Human Rights Watch; (3) UN Security Council Resolutions 1160 and 1199.

Detention
(KPPC Art. 305 (2))

Defendants **Sabit Geci** and **Riza Alija** are currently being held in detention on remand. The undersigned respectfully requests that the defendants remain in detention on remand.

Respectfully Submitted,

5 August 2010

Robert L. Dean

International Public Prosecutor - Eulex
Special Prosecution Office of the Republic of Kosovo