

Prana no 20.03./12-13,30

DISTRICT COURT OF MITROVICA
P. nr. 45/2010
13 October 2011

IN THE NAME OF THE PEOPLE

THE DISTRICT COURT OF MITROVICA, in the trial panel composed of EULEX Judge Jonathan Welford-Carroll as Presiding Judge, and President Xhevdet Abazi and EULEX Judge Caroline Charpentier as panel members, with the participation of EULEX Legal Officer Tara Khan as Recording Officer, in the criminal case against:

SALI REXHEPI charged, according to SPRK Indictment PPS nr. 117/2010 filed on 29 December 2010 and confirmed on 25 March 2011 by Ruling KA nr. 208/2010 and joined with case P nr. 45/2010 during the main trial hearing on 04 May 2011, with three counts of **War Crimes Against the Civilian Population** in violation of Articles 22 and 142 of the Criminal Code of the Socialist Federal Republic of Yugoslavia ("CCSFRY"), also foreseen in Articles 23 and 120 of the Criminal Code of Kosovo ("CCK"), and in violation of Common Article 3 of the Geneva Conventions and Articles 4 and 5(1) of Additional Protocol II to the Geneva Conventions;

After having held the main trial hearings open to the public on the following dates:

- 14, 16, 21, 23, 24, 28, 31 March 2011;
- 04, 06, 07 April 2011;
- 04, 05, 16, 19, 23, 25 May 2011;
- 02, 08, 09, 10, 20 June 2011;
- 12 October 2011;

All in the presence of SPRK Prosecutor Maurizio Salustro¹, defendant Sali Rexhepi and his defence counsel Qazim Qerimi;

After deliberations and voting, pursuant to Article 392 Paragraph (1) of the Kosovo Code of Criminal Procedure ("KCCP"), on 13 October 2011 the Trial Panel

¹ With the exception of those days when he sent an authorized substitute.



pronounced in public and in the presence of all the above-mentioned parties the following:

VERDICT

The Accused **SALI REXHEPI**, son of [REDACTED] Rexhepi and [REDACTED] born 12 July 1956 in Rashkoc Village, Gjakove/Djakova Municipality, currently residing in Gjakove/Djakova, ID nr. 1009230218;

Is

FOUND GUILTY

Of (Count 2) War Crimes Against the Civilian Population

- because on or about 03 May 1999, during a time of internal armed conflict in Kosovo, the Accused in his capacity as a member of the KLA, in co-perpetration with Haki Hajdari, Shaban Hoti and other unidentified KLA soldiers, tortured Witness N, a Kosovo Albanian civilian detained in the Cahan detention center by attempting to obtain information and confessions from him while repeatedly beating him with wooden sticks.

By doing so, SALI REXHEPI committed and is criminally liable for the criminal act of War Crimes against the Civilian Population pursuant to Articles 22 and 142 of the CC SFRY and in conjunction with Common Article 3 of the Geneva Conventions and Articles 4 and 5(1) of Additional Protocol II to the Geneva Conventions.

The Accused SALI REXHEPI is

FOUND NOT GUILTY

Of (Count 1) War Crimes Against the Civilian Population

- because it was not proven that between April until mid-June 1999, during a time of internal armed conflict in Kosovo, the Accused in his capacity as a member of the KLA holding a command position in the Cahan camp, in co-



perpetration with Riza Alija, Haki Hajdari and other unidentified KLA soldiers, treated inhumanely (e.g. filthy living conditions, lack of adequate sanitation, food and water) an undefined number of civilian prisoners detained in the detention center in the KLA camp in Cahan.

Therefore, pursuant to Article 390 Item (3) of the KCCP, the Accused SALI REXHEPI is acquitted of the charge of (Count 1) War Crimes Against the Civilian Population.

Of (Count 3) War Crimes Against the Civilian Population

- because it was not proven that on or about 09 May 1999, during a time of internal armed conflict in Kosovo, the accused in his capacity as a member of the KLA, in co-perpetration with another unidentified KLA soldier, tortured Witness N, a Kosovo-Albanian civilian detained in the Cahan detention center, by attempting to obtain information and confessions from Witness N while an unidentified KLA soldier beat him with a wooden stick on his hands and legs.

Therefore, pursuant to Article 390 Item (3) of the KCCP, the Accused SALI REXHEPI is acquitted of the charge of (Count 3) War Crimes Against the Civilian Population.

SALI REXHEPI is

SENTENCED

- to five /5/ years of imprisonment for (Count 2) War Crimes Against the Civilian Population.

The Accused shall reimburse the costs of criminal proceedings pursuant to Article 102 Paragraph (1) of the KCCP with the exception of the costs of interpretation and translation, in the amount of 500.00 Euro.



REASONING

I. PROCEDURAL HISTORY

1. On 29 December 2010, SPRK Prosecutor Maurizio Salustro filed Indictment PPS nr. 117/2010 against Haki Hajdari and Sali Rexhepi charging them with War Crimes Against the Civilian Population by maltreatment of civilian detainees at a KLA-run detention camp located in Cahan, Albania in 1999. A hearing was held on confirmation of the indictment and admissibility of the evidence on 14 February 2011. Upon request of Defence Counsel of both Defendants, the hearing was adjourned to 22 March 2011 in order to give the Defence appropriate time to review the disclosure materials supporting the indictment.
2. On 16 February 2011, the Prosecutor filed a Ruling on expansion of the criminal investigation of case PPS nr. 117/2010 to include Shaban Hoti as a additional suspect. Subsequently, on 25 February 2011, the Prosecutor filed a separate indictment under PPS nr. 117/2010 (registered by the Court under KA nr. 09/2011) against Shaban Hoti charging two counts of War Crimes with regard to the detainees at the KLA camp in Cahan.
3. Upon request of the SPRK Prosecutor, Confirmation Judge Nikolay Entchev issued an Order on 02 March 2011 joining criminal case KA nr. 09/2011 against Shaban Hoti to criminal case KA nr. 208/2010 against Haki Hajdari and Sali Rexhepi since the alleged criminal offences were interconnected and relied upon common evidence.
4. The Confirmation Hearing of the Indictments against Hajdari, Rexhepi and Hoti was held on 22 March 2011. On 25 March 2011, Confirmation Judge Nikolay Entchev issued Ruling KA nr. 208/2010 confirming both indictments and declaring all the evidence contained in the case file as admissible.
5. On 06 August 2010, SPRK Prosecutor Robert Dean filed indictment PPS nr. 08/2009 against Sabit Geci and Riza Alija alleging one count of War Crimes



Against the Civilian Population against each defendant for acts committed against civilian detainees held in two KLA-run camps in Kukes and Cahan in the Republic of Albania during 1999, and one count of Unauthorized Possession of Weapon against Defendant Geci. A hearing on confirmation of the indictment was held on 07 October 2010 during which SPRK Prosecutor Maurizio Salustro presented a revision of the wording of the enacting clause of the indictment which separated the individual various charges of War Crimes. The hearing was adjourned until 22 October in order to give the Defence appropriate time to review the revision. On 24 November 2010, EULEX Judge Nikolay Entchev confirmed the Indictment as amended in Ruling KA nr. 64/2010.

6. On 14 April 2011, the Prosecutor moved for the case against Haki Hajdari, Sali Rexhepi and Shaban Hoti to be joined to the ongoing trial against Sabit Geci and Riza Alija (P nr. 45/2010). Geci and Alija were charged with several counts of War Crimes Against the Civilian Population with regard to the treatment of detainees at KLA camps in both Cahan and Kukes, Albania in 1999. That trial had commenced on 14 March 2011 with the hearing of evidence in relation to the KLA camp in Kukes.
7. On 04 May 2011, the trial against Hajdari, Rexhepi and Hoti (case P nr. 13/2011) was opened, also in the presence of defendants Sabit Geci and Riza Alija and their Defence Counsel. All of the parties agreed to the joinder of the cases because although eleven hearings had been held in the Geci/Alija trial, all of the evidence heard thus far concerned only acts which had allegedly occurred in the KLA camp in Kukes.² Only Geci and Alija were charged with committing criminal offences at that location. The charges against Hajdari, Rexhepi and Hoti concerned incidents which allegedly occurred exclusively at the KLA camp in Cahan, Albania. Therefore, there was no prejudice to the new defendants in the joinder of these cases. The main trial thus continued against all five defendants.

² Between 14 March and 04 May 2011, six Prosecution witnesses were heard, all of whom testified exclusively about events occurring in the KLA camp in Kukes, Albania.



8. Sali Rexhepi pled "Not Guilty" to each of the three counts of the Indictment during the main trial session on 04 May 2011.
9. On 16 June 2011, Defence Counsel Qazim Qerimi applied for permission from the Court for Defendant Rexhepi to travel to Turkey for urgently needed heart surgery. On 20 June, the Trial Panel severed the case against Sali Rexhepi pursuant to Article 34 KCCP and the trial continued against the four other defendants.
10. The trial against the other four defendants concluded on 29 July 2011. The trial against Sali Rexhepi continued on 12 October 2011 and the verdict was pronounced on 13 October 2011.

II. COMPETENCE OF THE COURT & QUALIFICATION OF OFFENCE

11. Under Article 23 Item 1) i) KCCP, District Courts are competent to hear criminal cases involving charges for which the law allows the imposition of a penal sentence of at least five years. Sali Rexhepi was charged with three counts of the criminal offence of War Crimes Against the Civilian Population, which carries a minimum sentence of five years (under Art. 142 CC SFRY). Therefore, the District Court is the competent judicial body to hear this criminal proceeding.
12. Under Article 3.1 of the Law on the Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors ("Law on Jurisdiction"), EULEX Judges have jurisdiction and competence "over any case investigated or prosecuted by the SPRK." This case was investigated and prosecuted by SPRK prosecutors. The main trial panel was composed of EULEX Judge Jonathan Welford-Carroll as Presiding Judge, and EULEX Judge Caroline Charpentier and Mitrovica District Court President Xhevdet Abazi as panel members. There were no objections by the parties to the composition of the panel.



13. In the joined indictment all of the defendants are charged with several counts of "War Crime against the Civilian Population" pursuant to Common Article 3 of the 1949 Geneva Conventions and Articles 4 and 5(1) of Additional Protocol II 1977 under Articles 22 and 142 of the Criminal Code of the Socialist Federal Republic of Yugoslavia (CCSFRY).
14. Pursuant to UNMIK Regulation 1999/24, as amended by UNMIK Regulation 2000/59, the CCSFRY is the applicable Substantive Law in this case. This is confirmed by the Supreme Court of Kosovo in People v Latif Gashi.³ The Procedural Law applicable to the case is the KCCP.
15. Common Article 3 of the Geneva Conventions 1949, *inter alia*, declares:
 In the case of armed conflict *not of an international character* [emphasis added] occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:
- (1) Persons taking no active part in the hostilities, ... , shall in all cases be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.
 To this end, the following acts are and shall remain prohibited *at any time and in any place whatsoever* [emphasis added] with respect to the above mentioned persons:
- a. Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- b. - d. ... (*not relevant*) Taking of hostages;
- (2) ... (*not relevant*)
 ... (*not relevant*)
 The application of the preceding provision shall not affect the legal status of the parties to the conflict.
16. Additional Protocol II 1977, Part II Humane Treatment declares:
 Article 4 – Fundamental guarantees
1. All persons who do not take a direct part ... in hostilities, whether or not their liberty has been restricted, are entitled to respect for their person, honour and convictions and religious practices. They shall be in all circumstances be treated humanely, without any adverse distinction. It is prohibited to order that there shall be no survivors.
2. Without prejudice to the generality of the foregoing, the following acts against the persons referred to in paragraph (1) are and shall remain prohibited *at any time and in any place whatsoever* [emphasis added]:

³ Latif Gashi, Kosovo Supreme Court Decision, 21 July 2005 at p5.



(a) violence to the life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment;

(b) – (h) ... *(not relevant)*

3. ... *(not relevant)*

Article 5 – Persons whose liberty has been restricted

1. In addition to the provisions of Article 4, the following provisions shall be respected as a minimum with regard to persons deprived of their liberty for reasons related to the armed conflict, whether they are interned or detained:

(a) ... *(not relevant)*

(b) the persons referred to in this paragraph shall, to the same extent as the local civilian population, be provided with food and drinking water and be afforded safeguards as regards health and hygiene and protection against the rigours of the climate and the dangers of the armed conflict;

(c) – (e) ... *(not relevant)*

17. It is established and settled law that Common Article 3 of the Geneva Conventions and Articles 4 and 5(1) of Additional Protocol II 1977 are customary international law and were so at the relevant time for this case.⁴

18. The relevant CC SFRY provisions on the substantive offences are as follows:

Article 22 – complicity

If several persons jointly commit a criminal act by participating in the act of commission or in some other way, each of them shall be punished as prescribed for the act.

NOTE: The above provision is repeated within the current CCK in Article 23 – Collaboration in Criminal Offences/Co-perpetration.

Article 142 – War crime against the civilian population

Whoever in violation of the rules of international law effective at the time of war, armed conflict or occupation, orders that the civilian population be subjected to killings, torture, inhuman treatment, ..., immense suffering or violation of bodily integrity or health; ..., unlawful bringing in concentration camps and other illegal arrests and detention, deprivation of rights to fair and

⁴ See Opinion of International Court of Justice opining that Common Article 3 represents customary international law in both international and non-international armed conflict in *Nicaragua v. U.S.*, Merits 1986 [CJ Rep. 4 (June 27) at paras 118-120.



impartial trial; ... , or who commits one of the foregoing acts, shall be punished by imprisonment of not less than five years or by the death penalty.

NOTE: The above provision is repeated within the CCK in Article 120 – War Crimes in Serious Violation of Article 3 Common to the Geneva Conventions. Article 106 – Applicability of Yugoslav criminal law to a SFRJ citizen committing a criminal act abroad

Yugoslav criminal law applies to a citizen of SFRJ 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.

NOTE: The above provision is repeated within the CCK in Articles 100 and 101.

19. Yugoslavia became a high contracting party to the Geneva Conventions on 15 December 1950 and to the Additional Protocols on 28 December 1978.
20. The Defence Counsel of Sabit Geci and Riza Alija both raised the issue of the court's jurisdiction to try cases of alleged war crimes relating to the war between Serbian forces and the Kosovo Liberation Army which existed in Kosovo in circumstances where the alleged criminality occurred within the territory of a third party nation, Albania, which at no stage was a combatant in the armed conflict. In addition, the Defence incorporated into that argument issues relating to the proper classification of such offences that may be proved to have occurred in Albania. Though these two issues of jurisdiction and classification are closely linked within the context of this case, they remain two distinct and separate issues.
21. The following issues arise:
 1. Did a state of Armed Conflict not of an International Character exist in Kosovo?
 2. Did such Armed Conflict (if it existed) engage Geneva Conventions Common Article 3 and Additional Protocol II, Articles 4 and 5 (1)?



3. If engaged, what impact, if any, is there upon the jurisdiction of the Kosovo Criminal Courts, where the alleged criminal conduct occurred outside the territorial boundary of Kosovo and within a third party country, Albania, which at no time was a party to the conflict?
22. First, it must be noted that Common Article 3 of the Geneva Conventions and Additional Protocol II were in force at the time of the alleged facts.⁵
23. Common Article 3 of the Geneva Conventions applies to conflicts “not of an international character”. Non-international armed conflicts are armed confrontations occurring within the territory of a single State and in which the armed forces of no other State are engaged against the central government.⁶ However, where a foreign State extends military support to an armed group acting against the government, the conflict will become international in character.⁷ In this case, the NATO bombing of Serbian military targets began on 24 March 1999⁸. Subject to the threshold issue (see below), until that moment, the conflict between the forces of the Serbian Government and the KLA amounted to a conflict of a non-international character. After that moment, the conflict may have amounted to an International Armed Conflict, though nothing in this case requires that to be determined one way or the other.
24. To amount to a “non-international armed conflict”, a minimum threshold needs to be met. Though Common Article 3 merely requires that the armed conflict not be of “an international character” and occur in “the territory of one of the High Contracting Parties” (both conditions being satisfied in the instant case), a higher threshold applies under Additional Protocol II. Additional Protocol II only applies to conflicts between the armed forces of a High Contracting Party and “dissident armed forces or other organized armed groups which, under responsible command exercise such control over a part of the territory as to enable them to carry out sustained and concerted military

⁵ Supreme Court Decision of 21 July 2005 in *Latif Gashi et al.*, p6.

⁶ The Manual on the Law of Non-International Armed Conflict, with commentary, International Institute of Humanitarian Law, March 2006, p2.

⁷ *Ibid.*, p2.

⁸ See http://nato.int/cps/en/natolive/topics_49602.htm.



operations.”⁹ The Prosecution asserted, and there was no contrary argument from the Defence, that the higher threshold conditions of Additional Protocol II were met. Indeed, it was positively advanced by the Defence that the KLA were engaged in such an armed conflict. According to the Indictment, the alleged crimes were committed in the period between April and mid-June of 1999. The existence of an armed conflict between the Serbian forces and the KLA in the relevant period has been established by the Supreme Court of Kosovo in the *Kolasinac* case, Decision of 05 August 2004. This finding was confirmed in the Supreme Court Decision of 21 July 2005 in *Latif Gashi et al.*, p. 9-11. This latter Decision also found that the organizational structure of the KLA satisfied the above-mentioned requirements under Additional Protocol II. Particularly relevant for the present case is the finding that “the very fact that the KLA was detaining Kosovar civilians suspected of conduct hostile to the aims of the KLA reflects the extent of their control over part of the territory.”¹⁰

25. The Panel has no hesitation in concluding that the condition precedents of Common Article 3 and Additional Protocol II were met and that those provisions were engaged in the non-international armed conflict phase of the war in Kosovo. Common Article 3 and Additional Protocol II set out all of the obligations that apply to parties to such conflicts and, of crucial significance, those obligations apply automatically and without any condition of reciprocity.¹¹ Note also that the use of the phrase ‘each Party to the conflict’ clearly indicates that the Article was not intended to be limited to High Contracting Parties but applies to all participants in qualifying armed conflict.
26. The question arises, did the status or applicability of Common Article 3 and Additional Protocol II change when the conflict became an international armed conflict after the commencement of NATO bombing on 24 March 1999? The short answer is no. Despite the language of Common Article 3 stating that it applies to non-international armed conflicts, in two substantial ways, the substance of the text should be considered to be applying to all

⁹ *Ibid.*, p3.

¹⁰ See Supreme Court Decision of 21 July 2005 in *Latif Gashi et al.*, p. 10.

¹¹ GC3 & GC4 Commentaries to Common Article 3 at <http://www.icrc.org/ihl.nsf/COM/300-00000670?openDocument>.



armed conflicts of any description, including international. As the absolute prohibitions of Common Article 3 are stated to be 'as a minimum' which must be applied 'in the least determinate of conflicts, its terms must *a fortiori* be respected in the case of international conflicts proper, when all the provisions of the Convention are applicable. For "the greater obligation includes the lesser", as one might say.¹² The only consequence therefore of the war in Kosovo becoming an "international armed conflict" is that wider obligations, which continued to include Common Article 3 and Additional Protocol II, were imposed upon the warring parties. Thus the panel concludes that the behavior of the parties at all material times referred to in the instant indictment was subject to the regulation of Common Article 3 and Additional Protocol II, and the behavior alleged, if proved, is capable of amounting to War Crimes Against the Civilian Population contrary to Article 142 CCSFRY.

27. But, what impact, if any, does the fact that the events alleged to amount to the offences charged occurred wholly within the territory of Albania, which at no stage was a party to the conflict? Does that fact impact either upon the jurisdiction of the court to try the case, or, if the court may try the case, upon the classification of the offence that the alleged conduct constitutes?
28. Article 9 of the ICTY Statute provides for Concurrent Jurisdiction:
1. The International Tribunal and national courts shall have concurrent jurisdiction to prosecute persons for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1 January 1991.
 2. The International Tribunal shall have primacy over national courts. At any stage of the procedure, the International Tribunal may formally request national courts to defer to the competence of the International Tribunal in accordance with the present Statute and the Rules of Procedure and Evidence of the International Tribunal.
29. There has been no request from ICTY pursuant to Art 142(2) to take over this case, and therefore it remains for the domestic judicial system to adjudicate.
30. The Law on the Special Prosecution Office of the Republic of Kosovo (Law no. 03/L-052), Article 5.1(f) gives SPRK exclusive jurisdiction over crimes in

¹² *Ibid.*



breach of Common Article 3. The Law on Jurisdiction, Article 3 clearly foresees that EULEX Judges have jurisdiction over any case prosecuted by the SPRK.

31. Mitrovica DC Jurisdiction. This court is not an ad hoc jurisdiction and the local jurisdiction does not have a restricted mandate. As stated above, district courts are competent to hear criminal cases involving charges for which the law allows the imposition of a penal sentence of at least five years pursuant to Article 23(1)(i) KCCP. This includes the matters for which the defendants are charged on this indictment.
32. Article 22 combined with Article 142 of the CCSFRY, which is reflected in Articles 23 and 120 of the CCK, gives jurisdiction to try War Crimes against the Civilian Population to the District Court level.
33. Article 106 CCSFRY, reflected in Article 101(2) CCK, extends that competence to include offences which were committed by citizens of SFRY abroad (which necessarily includes the territory of Albania) and therefore grants to Mitrovica DC the competence/jurisdiction to try the war crimes alleged to have been committed by Sali Rexhepi.
34. I turn to the issue of geographical location in terms of the classification of the alleged conduct amounting to a war crime.
35. Various decisions of ICTY have been reviewed and considered including: *Tadic*, *Blaskic*, *Kunarac* and *Kovac & Vasiljevic*. None of these decisions were called upon to consider the precise circumstances of this case, namely the impact on jurisdiction and qualification of the alleged criminal activity of crossing an international border into a third state. Thus such an issue has not, to this panel's knowledge, been adjudicated upon before.
36. In *Tadic*, the Appeal Panel stated that "International Humanitarian Law governs the conduct of both internal and international armed conflicts. The Appellant correctly points out that for there to be a violation of this body of



law, there must be an armed conflict. The definition of "armed conflict" varies depending on whether the hostilities are international or internal but, contrary to Appellant's contention, the temporal and geographical scope of both internal and international armed conflicts extends beyond the exact time and place of hostilities."¹³ As the *Tadic* judgment makes clear, both the Geneva Conventions and the Additional Protocols in certain key provisions, especially those relating to the protection of civilians, apply throughout the territory of the parties. In particular, relating to civilians who have been detained "for reasons related to such conflict",¹⁴ the *Tadic* Appeal Panel stated that "the relatively loose nature of the language "for reasons related to such conflict" suggests a broad geographical scope. The nexus required is only a relationship between the conflict and the deprivation of liberty."¹⁵ The *Tadic* Appeal Panel concluded that "an armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State. International humanitarian law applies from the initiation of such armed conflicts and extends beyond the cessation of hostilities until a general conclusion of peace is reached; or, in the case of internal conflicts, a peaceful settlement is achieved. Until that moment, international humanitarian law continues to apply in the whole territory of the warring States or, in the case of internal conflicts, the whole territory under the control of a party, whether or not actual combat takes place there."¹⁶

37. The *Blaskic* case¹⁷ did not significantly add to the principals laid out in *Tadic*, but simply re-affirmed the requirement nexus over the requirement for geographical or temporal connection with fighting:

"Nexus between the crimes imputed to the accused and the armed conflict

69. In addition to the existence of an armed conflict, it is imperative to find an evident nexus between the alleged crimes and the armed conflict as a whole. This does not mean that the crimes must all be committed in the precise geographical region where an armed conflict is taking place at a given moment. To show that a link exists, it is sufficient that the alleged crimes were

¹³ *Tadic*, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, at para 67.

¹⁴ Additional Protocol II, Article 2 paragraph 2.

¹⁵ *Tadic*, para 69.

¹⁶ *Tadic*, para 70.

¹⁷ *Blaskic*, IT-95-14-T, 3 March 2000.



closely related to the hostilities occurring in other parts of the territories controlled by the parties to the conflict.

70. The foregoing observations demonstrate that a given municipality need not be prey to armed confrontation for the standards of International Humanitarian Law to apply there. It is also appropriate to note, as did the *Tadic* and *Celebici* Judgments, that a crime need not be part of a policy or practice officially endorsed or tolerated by one of the parties to the conflict, or that the act be in actual furtherance of a policy associated with the conduct of the war or in the actual interest of a party to the conflict.

71. With particular regard to Article 5 of the Statute, the terms of that Article, the *Tadic* Appeal Judgment, the Decision of the Trial Chamber hearing the *Tadic* case and the statements of the representatives of the United States, France, Great Britain and the Russian Federation to the United Nations Security Council all point out that crimes against humanity must be perpetrated during an armed conflict. Thus, provided that the perpetrator's act fits into the geographical and temporal context of the conflict, he need not have the intent to participate actively in the armed conflict."¹⁸

38. The same point is reiterated in the case of *Kunarac and others*¹⁹ and in *Vasiljevic*.²⁰ It is also worthy of note that regarding the word "territory", the cases, whilst expressly considering incidents that occurred within the same territorial boundaries as the fighting, state that the laws of war apply and continue to apply "to the whole of the territory under the control of one of the parties to the conflict."²¹ Such "territory" cannot mean and does not mean the political or national territorial boundaries or borders. It can only be understood to mean the actual places in which one of the warring parties has substantive and real control, irrespective of where that is. In the context of the instant case, that must and does include the well established, functional KLA military bases in Albania which were established and used by the KLA as military logistical bases, training bases, HQs, bases from which military operations were launched and as detention centres for detainees who were detained solely for reasons related to the war. It is clear that this amounts to "territory under the control of one of the parties to the conflict." To determine otherwise is to permit a wholly technical and unjustified loop-hole from the protection of the Conventions and the Protocols in which by simply crossing a boundary, but in all other respects remaining in territory which was under the control of a Party to the conflict, that Party completely avoids its obligations under International

¹⁸ *Blaskic*, paras 69-71.

¹⁹ *Kunarac*, IT-96-23 & IT-96-23/1-A, para 57.

²⁰ *Vasiljevic*, IT-98-32-T, para 25.

²¹ *Tadic*, paras 68-70; *Vasiljevic*, para 25; *Kunarac*, para 57.



Humanitarian Law. That is neither within the spirit nor the letter of the law. We are fortified in this conclusion by the terms of the ICRC Commentaries on Article 3, in general and of Article 3, sub-paragraphs (1) and (2) "extent of the obligation". This makes it clear that Article 3 represents the "minimum obligation" applying to both internal and international conflicts and that the acts prohibited by Article 3 "are and shall remain prohibited *at any time and in any place whatsoever* [emphasis added]" and thus "no possible loophole is left; there can be no excuse, no attenuating circumstances."²² To escape liability because a Party has crossed a boundary by a mere few kilometres into the political territory of a neighboring state but carry out acts within territory clearly under the control of a party to the conflict such as a KLA military camp would amount to the most technical and unjustified loophole which Common Article 3 was intended to prevent.

39. The essential principles that can be derived from these cases are as follows:

1. An armed conflict exists whenever there is resort to armed force between states or protracted armed violence between governmental authorities and organized armed groups or between such groups within a state. There is no real challenge by the defence to the proposition that at the relevant time there was an internal armed conflict in Kosovo.

2. Common Article 3, in particular where it applies to civilians (GC4) should be given the widest possible interpretations in both temporal and geographical terms, since to do otherwise is to defeat the purpose of these provisions. Thus within one state, it is not necessary to prove that armed conflict existed in every single municipality, it is sufficient that it existed within the larger region where the municipalities existed, in other words the entirety of the state. It should be noted that the ICTY in none of these cases was expressly required to determine the situation where the alleged conduct occurred across an international boundary in a 3rd country. As the ICTY was not expressly considering such a situation, nothing in the quoted judgments can be considered to be excluding such a situation.

²² ICRC Commentaries, Article 3, subparas (1) & (2) "Extent of the obligation".



3. What is required is a nexus/link between the defendant, the victim, the alleged criminal conduct and the armed conflict and that the alleged conduct occurred on territory under the control of one of the Parties to the conflict. On the alleged facts of this case, it is said that the Defendants behaved in the way alleged because of their membership of KLA, that the victims were selected for the alleged treatment because of their assumed beliefs or sympathies in relation to armed conflict which was then taking place and that the alleged conduct was inflicted because of those sympathies. In every case, the alleged conduct occurred within KLA Camps at Kukes and Cahan. There is no doubt at all that these amounted to territory under the clear control of a party to the conflict, namely the KLA. In other words, a clear nexus between the defendants, victims, conduct, treatment and territorial control is alleged. Nothing in any of the quoted cases prevents this from amounting to a war crime just because the geographical location of the events was in Albania. Nothing in the alleged conduct deprives this Court of jurisdiction just because the geographical location of the events was in Albania.

40. Thus, it is clear to the Panel that it has jurisdiction and is competent to try cases involving persons previously of Yugoslav citizenship and currently of Kosovo citizenship for offences which occurred outside the territory of Kosovo where the offences alleged constitutes criminalized conduct within Kosovo and that the particular offences alleged in the instant indictment are capable, if the acts are in fact proved, of being classified as war crimes, regardless of the fact that such crimes occurred within the territory of a third party nation (Albania) which was not itself a party to the conflict. Any other conclusion would defeat the clear purposes of the Geneva Conventions and Additional Protocols and would run counter to the prevailing criminal code of the Socialist Federal Republic of Yugoslavia, the current criminal code of Kosovo, the strict letter and the spirit of the Geneva Conventions and Additional Protocols and against all common sense.

41. At the material time, there was both an internal and international armed conflict in which the KLA were engaged in a war of liberation against Serb



forces both regular and irregular, such as engaged the provisions of Common Article 3 of the Geneva Conventions 1949, and Articles 4 and 5(1) of Additional Protocol II 1977.

42. The KLA had established and maintained a camp within Albania in Cahan. This camp was used for a variety of purposes including logistics, transit accommodation for soldiers en route to the fighting, training, administration, headquarters & a detention facility in which ethnic Kosovo Albanians who were suspected of collaboration with the Serb forces were detained, questioned and ill-treated.
43. Despite the physical location of these camps within the territory of Albania, there existed a clear nexus between the KLA, the victims of the detentions and the armed conflict within Kosovo sufficient to qualify such criminal acts as are found to be proved as war crimes within the meaning of International Humanitarian Law.

III. SUMMARY OF EVIDENCE PRESENTED

44. During the course of the main trial the following witnesses were heard:

- (1) Witness B – 16, 21, 23 & 24 March 2011
- (2) Witness F – 24 & 28 March 2011
- (3) Witness H – 31 March & 04 April 2011
- (4) C [REDACTED] K [REDACTED] – 06 April 2011
- (5) Witness E – 07 April 2011
- (6) Witness D – 07 April 2011
- (7) I [REDACTED] I [REDACTED] – 04 & 05 May 2011
- (8) Witness K – 16 May 2011
- (9) Witness M – 19 May 2011
- (10) Witness N – 23 & 25 May 2011
- (11) S [REDACTED] D [REDACTED] – 02 June 2011
- (12) H [REDACTED] A [REDACTED] – 02 June 2011
- (13) Xh [REDACTED] H [REDACTED] – 08 June 2011
- (14) R [REDACTED] Q [REDACTED] – 08 June 2011
- (15) Witness A – 09 & 10 June 2011
- (16) M [REDACTED] Z [REDACTED] – 20 June 2011

45. On 12 October 2011, Sali Rexhepi chose to remain silent and stand by his previous statements.



46. During the course of the main trial the following documents were read into the record:

- (1) Prosecution Record of the Witness Hearing of Witness C dated 17 December 2009 – admitted on 07 April 2011.
- (2) EULEX Police WCIU Report on Interrogation Statement of Witness C dated 09 April 2009 – admitted on 07 April 2011.
- (3) EULEX Photo Identification Procedure Report (Witness C) dated 17 December 2009 – admitted on 07 April 2011.
- (4) Prosecution Record of the Witness Hearing (Witness G) dated 04 March 2011, admitted on 28 April 2011.
- (5) Medical Certificate of Central Military University Hospital of Tirana regarding hospitalization of Sabit Geci from 03-14 June 1999 – admitted on 20 July 2011.
- (6) District Public Prosecutor Incident Report (Republic of Albania), PP nr. 876/99 (regarding Sabit Geci's car accident) – submitted by Sabit Geci on 20 July 2011.
- (7) Document signed by A [redacted] S [redacted] and bearing official stamp (regarding activities of Riza Alija – submitted by Alija and DC Kollqaku on 20 July 2011.
- (8) Prosecution Record of Witness Hearing (Witness F) dated 16 December 2009.
- (9) EULEX Police WCIU Report on Interrogation Statement of Witness F dated 24 June 2009.
- (10) EULEX WCIU Photo Identification Procedure Report (Witness F) dated 03 December 2009.
- (11) Officer's Report by V [redacted] O [redacted] dated 06 May 2010.
- (12) EULEX Police Report by F [redacted] D [redacted] dated 06 May 2010 with receipt of temporary seizure of items.
- (13) EULEX WCIU Officer's Report by A [redacted] R [redacted] dated 15 May 2010.
- (14) EULEX WCIU Officer's Report by C [redacted] S [redacted] dated 15 May 2010.
- (15) EULEX Detailed Description of Items Seized on 06 May 2010 from Sabit Geci and on 13 May 2010 from Xh [redacted] K [redacted].
- (16) EULEX Memo: Weapon Authorization Checking by V [redacted] T [redacted] dated 25 May 2010.
- (17) KP Database Verification on Weapon Authorization by Lt. Col. Z [redacted] K [redacted] dated 03 June 2010.
- (18) EULEX WCIU Report on Search of Person, Accommodation and Other Premises (regarding search of Riza Alija's home) by V [redacted] C [redacted] dated 23 June 2010.
- (19) EULEX Police Report (regarding search of Riza Alija's home) by Claudio Scipione dated 23 June 2010.
- (20) EULEX WCIU Report on Search of Person, Accommodation and Other Premises (regarding search of Riza Alija's home) by C [redacted] S [redacted] (undated).
- (21) EULEX WCIU Officer's Report (regarding search of Riza Alija's home) by C [redacted] S [redacted] dated 24 June 2010.
- (22) Photos taken during search of Riza Alija's home.



- (23) SPRK Record of the Expert Witness Hearing in an Investigation (M█████ G█████) dated 02 March 2011.
- (24) DFM Report of Physical Examination of Witness B by Dr. M█████ G█████ dated 02 March 2011 with accompanying photographs.
- (25) DFM Medical Examiner Office report on examination of Witness B dated 10 November 2010 with attachments.
- (26) DFM Report of Physical Examination of Witness H by Dr. M█████ G█████ dated 10 November 2010 with attachments.
- (27) Officer's Report by J█████ V█████ dated 01 February 2011 together with a list of KLA members based in Cahan and bundle of photographs – submitted on 04 May 2011.
- (28) OMPF Autopsy Report MA09216 (A█████ B█████) by Dr. M█████ G█████ dated 18 August 2009 with photographs.
- (29) Police of Czech Republic, Criminology Institute Prague, Expert's Examination dated 22 December 2009.
- (30) List of deceased immigrants from Kosovo, Kukes Municipality (28 March 1999 to 17 June 1999) at SPRK binder pp. B80-B84.
- (31) Expertise Reports on Firearms at SPRK binder pp. B52-B73.
- (32) EULEX WCIU Photo Identification Procedure Report (Witness A) dated 27 October 2009.
- (33) Photograph of Witness A and victim A█████ B█████ at SPRK binder p. C247.
- (34) EULEX WCIU Photo Identification Procedure Report (Witness B) dated 23 October 2009.
- (35) EULEX WCIU Photo Identification Procedure Report (Witness B) dated 01 April 2010.
- (36) EULEX WCIU Report: Interrogation Statement of the Witness/Victim (Witnesses D and E) dated 22 April 2009.
- (37) Report regarding served summons and episode of Roma brothers, by C█████ S█████ dated 06 March 2010.
- (38) Photo Identification Procedure (Witness G) dated 04 March 2010.
- (39) EULEX WCIU Photo Identification Procedure Report (I█████ I█████) by Jouni Voutila dated 16 June 2010.
- (40) EULEX WCIU Photo Identification Procedure Report (I█████ I█████) by J█████ V█████ dated 14 June 2010.
- (41) Newspaper articles written by I█████ I█████ and related reports at SPRK binder pp. D245-D253.
- (42) EULEX WCIU Photo Identification Procedure Report (Witness M) dated 18 June 2010.
- (43) EULEX WCIU Photo Identification Procedure Report (Witness N) dated 17 January 2011.
- (44) SPRK Record of the Witness Hearing in a Preliminary Investigation and Photo Identification Procedure (Witness N) dated 02 December 2010.
- (45) Prosecution Record of the Suspect Hearing in an Investigation (Riza Alija) dated 23 June 2010.
- (46) Prosecution Record of the Suspect Hearing in an Investigation (Riza Alija) dated 28 July 2010.
- (47) Photos referenced during the 28 July 2010 interview of Riza Alija.
- (48) Prosecution Record of the Suspect Hearing in an Investigation (Sabit Geci) dated 06 May 2010.



- (49) Prosecution Record of the Suspect Hearing in an Investigation (Sabit Geci) dated 10 May 2010.
- (50) Prosecution Record of the Witness Hearing (Haki Hajdari) dated 15 June 2010.
- (51) Prosecution Record of the Suspect Hearing in an Investigation (Haki Hajdari) dated 15 December 2010.
- (52) Prosecution Record of the Suspect Hearing in an Investigation (Shaban Hoti) dated 18 February 2011.
- (53) Prosecution Record of the Suspect Hearing in an Investigation (Sali Rexhepi) dated 15 December 2010.
- (54) Prosecution Record of the Witness Hearing (Sali Rexhepi) dated 13 July 2010.
- (55) Copies of two handwritten orders from Commander Plaku dated 19 February 1999 and 26 March 1999 and submitted to the Court on 12 October 2011 (no originals provided).
- (56) A photograph depicting Sali Rexhepi with NATO soldiers in Cahan, submitted to the Court on 12 October 2011.

IV. WITNESS CREDIBILITY

- 47. The Panel was mindful that the events described occurred over ten years ago, and the witnesses were all injured parties who were testifying about details and events which occurred while each one was experience severe physical, mental and emotional trauma. As such, it is only human and logical that there will be some small discrepancies between witness testimonies, for example as to the specific date of a beating or the precise amount of time which a beating lasted. These minor inconsistencies do not render the whole of the testimonies as incredible. The Panel carefully considered the account given by each witness and the corroborating testimonies and evidence for such account, and determined that the witnesses were credible with the following exceptions.
- 48. Witness K's evidence has been approached by the Panel with care. He spent time in both the Kukes and Cahan KLA camps. In general, he provides some corroboration for the presence of other witnesses at the time and place those other witnesses have stated and for some use of violence. But, it must also be noted that Witness K does not assert such severity of conditions of detention or ill-treatment as other witnesses in the case. It may be that Witness K was actually treated better than other witnesses and therefore gives an account that is less intensive than other witnesses, or it may be that Witness K was a reluctant and more evasive witness than others. Therefore the Panel concludes



that the weight to be attached to Witness K is considerably reduced. Insofar as he corroborates other witnesses, his evidence is taken into account. There is no direct evidence from Witness K that is capable of fundamentally undermining other witnesses.

V. EVALUATION OF THE EVIDENCE: Factual Findings

49. Upon the evidence presented during the course of the main trial, the Court considers the facts which are detailed in this section as proven. The evidence supporting each fact is incorporated into the description of the fact itself as well as indicated in the footnotes.
50. The general circumstances ongoing in Kosovo at the relevant time have been laid out in detail above. In summary, the KLA and Serb forces were engaged in an internal and international armed conflict and the KLA had established camps in Kukes and Cahan, Albania, which were used, *inter alia*, for detaining and questioning ethnic Kosovo Albanians suspected of collaboration with the Serb forces.

The KLA Camp in Cahan, Albania

51. A military camp was set up by the KLA in Cahan, Albania where civilians were detained. Sali Rexhepi was present and had a role in the Cahan camp. Each civilian detainee arrived at the Cahan camp in a different manner and route.
52. Witness I [REDACTED] [REDACTED] was a supporter of LDK and Ibrahim Rugova from the early 1990's.²³ His brother was the LDK chairman in their community and a delegate in Skenderaj/Srbica.²⁴ In the beginning of April 1999, [REDACTED] [REDACTED] was working in Croatia.²⁵ When the NATO bombing commenced in Kosovo, Imeri's family fled Kosovo for Albania.²⁶ Imeri traveled to Albania in search

²³ [REDACTED] [REDACTED], Minutes of Main Trial, 04 May 2011, Q56.

²⁴ [REDACTED] [REDACTED], Minutes of Main Trial, 04 May 2011, Q92-95; Witness K, Minutes of Main Trial, 16 May 2011, Q67.

²⁵ [REDACTED] [REDACTED], Minutes of Main Trial, 04 May 2011, Q5-6.

²⁶ [REDACTED] [REDACTED], Minutes of Main Trial, 04 May 2011, Q9.



of his family and in the evening of 12 April 1999 he arrived in Krume.²⁷ In the middle of the night, 8-10 uniformed persons wearing masks and armed with weapons knocked on his door and informed him that his family was waiting in a nearby mosque.²⁸ They took In [REDACTED] to the mosque where Sabit Geci was present.²⁹ Geci introduced himself and stated that he was the “chief of the KLA secret police.”³⁰ With regard to [REDACTED], Sabit Geci stated “We have the right guy because he is a supporter of Rugova” and “Will Rugova be able to save you now?”³¹ In [REDACTED] and two other Kosovo-Albanians were then taken by car to the KLA camp in Cahan by Sabit Geci and Haki Hajdari.³² [REDACTED] saw that it was a military barracks, and there were approximately 100-150 KLA soldiers present.³³

53. Until 17 September 1990, Witness M was employed as a police officer in the Secretariat for Internal Affairs in Pristina. On 17 September, along with over 100 other employees, Witness M resigned from his post. In 1999, Witness M was unemployed.³⁴ Approximately four days after the NATO airstrike began, Witness M and his family were expelled from their home by Serbian military. They traveled first to Rozaje, Montenegro, and then to Skallure village near Durres in Albania. After ten days, on or about 16 April 1999, a person came to their door in the evening and introduced himself as a member of SHIK. There were two other persons with him waiting in a vehicle. This person informed Witness M that he had to come with him to Durres. Witness M obliged and after getting into their vehicle and departing, they told him that they were not SHIK but KLA. Witness M was then taken to Hotel Drenica.³⁵
54. At Hotel Drenica, Witness M was interrogated by a KLA soldier whom he later learned to be Xhe [REDACTED] K [REDACTED].³⁶ Xh [REDACTED] t K [REDACTED] was armed with a gun during the questioning.³⁷ Witness M was accused of being a spy and was

²⁷ [REDACTED], Minutes of Main Trial, 04 May 2011, Q9-17.

²⁸ [REDACTED], Minutes of Main Trial, 04 May 2011, Q21-25.

²⁹ [REDACTED], Minutes of Main Trial, 04 May 2011, Q26-29.

³⁰ [REDACTED], Minutes of Main Trial, 04 May 2011, Q29, 38-39.

³¹ [REDACTED], Minutes of Main Trial, 04 May 2011, Q58-59.

³² [REDACTED], Minutes of Main Trial, 04 May 2011, Q41-47, 60.

³³ [REDACTED], Minutes of Main Trial, 04 May 2011, Q60.

³⁴ Witness M, Minutes of Main Trial, 19 May 2011, Q19-22.

³⁵ Witness M, Minutes of Main Trial, 19 May 2011, Q1-10.

³⁶ Witness M, Minutes of Main Trial, 19 May 2011, Q11-14.

³⁷ Witness M, Minutes of Main Trial, 19 May 2011, Q11-14.



asked for names of Serb collaborators.³⁸ The KLA soldiers confiscated Witness M's driver's license, identification card, ring, watch and cash.³⁹ He was then taken handcuffed to the KLA military camp in Kukes.⁴⁰ After a few minutes, the KLA brought another person in handcuffs (Witness K) into the car.⁴¹

55. Witness K left Kosovo with his family and some fellow villagers due to the conflict. He arrived in Durres, Albania on or about 30 March 1999. There he was living in a refugee camp near the beach for approximately 12 days.⁴² Two persons dressed in civilian clothing who stated that they were KLA told Witness K that he had to come with them to answer some questions. He was brought first to Hotel Drenica in Durres for one night where he was asked questions by a person claiming to be an investigative judge.⁴³ Witness K was then brought to Kukes where he was held for approximately three days.⁴⁴ Then Witness K was transported together with Witness M out of the Kukes camp.⁴⁵
56. From Kukes, Witness K and Witness M were first driven to Krume. During the journey, the KLA soldiers told Witness M that they were going to shoot him.⁴⁶ They stopped briefly in Krume, where Haki Hajdari, who introduced himself as "Commander Drenica", instructed the KLA soldiers to take Witness K and Witness M to Cahan.⁴⁷ Witness K and Witness M were then driven to the KLA camp in Cahan.⁴⁸ It was on or about 17 April 1999.⁴⁹
57. Witness N was living in the village Lug in Istog/Istok Municipality in 1999.⁵⁰ He and his wife were members of the SPS Socialist Party of Serbia.⁵¹ Witness N resigned his position in mid-April 1999 and left his home with his family

³⁸ Witness M, Minutes of Main Trial, 19 May 2011, Q11-17.

³⁹ Witness M, Minutes of Main Trial, 19 May 2011, Q16.

⁴⁰ Witness M, Minutes of Main Trial, 19 May 2011, Q23-29.

⁴¹ Witness M, Minutes of Main Trial, 19 May 2011, Q30-35.

⁴² Witness K, Minutes of Main Trial, 16 May 2011, Q9-16.

⁴³ Witness K, Minutes of Main Trial, 16 May 2011, Q18-22.

⁴⁴ Witness K, Minutes of Main Trial, 16 May 2011, Q22-24.

⁴⁵ Witness K, Minutes of Main Trial, 16 May 2011, Q24-28.

⁴⁶ Witness M, Minutes of Main Trial, 19 May 2011, Q33.

⁴⁷ Witness M, Minutes of Main Trial, 19 May 2011, Q33.

⁴⁸ Witness K, Minutes of Main Trial, 16 May 2011, Q24-28; Witness M, Minutes of Main Trial, 19 May 2011, Q30-35.

⁴⁹ Witness M, Minutes of Main Trial, 19 May 2011, Q98-100.

⁵⁰ Witness N, Minutes of Main Trial, 23 May 2011, Q1-11.

⁵¹ Witness N, Minutes of Main Trial, 23 May 2011, Q12-17.



because all of the Kosovo Albanians were leaving the village and he no longer felt safe.⁵² The family traveled to Shkodra in Albania where they stayed in a tobacco factory, and after ten days Witness N was summoned for questioning by three KLA members.⁵³ The KLA members beat him and asked him about his employment and his membership in SPS and Witness N called the Albanian police who arrested and detained him for 24 hours.⁵⁴ Upon his release, Witness N returned to the factory, and armed KLA members arrived after midnight and arrested him.⁵⁵

58. The KLA brought Witness N first to the Albanian police station where he was detained until the morning, next to the KLA headquarters in Kukes where he was held for a few hours, and then to Krume.⁵⁶ In Krume, Witness N was beaten by the three KLA soldiers who had transported him there, and asked questions about his family and why he had not resigned from his job sooner.⁵⁷ In the night at approximately 21:00 hrs, Witness N was transferred to the Cahan camp.⁵⁸

General Living Conditions of Detainees in the KLA Cahan Camp

59. Witness K, Witness M, Witness N and [REDACTED] were all kept in the same detention room in the Cahan camp. [REDACTED] was brought there first, and for the first seven days, remained alone in the room.⁵⁹ Witness K and Witness M were then brought into the room.⁶⁰ Approximately three weeks later, Witness N was also brought into the room, and later Witness O.⁶¹ While there was regularly these detainees kept in the room, from time to time more persons were brought in, so that at one point there were potentially up to 17 persons, though this was not for long.⁶²

⁵² Witness N, Minutes of Main Trial, 23 May 2011, Q9-11, 22-25.

⁵³ Witness N, Minutes of Main Trial, 23 May 2011, Q26-35.

⁵⁴ Witness N, Minutes of Main Trial, 23 May 2011, Q36-44.

⁵⁵ Witness N, Minutes of Main Trial, 23 May 2011, Q44-52.

⁵⁶ Witness N, Minutes of Main Trial, 23 May 2011, Q44-66.

⁵⁷ Witness N, Minutes of Main Trial, 23 May 2011, Q67-72.

⁵⁸ Witness N, Minutes of Main Trial, 23 May 2011, Q69, 73-77.

⁵⁹ [REDACTED], Minutes of Main Trial, 04 May 2011, Q124 & 129.

⁶⁰ [REDACTED], Minutes of Main Trial, 04 May 2011, Q163-164; Witness K, Minutes of Main Trial, 10 May 2011, Q33, 47, 58, 249-250.

⁶¹ [REDACTED], Minutes of Main Trial, 04 May 2011, Q128, 170-171; Witness K, Minutes of Main Trial, 16 May 2011, Q83.

⁶² [REDACTED], Minutes of Main Trial, 04 May 2011, Q173-174, 181.



60. The room was small and narrow, measuring approximately 2x2.5-2.7 meters with one window which caused a lot of drafts because the glass was broken.⁶³ As a result, it was very cold inside the room.⁶⁴ The door was always locked.⁶⁵
61. The room would leak water and rain, enough so that the floor became very wet.⁶⁶ For the first three days that Witness K was in the room, the floor was so wet that the detainees could not lie down to sleep.⁶⁷ After this, some plastic sheeting was given to the detainees to put on the wet floor.⁶⁸
62. ██████ slept on the concrete floor of the detention room, on top of a 1 cm thick sponge.⁶⁹ He was not provided with any blanket and covered himself at night with his own jacket.⁷⁰ Later, after other detainees had arrived, some blankets were provided.⁷¹ Nevertheless, the sleeping conditions were described by Witness K as "very severe."⁷² Witness K, Witness M and ██████ huddled together for warmth during the night, and the hands of both Witness k and ██████ were always tied.⁷³ In fact, Ir ██████ hands were kept tied together for ten days.⁷⁴
63. The testimonies of the witnesses regarding access to water during their detention were too inconsistent to arrive at any firm conclusions. I ██████ testified that water would be brought to the detention room when requested.⁷⁵ Witness M testified that no one dared to ask for water, and they had little access to the water which came from a spring located near the toilet.⁷⁶ Witness

██████████ Minutes of Main Trial, 04 May 2011, Q98, 123, 175-178; Witness K, Minutes of Main Trial, 16 May 2011, Q108-109; Witness M, Minutes of Main Trial, 19 May 2011, Q35-38, 61; Witness N, Minutes of Main Trial, 23 May 2011, p.15.

⁶⁴ Witness M, Minutes of Main Trial, 19 May 2011, Q61.

⁶⁵ ██████████ Minutes of Main Trial, 04 May 2011, Q157; Witness K, Minutes of Main Trial, 16 May 2011, Q116; Witness M, Minutes of Main Trial, 19 May 2011, Q110.

⁶⁶ Witness K, Minutes of Main Trial, 16 May 2011, Q108-110; Witness M, Minutes of Main Trial, 19 May 2011, Q109.

⁶⁷ Witness K, Minutes of Main Trial, 16 May 2011, Q110-114.

⁶⁸ Witness K, Minutes of Main Trial, 16 May 2011, Q110-114.

██████████ Minutes of Main Trial, 04 May 2011, Q153-154.

██████████, Minutes of Main Trial, 04 May 2011, Q155.

⁷¹ Witness K, Minutes of Main Trial, 16 May 2011, Q108; Witness M, Minutes of Main Trial, 19 May 2011, Q59 & 65.

⁷² Witness K, Minutes of Main Trial, 16 May 2011, Q231.

⁷³ Witness M, Minutes of Main Trial, 19 May 2011, Q59-65.

⁷⁴ ██████████ Minutes of Main Trial, 04 May 2011, Q110.

⁷⁵ ██████████ Minutes of Main Trial, 04 May 2011, Q156.

⁷⁶ Witness M, Minutes of Main Trial, 19 May 2011, Q144, 150-152, 191-195.



N testified that the detainees were provided water in bottles, however seemed to suggest that this water was not drinkable.⁷⁷

64. Food was provided when the KLA soldiers themselves had food.⁷⁸
65. The toilet was located outside of the room, in a field, and stank badly.⁷⁹ Detainees could ask permission to go to the toilet in the morning and in the afternoon.⁸⁰ However, they were not able to go to the toilet on a regular basis, and at night some detainees would urinate into plastic bottles.⁸¹ According to Witness M, the detainees would have to ask "100 times" before finally being allowed to go to the toilet.⁸²
66. There was no opportunity for the detainees to bathe or wash themselves.⁸³ Imer Imeri was able to shave once after five weeks of detention, and to wash only once during approximately nine weeks of detention.⁸⁴ Witness K was able only to shave once during approximately eight weeks of detention.⁸⁵ The detainees were never provided with a change of fresh clothing.⁸⁶
67. There was no medical treatment provided, even when Witness I [REDACTED] [REDACTED] sustained injuries from the beatings⁸⁷ though it should be noted that Witness K stated that they were provided with medicines whenever they were needed.⁸⁸
68. [REDACTED] In [REDACTED] was detained for approximately nine weeks, from 12 April to 20 June 1999.⁸⁹ Witness K was held for approximately two months.⁹⁰ Witness M

⁷⁷ Witness N, Minutes of Main Trial, 23 May 2011, Q250-251; Minutes of Main Trial, 25 May 2011, Q169-170.

⁷⁸ [REDACTED], Minutes of Main Trial, 04 May 2011, Q158-159.

⁷⁹ [REDACTED], Minutes of Main Trial, 04 May 2011, Q144; Witness K, Minutes of Main Trial, 16 May 2011, Q108.

⁸⁰ Witness K, Minutes of Main Trial, 16 May 2011, Q118.

⁸¹ Witness K, Minutes of Main Trial, 16 May 2011, Q119; Witness M, Minutes of Main Trial, 19 May 2011, Q66, 111-113, 141.

⁸² Witness M, Minutes of Main Trial, 19 May 2011, Q190.

⁸³ [REDACTED], Minutes of Main Trial, 04 May 2011, Q160; Witness K, Minutes of Main Trial, 16 May 2011, Q120.

⁸⁴ [REDACTED], Minutes of Main Trial, 04 May 2011, Q160.

⁸⁵ Witness K, Minutes of Main Trial, 16 May 2011, Q120-122.

⁸⁶ Witness K, Minutes of Main Trial, 16 May 2011, Q121.

⁸⁷ [REDACTED], Minutes of Main Trial, 04 May 2011, Q159.

⁸⁸ Witness K, Minutes of Main Trial, 16 May 2011, Q219.

⁸⁹ [REDACTED], Minutes of Main Trial, 04 May 2011, Q12, 17-26, 122, 232.

⁹⁰ Witness K, Minutes of Main Trial, 16 May 2011, Q78.



was detained in Cahan for approximately six days.⁹¹ Witness N was detained for over one month.⁹²

Torture on 03 May 1999 of Witness N

69. When Witness N was brought to the Cahan camp, he was handed over to Haki Hajdari, Sali Rexhepi (a.k.a. Sali Berisha) and Shaban Hoti and taken to a basement where they all beat and interrogated him.⁹³ Haki Hajdari, Sali Rexhepi and Shaban Hoti, along with other unknown KLA soldiers, tied Witness N's hands, removed his socks and beat him on the soles of his feet with wooden sticks until he felt that he lost consciousness.⁹⁴ After he regained consciousness, they beat him again for approximately another hour.⁹⁵ During both beatings, the KLA, including the three defendants, asked Witness N questions about his employment, his involvement SDS, details about the organization "Fadofil", and the presence of Serbian militaries in Istog/Istok.⁹⁶
70. After this beating and interrogation, Witness N was brought to a detention room on the second floor where [REDACTED], Witness K and Witness O were being held.⁹⁷ Witness K and [REDACTED] testified that Witness N had been beaten before being brought into the detention room and had visible injuries.⁹⁸ [REDACTED] could hear Witness N screaming before he was brought in, and also witnessed his further beating as they entered the room.⁹⁹ The KLA soldiers just dropped Witness N at the feet of [REDACTED] and Witness K.¹⁰⁰ The reason given for this treatment was because Witness N had attended a meeting of the SPS Serbian political party.¹⁰¹

⁹¹ Witness M, Minutes of Main Trial, 19 May 2011, Q 73; Witness K, Minutes of Main Trial, 16 May 2011, Q54 & [REDACTED], Minutes of Main Trial, 04 May 2011, Q183.

⁹² Witness N, Minutes of Main Trial, 23 May 2011, Q156.

⁹³ Witness N, Minutes of Main Trial, 23 May 2011, Q76-83, 134-138.

⁹⁴ Witness N, Minutes of Main Trial, 23 May 2011, Q82-88.

⁹⁵ Witness N, Minutes of Main Trial, 23 May 2011, Q87.

⁹⁶ Witness N, Minutes of Main Trial, 23 May 2011, Q89-99.

⁹⁷ Witness N, Minutes of Main Trial, 23 May 2011, Q117-126.

⁹⁸ Witness K, Minutes of Main Trial, 16 May 2011, Q83-84; Imer Imeri, Minutes of Main Trial, 04 May 2011, Q170-172, 196-200.

⁹⁹ [REDACTED], Minutes of Main Trial, 04 May 2011, Q170-172, 196-200.

¹⁰⁰ Witness K, Minutes of Main Trial, 16 May 2011, Q83-84.

¹⁰¹ Witness K, Minutes of Main Trial, 16 May 2011, Q84-86.



Torture on 09 May 1999 of Witnesses N

71. Witness N confirmed that he was beaten on a second occasion, about 8-9 days after the first beating, though he could not be certain exactly when.¹⁰² He was taken to the floor below the detention cell and beaten by a person wearing a black KLA uniform. At one stage, Witness N appears to suggest that the person responsible for this second beating was a female soldier, but later answers suggest that it was a male soldier.¹⁰³ On this occasion, Witness N was beaten with a wooden rifle (or wooden model rifle) while two or three other KLA soldiers stood watching.¹⁰⁴
72. After giving this testimony, Witness N was confronted by the Prosecutor with his previous statement given to the Prosecutor on 10-16 March 2010, when he stated that he was beaten by a man wearing a black KLA uniform using a piece of wood resembling a rifle and that Sali Rexhepi, Shaban Hoti and an unknown third person were present and asking him questions as he was beaten.¹⁰⁵ The Prosecutor also confronted the witness with a passage from his previous statement given to the Prosecutor on 02 December 2010 where in reference to the second beating he said, "this time an unknown person beat me. But I remember that Sali Berisha and Shaban Hoti were present and they were asking me questions while this guy was beating me." In these passages, Witness N denies seeing Haki Drenica (Haki Hajdari) at the second beating.¹⁰⁶ In response to this confrontation, Witness N replied that he remembers both occasions when he was beaten and that on the second occasion "Sali Berisha", Shaban Hoti and Haki Drenica were present but did not stay for the beating, they just came and went.¹⁰⁷ When challenged yet further by the Prosecutor as to who was present, there was conflict between the previous statements and oral trial testimony about whether Witness N had seen Haki Drenica at this beating. Witness N replied that "I remember well that I was badly beaten and I

¹⁰² Witness N, Minutes of Main Trial, 23 May 2011, Q158-162; Record of Witness Hearing 10-16 March 2010, p28.

¹⁰³ Witness N, Minutes of Main Trial, 23 May 2011, Q159-160, 163.

¹⁰⁴ Witness N, Minutes of Main Trial, 23 May 2011, Q158-167.

¹⁰⁵ Witness N, Minutes of Main Trial, 23 May 2011, Q168; Record of Witness Hearing 10-16 March 2010, p28.

¹⁰⁶ Witness N, Minutes of Main Trial, 23 May 2011, Q168; Record of Witness Hearing 02 December 2010, p4.

¹⁰⁷ Witness N, Minutes of Main Trial, 23 May 2011, Q168.



was horrified and simply I don't want to remember"¹⁰⁸ and "I saw these two [referring to Sali Rexhepi and Shaban Hoti] in the room but it was very dark and I could not establish exactly who the other one was."¹⁰⁹

73. Witness N then went on to give a detailed description of the beating he received including being beaten on his legs, being questioned during the beating and afterwards as a consequence of the beating his leg gave way and had to be examined by a doctor, his face was in pain and swollen, looking like "blue ink".¹¹⁰ It should be noted that at no stage does Witness N suggest that there was ever any other witness present during the second beating.
74. Due to the inconsistent and confused statements regarding the details of what occurred on this occasion, the evidence only establishes that Witness N did indeed suffer another beating on or about 09 May 1999. However, no further factual findings can be made regarding this incident, such as who was present, who actively perpetrated the beating and who, if anyone, interrogated Witness N during the beating.

The "Trial" of [REDACTED] [REDACTED] and Witness N

75. On approximately 20 May 1999, [REDACTED] [REDACTED] was presented with a written charge by Sali Rexhepi (a.k.a. "Sali Berisha"). The charge stated "Admirer of President Rugova, a person who organizes the free percent (sic) for Kosova. A friend of A [REDACTED] K [REDACTED] who was murdering in Tirana, H [REDACTED] [REDACTED] brother, leader of LDK, and a friend of seven brothers."¹¹¹ Witness N was accused of refusing to hand over his personal weapons, accepting the Serbian regime, and of his wife being a member of the LDK political party.¹¹² [REDACTED] [REDACTED] and Witness N were then taken by Haki Hajdari and Sali Rexhepi to a court in Kukes and placed into different rooms.¹¹³

¹⁰⁸ Witness N, Minutes of Main Trial, 23 May 2011, Q169.

¹⁰⁹ Witness N, Minutes of Main Trial, 23 May 2011, Q171.

¹¹⁰ Witness N, Minutes of Main Trial, 23 May 2011, Q172-179.

¹¹¹ [REDACTED] [REDACTED], Minutes of Main Trial, 04 May 2011, Q209-210.

¹¹² Witness N, Minutes of Main Trial, 23 May 2011, Q222-226.

¹¹³ [REDACTED] [REDACTED], Minutes of Main Trial, 04 May 2011, Q209-Q213.



76. A judge spoke to each person individually. He came into the room where Imer Imeri was, read the written charge against him and then discussed it with Imeri.¹¹⁴ After Imeri answered various questions, the judge stated “as far as I am concerned, you are free.”¹¹⁵ The judge also spoke with Witness N about the accusations lodged against him, and afterwards informed Witness N that he was free and should be released by the KLA.¹¹⁶
77. When Haki Hajdari and Sali Rexhepi came to collect Imer Imeri and Witness N, they were told by a police officer at the court that Imer Imeri and Witness N were to be freed.¹¹⁷ Haki Hajdari was apprehensive and decided not to release Imer Imeri and Witness N, but instead to bring them back to the KLA camp in Cahan.¹¹⁸ During the ride from Kukes back to Cahan, both Imer Imeri and Witness N had their hands tied.¹¹⁹ When Imer Imeri and Witness N were returned to the detention room, Witness K was gravely relieved because he had been told by Riza Alija that the KLA had executed them.¹²⁰

Identification of Sali Rexhepi as “Sali Berisha”

78. During the main trial, the witnesses referred to Sali Rexhepi by the nickname “Sali Berisha”. Sali Rexhepi specifically denied that he was known by this nickname when his personal data was taken by the Court on 05 May 2011. However, his identity is established by the evidence.
79. Imer Imeri identified Sali Rexhepi as “Commander Sali Berisha” in the courtroom during the main trial sessions on both 04 and 05 May 2011.¹²¹ According to Imer Imeri, Sali Rexhepi was the commander in charge of the prison

¹¹⁴ Imer Imeri, Minutes of Main Trial, 04 May 2011, Q213-214.

¹¹⁵ Imer Imeri, Minutes of Main Trial, 04 May 2011, Q214.

¹¹⁶ Witness N, Minutes of Main Trial, 23 May 2011, Q227-230; Imer Imeri, Minutes of Main Trial, 04 May 2011, Q214.

¹¹⁷ Imer Imeri, Minutes of Main Trial, 04 May 2011, Q214-215; Witness N, Minutes of Main Trial, 23 May 2011, Q233.

¹¹⁸ Imer Imeri, Minutes of Main Trial, 04 May 2011, Q214-216; Witness N, Minutes of Main Trial, 23 May 2011, Q231-234.

¹¹⁹ Witness N, Minutes of Main Trial, 23 May 2011, Q235.

¹²⁰ Imer Imeri, Minutes of Main Trial, 04 May 2011, Q218-219.

¹²¹ Imer Imeri, Minutes of Main Trial, 04 May 2011, Q266-268; Minutes of the Main Trial, 05 May 2011, Q163-164.



in the Cahan camp,¹²² and when Haki Hajdari was not present, Sali Rexhepi was in charge of the barracks.¹²³

80. Witness K testified that he only knew the name “Sali Berisha” at the Cahan camp and not “Sali Rexhepi”.¹²⁴ Sali Berisha was responsible for the detainees, for example to escort them to the toilet.¹²⁵ Witness K was unclear about whether Sali Berisha held the rank of commander or how he fit into the KLA hierarchy. However, he perceived that Sali Berisha was more important than “Commander Hoxha” [Riza Alija]¹²⁶ and saw that he could exert a positive influence on Alija’s behaviour when he maltreated the detainees.¹²⁷
81. Witness N also referred to “Sali Berisha” in his testimony, who he described as chubby, taller and bigger than he, and with a moustache. Witness N identified Sali Rexhepi as “Sali Berisha” in a photographic line-up before the Public Prosecutor’s Office on 02 December 2010.¹²⁸ Witness N learned from other detainees and KLA soldiers that “Sali Berisha” was a teacher in Dushkaje village in Gjakove Municipality.¹²⁹ Sali Rexhepi confirmed to the Court that he is a teacher in Djakova.¹³⁰ According to Witness N, Sali Rexhepi, Shaban Hoti, “Hoxha” and Haki Hajdari were the ones in charge at the Cahan camp, although he could not describe the hierarchy between these persons.¹³¹

VI. INDIVIDUAL CRIMINAL LIABILITY

82. Sali Rexhepi is charged with three counts of War Crimes Against the Civilian Population in relation to the events which occurred in the Cahan camp which are detailed in the factual findings above.

¹²² [REDACTED], Minutes of Main Trial, 04 May 2011, Q237-241.

¹²³ [REDACTED], Minutes of Main Trial, 04 May 2011, Q260.

¹²⁴ Witness K, Minutes of Main Trial, 16 May 2011, Q4 & 101.

¹²⁵ Witness K, Minutes of Main Trial, 16 May 2011, Q209-211.

¹²⁶ Witness K, Minutes of Main Trial, 16 May 2011, Q102.

¹²⁷ Witness K, Minutes of Main Trial, 16 May 2011, Q104-107.

¹²⁸ SPRK Record of the Witness Hearing in a Preliminary Investigation and Photo Identification Procedure (Witness N) dated 02 December 2010.

¹²⁹ Witness N, Minutes of Main Trial, 23 May 2011, Q105-107, 116.

¹³⁰ Minutes of Main Trial, 04 May 2011, p. 3.

¹³¹ Witness N, Minutes of Main Trial, 23 May 2011, Q205-211.



83. As explained in section II - Competence of the Court and Qualification of Offence above, the preconditions triggering the Geneva Conventions and Additional Protocol II have been established and will not be reiterated here. Common Article 3 affords protection to “persons taking no active part in the hostilities”. The evidence establishes that Witnesses K, M, N and [REDACTED] [REDACTED] were all civilians at the time that they were arrested and detained by the KLA. The basis of such detention was linked to their perceived status as “spies” or “Serb collaborators” however no evidence was presented to establish that any individual witness was taking active part in the ongoing conflict. Rather, these were vague, inconsistent and inadequate allegations which amounted to no more than unsubstantiated claims by the KLA used as an excuse to detain and mistreat the witnesses. The mere fact that any individual witness may have had neighbors or friends of Serbian ethnicity prior to 1999, or may have stayed employed as a civil servant for a longer period of time than other Kosovo-Albanians, does not amount to proof of participation in the conflict and certainly does not remove the status of a protected person under the Geneva Conventions.

Count 1 - Inhumane Treatment of the Detainees (Living Conditions)

84. The Indictment charges Sali Rexhepi (Count 1) with the commission of a war crime by way of inhumane treatment of the civilians detained in the Cahan camp with regard to the living conditions of their detention. He is charged as a co-perpetrator, along with other KLA soldiers, in his capacity as a KLA member with a command position.
85. The ICTY has defined inhuman treatment as
- “an intentional act or omission, that is an act which, judged objectively, is deliberate and not accidental, which causes serious mental harm or physical suffering or injury or constitutes a serious attack on human dignity [...]. Thus, inhuman treatment is intentional treatment which does not conform with the fundamental principle of humanity, and forms the umbrella under which the remainder of the listed ‘grave breaches’ in the [Geneva] Conventions fall. Hence, acts characterised in the Conventions and Commentaries as inhuman, or which are inconsistent with the



principle of humanity, constitute examples of actions that can be characterised as inhuman treatment.”¹³²

Inhumane treatment can be manifested in an endless number of ways, limited only by the dark imagination of mankind. One such manner of inhumane treatment may be constituted in the living conditions which detainees are forced to endure. To determine whether living conditions are so severe as to amount to inhumane treatment, one must examine both the tangible characteristics of the detention as well as the physical and mental suffering suffered by the detainee. The living conditions of detention must be “such as to cause serious mental and physical suffering to the detainees” and thus constitute “a serious attack upon the dignity of the detainees”.¹³³ Furthermore, the period of time over which these conditions are maintained without improvement can be indicative that that they are imposed deliberately.¹³⁴

86. The evidence establishes that the conditions in the Cahan camp were severe, though considerably less so than at the KLA-run camp located in Kukes.¹³⁵ A number of witnesses pointed out that the conditions in which they were held, in particular regarding food, were not so significantly different from others who were present in Cahan including the soldiers. There is no evidence of severe weight loss or other signs of deprivation such as there was for those detained in the Kukes camp. The principal factors of complaint were the fact of detention *per se* and the continuing fear of further beatings rather than the living conditions.
87. The Trial Panel holds that there is insufficient evidence to qualify the conditions at Cahan as inhumane treatment within the definition of a war crimes and acquits Sali Rexhepi of Count 1 of War Crimes.

¹³² ICTY, *Celebici Trial Judgment (Delalic et al.)*, 16 November 1998, at para. 543.

¹³³ ICTY, *Lima et al.*, Trial Chamber Judgment, 30 November 2005, at para. 289.

¹³⁴ *Ibid.*

¹³⁵ The factual findings with relation to the conditions and events which occurred at the KLA camp in Kukes, Albania, are detailed in Mitrovica District Court verdict P nr. 45/2010 against Sabit Geci, Riza Alija, Haki Hajdari and Shaban Hoti dated 29 July 2011. This information was not repeated in this written verdict, as defendant Sali Rexhepi has not been charged with any criminal offence in connection with the Kukes camp.



Count 2 - Torture of Witness N on 03 May 1999

88. Count 2 of the Indictment charges Sali Rexhepi with the commission of a war crime in co-perpetration with Haki Hajdari and Shaban Hoti by torturing Witness N on approximately 03 May 1999 in the Cahan camp.
89. Matters of general application which have already been established in common with Count 1 will not be repeated herein and going forward.
90. The UN Convention Against Torture defines torture as
“any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”¹³⁶
91. The evidence established that Witness N was badly beaten upon his arrival to the Cahan camp on or about 03 May 1999 and that the beating was perpetrated by Sali Rexhepi, Haki Hajdari and Shaban Hoti. The beating inflicted severe pain and suffering, causing Witness N to scream and to lose consciousness. During this beating, Witness N was interrogated about his employment, his involvement SDS, details about the organization “Fadofil”, and the presence of Serbian militaries in Istog/Istok. Thus, the purpose of the beating and questioning was both to obtain information from Witness N and to punish him for his perceived involvement with Serbian organizations and entities. At the time, Sali Rexhepi, as well as Haki Hajdari and Shaban Hoti, were acting in official capacity as members of the KLA.
92. The Panel holds that Sali Rexhepi co-perpetrated, and is criminally liable for, Count 2 of War Crimes Against the Civilian Population due to his participation in the beating and interrogation of Witnesses N on approximately 03 May 1999 which amounted to the act of torture.

¹³⁶ Article 1.

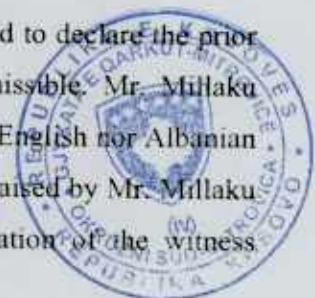


Count 3 - Torture of Witness N on 09 May 1999

93. Count 3 of the Indictment charges Sali Rexhepi with the commission of a war crime in co-perpetration with Shaban Hoti by torturing Witness N on approximately 09 May 1999 in the Cahan camp.
94. While the evidence establishes that this additional beating of Witness N took place, the account given by Witness N was confused and uncertain, in particular as to Sali Rexhepi's alleged presence and role. While there is some evidence to support the allegations made in Count 2, the totality of the evidence upon this count, and indeed the uncertainty of the witness' own recollection of Rexhepi's presence and role, and the absence of other corroboration is such that the Trial Panel cannot find Sali Rexhepi criminally liable.
95. Due to insufficiency of evidence, the Trial Panel acquits Sali Rexhepi of Count 3 of the Indictment.

VII. REJECTED MOTIONS

96. Pursuant to Art. 397 Paragraph (7) KCCP, following is the list of motions which were rejected over the course of the main trial:
97. On 16 May 2011, the Trial Panel rejected the motion of Defence Counsel Haxhi Millaku for a handwriting expertise to examine the signatures on the prior statements of Witness K. The Panel found that there were no grounds for an expertise because the signatures in question did not purport to be that of the witness but rather that of the Prosecutor.
98. On 16 May 2011, Defence Counsel Haxhi Millaku moved to declare the prior statement of Witness K dated 21 April 2010 as inadmissible. Mr. Millaku objected to the statements due to the fact that neither the English nor Albanian versions had been signed by the witness. This point was raised by Mr. Millaku after the Prosecution had completed its direct examination of the witness.



during which the witness was confronted numerous times with statements he had made in the 21 April 2010 record. At no point during any of the Prosecution's confrontations of Witness K with his prior statement did any party object to the admissibility of the statement. The Prosecution's position is that the issue of admissibility should have been raised before the core testimony of the witness. By remaining silent on the issue both before the direct examination and during the testimony when the witness was repeatedly confronted with the prior statement, the Defence impliedly had accepted the admissibility of the document. In accordance with the Presiding Judge's statement on 16 May 2011 at p. 35, reliance was given to the sworn testimony given in the Court, and no account was taken or weight given to those portions of the unsigned statement which were not expressly repeated and that were accepted by the witness to be true during the sworn testimony.

VIII. SENTENCING

99. When imposing the criminal sanction, the Trial Panel must bear in mind both the general purpose of punishment to deter others from committing criminal activity, and the specific purpose to prevent the offender from re-offending and facilitate rehabilitation.¹³⁷
100. In determining the punishment, the Trial Panel must evaluate all mitigating and aggravating factors.¹³⁸
101. With regard to Sali Rexhepi, the Trial Panel found as aggravating factors the following circumstances: His use of a wooden stick and excessive gratuitous violence in the beating of Witness N during the incident on 03 May 1999 and the impact of this maltreatment on the physical and psychological health of Witness N.
102. As mitigating circumstances, the Trial Panel took into account the current medical and health situation of the defendant and the fact that Witness K, Witness N and Imer Imeri each identified Sali Rexhepi as behaving in a more

¹³⁷ Articles 34 & 64 of the CCK.

¹³⁸ Article 64 para (1) CCK.



humane and positive manner towards the detainees than other KLA soldiers at the camp.¹³⁹

103. Sali Rexhepi is convicted of one count of War Crimes Against the Civilian Population pursuant to Article 142 of the CC SFRY. The CC SFRY foresees a minimum punishment of five years of imprisonment and a maximum punishment of the death penalty for this criminal offence. The death penalty was later abolished in Kosovo and replaced with imprisonment of forty years.¹⁴⁰
104. The Panel imposed the sentence of five years of imprisonment based on the context and circumstances of the individual criminal act and the aggravating and mitigating circumstances listed above.

IX. COMPENSATION CLAIM

105. During the criminal proceedings, Witness N in his capacity as an Injured Party submitted a compensation claim for injuries sustained during his unlawful detention and beatings in the KLA Cahan camp. He continues to suffer physical ailments and permanent injury. As supporting documentation, he submitted copies of seven medical referrals to specialist doctors and a prescription issued by one specialist.
106. The documentation submitted together with the compensation claim provided insufficient information for the Trial Panel to establish to what extent the claims for physical injury, pain and suffering are justified and the fiscal amount sought in compensation. The claim itself did not reflect any monetary amount spent on medical costs and did not indicate any amount sought for mental and psychological pain and suffering. No receipts or other documentation of costs of medical services was submitted with the claim. Substantial further inquiries would have been necessary for determining the

¹³⁹ See [REDACTED] Minutes of Main Trial, 05 May 2011, Q168; Witness K, Minutes of Main Trial, 16 May 2011, Q103-107, 233; Witness N, Minutes of Main Trial, 25 May 2011, Q155-157, 171-173.

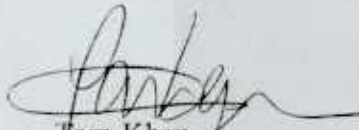
¹⁴⁰ UNMIK Regulation 1999/24, 12 December 1999; UNMIK Regulation 2000/59 amending UNMIK Regulation 1999/24, 27 October 2000.



determined in the amount of 500.00 Euro.

District Court of Mitrovica
P. nr. 45/2010

Prepared in English, an authorized language.



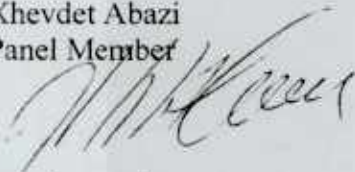
Tara Khan
Recording Officer



Jonathan Welford-Carroll
Presiding Judge



Xhevdet Abazi
Panel Member



Caroline Charpentier
Panel Member

Legal remedy:

Authorized persons may file an appeal in written form against this verdict to the Supreme Court of Kosovo through the District Court of Mitrovica within fifteen (15) days from the date the copy of the judgment has been received, pursuant to Article 398(1) of the KCCP.