

**INTERIM ADMINISTRATION OF KOSOVO
ADMINISTRATA E PERKOHSHME E KOSOVËS
PRIVREMENA ADMINISTRACIJA KOSOVA**

PRIZREN DISTRICT COURT

Sitting at the premises of the District Court of Gjilan/Gnjilane

P. No. 85/2005

10 August 2006

IN THE NAME OF THE PEOPLE

The District Court of Prizren, in a panel composed of International Judge, Vinod Boolell as Presiding Judge, International Judges, Leonard Assira and Nurul Khan, as panel members,

In the criminal proceedings against:

Selim Krasniqi, Bedri Zyberaj and Islam Gashi charged with War Crimes of inhumane treatment and immense suffering or violation of the bodily health of the civilian detainees and constituting an application of measures of intimidation and terror, pursuant to Article 142 of the Criminal Code of the Socialist Federal Republic of Yugoslavia (CC SFRY) as read with Articles 22, 24, 26 and 30 of the CC SFRY, and War Crimes of killings in violation of Article 142 of the CC SFRY as read with Articles 22, 24, 26 and 30 of the CC SFRY,

Xhavit Elshani and Isuf Gashi charged with War Crimes of illegal arrests and detention, pursuant to Article 142 of the CC SFRY as read with Articles 22, 24, 26 and 30 of the CC SFRY, War Crimes of inhumane treatment and immense suffering or violation of bodily health of the civilian detainees and constituting an application of measures of intimidation and terror pursuant to Article 142 of the CC SFRY as read with Articles 22, 24, 26 and 30 of the CC SFRY, War Crimes of beating and torture in violation of Article 142 of the CC SFRY as read with Articles 22, 24, 26 and 30 of the CC SFRY, and War Crimes of killings in violation of Article 142 of the CC SFRY as read with Articles 22, 24, 26 and 30 of the CC SFRY,

Agron Krasniqi charged with War Crimes of inhumane treatment and immense suffering or violation of the bodily health of the civilian detainees and constituting an application of measures of intimidation and terror, pursuant to Article 142 of the CC SFRY as read with Articles 22, 24, 26 and 30 of the CC SFRY,

with the assistance of recording clerk Nina Maric, after the main trial held on 29 September, 14, 19, 26 October, 9, 10, 16, 23, 30 November, 1, 14, 15 December 2005 and 8, 9, 15, 16, 22 February, 1, 15, 16, 22 March, 3, 10, 11, 17, 18, 23, 24, 25, 31 May, 1, 2, 7, 8, 14, 21, 22, 28, 29 June, 19, 27 July, 7, 8, 10 August 2006 in the presence of the International Public Prosecutors, Jude Romano (from 29 September 2005 to 22 February 2006) and Paul Flynn (from 1 March to 10 August 2006), Legal Officer for the Criminal

Division, Andrey Antonov, accused, Selim Krasniqi, and his Defence Counsel, Mahmut Halimi, accused, Bedri Zyberaj, and his Defence Counsels, Haxhi Millaku (from 29 September to 15 December 2005) and Rexhep Hasani, appointed *ex officio*, (from 8 February to 10 August 2006), accused, Xhavit Elshani, and his *ex officio* Defence Counsel, Fatmir Celina (both from 29 September 2005 until 27 July 2006, and on 10 August 2006), accused, Isuf Gashi and his Defence Counsel, Ethem Rogova (from 29 September 2005 until 27 July 2006, and on 10 August 2006), accused, Islam Gashi, and his Defence Counsel Mexhid Sylja, accused, Agron Krasniqi and his Defence Counsel, Fazli Balaj (from 3 May to 10 August 2006), and Legal Officer for the International Judicial Support Division, Virginie Monchy, (subsequently replaced by Legal Officer for the International Judicial Support Division, Leanne Ho).

Publicly announces on this day, 10 August 2006, the following:

JUDGMENT

Pursuant to Article 391 Paragraph 1 of the Provisional Criminal Procedure Code of Kosovo (PCPCK),

Selim KRASNIQI, born on 1 April 1970 in VllashkiDranovc/Vlaški Drenovac village, Malishevë/Mališevo municipality, nickname: "Celiku" or "Celik", father's name: ██████████, Krasniqi, mother's name: ██████████, Kosovo Albanian, residing in Ortokoll, Prizren, married with two (2) children, Commander of RTG2 – TMK, Prizren, Brigadier General, literate, has completed secondary school and is undergraduate in economics, average financial status, KPC ID No. 00624, no other criminal case pending against him, detained since 16 February 2004, is

GUILTY

Because on a date between 1 May 1998 and 31 August 1998, Selim Krasniqi, in complicity with others, and pursuant to a joint criminal plan to unlawfully detain Kosovo Albanian civilians, participated in the illegal arrest and detention of Kosovo Albanian civilians suspected of collaboration with Serbs and held those civilians at a location situated at Dranovc/Drenovac (of Zatriq) village, Rahovac/Orahovac municipality, where they were detained in inhumane conditions without access to due process, and subjected to beatings, thus causing them great suffering and violation of their health. Among those civilians arrested and illegally detained and beaten were: Sh██████ Sh██████, B██████ B██████, H██████ P██████, M██████ R██████ H██████ T██████, A██████ B██████, H██████, K██████ as well as Witnesses "A", "E", "U", "W" and "X".

By participating in the above activities which amounted to the establishment and perpetuation of the inhumane treatment of Kosovo Albanian citizens, Selim Krasniqi incurred personal responsibility for the war crime of inhumane treatment and immense suffering or violation of the bodily health of the civilian detainees and this constituted an application of measures of intimidation and terror in violation of Article 142 of the CC SFRY as read with Articles 22, 26 and 30 of the CC SFRY.

Bedri ZYBERAJ, born on 6 May 1963 in Gjakovë/Dakovica, father's name: B [REDACTED], Zyberaj, mother's name: [REDACTED], Kosovo Albanian, residing in Prishtinë/Pristina, Lagja Lakrishte street No. 24, entrance No. 3, 6th floor, married with four (4) children, Protocol Officer, General TMK HQ in Prishtinë/Pristina, Lieutenant Colonel, literate, has passed a Master in Philological Sciences, poor financial status, KPC ID No. 00010, no other criminal case pending against him, detained since 16 February 2004, is

GUILTY

Because on a date between 1 May 1998 and 31 August 1998, Bedri Zyberaj, in complicity with others, and pursuant to a joint criminal plan to unlawfully detain Kosovo Albanian civilians, participated in the illegal arrest and detention of Kosovo Albanian civilians suspected of collaboration with Serbs and held those civilians at a location situated at Dranovc/Drenovac (of Zatriq) village, Orahovac/Rahovac municipality, where they were detained in inhumane conditions without access to due process, and subjected to beating, thus causing them great suffering and violation of their health. Among those civilians arrested and illegally detained and beaten were: Sh [REDACTED] Sh [REDACTED] B [REDACTED] B [REDACTED], H [REDACTED] P [REDACTED] M [REDACTED] Rr [REDACTED], H [REDACTED] T [REDACTED] A [REDACTED] B [REDACTED], H [REDACTED] K [REDACTED] as well as Witnesses "A", "E", "U", "W" and "X".

By participating in the above activities which amounted to the establishment and perpetuation of the inhumane treatment of Kosovo Albanian citizens, Bedri Zyberaj incurred personal responsibility for the war crime of inhumane treatment and immense suffering or violation of the bodily health of the civilian detainees and this constituted an application of measures of intimidation and terror in violation of Article 142 of the CC SFRY as read with Articles 22, 26 and 30 of the CC SFRY.

Agron KRASNIQI, born on 25 October 1977 in Dejnë/Danjane village, Rahovec/Orahovac municipality, father's name: [REDACTED] Krasniqi, mother's name: [REDACTED], Kosovo Albanian, residing in CH8180 Zurich, Buelach, Lindenhof Street No. 4A, Switzerland, married with one (1) child, driver, has completed secondary school and started to study Law at university, average financial status, no other criminal case pending against him, detained since 9 December 2005, is

GUILTY

Because on a date between 1 May 1998 and 31 August 1998, Agron Krasniqi, in complicity with others, and pursuant to a joint criminal plan to unlawfully detain Kosovo Albanian civilians, participated in the illegal arrest and detention of Kosovo Albanian civilians suspected of collaboration with Serbs and held those civilians at a location situated at Dranovc/Drenovac (of Zatriq) village, Orahovac/Rahovac municipality, where they were detained in inhumane conditions without access to due process, and subjected to beating, thus causing them great suffering and violation of their health. Among those civilians arrested and illegally detained and beaten were: Sh [REDACTED] Sh [REDACTED] B [REDACTED] B [REDACTED], H [REDACTED] P [REDACTED], M [REDACTED] Rr [REDACTED], H [REDACTED] T [REDACTED] A [REDACTED] B [REDACTED], H [REDACTED] K [REDACTED] as well as

Witnesses "A", "E", "U" and "W".

By participating in the above activities which amounted to the establishment and perpetuation of the inhumane treatment of Kosovo Albanian citizens, Agron Krasniqi incurred personal responsibility for the war crime of inhumane treatment and immense suffering or violation of the bodily health of the civilian detainees and this constituted an application of measures of intimidation and terror in violation of Article 142 of the CC SFRY as read with Articles 22, 26 and 30 of the CC SFRY.

SENTENCES

For the criminal offence of war crime against the civilian population as set out above:

Selim Krasniqi is sentenced to seven (7) years imprisonment,

Bedri Zyberaj is sentenced to seven (7) years imprisonment,

Agron Krasniqi is sentenced to seven (7) years imprisonment.

Pursuant to Article 50 of the CC SFRY, the time spent in detention on remand is included in the amount of punishment for:

Selim Krasniqi from 16 February 2004 until the judgment becomes final,

Bedri Zyberaj from 16 February 2004 until the judgment becomes final,

Agron Krasniqi from 9 December 2005 until the judgment becomes final.

Pursuant to Article 390 Paragraph 3 of the PCPCK, Agron KRASNIQI is

ACQUITTED

of the charge of war crime of inhumane treatment and immense suffering or violation of the bodily health of Witness "X" and constituting an application of measures of intimidation and terror in violation of Article 142 of the CC SFRY as read with Articles 22, 24, 26 and 30 of the CC SFRY, whereupon on a date between 2 June 1998 and 31 August 1998, Agron Krasniqi, in complicity with and aided and abetted by others, and pursuant to a joint criminal plan to unlawfully detain Kosovo Albanian civilians, participated in the illegal arrest and detention of Witness "X" suspected of collaboration with Serbs and held that civilian at a location situated at Dranovc/Drenovac village where Witness "X" was detained in inhumane conditions without access to due process, and subjected to beatings and torture, thus causing him/her great suffering and violation of his/her health.

Pursuant to Article 390 Paragraph 3 as read with Article 3 Paragraph 2 of the PCPCK,

Islam GASHI, born on 22 January 1974 in Dranovc/Drenovac village, Rahovec/Orahovac municipality, father's name: [REDACTED] Gashi, mother's name: [REDACTED], Kosovo Albanian, residing in Dranovc/Drenovac village, Rahovec/Orahovac municipality, single, major in TMK, literate, has completed high education in mathematics, poor financial status, no other criminal case pending against him, detained since 24 May 2004, is

ACQUITTED

of the charge of war crime of inhumane treatment and immense suffering or violation of the bodily health of the civilian detainees and constituting an application of measures of intimidation and terror in violation of Article 142 of the CC SFRY as read with Articles 22, 24, 26 and 30 of the CC SFRY, whereupon on a date between 2 June 1998 and 31 August 1998, Islam Gashi, in complicity with and aided and abetted by others, and pursuant to a joint criminal plan to unlawfully detain Kosovo Albanian civilians, participated in the illegal arrest and detention of Kosovo Albanian civilians suspected of collaboration with Serbs and held those civilians at a location situated at Dranovc/Drenovac Village where they were detained in inhumane conditions without access to due process, and subjected to beatings and torture, thus causing them great suffering and violation of their health. Among those civilians arrested and illegally detained and beaten were: Sh[REDACTED] Sh[REDACTED], B[REDACTED] B[REDACTED], H[REDACTED] P[REDACTED], M[REDACTED] R[REDACTED], H[REDACTED] T[REDACTED], A[REDACTED] B[REDACTED], H[REDACTED] K[REDACTED] as well as Witnesses "A", "E", "U", "W" and "X".

Pursuant to Article 389 Paragraph 1 of the PCPCK, the following charges are

REJECTED AGAINST

Xhavit ELSHANI, born on 8 July 1968 in Piran/Pirane village, Prizren municipality, father's name: [REDACTED] Elshani, mother's name: [REDACTED], Kosovo Albanian, residing in Piran/Pirane village, Prizren municipality, married, father of three (3) children, fire chief of the TMK 1st Rapid Reaction, Detachment of Protection Zone 2, Shiroke, Prizren Captain, literate, has completed elementary school, KPC ID No. 00566, ID No. 1002612239, no other criminal case pending against him, detained from 16 February 2004 to 9 June 2006,

AND

Isuf GASHI, born on 20 April 1946 in Dranovc/Drenovac village, municipality of Rahovec/Orahovac, father's name: [REDACTED] Gashi, mother's name: [REDACTED], Kosovo Albanian, residing in Dranovc/Drenovac village, Rahovec/Orahovac municipality, married with five (5) children, clerk for the war veterans' association in the municipality of Rahovec/Orahovac and lay judge in the Municipal Court of Rahovec/Orahovac, literate, has completed elementary school, poor financial status, ID No. 1007989187, no other criminal case pending against him, detained from 24 May 2004 to 9 June 2006,

- 1) War Crimes of illegal arrests and detention in violation of Article 142 of the CC

SFRY as read with Articles 22, 24, 26 and 30 of the CC SFRY whereupon on days between 2 June 1998 and 13 July 1998, Xhavit Elshani and Isuf Gashi, acting in concert with other individuals, and pursuant to a joint criminal enterprise, ordered and participated, directly or indirectly, in the illegal arrests and detention of Kosovo Albanian civilians in the Detention Centre in Dranovc/Drenovac village. Among those illegally arrested civilians were:

- i. Sh■■■■ Sh■■■■ was unlawfully arrested and illegally detained on 2 June 1998 at the Detention Centre in Dranovc/Drenovac village. To this day, he has never been seen again.
- ii. B■■■■ B■■■■ was unlawfully arrested and illegally detained on 3 June 1998 at the detention Centre in Dranovc/Drenovac village. To this day, he has never been seen again.
- iii. H■■■■ K■■■■ was unlawfully arrested and illegally detained on 4 June 1998 at the Detention Centre in Dranovc/Drenovac village. To this day, he has never been seen again.
- iv. H■■■■ P■■■■ was unlawfully arrested and illegally detained on 7 June 1998 at the Detention Centre in Dranovc/Drenovac village. To this day, he has never been seen again.
- v. M■■■■ Rr■■■■ was unlawfully arrested and illegally detained on 10 June 1998 at the Detention Centre in Dranovc/Drenovac village. To this day, he has never been seen again.
- vi. H■■■■ T■■■■ was unlawfully arrested and illegally detained on 2 July 1998 at the Detention Centre in Dranovc/Drenovac village. To this day, he has never been seen again.
- vii. A■■■■ B■■■■ was unlawfully arrested and illegally detained on 13 July 1998 at the Detention Centre in Dranovc/Drenovac village. To this day, he has never been seen again.

2) War Crimes of inhumane treatment and immense suffering or violation of bodily health of the civilian detainees and constituted an application of measures of intimidation and terror in violation of Article 142 of the CC SFRY as read with Articles 22, 24, 26 and 30 of the CC SFRY whereupon on days between 2 June 1998 and 13 July 1998, Xhavit Elshani and Isuf Gashi, acting in concert with other individuals and pursuant to a joint criminal enterprise to unlawfully detain Kosovo Albanian civilians, ordered and participated, in the establishment and perpetuation of inhumane treatment of the Kosovo Albanian civilians illegally detained in the Detention Centre located in Dranovc/Drenovac village, by housing those civilian detainees in inhumane conditions, depriving them of adequate sanitation, food and water, and needed medical treatment. The inhumane treatment of the civilian detainees caused immense suffering or was a violation of the bodily integrity and health of those detainees and constituted an application of measures of intimidation and terror. Among those civilians subjected to inhumane treatment were the seven (7) victims mentioned in paragraph 61 of the indictment.

3) War Crimes of beating and torture in violation of Article 142 of the CC SFRY as read with Articles 22, 24, 26 and 30 of the CC SFRY whereupon on days between 2 June 1998 and 13 July 1998, Xhavit Elshani and Isuf Gashi while being members of KLA, acting in concert with other individuals, and pursuant to a joint criminal enterprise,

ordered and participated, directly or indirectly, in the beating and torture of civilians illegally detained in the Detention Centre in Dranovc/Drenovac village. Among those civilians subjected to beatings and torture were the seven (7) victims mentioned in paragraph 61 of the indictment.

COSTS

Pursuant to Article 102 Paragraph 1 of the PCPCK, Selim Krasniqi, Bedri Zyberaj and Agron Krasniqi must reimburse the costs of the criminal proceedings. Pursuant to Article 102 Paragraph 4 of the PCPCK, Bedri Zyberaj is entirely relieved of the duty to reimburse the costs of the criminal proceedings.

Pursuant to Article 103 Paragraph 1 of the PCPCK, Xhavit Elshani, Isuf Gashi and Islam Gashi shall not reimburse the costs of the criminal proceedings.

CLAIM OF INJURED PARTY

Pursuant to Article 109 Paragraph 2 and Article 112 Paragraphs 2 and 3 of the PCPCK as read together with Article 391 Paragraph 1 Item 6 of the PCPCK, any potential property claim of the injured party shall be pursued in civil litigation.

MEDIA PUBLICATION

Pursuant to Article 391 Paragraph 1 Item 6 of the PCPCK, this judgment may be reported in the media.

BACKGROUND

At all times relevant to the present case a state of internal armed conflict existed between the Kosovo Liberation Army ("KLA") and the 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's 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.

The present case is concerned with circumstances linked to the internal armed conflict that had been going on in Kosovo and more particularly to the first seven months of 1998 that saw a protracted and intense conflict in the territory of Kosovo which extended into and affected the locality of Dranovc/Drenovac and its surrounding villages.

Between May 1998 and October 1998, members of the Kosovo Liberation Army (KLA) organized and ran a detention centre in Dranovc/Drenovac Village in Zatriq, Rahovec/Orahovac ("Detention Centre"). A KLA policy was in existence which resulted in the unlawful arrest, interrogation, detention, beating, torture and, in some instances,

murder of non-combatant Kosovo Serbian and Kosovo Albanian citizens who were suspected of collaborating with the Serbian authorities. The KLA established the Detention Centre which kept those so suspected in "isolation". A number of victims were taken against their will from their families and brought to the Detention Centre or were detained after they appeared in the Detention Centre on different occasions.

BRIEF OVERVIEW OF THE FACTUAL SITUATION

On 2 June 1998, Sh████ SH████ together with H████ M████ and F████ H████ went to the KLA Dranovc/Drenovac Headquarters on board Sh████ Sh████'s vehicle. Sh████ Sh████ was detained by the KLA soldiers while H████ M████ and F████ H████ were allowed to go home. On 3 or 4 June 1998, Sh████ Sh████'s father, R████ Sh████ accompanied by H████ M████, went to the Detention Centre to look for Sh████ Sh████. They were not allowed to see him. On his second visit three days after his first visit, R████ Sh████ failed to see the victim again. However, somebody told him at the headquarters that "Sh████ is no longer here, he is in Drenica". R████ Sh████ saw Sh████'s vehicle parked outside the headquarters. He never saw Sh████ Sh████ again after 2 June 1998.

On 3 June 1998, B████ B████ was illegally arrested from his uncle I████ H████'s home in Ratkovc/Ratkovac (Rahovec/Orahovac municipality) village by KLA soldiers M████ L████ R████ Q████ K████ and N████ K████ upon the orders of G████ P████ (nicknamed "████", now deceased) who was then the Commander of the Military Police in Dranovc/Drenovac Village. The unlawful arrest was witnessed by I████ H████ and Anonymous Witness "B". Anonymous Witness "A" saw B████ B████ at the Detention Centre with swollen cheeks on 5 or 6 of June 1998. This was the last time Anonymous Witness "A" saw B████ B████.

On 4 June 1998 H████ K████ was taken from his home by KLA soldiers Agron Krasniqi, Z████ B████, Islam Gashi and Islam Gashi's uncle's son. The following day, Anonymous Witnesses "TT", and "N" went to the Detention Centre to look for H████ K████ and were able to talk to Isuf Gashi, then to Selim Krasniqi, who referred them to Bedri Zyberaj. The witnesses saw the victim several weeks after his unlawful arrest in a room at the Detention Centre where several KLA soldiers, among them Selim Krasniqi and Islam Gashi, were also present.

On 7 June 1998, H████ P████ was unlawfully arrested and detained at the Detention Centre. The day prior to his unlawful arrest, his son, M████ P████, went to the Detention Centre with H████ D████ to find out if their names were on the "black list". M████ P████ was detained by the KLA soldiers. The KLA soldiers told H████ D████ to tell H████ P████ to go to the Detention Centre so that his son can be released. Thus, H████ P████ went to the Detention Centre where he was illegally detained while his son M████ was released.

On 10 June 1998, M████ RR████ was taken from outside his home by three men wearing black uniforms, two of whom were identified as Agron Krasniqi and Z████

B [redacted]. The following day, N [redacted] R [redacted] and H [redacted] R [redacted] went to the school in Dranovc/Drenovac village where they saw Z [redacted] B [redacted]. When they confronted Z [redacted] B [redacted], the latter told them that M [redacted] was locked in the basement and that if they wanted to know more about M [redacted], they should talk to Bedri Zyberaj. Bedri Zyberaj admitted to them that it was he who was responsible for taking away M [redacted] R [redacted] and that they should do what they needed to and leave.

On 2 July 1998, H [redacted] T [redacted] and Z [redacted] T [redacted] were on their way to pick up a bride. At the Dranovc/Drenovac and Paragan roads, they were stopped at a KLA checkpoint manned by four armed KLA soldiers. Their IDs were taken and brought by a soldier to the vineyard. Thereafter, one of the KLA soldiers came back and asked who H [redacted] T [redacted] was. H [redacted] identified himself and after three hours, a "Lada Caravan" car arrived and took H [redacted] T [redacted]. The KLA soldier told Z [redacted] T [redacted] that he could pick up H [redacted] the following day at 8:00 a.m. Z [redacted] T [redacted] however did not come back out of fear.

On 13 July 1998, A [redacted] B [redacted] was abducted in his house by seven KLA soldiers who told A [redacted]'s family that they were only going to ask him some questions and release him later. Since A [redacted] never came back, M [redacted] B [redacted] later went to Dranovc/Drenovac to look for him. There he met Bedri Zyberaj, whom he heard was the police "commissar" in charge of the KLA headquarters. Bedri Zyberaj told him to go to the police located at the school building and ask for "Celiku".

PROSECUTION WITNESSES HEARD DURING THE TRIAL.

Witness M [redacted] Sh [redacted]; Witness R [redacted] Sh [redacted] (former witness "C")², W [redacted] S [redacted] Sh [redacted] (former witness "H")³; W [redacted] Z [redacted] T [redacted] (former witness "F")⁴; Protected Witness "X" (never cross-examined by Agron Krasniqi)⁵; Head of OMPF, Jose-Pablo Baraybar, expert witness⁶; Anonymous Witness "U"⁷; Witness E [redacted] R [redacted] (former witness "S")⁸; W [redacted] N [redacted] R [redacted] (former witness "P")⁹ and Witness H [redacted] R [redacted] (former witness "I")¹⁰; Witness M [redacted] (M [redacted]) B [redacted] (former Witness "K")¹¹; Civpol Officer H [redacted] M [redacted] Y [redacted] WCIS¹²; Witness H [redacted] M [redacted] (never cross-examined by Agron Krasniqi)¹³; Anonymous Witness "E"¹⁴; Witness F [redacted] H [redacted]

¹ 9 November 2005 and 11 May 2006.

² 10 November 2005 and 11 May 2006.

³ 16 November 2005 and 11 May 2006.

⁴ 23 November 2005 and 23 May 2006.

⁵ 30 November 2005.

⁶ 1 December 2005; and 9 and 15 February 2006.

⁷ 14 December 2005 and 10 May 2006.

⁸ 14 and 15 December 2005 and 24 May 2006.

⁹ 15 December 2005 and 25 May 2006.

¹⁰ 15 December 2005 and 24 May 2006.

¹¹ 8 February 2006 and 10 May 2006.

¹² 16 February 2006.

¹³ 22 February 2006.

¹⁴ 15 and 22 March 2006, and 10 May 2006.

(never cross-examined by Agron Krasniqi)¹⁵; Protected Witness "Z"¹⁶; Anonymous Witness "TT"¹⁷; Anonymous Witness "D"¹⁸ and Anonymous Witness "W"¹⁹; Anonymous Witness "B"²⁰; Anonymous Witness "N"²¹; Anonymous Witness "A"²²

DEFENDANTS HEARD DURING THE TRIAL

Defendant Selim Krasniqi²³; Defendant Xhavit Elshani²⁴; Defendant Islam Gashi²⁵; Defendant Isuf Gashi²⁶ and Defendant Agron Krasniqi²⁷.

DEFENCE WITNESSES HEARD DURING THE TRIAL

Witness K█████ P█████²⁸; Dr. A█████ H█████²⁹; Witness F█████ B█████³⁰; Witness R█████ L█████³¹; Witness N█████ M█████³²; Witness R█████ R█████³³; Witness H█████ Z█████³⁴; Witness F█████ B█████³⁵; Witness I█████ G█████³⁶; Witness M█████ J█████³⁷; Witness I█████ D█████³⁸; Witness S█████ K█████³⁹.

STATEMENTS READ INTO THE RECORDS

Pursuant to Article 156 paragraph 2, the Court decided, after the parties consented, that the statements of the following witnesses given at previous stages of the proceedings be considered read into the record: investigative statements of A█████ P█████, dated 28 September 2004; N█████ H█████, dated 6 December 2004; and H█████ K█████, dated 5

¹⁵ 16 March 2006.

¹⁶ 17 May 2006.

¹⁷ 17 May 2006.

¹⁸ 18 May 2006.

¹⁹ 18 May 2006.

²⁰ 23 May 2006.

²¹ 24 May 2006.

²² 25 and 31 May 2006.

²³ 21, 22 and 28 June 2006.

²⁴ 28 June 2006.

²⁵ 29 June 2006.

²⁶ 29 June 2006.

²⁷ 19 July 2006.

²⁸ 2 June 2006.

²⁹ 7 June 2006.

³⁰ 7 June 2006.

³¹ 7 June 2006.

³² 8 June 2006.

³³ 8 June 2006.

³⁴ 8 June 2006.

³⁵ 8 June 2006.

³⁶ 8 June 2006.

³⁷ 14 June 2006.

³⁸ 14 June 2006.

³⁹ 14 June 2006.

November 2004 (*none of them was ever cross-examined by Agron Krasniqi*).

The following investigative statements were admitted as evidence in relation to all six (6) accused, namely Selim Krasniqi, Bedri Zyberaj, Xhavit Elshani, Isuf Gashi, Islam Gashi and Agron Krasniqi: Witness M [REDACTED] Sh [REDACTED], dated 7 July 2004, Witness R [REDACTED] Sh [REDACTED] (former witness "C"), dated 10 March 2004, Witness S [REDACTED] Sh [REDACTED] (former witness "H"), dated 10 March 2004, Witness Zenel Tarjani (former witness "F"), dated 11 March 2004, Anonymous Witness "U", dated 6 August 2004, Witness E [REDACTED] Rr [REDACTED] (former witness "S"), dated 14 June 2004, Witness N [REDACTED] Rr [REDACTED] (former witness "P"), dated 4 June 2004, Witness H [REDACTED] Rr [REDACTED] (former witness "I"), dated 7 and 14 June 2004, Witness M [REDACTED] B [REDACTED] (former witness "K"), dated 11 March 2004, Anonymous Witness "E", dated 2 August 2004, Protected Witness "Z", dated 8 September 2004, Anonymous Witness "TT", dated 26 April 2004, Anonymous Witness "D", dated 20 September 2004, Anonymous Witness "W", dated 11 March 2004, Anonymous Witness "B", dated 26 February and 2 March 2004, Anonymous Witness "N", dated 26 April 2004, Anonymous Witness "A", dated 26 February and 2 March 2004, Witness K [REDACTED] P [REDACTED], dated 28 September 2004, Witness A [REDACTED] H [REDACTED], dated 28 September 2004, Witness F [REDACTED] B [REDACTED], dated 5 October 2004, Witness R [REDACTED] L [REDACTED], dated 5 November 2004, Witness R [REDACTED] R [REDACTED], dated 5 November 2004, Witness F [REDACTED] B [REDACTED], dated 6 December 2004, Witness I [REDACTED] G [REDACTED], dated 6 December 2004, Witness M [REDACTED] J [REDACTED], dated 5 November 2004.

The investigative statement given by Anonymous Witness "X" on 10 September 2004 was admitted as evidence in relation to accused Selim Krasniqi, Bedri Zyberaj, Xhavit Elshani, Isuf Gashi and Islam Gashi.

The following Police statements were admitted as evidence in relation to all accused, namely Selim Krasniqi, Bedri Zyberaj, Xhavit Elshani, Isuf Gashi, Islam Gashi and Agron Krasniqi: Witness M [REDACTED] Sh [REDACTED], dated 21 July 2003, Witness R [REDACTED] Sh [REDACTED] (former witness "C"), dated 2 June at 16:00 hours (no year mentioned) and 26 June 2002, Witness S [REDACTED] Sh [REDACTED] (former witness "H"), dated 21 July 2003, Witness Z [REDACTED] T [REDACTED] (former witness "F"), dated 5 July 2001 and 23 November 2001, Anonymous Witness "U", dated 16 July 2004 and 19 July 2004, Witness E [REDACTED] Rr [REDACTED] (former witness "S"), dated 16 April 2002, Witness N [REDACTED] Rr [REDACTED] (former witness "P"), dated 16 April 2002 at 11:40 hours, Witness H [REDACTED] Rr [REDACTED] (former witness "I"), dated 29 June 2003, Witness M [REDACTED] B [REDACTED] (former witness "K"), dated 1st March 2000 and 22 December 2001, Anonymous Witness "E", dated 17 April 2004 including the two (2) pictures of Anonymous Witness "E" attached to the statement, Anonymous Witness "TT", dated 2 June 2001 and 29 November 2001, Anonymous Witness "W", dated 23 April 2002, Anonymous Witness "B", dated 23 November 2001, 10 January 2001 and 20 March 2000, Anonymous Witness "N", dated 29 November 2001 and 3 July 2000, Anonymous Witness "A", dated 20 March 2000, 27 June 2001 and 23 November 2001.

The statement given by witness Rr [REDACTED] B [REDACTED] to Police on 24 December 2002 was admitted as evidence in relation to accused Selim Krasniqi, Bedri Zyberaj, Xhavit Elshani, Isuf Gashi and Islam Gashi.

THE INDICTMENT

By the indictment dated 27 July 2004, the International Public Prosecutor charged the defendants Selim Krasniqi, Bedri Zyberaj, Xhavit Elshani, Isuf Gashi, Islam Gashi, and Xh[REDACTED] G[REDACTED] with a number of acts arising from the period between May and October 1998. The specific charges were set out in four counts and were said to relate to the activities of the defendants regarding detainees at a detention centre in Dranovc/Drenovac Village in Zatriq, Municipality of Rahovec/Orahovac. The allegations related to illegal arrest, unlawful detention, beating, torture and death of Kosovo Albanian victims in this case. In his ruling dated 21 May 2005, the confirmation judge confirmed the indictment, but severed the proceedings against Xh[REDACTED] G[REDACTED] who was not present at the hearing.

Defendant Agron Krasniqi was in Sweden at the time of the initiation of the investigation against the other defendants. He was extradited from Sweden on 9 December 2005 and was arrested pursuant to a warrant of arrest dated 15 April 2004. The investigation that had been initiated by the 20 February 2004 ruling of the Investigating Judge following the proposal dated 17 February 2004 of the International Prosecutor, against all the defendants including Agron Krasniqi, was extended in the case of Agron Krasniqi by a ruling dated 11 December 2005 and that defendant was placed in detention. An indictment dated 28 February 2006 was filed against him containing four counts and they also related to the detention centre referred to above. The allegations related to illegal arrest and/or detention, inhumane treatment, beating and torture as well as the killing of Kosovo Albanian victims. The Confirmation Judge confirmed the indictment in respect of all the charges of illegal arrest and/or detention, inhumane treatment, beating and torture but dismissed the charge of illegal arrest in the case of five of the victims. He also dismissed the charge of killing. An appeal by the prosecutor against the ruling of the confirmation judge was dismissed by a three judge panel. The case against Agron Krasniqi was consolidated with the ongoing trial of the other defendants.

At the session on 27 July 2006 the prosecutor dropped all the charges against defendants Isuf Gashi and Xhavit Elshani. A final indictment dated with the same date, 27 July 2006, was filed and that final amended indictment charged Selim Krasniqi, Bedri Zyberaj, Islam Gashi and Agron Krasniqi on four counts with the War Crimes of inhumane treatment.

The defendants were alleged to be members of the Kosovo Liberation Army (KLA), a fact admitted by all of them except Bedri Zyberaj.

In broad terms, the indictment alleged that all four defendants took part during the period between 2 June 1998 and 31 August 1998, (except that in the case of defendant Selim Krasniqi the starting date is 1 May 1998), in a joint criminal enterprise in which Albanian civilians suspected of collaborating with Serbians were unlawfully arrested, and unlawfully detained in the detention centre in Dranovc. It was alleged that the defendants participated in the illegal arrests and detention of Sh[REDACTED] Sh[REDACTED] B[REDACTED] B[REDACTED], H[REDACTED]

P████, M████, Rr████, H████, T████, A████, B████, H████, K████ as well as Witnesses "A", "E", "U", "W" and "X", and that they subjected the civilian detainees to inhumane treatment and immense suffering or violation of bodily health, constituting an application of measures of intimidation and terror. The defendants promoted a regime of detention that was arbitrary and oppressive and from which normal safeguards and proper trial processes were wholly absent.

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

- A state of internal armed conflict existed between the Kosovo Liberation Army ("KLA") and the 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's Ministry of the Interior and Serbian paramilitary soldiers in the territory of Kosovo.
- Both opposing forces were under responsible command exercising control over part of the territory of Kosovo to enable them to carry out sustained and concerted military operations;
- All the victims were expressly protected members of the civilian population;
- The acts of the accused took place during a period when an internal armed conflict existed within Kosovo.
- A nexus existed between the acts committed by the accused and the internal armed conflict. The existence of the armed conflict played a substantial part in the ability of the accused to carry out the offences, and the actions of the accused were directly linked to the armed conflict;
- The accused, as perpetrators of War Crimes, acted on behalf of, and were closely linked to, the armed forces of the KLA rendering them parties to the conflict. The KLA declared itself a legal army on 15 or 16 May 1998.
- Each of the acts concerned was accompanied by the necessary intent in the mind of the perpetrator.
- The conduct alleged against the defendants was said to be contrary to Article 142 of the CC SFRY, as read with Articles 22, 24, 26, and 30 of the CC SFRY, namely committing, aiding, committing by omission, acting in complicity with others, and participating in a joint criminal design, and, for the purpose of committing War Crimes, that the defendants were criminally liable personally for the illegal arrest, unlawful detention, beating, and torture of Kosovo Albanian victims in this case.
- Further, the conduct alleged was said to constitute War Crimes, as each of the key

identified acts constituted a violation of applicable 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.

LEGAL ISSUES

Witnesses not cross examined by defendant Agron Krasniqi

The statements made either to the police or to the Investigating Judge were put in at the trial. The Trial Panel considered these statements only to the extent that makers of the statements the witnesses testified at the trial were cross examined by the defendant Agron Krasniqi and by his defence counsel.

Evaluation of the credibility of the witnesses

In assessing the credibility of witnesses the Trial Panel did not consider the evidence as a monolithic structure which must be either accepted or rejected *en bloc*. The Trial Panel examined all the evidence, evaluated its weight and sought to distinguish what may safely be accepted from what is tainted or doubtful.

The Trial Panel was fully conscious of the circumstances in which the witnesses were placed and the complexity and the particular nature of events unfolding around them. The International Criminal Tribunal for Rwanda (ICTR) made the following observations on the impact of trauma on the testimony of witnesses in one of its leading cases⁴⁰.

“Many of the eye-witnesses who testified before the Chamber in this case have seen atrocities committed against their family members or close friends, and/or have themselves been the victims of such atrocities. The possible traumatism of these witnesses caused by their painful experience of violence during the conflict in Rwanda is a matter of particular concern to the Chamber. The recounting of this traumatic experience is likely to evoke memories of the fear and the pain once inflicted on the witness and thereby affect his or her ability fully or adequately to recount the sequence of events in a judicial context. The Chamber has considered the testimony of those witnesses in this light”⁴¹.

“The Chamber is unable to exclude the possibility that some or all of these witnesses did actually suffer from post traumatic or extreme stress disorders, and has therefore carefully perused the testimonies of these witnesses, those of the Prosecutor as well as those of the Defence, on the assumption that this might possibly have been the case. Inconsistencies or imprecision in the testimonies, accordingly, have been assessed in the light of this assumption, personal background and the atrocities they have experienced or

⁴⁰ *Prosecutor v Akayesu*, Judgment, 2 September 1998, Case no ICTR-96-4-T.

⁴¹ *Ibid*, paragraph 142.

have been subjected to”⁴².

By their very nature the experiences of many of the witnesses who gave evidence in the present case were traumatic for them and they could not reasonably be expected to recall the minutiae of the particular events charged, such as the precise sequence, or the exact dates and times of the events, which they had described. It should be recalled that the events occurred in 1998 and many of the witnesses had to recall events while in the process of searching for their loved ones who had disappeared. Some the witnesses were victims of abduction and detention in the course of which they were subjected to ill treatment.

Under Article 364 of the PCPCK [previously Article 328 of the Law on Criminal Proceedings, (LCP)], the court has a duty to draw the attention of a witness to departures from or contradictions in her/his testimony. This approach is explained for the purposes of Article 347 of the now repealed LCP⁴³ as follows: “The fact that the court can base its verdict only on evidence and facts presented at the main trial, does not mean that it may not evaluate, and even take into consideration testimonies given in the preliminary proceedings. If the witness at the main trial completely changes the testimony from investigation and does not provide persuasive reasons for that change in testimony, the court may take into consideration testimony from the investigation (Supreme Court of Croatia Kz. 962/72 dated 26 December 1972). This is because testimony from investigation must be shown to the witness, and it should have been read to him (Article 328 LCP, now Article 364 of the PCPCK⁴⁴), so the panel was familiar with that testimony as well”⁴⁵. Since Article 347 refers to Article 328 and that Article is reproduced as Article 364 in the PCPCK, the Trial Panel considered that the commentaries on Article 347 of the LCP would still be a valid guide in the evaluation of evidence.

The same observations appear in the Akayesu⁴⁶ case. “The majority of the witnesses who appeared before the Chamber were eye-witnesses, whose testimonies were based on events they had seen or heard in relation to the acts alleged in the Indictment. The Chamber noted that during the trial, for a number of these witnesses, there appeared to be

⁴² Ibid, paragraph 143.

⁴³ Article 347, paragraph 2 reads “The court has a duty to conscientiously evaluate each piece of evidence individually and, in connection with other evidence and on the basis of that assessment, to frame a conclusion as to whether the fact has been proved”. A carry over of that Article would now be Article 387 paragraph 2 of the Provisional Criminal Procedure of Kosovo which has repealed the Law on Criminal Proceedings.

⁴⁴ Article 328 of the Law on Criminal Proceedings reads “If in prior questioning a witness or an expert witness has presented facts that he no longer remembers or if he departs from his prior testimony, he shall be informed of his prior testimony or indicated where the discrepancy is, and shall be asked why he is now testifying differently, and if necessary, prior testimony or a part of that testimony shall be read”, and Article 364 of the PCPCK reads “If a witness or an expert witness cannot recall the facts he or she has presented in previous testimony or if he or she deviates from his or her previous testimony, the presiding judge or the parties shall draw his or her attention to the previous testimony and ask him or her why he or she is now testifying differently. Where necessary, the presiding judge shall read the previous testimony or a part thereof”.

⁴⁵ Commentaries on The Criminal Procedure of CC SFRY 3rd edition 1988, by Branko Petric.

⁴⁶ *Prosecutor v Akayesu*, Judgment, 2 September 1998, Case no. ICTR-96-4-T.

contradictions or inaccuracies between, on the one hand, the content of their testimonies under solemn declaration to the Chamber, and on the other, their earlier statements to the Prosecutor and the Defence. This alone is not a ground for believing that the witnesses gave false testimony. Indeed, an often levied criticism of testimony is its fallibility. Since testimony is based mainly on memory and sight, two human characteristics which often deceive the individual, this criticism is to be expected. Hence, testimony is rarely exact at to the events experienced. To deduce from any resultant contradictions and inaccuracies that there was false testimony would be akin to criminalising frailties in human perceptions. Moreover, inaccuracies and contradictions between the said statements and the testimony given before the Court are also the result of the time lapse between the two. Memory over time naturally degenerates; hence it would be wrong and unjust for the Chamber to treat forgetfulness as being synonymous with giving false testimony. Moreover, false testimony requires the necessary mens rea and not a mere wrongful statement⁴⁷.

A witness who departs from an earlier statement is thus given an opportunity to explain the reasons for such departure or contradictions and at the end of the day it is for the court to assess that evidence and decide whether to act on it or not.

The Panel was fully alive to the fact that there was bound to be discrepancies between the evidence of various witnesses, or between the evidence of a particular witness and a statement previously made by that witness. The Panel realized that a witness could depart from an earlier testimony for a variety of legitimate reasons and not because of a propensity to lie. This in itself is no ground to reject the testimony of a witness.

The events in this case occurred in 1998 and it would be a denial of justice not to take this key factor into account when assessing the testimony of the witnesses. The Trial Panel did not treat minor discrepancies to discredit the evidence given by one or more witnesses where the witnesses had nevertheless recounted the essence of the incidents in acceptable detail. The Panel took into account that these events had occurred some eight or more years before the witnesses gave evidence on more than one occasion. In these circumstances the panel was more cautious when assessing the testimony of a witness who was able to give a precise account of events.

The Panel analysed each discrepancy in the light of the explanations given and the circumstances in which each statement was made during the investigating proceedings and at the first trial. Many witnesses made statements to the police and to the Investigating Judge. Indeed in some instances the witnesses were asked why they had not mentioned the name of the accused or why they had not identified him in earlier statements. The Trial Panel considered the discrepancies between witnesses' testimony and previous statements, as well as discrepancies with established facts and addressed the credibility of each witness.

The Court also took into account the great stress and fear to which the witnesses were

⁴⁷ Ibid, paragraph 140.

exposed. It should be recalled that many of the witnesses requested protective measures and testified under the condition of anonymity. The Trial Panel gave much weight to this in the assessment of the testimony, in the light of the pertinent observation of the ICTY in the Fatmir Limaj case⁴⁸ “The Chamber further observed that a significant number of witnesses requested protective measures at trial, and expressed concerns for their lives and those of their family. This context of fear, in particular with respect to witnesses still living in Kosovo, was very perceptible throughout the trial”⁴⁹.

In some cases, the witnesses stated that they stood by their previous testimony and they gave a summary of their previous evidence at the hearing. This was quite understandable as the witnesses were giving evidence for the third time in front of judicial institutions after giving statements to the police and other organizations. The Trial Panel felt that it could safely act on the evidence of the witnesses. The Court found a number of inconsistencies in the evidence given at the trial compared to the previous statements of the witnesses. The Court did not consider that these inconsistencies were such as to undermine the essence of the testimony of the witnesses on the events that they had witnessed, or the defendants and other persons they had identified.

Use of the testimony of an Anonymous Witness in a decisive manner

Much of the evidence was given by Anonymous Witnesses. Under the applicable law of Kosovo care should be taken on the use made of such testimony⁵⁰. On a strict interpretation of international instruments on Human Rights and rules of international law, a witness does not enjoy specific rights as in the case of an accused. However there has been a shift in that situation at the international level. The European Court of Human Rights has held that it is true that Article 6 does not require the interests of witnesses in general, and those of victims called upon to testify in particular, to be taken into consideration. However their life, liberty or security of person may be at stake, as may interests coming generally within the ambit of the Convention. Such interests of witnesses and victims are in principle protected by other substantive provisions of the Convention, which imply that Contracting States should organize their criminal proceedings in such a way that those interests are not unjustifiably imperiled⁵¹.

The United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power provides that “victims should be treated with compassion and respect for their dignity”⁵². In the view of the Trial Panel, this principle should be applicable by extension, not only to victims who are witnesses but also to any witness who may be in some form of serious jeopardy.

⁴⁸ ICTY, Trial Chamber, Judgment, 30 November 2005, Case no. IT-03-66-T.

⁴⁹ Ibid, paragraph 15.

⁵⁰ “The court shall not find the accused guilty based solely, or to a decisive extent, on the testimony or other evidence which could not be challenged by the defendant or defence counsel through questioning during some stage of the criminal proceedings”. (Article 157, paragraph 1, PCPCK).

⁵¹ *Doorson v Netherlands*, 1996 22 EHRR 330.

⁵² Principle 4 of the Basic Principles.

The protection of victims and witnesses is also a principle which is well entrenched at the level of international tribunals. Both the relevant statutes on the *ad hoc* Tribunals for the former Yugoslavia [ICTY] and for Rwanda [ICTR] contain rules for such protection and for in camera hearings⁵³. In the Tadić case the ICTY has held that the requirements of a fair trial that the accused is entitled to must be consistent with appropriate measures for the protection of vulnerable witnesses⁵⁴.

The Rome Statute that has established the International Criminal Court also contains provisions for the protection of victims and witnesses⁵⁵.

Any decision to hold a hearing in camera and to grant anonymity to a witness must be balanced against the rights of an accused who should have a fair trial. In fact *principles of fair trial also require that in appropriate cases the interests of the defence are balanced against those of witnesses or victims called upon to testify*⁵⁶. This is so under domestic law, under the European Convention on Human Rights and other international instruments on Human Rights and more especially the International Covenant on Civil and Political Rights [ICCPR]. In relation to the ICCPR it has been observed that *the right to call, obtain the attendance of and examine witnesses under the same conditions as the prosecutor is an essential element of 'equality of arms' and thus of a fair trial*.⁵⁷ The European Court has observed that *if the anonymity of witnesses is maintained, the defence will be faced with difficulties which criminal proceedings should not normally involve. Accordingly the Court has recognised that in such cases Article 6, paragraph 1, taken together with Article 6 paragraph 3.d, of the Convention requires that the handicaps under which the defence labours be sufficiently counterbalanced by the procedures followed by the judicial authorities*⁵⁸.

The disadvantages referred to above can be avoided if an opportunity is given for the victims or witnesses to be cross examined in conditions that do not put them in danger, while at the same time respecting the equality of arms principle, of which the interrogation of witnesses is a component. What the case law of the European Court does not countenance is a total exclusion of an opportunity to examine witnesses by the defence and the finding of guilt based solely on such untested evidence⁵⁹. This is what is provided also in the PCPCK⁶⁰. It is important therefore that the defence are able to challenge any testimony adduced by the prosecution⁶¹ and that there is some other evidence to support the testimony of the anonymous witness.

⁵³ See Articles 20, 21 and 22 ICTY Statute and Article 21 Statute ICTR.

⁵⁴ Tadić, Decision on the Prosecutor's motion requesting Protective Measures for Victims and Witnesses, ICTY Trial Chamber, 10 August 1995, Case no. IT-94-1.

⁵⁵ Article 68 of the Rome Statute.

⁵⁶ *Doorson v Netherlands*, 1996 22 EHRR.

⁵⁷ Nowak, UN Covenant on Civil and Political Rights, CCPR Commentary, 1993.

⁵⁸ *Doorson v Netherlands* 1996 22 EHRR.

⁵⁹ See *Kostovski v Netherlands* 1989, 12 EHRR 434 and *Uppertinger v Austria* 1986, 13 EHRR 175.

⁶⁰ "The court shall not find the accused guilty based solely, or to a decisive extent, on the testimony given by a single witness whose identity is anonymous to the defence counsel and the accused". (Article 157, paragraph 3, PCPCK).

⁶¹ See *Birutis v Lithuania*, Judgment of the European Court, 28 March 2002.

The PCPCK is totally silent on the nature of the supporting evidence that is required to corroborate the testimony of an anonymous witness. Should the evidence be totally independent evidence in the sense that an anonymous witness cannot be supported by another anonymous witness? The question assumes its importance in view of the submission of the prosecutor who expressed the view that Article 157 Paragraph 3 of the PCPCK indirectly suggests that, where there are two or more anonymous witnesses their testimony could be used for the purpose of a conviction. He added that this would be the case here as much of the evidence was corroborated by two or more anonymous witnesses.

The Trial Panel was of the view that the aim of Article 157 paragraph 3 is to prohibit any evidence given by one or more anonymous witnesses being in a decisive manner to come to a finding of guilt. Whether there is one or more than one anonymous witness the fact remains that the identity of each and every such witness would still be unknown to the defence counsel and the defendant. This is the evil sought to be avoided by the legislator in Article 157 Paragraph 3 of the PCPCK.

The Trial Panel found that the pattern of events as described by the anonymous witnesses did not stand alone but was supported to a large extent by the testimony of non anonymous witnesses and by what some of the defendants stated.

The testimony of both the Prosecution and Defense Witnesses as well as the testimony of the Defendants, clearly established that there existed during the first seven months of 1998 a protracted and intense conflict in the territory of Kosovo, which extended into and affected the locality of Dranovc/Drenovac and its surrounding villages.

With regard to the Detention Centre, H [REDACTED] Rr [REDACTED] stated in regard to pictures 13, 15, 18 and 19, Exhibit D, that the detention centre was located there. The old school had two basements or cells downstairs and it was a prison or Detention Centre. The witness added that there was the entrance with some stairs. Looking at picture 13, Exhibit D, the witness showed the main entrance to the detention area.

Witness E [REDACTED] Rr [REDACTED] stated that there were two schools adjacent to each other, an old one and new one. The basement of the old school used to serve as a prison and these schools were located in Dranovc/Drenovac. The witness had been told that the basement of the old school was utilized as a detention facility.

M [REDACTED] B [REDACTED] was told by Bedri Zyberaj whom he saw in Dranovc/Drenovac that he was dealing with the issue of the abduction of A [REDACTED] B [REDACTED] and that he should go to the school/prison and ask for Selim Krasniqi (Celiku).

Witness N [REDACTED] Rr [REDACTED] said that when he went to look for M [REDACTED] Rr [REDACTED], he was conversing with Z [REDACTED] B [REDACTED] and he came to know that detainees were being held at the detention centre, at the school in Dranovc. He heard this from many people because

everyone knew that the detention centre was there and that the detainees were being held at the school.

The witness described the school and pointed to picture 6, Exhibit D. He then explained that he knew this because when he went to that location to bring clothes for Murat. There he met with Z■■■■ B■■■■ to hand over the clothes to him, went up the stairs and overheard that the prisoners were there. He overheard that through the window. He turned around but there were guards standing at the door, this indicated to him that the prisoners were being held there.

Defendant Selim Krasniqi himself acknowledged the existence of a Detention Centre in Dranovc/Drenovac.

Witness E■■■■ Rr■■■■ saw defendant Agron Krasniqi and one Z■■■■ B■■■■ abduct M■■■■ Rr■■■■. The witness and his uncle N■■■■ went out to look for him. There they asked Z■■■■ B■■■■ about M■■■■ and he replied, "He is doing fine the investigations are in process". Defendant Bedri Zyberaj stated that it was a fact that witnesses H■■■■ and N■■■■ came only once to see him on the premises of the cooperative during the summer of 1998. Then Bedri Zyberaj told them "M■■■■ Rr■■■■ is here, and the police are dealing with him, now you may go out. I have no competences, I am here as a warehouse keeper, the police are dealing with him".

Witness Z■■■■ T■■■■ explained the circumstances of the abduction of H■■■■ T■■■■.

After the abduction of A■■■■ B■■■■ witness M■■■■ B■■■■ went to look for him and met Bedri Zyberaj. He asked Bedri Zyberaj "would it be possible to learn why A■■■■ B■■■■ was abducted and also his whereabouts?" At one point Bedri Zyberaj told the witness that he was not the one dealing with this issue but advised him that he should go to the school/prison and ask for Celiku, Selim Krasniqi. Bedri Zyberaj sent him to Selim Krasniqi because the latter "was the man in charge of the military police".

The witness asked Selim Krasniqi about A■■■■ B■■■■. He answered: "there is no one here in Dranovc/Drenovac they are somewhere in Drenica. We cannot bring them over here given the very bad road conditions.

Witness M■■■■ B■■■■ after describing the accused Selim Krasniqi identified him from a photo line up, Exhibit C.

Witness M■■■■ B■■■■ after describing the accused Bedri Zyberaj, identified him from a photo line up, Exhibit C.

Witness N■■■■ Rr■■■■ said that he and Bedri Zyberaj are of the same age and he has known him since elementary school. He added that Bedri Zyberaj is slightly bald in front. He identified Bedri Zyberaj from the photo line up, picture 16, Exhibit C.

H [REDACTED] Rr [REDACTED] identified defendant Bedri Zyberaj whom he has known since they were kids.

Witness E [REDACTED] Rr [REDACTED] identified defendant Agron Krasniqi from a photo line up, picture 1, Exhibit C.

Burden and Standard of Proof

Whilst being fully alive to the approach to be taken in the assessment of the credibility of witnesses as discussed above, the Court nevertheless had to balance these factors with the burden of proof in criminal matters. Under no circumstances should a rule be devised suggesting that different degrees of proof apply in a case, whatever the complexities of proof may be.

Identification Evidence

One of the main evidentiary issues in this case was the identification and/or recognition of the defendants. Identification evidence involves inherent uncertainties. There are many difficulties inherent in the identification process, resulting from the vagaries of human perception and recollection. It is insufficient that the evidence of identification given by the witnesses has been honestly given; the true issue in relation to identification evidence is not whether it has honestly been given but rather whether it is reliable.

The manner in which mistakes regarding evidence of identification can arise, the scrutiny to which such evidence must be subjected and the precautions which must be taken to ensure that an identification affords a fair and reliable method of preventing a miscarriage of justice, are very crucial. Evidence as to identity based on personal impressions, however *bona fide*, is perhaps of all classes of evidence the least to be relied upon, and therefore, unless supported by other facts, is an unsafe basis for a verdict of guilt.

War Crimes under Article 142 CC SFRY (the applicable law)

The heading of Article 142 of the CC SFRY is War Crimes against the Civilian Population. The article prohibits the ordering or execution of acts directed against the civilian population during a war or armed conflict if the ordering or the execution of the acts violates international law.

In the commentaries to that article, the commentator Ljubisa Lazarevic refers to The Hague Conventions dated 1899 and 1907; the 1949 Geneva Conventions on the Protection of Civilians During War; Additional Protocol I to the Geneva Conventions. These Conventions have been ratified by the Former Republic of Yugoslavia as is evidenced by the "Official Gazette of the Presidium of the National Assembly of the Federal People's Republic of Yugoslavia", no. 6/50 and the "Official Gazette of the Socialist Federal Republic of Yugoslavia – International Agreements", no. 16/78.

The author then discusses the various offences prescribed by Article 142.

The author starts by stating that War Crimes against the Civilian Population may be performed only during war, armed conflict or occupation. War Crimes against the Civilian Population can also be performed in the conditions of civil war, i.e. when it is a non-international armed conflict.

According to the author, War Crimes are the forms of this criminal act which are directed against the basic rights of citizens: their life or physical integrity, freedom, property, right to correct and impartial trial etc. Those activities are serious violations of the regulations of international law towards the civilian population during war, armed conflict or war occupation. The author is careful to point out that War Crimes against the Civilian Population cannot be performed with activities that are not included in this Article. However, the activities stated in the law forming the criminal act of War Crimes only qualify as War Crimes if they violate the regulations of international criminal law.

The author points to the limited protection of civilians in an internal conflict: according to the 1949 Geneva Convention and the Supplementary Protocol with the Geneva Conventions on the Protection of the Victims of Non-International Armed Forces (Protocol II), the regulations of international law are applied in limited scope, i.e. the ban of only some of the activities stated in this Article is stipulated. The ban includes the attacks against the life and physical integrity, in particular murder in all forms, injuries, torture and causing suffering, inhumane treatment, humiliating and diminishing treatment, taking hostages, deprivation of the right to a correct and impartial trial, rape, forced prostitution, etc.

In brief, Article 142 of the CC SFRY provides that a person will commit an offence if s/he orders or commits one of the proscribed acts and such act or order is also a violation of the rules of international law effective at the time of the order or act. Thus, the order or conduct must contravene a dual test; both the applicable state law and international law must condemn the event in order for criminal liability to apply.

Criminal responsibility for War Crimes

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

- The existence of an armed conflict, either internal or international, and the participation of the accused in the armed conflict;
- A nexus between the alleged crime and the armed conflict;
- The civilian (protected) status of the victim;
- The order or conduct concerned is in violation of international law effective at the time of the conduct;
- The order or conduct concerned falls within those criminal acts identified as a

War Crime within Article 142 of the CC SFRY;

- The participation of the accused in the offence.

Existence of an armed conflict

In the Tadić case the Appeals Chamber of the ICTY⁶² stated that an armed conflict exists wherever there is resort to armed force between States or protracted armed violence between government authorities and organized armed groups or between such groups within a State.

International Humanitarian Law (IHL) applies from the initiation of such conflicts and extends beyond the cessation of hostilities until a general conclusion of peace is reached⁶³.

Conventions supplemented by Additional Protocol II (Common Article 3 and APII).

When determining whether there exists an armed conflict or not, both Domestic and International Tribunals have consistently applied the test enumerated in the Tadić Jurisdiction Decision which decided that intensity of a conflict and the organization of the parties are the principal factual matters which need to be decided in light of the particular evidence, on a case-by-case basis⁶⁴. The new ICC Statute which claims jurisdiction over similar international crimes from 2002 also adopts a similar test⁶⁵.

The test applied to the existence of an armed conflict for the purposes of the rules contained in Common Article 3 focuses on two aspects of a conflict; the intensity of the conflict and the organization of the parties to the conflict. In an armed conflict of an internal or mixed character, these closely related criteria are used solely for the purpose, as a minimum, of distinguishing an armed conflict from banditry, unorganized and short-lived insurrections, or terrorist activities, which are not subject to international humanitarian law⁶⁶.

In internal armed conflicts the essential features of the term “armed conflict” are (1) that protracted armed violence takes place between governmental authorities and organised armed groups or between such groups within a State, (2) that those groups under

⁶² Tadić, ICTY Appeals Chamber, *Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction*, 2 October 1995, Case no. IT-96-1-AR72.

⁶³ Tadić, ICTY Appeals Chamber, *Decision on Defence Motion for Interlocutory Appeal on Jurisdiction*, 2 October 1995, Case no IT-96-1-AR72, paragraph 70.

⁶⁴ “The definition of an armed conflict per se is termed in the abstract, and whether or not a situation can be described as an “armed conflict”, meeting the criteria of Common Article 3, is to be decided upon on a case-by-case basis.” Rutaganda, ICTR Trial Chamber, Judgment, 6 December 1999, paragraph 93.

⁶⁵ Article 8, paragraph 2(f) of the new ICC Statute adopts a test similar to the test formulated in the Tadic Decision on Jurisdiction. It defines an internal armed conflict by the same two characteristics, “protracted armed conflict” and “organised armed groups,” without including further conditions.

⁶⁶ Tadić, ICTY Trial Chamber, Judgment, 7 May 1997, Case no. IT-94-1, paragraph 562.

responsible command, exercise such control over a part of the territory of the State as to enable them to carry out sustained and concerted military operations and to implement Protocol II to the Geneva Conventions of August 1949, and (3) that hostilities take place at a level in excess of that which could be characterised as merely internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature⁶⁷.

Intensity of the Conflict

In assessing the intensity of a conflict, courts have regularly considered factors such as the seriousness of attacks and whether there has been an increase in armed clashes⁶⁸, the spread of clashes over territory and over a period of time⁶⁹, any increase in the number of government forces and mobilization and the distribution of weapons among both parties to the conflict⁷⁰, as well as whether the conflict has attracted the attention of the United Nations Security Council, and, whether any resolutions on the matter have been passed⁷¹.

Organization

When deciding upon whether or not the parties are organized, International and Domestic tribunals have regularly taken into account factors including the existence of headquarters, designated zones of operation, and the ability to procure, transport, and distribute arms⁷².

International jurisprudence has ruled that some degree of organization by the parties will suffice to establish the existence of an armed conflict but it does not necessarily mean that a hierarchical system of military organization similar to that of regular armed forces is necessary⁷³.

⁶⁷ See Protocol II to the Geneva Conventions of 12 August 1949; Tadić, ICTY Appeal on Jurisdiction Judgment, Appeal Chamber, 2 October 1995, Case no. IT-94-1-A73.1, paragraph 70; Akayesu, ICTR Trial Chamber Judgment, 2 September 1998, Case no. ICTR-96-4-T, paragraphs 620 and 625, and see the ICRC Commentary to Protocol II.

⁶⁸ Tadić, ICTY Trial Chamber Judgment, 7 May 1997, case no. IT-94-1, paragraph 565; Delalic and others, ICTY Trial Chamber Judgment, 16 November 1998, Case no. IT-96-21-T, paragraph 189; Milošević, ICTY Trial Chamber, Decision on Motion for Judgment of Acquittal, 16 June 2004, Case no. IT-02-54-T, paragraph 28.

⁶⁹ Tadić, ICTY Trial Chamber Judgment, 7 May 1997, case no. IT-94-1, paragraph 566; Milošević, ICTY Trial Chamber, Decision on Motion for Judgment of Acquittal, 16 June 2004, Case no. IT-02-54-T,, paragraph 29.

⁷⁰ Milošević, ICTY Trial Chamber, Decision on Motion for Judgment of Acquittal, 16 June 2004, Case no. IT-02-54-T, paragraphs 30-31. See also Čelebici Trial, Delalic and others, ICTY Trial Chamber Judgment, 16 November 1998, Case no. IT-96-21-T, paragraph 188.

⁷¹ Tadić, ICTY Trial Chamber Judgment, Case no. IT-94-1, paragraph 567; Delalic and others, ICTY Trial Chamber Judgment, 16 November 1998, Case no. IT-96-21, paragraph 190.

⁷² Milošević, ICTY Trial Chamber, Decision on Motion for Judgment of Acquittal, 16 June 2004, Case no. IT-02-54-T, paragraphs 23-24; Fatmir Limaj et al, ICTY Trial Judgment, 30 November 2005, Case No. IT-03-66-T, paragraph 90.

⁷³ Musema, ICTR Trial Chamber Judgment, 27 January 2000, Case no. ICTR-96-13-T, paragraph 257.

The Kosovo District Court⁷⁴ decided in relation to the establishment of the armed conflict in Kosovo in 1998 that “it is important to note that it is not necessary for the prosecution to prove neither that the KLA was a fully unified force nor that it had reached the same level of development across Kosovo”.

Control

The issue of control is relevant in the determination of the applicability of Additional Protocol II.

Geographical aspect of the armed conflict

The geographical scope does not affect the prosecution of these crimes. International jurisprudence has long ruled that violations of the laws or customs of war may occur at a time when and in a place where no fighting is actually taking place. The Tribunals of the ICTY have concluded that

- (a) “Until a peaceful settlement is achieved International Humanitarian Law continues to apply.... in the whole territory under the control of a party, **whether or not actual combat takes place there**”⁷⁵.
- (b) “It is not necessary to establish the existence of an armed conflict within each municipality concerned. It suffices to establish the existence of the conflict within the whole region of which the municipalities are part”.⁷⁶
- (c) “...[T]he requirement that the acts of the accused must be closely related to the armed conflict would not be negated if the crimes were temporally and geographically remote from the actual fighting. It would be sufficient, for instance for the purpose of this requirement, that the alleged crimes were closely related to hostilities occurring in other parts of the territories controlled by the parties to the conflict”.⁷⁷
- (d) “The requirement that the acts of the accused be closely related to the armed conflict does not require that the offence be committed, whilst fighting is actually taking place, or at the scene of combat”⁷⁸.

Evidence establishing the armed conflict

⁷⁴ *Prosecutor v Latif Gashi et al*, District Court of Pristina, Judgment dated 16 July 2003.

⁷⁵ Tadić, ICTY Appeals Chamber, *Decision on Defence Motion for Interlocutory Appeal on Jurisdiction*, 2 October 1995, Case no. IT-96-1-AR72, paragraph 70. See also ICTY Judgment Delalic and others, ICTY Trial Chamber Judgment, 16 November 1998, Case no. IT-96-21, paragraph 194, where it was held that it is not required for there to be actual armed hostilities in a particular location or that fighting be taking place in the exact time period when the alleged acts occurred.

⁷⁶ Blaskic, ICTY Trial Chamber I, Judgment, 3 March 2000, Case no. IT-95-14-T, paragraph 64.

⁷⁷ Kunarac, Kovac and Vokovic, ICTY Appeals Chamber, 12 June 2002, Case no. IT-96-23, paragraph 57.

⁷⁸ Vasiljevic, ICTY Trial Chamber, Judgment, 29 November 2002, Case no. No. IT-98-32-T, paragraph 25.

From a Dranovc/Drenovac perspective, the Trial Panel heard evidence regarding the establishment of village KLA units in Dranovc/Drenovac and villages surrounding it, most of which appeared to have their own headquarters. Soldiers were employed in observing Serbian Forces. There were incidents involving sporadic clashes between units of the KLA and Serbian Forces. The evidence of General M█████J█████ shows that his duties included visiting observation points and arranging for the transport of weapons into Kosovo.

It was further shown through the evidence of R█████L█████R█████ R█████, Selim Krasniqi and others that the KLA had the ability to procure and transport weapons for distribution amongst its fighters. There was even a mobile hospital functioning in the “free zone”, where injured KLA fighters and Albanian civilians were treated⁷⁹. The unit in Dranovc/Drenovac also had its own Military Police contingent.

Furthermore the KLA in Dranovc/Drenovac had the organizational ability to manage at least the security affairs of Dranovc/Drenovac and the surrounding villages and even to move prisoners as there is evidence that some of the prisoners were sent to Drenica⁸⁰.

On examination of the various Communiqués issued by the KLA⁸¹ it is clear, in spite of the evidence of General M█████J█████ that the KLA had a General Command early in 1998. Communiqué No 47, issued on 13/05/98, mentions that on the orders of the KLA General Staff, operations were conducted in March, April, and May in the operational sub zones Drenica/Pastrik, and 16 KLA members were killed. Reference can also be made to KLA Intelligence Service and ongoing operations being conducted. Communiqué of 19/06/98 again issued by or on behalf of the General Staff of the KLA stated that it would set up a general mobilization and prepare for a decisive confrontation with Serbia.

During 1998 the KLA published Military and Disciplinary Regulations (apparently based on the Albanian army regulations). In the view of the Court this could only have been done in order to regulate and organize internally the workings of the KLA⁸².

On the evidence presented, the KLA constituted a serious and organized threat to the Serbian Regime through their demonstrated ability to carry out sustained military attacks, but more importantly that the KLA, between May and September 1998, constituted an “organized armed group” which met the Tadić criteria.

On the issue of control it has been concretely proven when referring to witnesses’ testimony that the KLA was in factual control of a significant part of the area between Rahovec/Orahovac and Malishevë/Mališevo towns during the critical period of time. A special area called “Free Zone”, which covered the villages of Potočani i Ultë/Donje Potočane, Potočani i Epërm/Gornje Potočane, Sopniq/Sopniç, Dranovc/Drenovac, Ratkovc/Ratkovac and a number of other villages up to Malishevë/Mališevo town. No

⁷⁹ See testimony of witness Dr. Agim Harroli, Trial Minutes, 7 June 2006, pages 6, 8, and 9.

⁸⁰ See Trial Minutes of the witness Muhmet Berisha, 8 February 2006, page 9.

⁸¹ Exhibit 15.

⁸² Exhibit 15.

Serbian authorities (civilian, military or police) were allowed there without forcing their way through. The Albanian civilian population also required permission to leave or return to the "Free Zone"⁸³. During the critical period of time the KLA was the only authority in Drenovac and many Albanian villages around it⁸⁴.

From a Kosovo Wide perspective, Human Rights Watch⁸⁵ went so far as to report that "From April until mid-July, 1998, the KLA tenuously held as much as 40 percent of the territory of Kosovo, although most of that territory was retaken by government forces by August 1998. Until then, however, the KLA had held a number of strategic towns and villages, and manned checkpoints along some of Kosovo's important roads; by September 1998 their area of control had been reduced to some parts of Drenica and a few scattered pockets in the west, especially at night".

In addition a number of witnesses gave accounts of the armed conflict.

Witness E [REDACTED] Rr [REDACTED] stated that when the bombing started in the beginning of August all the villagers left Dranovc⁸⁶. He went back to his village in September and on his return he saw all the houses had been burnt and he said that the Serbs had done that⁸⁷. The KLA appeared in Dranovc/Drenovac in March or April and the witness remembered that the accused Isuf Gashi called on the villagers and they were digging trenches⁸⁸. The KLA army consisted of old and young people⁸⁹. He had heard that KLA members had been wounded and killed in May 1998 in Dranovc/Drenovac but he could not give their names⁹⁰.

The questions put to him by accused Isuf Gashi stated that the KLA appeared in Dranovc/Drenovac in the month of March or April. The witness remembered this fact because Isuf Gashi called the witness and others and they all went to dig trenches⁹¹. To the following question by Isuf Gashi, "does he remember whether the army was composed of young or old soldiers?" the witness answered that there were young and old soldiers⁹².

Witness F [REDACTED] H [REDACTED] testified that war had started earlier in Dranovc/Drenovac then in Ratkovc⁹³. At the time that Sh [REDACTED] Sh [REDACTED] came to see him it was a time of war but the bombing had not started⁹⁴. At the time that Sh [REDACTED] Sh [REDACTED] came to see him the KLA was controlling the village of Ratkovc which is about six to seven kilometres from Dranovc/Drenovac where there was a KLA unit and where the headquarters of the KLA

⁸³ See Trial Minutes of the witness "D" 18 May 2006, page 28; Trial Minutes of the witness Fehmi Bellaqa, 8 June 2006, Trial Minutes of the witness N [REDACTED] M [REDACTED] 8 June 2006.

⁸⁴ See Trial Minutes of the witness F [REDACTED] H [REDACTED] 16 March 2006, pages 8/9.

⁸⁵ Human Rights Watch Report 1999 - Exhibit 15.

⁸⁶ See Trial Minutes of the witness E [REDACTED] R [REDACTED] 14 December 2005, page 34.

⁸⁷ Ibid, page 35.

⁸⁸ Ibid, page 28.

⁸⁹ Ibid, page 29.

⁹⁰ Ibid, page 26.

⁹¹ Ibid, page 28.

⁹² Ibid, page 29.

⁹³ See Trial Minutes of the witness F [REDACTED] H [REDACTED] 16 March 2006, page 8.

⁹⁴ Ibid, page 6.

were situated⁹⁵. He did not know the location of the headquarters⁹⁶. Witness F ■ H ■ added that “every army had headquarters not only Dranovc⁹⁷. Ratkovc and other villages around were controlled by the KLA⁹⁸”.

Commenting on the testimony of F ■ H ■, Isuf Gashi made the following statement:

“I understand the word conflict, that it conveys conflict between ethnicities inside a country. There was a war in Kosovo; it was a severe and harsh war that maybe did not occur in the Balkans to have the NATO troops intervene for 78 days. Belgrade was bombed, but in accordance with what the Public Prosecutor is asking the first units of the KLA were created in 1998 in Kosovo. There is a difference between a formation and a unit. A unit contains up to 15 soldiers. In 1998 we had units in Kosovo, the first ones.

When the occupier entered Kosovo in a barbaric manner on 18 February 1998 it massacred and killed old people, women and children in Likoshan Qirez, and then on 5, 6 and 7 March children and women were killed in Prekaz, and in that resistance the commander of that unit lost his life. The same happened on 25 March in Dukagjin Glogjan and children and women were killed. The same happened on the day the Witness mentioned, 12 May, when the enemy came with helicopters, tanks and weapons. They killed, kidnapped and injured innocent civilians. They took away dozens of people to Serbia and they were there for 4 to 5 years. The people of the area took it upon themselves to defend against these barbaric attempts and each village made an attempt to defend themselves against these barbaric invasions, to defend themselves from all the evil they were bringing.

By the end of the year 1998 the main headquarters got established and they divided the areas. They established or founded brigades and they started to fight and at that point in time the KLA became an ally of NATO. And the result of that is that there is no more barbaric invasion here.

Regarding those persons that went missing or got killed, I am from Rahovec/Orahovac Municipality and over a thousand people have gone missing or reported to be dead. I say this with big responsibility because I was the person who referred such information about missing persons and dead persons. Over 2000 wounded people were reported from my Municipality. On 18, 19, 20, and 21 July 1998 those are the days when the entire city was vacated. As a result of such horror even believers of the Muslim religion were killed while they were praying in their own shrine. Shemehedin was killed. Over 300 to 400 people were massacred, killed and injured. There were eight massive massacres in our Municipality. If there is need I will mention by name all the people for each

⁹⁵ Ibid, page 7.

⁹⁶ Ibid, page 11.

⁹⁷ Ibid, page 8.

⁹⁸ Ibid, page 8.

massacre. There were above 100 individuals. In Krushe e Madhe there were more than 300 people killed. The KLA conducted the war only against the barbaric Serbs, not against the Serb civilian population, let alone the Albanians, as there was no need for that”⁹⁹.

Witness H [REDACTED] Rr [REDACTED] stated that at the time when the bombardment started all the villagers in the neighbourhood of Dranovc/Drenovac where the witness lived left. The children and the witness along with his brother E [REDACTED] Rr [REDACTED] went to a small village called Dejne and from there they went to Babobc which is somewhere in the mountains where they stayed for 2 to 3 nights together with the other people who were there. Everybody was gathered in Dejne village¹⁰⁰.

According to Witness M [REDACTED] B [REDACTED] in July 1998 the Serbian paramilitaries had started their offensive¹⁰¹. Before his return to Kosovo the witness had seen or heard news of attacks by Serbians in Rahovec/Orahovac and its surroundings and there were many of these attacks. He could not give the precise dates of the attacks¹⁰². His village Brestovc/Brestovac was attacked on 25 March 1998 and this was the second attack¹⁰³. One month prior to his coming to Kosovo, Rahovec/Orahovac and the surroundings were attacked but he could not say if Rahovec/Orahovac was attacked before his father was abducted on 13 July 1998.

Until the NATO bombing started, when the Serbian military attacked Rahovec/Orahovac and Brestovc/Brestovac, the village of the witness, the witness stayed at home for one week after the Serbian forces were deployed in his village. They moved the children out of the village. He then stayed in the village of Nagavc because his house had been burned to the ground and after that he went to Albania¹⁰⁴. When M [REDACTED] B [REDACTED] went to Dranovc, he did not see any houses or properties of the villagers of that area burned¹⁰⁵. While entering the village, he encountered some soldiers and on several occasions while in the village, he saw soldiers¹⁰⁶.

On 13 July 1998 there was fighting in Rahovec/Orahovac but not in Brestovc/Brestovac. However in the villages Brestovc/Brestovac, Krushe, Celin/Celina and Bellacerkve/Bela Crkva there were no fights on 12 or 13 July, but before and after there were periods of fighting that lasted two to three days¹⁰⁷. The police were present in Rahovec/Orahovac but it was teeming with Serbian forces. And even the Serbian civilians were armed at the time. However in the village of Brestovc/Brestovac, no Serbian police or soldiers managed to enter for one year, until the day of the offensives when they burned down the

⁹⁹ See Trial Minutes statement of Isuf Gashi, 16 March 2006, pages 18, 19 and 20.

¹⁰⁰ See Trial Minutes of the witness H [REDACTED] Rr [REDACTED] 15 December 2005, page 40.

¹⁰¹ See Trial Minutes of the witness M [REDACTED] B [REDACTED], 8 February 2006, page 9.

¹⁰² Ibid, page 14.

¹⁰³ Ibid, page 14.

¹⁰⁴ Ibid page 15.

¹⁰⁵ Ibid, page 16.

¹⁰⁶ Ibid, page 16.

¹⁰⁷ See Trial Minutes of the witness M [REDACTED] B [REDACTED] 10 May 2006, page 6.

entire village. The main highway was surrounded by the Serbian army and police forces in Rahovec/Orahovac¹⁰⁸.

The KLA command for the entire village of Brestovc/Brestovac was situated in Drenas¹⁰⁹. The witness had heard that Bedri Zyberaj was a high official. He had seen Xh█████G█████ alias "the German" in the village but did not speak with him and then when he went to the village he met with Selim Krasniqi but had not known him prior to that day¹¹⁰. M█████B█████ came from Albania. He travelled from Kukes and he was transporting weapons for the KLA. He brought the weapons to Hoc e Vogel.

Commenting on the testimony of M█████B█████ defendant Selim Krasniqi stated that the KLA was not only engaged in Dranovc/Drenovac, but was also operating throughout Kosovo. The main goal of KLA was deliverance of Kosovo from the Serb occupiers and it was not in the interests of the KLA to deal with Avdi Berisha¹¹¹.

Witness N█████Rr█████ stated that when he and H█████ went to look for M█████Rrustemi they went to a location that was referred to as the headquarters - the agricultural cooperative. That location was the KLA headquarters¹¹². He had been to the school alone to take some clothes for M█████ only once. Z█████ took the clothes from him¹¹³. When he was there he overheard a voice, like someone was screaming, but Z█████ told him, "Leave now, go home"¹¹⁴.

The witness said that the bombardment started on 19 July 1998¹¹⁵. The witness and his family left the village of Dranovc/Drenovac along with the other villagers when the attack began¹¹⁶.

During May and June of 1998 no fighting took place and there were no attacks by Serbian forces or skirmishes with the KLA or Serbian forces occurring in the area where the witness lived. He could not say if there were any skirmishes in other villages as he did not leave his village¹¹⁷, but he believed all the villages in the Dranovc/Drenovac were attacked during the war in 1998¹¹⁸. When his village was shelled in 1998 and then when the war started, almost all the villages were shelled. He said this was something everybody knows, that all villages were shelled and burned¹¹⁹.

¹⁰⁸ Ibid, page 7.

¹⁰⁹ Ibid, page 7.

¹¹⁰ Ibid, page 7.

¹¹¹ See Trial Minutes of the defendant Selim Krasniqi, 8 February 2006, page 21.

¹¹² See Trial Minutes of the witness N█████Rr█████, 15 December 2005, page 6.

¹¹³ Ibid, pages 11 and 12.

¹¹⁴ Ibid, page 12.

¹¹⁵ Ibid page 18.

¹¹⁶ Ibid, page 18.

¹¹⁷ See Trial Minutes of the witness N█████Rr█████ 25 May 2006, page 7.

¹¹⁸ Ibid, pages 7 and 8.

¹¹⁹ Ibid, page 8.

The witness also explained that if somebody wanted to get out and go to Rahovec/Orahovac or take some other direction towards Xerxe, s/he could have fallen victim because there was Serbian police and army there. It would not be safe for a person to go in that direction. Albanians or KLA fighters fell victim to the Serbian police or army¹²⁰. According to the witness, Dranovc/Drenovac and the surrounding villages were under KLA control. When KLA was inside the village there were Serbian police or paramilitary or military checkpoints in the area where KLA was in control¹²¹.

Anonymous Witness "B" stated that, at the time, the KLA headquarters in Dranovc/Drenovac was situated at a house used as the premises of the administration of the municipality and which was near the school¹²². Ratkovc was set on fire on 17 and 18 July¹²³. At a later stage Bellacerkve/Bela Crkva and Rahovec/Orahovac were set on fire and the witness could not go to Dranovc/Drenovac anymore¹²⁴. When traveling from Dranovc/Drenovac to Ratkovc and then to Brestovc/Brestovac the witness did not see any Serbian police controls or any kind of controls on the road or any battles between the KLA and the Serbian forces at that time¹²⁵. The villages Brestovc/Brestovac, Ratkovc, Xerxe, and Pirana were set on fire on 17 and 18 July. When Kosovar Albanians were expelled to Albania, those villages were set on fire for the second time and on that occasion other villages like Krushe were set on fire as well¹²⁶.

According to Anonymous Witness "D" when the witness was trying to get to Hidaj Popaj s/he was not permitted to enter the free zone. By free zone s/he meant the part controlled by the KLA. This control covered all the villages like Upper Potoqani, Lower Potoqani, Sukaniq, Dranovc/Drenovac, Ratkovc/Ratkovac and all the other villages up to Malishevo. The free zone was up to the bridge of Krmavik. S/he added that what s/he meant by "free" was that the zone was free from Serbians as it was controlled by the KLA¹²⁷. S/he did not know the exact date when it became the free zone but s/he believed in the beginning of July¹²⁸. When s/he was asked by accused Selim Krasniqi whether "for the time that we are speaking about it was the time when the KLA just started to organize itself and had only one unit in Dranovc/Drenovac" the witness answered "I know only that the army was formed. I don't know anything else"¹²⁹.

When asked if in the months of May, June, July or August 1998 a battle took place between the KLA and the Serbians to take back the free zone, s/he said that in July there was a battle in the villages of Bellacerkve/Bela Crkva and Rahovec/Orahovac, and Albanians were killed, but s/he could not say if Serbians were killed¹³⁰. After explaining

¹²⁰ Ibid, page 7.

¹²¹ Ibid, page 6.

¹²² See Trial Minutes of Anonymous Witness "B", 23 May 2006, page 8.

¹²³ Ibid, page 6.

¹²⁴ Ibid, page 7.

¹²⁵ Ibid, page 19.

¹²⁶ Ibid, page 19.

¹²⁷ See Trial Minutes of Anonymous Witness "D", 18 May 2006, page 28.

¹²⁸ Ibid, page 31.

¹²⁹ Ibid, page 35.

¹³⁰ Ibid, page 28.

that a battle is a war between two parties s/he added that the war was between the KLA army and the Serbian army¹³¹. A battle took place between these two parties, in April, May or June 1998 in the villages of Bellacerkve/Bela Crkva, Rahovec/Orahovac, and Dranovc/Drenovac¹³². The Serb forces had tanks and armoured vehicles and they burned down the entire village starting with Rahovec/Orahovac and Dranovc. S/he did not have any idea about the KLA participants¹³³. During the first five or six months of the year 1998, the Serbian forces, police and army had the capacity to attack and take any village they wanted to¹³⁴. The Serb police killed many civilians over two or three days¹³⁵. There were 70 killed in Bellacerkve/Bela Crkva; 80 in Celin; 150 in Krusha e Madhe/Velika Krusa; 100 in Krushe e Vogel; 50 to 60 in Nagaviciki, and the same number in Hoca e Vogel/Mala Hoca¹³⁶.

Anonymous Witness "TT" testified that there were attacks in her/his area in the summer of 1998 by Serbian forces and the village of Dranovc/Drenovac was also attacked¹³⁷. There were fights or skirmishes during May, June and July of 1998 between the KLA and the Serbian forces in Bellacerkve/Bela Crkva, Celin/Celina, Bratotine/Bratotin and Dranovc/Drenovac. Serbians and Albanians were fighting each other and one person died¹³⁸. The witness did not remember if in May, June or July 1998 Serbian forces rotated in that area of Rahovec/Orahovac, Prizren and Xerxe/Zrze. When the area was taken by the Serbians there was an army and other Serbian forces and the area was taken by Serbs. It was on 18 July 1998 that they took Bellacerkve/Bela Crkva¹³⁹.

As a KLA soldier s/he participated personally in fights in Bellacerkve/Bela Crkva on 18 July 1998. There were 100 KLA soldiers involved in fighting and at a checkpoint in Bellacerkve/Bela Crkva, Tafir Krasniqi was killed. From Muhadri, a village in the Hasi area within the border of Albania further along the river Drini, soldiers of the Yugoslavian Army shelled them and then Serbs came and took everything from them. The weapons used by the Serbians were Russian Katjusha¹⁴⁰. During the months of May, June and July 1998, the KLA was in control of the village of Dranovc/Drenovac and the villages surrounding it¹⁴¹. In this regard, defendant Isuf Gashi made the following comment "I'm not convinced that the KLA would have arrested the Albanian civilian population. My opinion is that KLA helped as much as it could"¹⁴².

There were KLA headquarters in Radoste and Ratkovc¹⁴³. Accused Isuf Gashi stated in the course of his interrogation of the witness that these were units established there to

¹³¹ Ibid, pages 33 and 34.

¹³² Ibid, page 34.

¹³³ Ibid, page 34.

¹³⁴ Ibid, page 34.

¹³⁵ Ibid, page 35.

¹³⁶ Ibid, page 35.

¹³⁷ See Trial Minutes of Anonymous Witness "TT", 17 May 2006, pages 38 and 39.

¹³⁸ Ibid, page 39.

¹³⁹ Ibid, page 44.

¹⁴⁰ Ibid, page 45.

¹⁴¹ Ibid, page 39.

¹⁴² Ibid, page 50.

¹⁴³ Ibid, pages 49 and 50.

protect them against Serbian forces¹⁴⁴. It was Isuf Gashi who set up KLA in Dranovc/Drenovac according to the witness¹⁴⁵.

Anonymous Witness "U" stated that Agron Krasniqi and Z ■ B ■, came to her/his place on 16 July 1008 and brought her/him to the military headquarters in Dranovc¹⁴⁶. At the time when s/he was arrested and taken to the office of the accused Selim Krasniqi, there was a KLA unit at that place and though s/he had not seen it, s/he had heard about it¹⁴⁷. S/he was interrogated at the military headquarters of the KLA¹⁴⁸.

Commenting on the testimony of Witness "U" defendant Selim Krasniqi stated "I would like to take this opportunity to inform the court that the KLA fought a just war¹⁴⁹. Several times the KLA was involved in many other things. We were facing an unequal war with an enemy so what we were interested in at the time was to liberate our country"¹⁵⁰.

According to Anonymous Witness "X" the KLA had their headquarters in Reti and were also occupying the school building in Dranovc¹⁵¹.

When Anonymous Witness "Z" was asked the names of the villages and towns which made up the area controlled by the KLA in her/his area, s/he only mentioned Dranovc/Drenovac and Ratkovc but said that no one was controlling his village Bellacerkve/Bela Crkva¹⁵².

The witness stated that visiting H ■ P ■ for the third time, s/he did not go to see him again because around 18 July 1998 the Serbian offensive started in his village Bellacerkve/Bela Crkva, forcing them to leave the village so they went to Ratkovc. S/he returned to her/his village one month later and went to Dranovc/Drenovac to look for H ■ P ■ again¹⁵³.

The witness had heard that around the end of May 1998, between the village Bellacerkve/Bela Crkva and village Xerxe, two or three persons were killed and one injured person escaped. A monument was erected at the place of that event¹⁵⁴. The witness remembered the names of two of those persons, S ■ B ■ and F ■ G ■¹⁵⁵.

¹⁴⁴ Ibid, page 50.

¹⁴⁵ Ibid, page 48.

¹⁴⁶ See Trial Minutes of Anonymous Witness "U", 10 May 2006, page 11.

¹⁴⁷ Ibid, page 13.

¹⁴⁸ See Trial Minutes of Anonymous Witness "U", 14 December 2005, page 8.

¹⁴⁹ Ibid, page 14.

¹⁵⁰ See Trial Minutes of defendant Selim Krasniqi, 10 June 2006, page 15.

¹⁵¹ See Trial Minutes of Anonymous Witness "X", 30 November 2005, pages 6 and 7.

¹⁵² See Trial Minutes of Anonymous Witness "Z", 17 May 2006, pages 28 and 29.

¹⁵³ Ibid, page 13.

¹⁵⁴ Ibid, pages 22 and 23.

¹⁵⁵ Ibid, page 23.

In response to a question by defence attorney F ■ B ■, the witness clarified that on 17 and 18 July 1998 the road was blocked by the KLA in Bellacerkve/Bela Crkva. The Serbian police bridged that barricade and during the attack some persons from Dranovc/Drenovac were killed, three women from Bellacerkve/Bela Crkva and two men from Bellacerkve/Bela Crkva, and one man from Dranovc/Drenovac. G ■ P ■ was murdered at the crossroad of Bellacerkve/Bela Crkva by a Serbian¹⁵⁶. The witness added that in Bellacerkve/Bela Crkva members of the civilian population were murdered, with the exception of G ■ P ■ and a soldier¹⁵⁷.

The witness was not aware whether any civilians were killed by Serbians in the villages of Xerxe, Dranovc, Krushe and other villages in the municipality of Rahovec/Orahovac or if there was any fighting, or if the Serbian forces entered villages, burned them and killed people, in August and September 1998¹⁵⁸.

The witness was aware that for a period of time during May, June, July, August, September or October 1998 there was fighting between two armies in the region of Rahovec/Orahovac, but it was not the same as it was in March 1999¹⁵⁹.

S/he did not know if there was fighting in May, June or July 1998 in her/his village or in other neighbouring villages because s/he did not participate in any war¹⁶⁰. S/he was only in the area where the liberation army was, the area of Dranovc/Drenovac and Ratkovc/Ratkovac¹⁶¹.

S/he confirmed having said the following to the Investigating Judge, "Some days later, myself and the others who were there, left Ratkovc/Ratkovac village because the Serbian police were also about to enter the area controlled by the KLA. We left and went to Rogove village. We were among several families in Ratkovc/Ratkovac, and we all left to Rogove village. I stayed in Rogove overnight. On the following day I went to Prizren through the village area along Drini. I stayed in Prizren for two weeks. After two weeks I returned back to my village from Prizren through the same route along the Drini area because some other families had also returned to the home village"¹⁶².

Defendant Selim Krasniqi gave the following evidence on how he joined the fight: "The fact that I went to the places where fighting existed in spite of the whereabouts of the region in Kosovo shows that I had to fight with them and protect the civilian population. It was not my choice to fight but this fighting was kind of forced by the Serbian occupation and I wanted to be at the places where the fighting was going on. This was my main preoccupation at that time, nothing else"¹⁶³.

¹⁵⁶ Ibid, page 24.

¹⁵⁷ Ibid, page 24.

¹⁵⁸ Ibid, page 24.

¹⁵⁹ Ibid, page 25.

¹⁶⁰ Ibid, page 25.

¹⁶¹ Ibid, page 25.

¹⁶² Ibid, pages 25 and 26.

¹⁶³ See Trial Minutes of defendant Selim Krasniqi, 21 June 2006, page 11.

He added that in May and June, there was no fighting exactly in Dranovc/Drenovac. There was fighting in the surrounding villages of Dranovc/Drenovac. He mentioned the battle of Ratish and the battle of Kramovik. He strongly emphasised that in Dranovc/Drenovac, there was no fighting, but that there was fighting in the surrounding villages where Serbians were trying to enter the civilian zones and start the killing¹⁶⁴.

When asked whether in the villages in which the KLA was in control the attacks and fights primarily resulted from an attempt by the Serbians to regain control of the villages, the defendant said “I would not call it an attempt to regain territory but I would call them attempts to try to kill civilians. Because at that time the number of unit members was not that big. The number of units was not a big one. There were insufficient soldiers to have all of that area under control. This is the main reason why I assisted together with some soldiers in a couple of cases. If the number of soldiers were enough to keep the area under control it would not have been necessary for us to go and assist their units”¹⁶⁵.

He was presented with an extract from a document published by Human Rights Watch called “A village destroyed” prepared in 1999, which states that: “From April until mid July 1998 the KLA held as much as 40% of the territory of Kosovo and most of the territory was taken by August 1998”. It also states that “The KLA held a number of towns and villages and manned checkpoints along some of the Kosovo roads and that by September 1998 their area of control had been reduced”. This extract was admitted into evidence (Exhibit 15d).

He was asked whether he agreed or disagreed with what that article stated and his answer was “I believe that the figure of 40% is exaggerated. I do not believe that the KLA was able to control 40% of the Kosovo area. This is my opinion. I believe, and I am aware, that at that time a free zone existed. I earlier stated that the organization was done earlier in certain areas. I can mention the Drenica zone which had a consolidated organization and the conflicts started there earlier. However I state that the figure of 40% is too much”¹⁶⁶.

When asked if he knew whether the KLA in Dranovc/Drenovac and the surrounding area, and in and around Kosovo, mobilized its forces for battle, the defendant answered “I don’t know exactly where the Dranovc/Drenovac unit fought. But I believe in the battles that happened at that time, members from the Dranovc/Drenovac unit took part as well because I believe that even in places where fighting was going on there were small units. Some of them may have gone to Ratish to fight or to Kramovik. But I cannot say that Dranovc/Drenovac was the one to mobilize them. I consider that at that time, that was spontaneous fighting.

The most willing soldiers at that time were following the messages on the radio about battles going on. Some of them would go and assist the units where the battles were

¹⁶⁴ Ibid, page 11.

¹⁶⁵ Ibid, page 11.

¹⁶⁶ Ibid, page 11.

going on. This is the way I logically consider the flow of events at that time, or the fighting as the prosecutor is putting it, and not otherwise”¹⁶⁷.

He had heard that there was a battle in Ratkovc/Ratkovac, but did not know that there was one in Malisheve, saying “I don’t know in July, I don’t know”¹⁶⁸.

He had stayed 5 days in Dranovc/Drenovac to assist and when asked if he was able to draw any conclusion on the existence of military police in Rahovec/Orahovac and who was leading them, the defendant answered “absolutely not”. He saw soldiers on that day, as well as civilians, and everybody was active and in terms of doing specific assignments. Civilians were preparing to leave and soldiers present there were taking care of the civilian population while they were leaving the place. Many of them were being prepared to confront the fighting with Serbian forces. He added that this was an approximate description of the situation in Dranovc/Drenovac¹⁶⁹.

As to whether the KLA was still operating in Dranovc/Drenovac on his return from Albania in August 1998, the defendant gave the following answer “When I returned in August, a part of the KLA was there in Dranovc/Drenovac. The majority of the civilian population had left, but some civilians were remaining. My purpose for going to Dranovc/Drenovac was simply to judge on circumstances and see what was going on, also to express condolences to the families that lost their members, to mothers who lost their sons. There was another purpose behind my going there that was to do with signs of another attack that was about to begin and the truth is that only few days after I went to Dranovc/Drenovac, the attack began, by the beginning of September as far as I remember. I took part in that offensive and I was there until it finished. The only thing we did for civilians was to protect them from massacres of Serbian forces and obviously we moved them to more secure areas. Since the KLA had run out of ammunition they were forced to withdraw and unfortunately, I was not aware at that time that the majority went to Albania. We were separated by the offensive and two to three days later I went to the mountains with some soldiers and colleagues of mine trying to get in touch with other soldiers. In particular, I met with Bedri Zyberaj who gave me a lift to my village with his car. That was the last moment I was in Dranovc/Drenovac of Zatriq”¹⁷⁰.

To a question by defence attorney Mexhid Sylja on the circumstances prevailing at the material time, the defendant stated that the “circumstances in the beginning were difficult starting from food, clothes, and ammunition etc. Another difficult aspect was carrying weapons to Kosovo on our own and being in constant danger from Serbian forces which were positioned in different places, of course including the borderline of Kosovo. Despite the difficult circumstances at that time, the massacres that occurred in Prekaz and some other parts of Drenica at that time, the situation forced anyone who wanted to live well to mobilize themselves whether they were in Kosovo or abroad. Regardless of the quantity or quality of ammunitions they possessed, a resistance was formed simply to

¹⁶⁷ Ibid, page 12.

¹⁶⁸ Ibid, page 13.

¹⁶⁹ Ibid, pages 13 and 14.

¹⁷⁰ Ibid, page 21.

avoid further massacres, and to show the people that there is the force that loves everyone and that force was growing. The circumstances were so difficult but the motivation was so high since the war was forced on the people of Kosovo”¹⁷¹.

Defendant Islam Gashi stated that he had joined the KLA on 26 April 1998¹⁷². His duties were primarily observation duties¹⁷³. He served as a simple soldier until 27 May 1998, the day on which he sustained injuries¹⁷⁴. On 26 April 1998 a Serbian police unit came down to Dranovc/Drenovac village and while entering the village they abducted one person and started beating up that person. Massacres had occurred in Qerez, Likoshan/Likosane and Prekaz. Young people had been arrested because some of them did not want to join the military service and others because they were suspected of being KLA members. People did not feel safe in their houses. As a consequence of that the defendant openly joined the KLA. After the KLA became a publicly recognized organisation the defendant remained in his village¹⁷⁵.

When he joined the KLA there were insufficient weapons for all the soldiers. Some soldiers had only two grenades. They had to defend themselves and their families from the massacres¹⁷⁶. The defendant and three of his friends were assigned by M [REDACTED] Z [REDACTED] to go to the border and collect weapons. On their way there they were ambushed. His three friends were killed. He managed to survive¹⁷⁷.

Defendant Agron Krasniqi served in the KLA from 21 June to the end of the war in June 1999, with some interruptions in between. During the period 21 June to end of September, he was serving all the time with the unit in his village. Because of the lack of weapons the unit could not increase its numbers and he and his friends and co-villagers had to go to Albania to get weapons by the end of June. Seven or eight persons went to get weapons¹⁷⁸.

In the beginning there were quite a few persons in his village unit, about 10 to 15, but later on others joined and it grew to 20 or 30. Because of the lack of weapons, this number could not be increased. They were operating in the village to prepare and protect themselves. They did not have a particular place of operation because they were not a modern army. They did not co-opt or associate with any other units from any other villages as they did not have enough time to cooperate¹⁷⁹.

He had heard that a KLA unit operated in Dranovc/Drenovac which is at about 10 to 15 kilometres from his village, Denje, just as there were KLA units operating in other

¹⁷¹ Ibid, pages 26 and 27.

¹⁷² See Trial Minutes of defendant Islam Gashi, 29 June 2006, page 24.

¹⁷³ Ibid, page 16.

¹⁷⁴ Ibid, page 17.

¹⁷⁵ Ibid, page 24.

¹⁷⁶ Ibid, page 25.

¹⁷⁷ Ibid, page 17.

¹⁷⁸ See Trial Minutes of defendant Agron Krasniqi, 19 July 2006, page 6.

¹⁷⁹ Ibid, page 5.

villages. He never visited the unit in Dranovc/Drenovac and its quarters as he had no reason to do so¹⁸⁰.

During the period that he served with the KLA, with respect to his duties, the defendant stated that there was no defined duty for anyone. They all tried very hard to be organized with their personal weapons, to observe and inform the population so that they could leave the place in good time. Nobody in his unit was assigned with specific tasks, like logistics, security, or medical care. They did not have sources to get supplies and they did everything on their own initiative¹⁸¹.

Defendant Xhavit Elshani became a member of the KLA at the end of the month of July 1998 until the end of the war, in June 1999. He went to a village one kilometre from his village and presented himself as a volunteer. He went to the house of one A [REDACTED] H [REDACTED]. He was accepted immediately into the KLA.

He was a soldier between July and October 1998 in the village of Randobrave in the Prizren municipality. That village is about 25 to 30 kilometres from Dranovc/Drenovac and Zatriq/Zatric and one kilometre from his own village, Piran/Pirane¹⁸².

During the period from July to October 1998, he did not have any connection or dealings with the KLA unit in Dranovc/Drenovac of Zatriq. He never went to visit the town of Dranovc/Drenovac during that period. He did not know anyone serving in the KLA in Dranovc/Drenovac either¹⁸³.

His duty was to defend his people from the Serbian forces. He and his friends would observe the territory and keep an eye on the people in order to defend them from the Serbs and the Serbian police, as previous massacres took place in Rahovec/Orahovac and in that region¹⁸⁴.

Defendant Isuf Gashi joined the KLA in 1996¹⁸⁵ and was still a member of the KLA during the period from June to October 1998¹⁸⁶. As a soldier in the KLA he did not report to the KLA on a daily basis as there was "no commanding pyramid" in his unit¹⁸⁷. In April 1998 there was a unit comprising 20 armed men and the person responsible for that unit was M [REDACTED] Z [REDACTED]. That unit took only preemptive action against the Serbs to prevent them from entering the villages and commit massacres as they had already started to do. The main task of the unit was to defend the villages and villagers, but it did not manage to because it lacked strength¹⁸⁸.

¹⁸⁰ Ibid, page 5.

¹⁸¹ Ibid, page 10.

¹⁸² See Trial Minutes of defendant Xhavit Elshani, 28 June 2006, pages 11 and 12.

¹⁸³ Ibid, page 12.

¹⁸⁴ Ibid, page 12.

¹⁸⁵ See Trial Minutes of defendant Isuf Gashi, 29 June 2006, page 4.

¹⁸⁶ Ibid, page 5.

¹⁸⁷ Ibid page 11.

¹⁸⁸ Ibid page 5.

As a soldier he and his comrades protected the people. They did this by guarding the villages and would monitor the entrance and the exit to the villages. Five armed people would mount guard everyday, night and day. That process started in 1989 and ended in June 1999. The head of the village council would tell people, in groups of 5, to stand guard during the night time in order to prevent paramilitaries from entering the village¹⁸⁹.

When asked if during May to July 1998 the KLA had occupied premises in the village of Dranovc/Drenovac he stated that he had not seen any¹⁹⁰.

His house was never used, even temporarily, for KLA activities¹⁹¹. There was no headquarters in his house and he refuted the testimony of witness E [REDACTED] R [REDACTED] that his house was serving as the headquarters of the KLA¹⁹². He also added that “My definition of ‘headquarters’ tells me that it is about a regular army with uniforms with a commander and so on” and he concluded by repeating that there was no headquarters¹⁹³.

It was put to him that there was evidence from witnesses who were not even KLA members who said that the KLA occupied two premises in the village of Dranovc/Drenovac between May and October 1998; that KLA members had testified that that there were offices occupied by the KLA in the village, out of which the KLA ran some affairs and that defendant Selim Krasniqi stated that Mr. G [REDACTED] P [REDACTED] had an office in the village. He was then asked if he still maintained that he did not know anything about the premises occupied by KLA in Dranovc/Drenovac¹⁹⁴.

The defendant explained “there are approximately three public or social buildings in our village – the oldest one being the elementary school erected in 1935. There is also a space called Zyra e Vendit, the outpatient clinic, and the agriculture cooperative. My task was to do with supplies from Prizren, Gjakova/Djakovica or Rahovec/Orahovac”¹⁹⁵.

He added that the persons that would stand guard in the village at a later stage, moved to the agricultural cooperative in the village and this is where they would all would spend some time¹⁹⁶.

When asked if the old school in the village was occupied by the KLA he gave the following answer, “I think for as long as I was detained I was not quite sure about this. But after I was released I learned that there is documentation at the school. That school continued until 15 June 1998 and the council of teachers continued working until 25 June

¹⁸⁹ Ibid, page 11.

¹⁹⁰ Ibid, page 9.

¹⁹¹ Ibid pages 9 and 10.

¹⁹² Ibid, pages 9 and 10.

¹⁹³ Ibid, page 11.

¹⁹⁴ Ibid, pages 11 and 12.

¹⁹⁵ Ibid, page 12.

¹⁹⁶ Ibid, page 12.

1998. This is all I have to say regarding the school”¹⁹⁷. The KLA never occupied the school¹⁹⁸.

According to defence witness Dr A [REDACTED] H [REDACTED], he saw a variety of cases on a daily basis, like people being ill, as well as wounded KLA soldiers who had sustained injuries from explosions or fire weapons¹⁹⁹. The witness initially concentrated his activities in Gajrak and mainly covered the triangle of Rahovec/Orahovac, Suhareke/Suva Reka and Malishevo/Malisevo. They later moved to the following villages as well: Kervasari, Semetish, Breshanc, Pagarushe, Gurvar, Guncat, Klec, Divjake, Krojmir, Shall, Petrovo Mallopolc, etc²⁰⁰.

They were always moving around in order to look for quiet places for the patients because they were trying to avoid Serbian attacks and they were aware of the disproportionate strengths that existed between forces. There were times when they had more than 100 patients who were not capable of walking. They were obliged in several cases to move those patients and carry them and all this was done during 24 hours²⁰¹.

They were moving around from village to village for security reasons. They stayed in Gajrak, for about two months and when they felt that they were in danger they would move to other villages as the danger was “big”. Gajrak is about one kilometer away from Malishevo by air. Serbian forces entered Malishevo when the witness was in Gajrak and they decided to move in the opposite direction²⁰².

The testimony of both the Prosecution and Defense Witnesses as well as from some of the Defendants themselves, clearly established that there existed during the first seven months of 1998 a protracted and intense conflict in the territory of Kosovo, which extended into and affected the locality of Dranovc/Drenovac and its surrounding villages. During the investigation, witnesses “U”, “D” and “P”, refer to offensives/bombings carried out by the Serbian forces in Dranovc/Drenovac village and in Orahovac/Rahovec area between July and September 1998 forcing the KLA to partly withdraw from there. A [REDACTED] H [REDACTED] who was a doctor in the KLA hospital for the Orahovac/Rahovec and Malishevë/Malisevo regions, stated to the Investigating Judge that there were fights in the Dranovc/Drenovac region at the time relevant for the indictment. Islam Gashi was allegedly wounded by the Serbian forces in May 1998, whereas his father, Isuf Gashi, was also wounded by them in mid-July 1998. Selim Krasniqi, Isuf Gashi and Islam Gashi, explicitly acknowledged in their investigative statements, the existence of an armed conflict between the KLA and the Serbian forces at the critical time. On 24 May 2004, Isuf Gashi declared to the Investigating Judge that the war started on 12 May 1998 in Rahovec/Orahovac area with an attack launched by the Serbian forces. He specifically declared having taken part, as a KLA soldier, in the fights against the Serbian forces that

¹⁹⁷ Ibid, page 12.

¹⁹⁸ Ibid, page 12.

¹⁹⁹ See Trial Minutes of defence witness Dr A [REDACTED] H [REDACTED], 7 June 2006, page 4.

²⁰⁰ Ibid, page 6.

²⁰¹ See Trial Minutes of defence witness Dr A [REDACTED] H [REDACTED], 14 June 2006, page 6.

²⁰² See Trial Minutes of defence witness Dr A [REDACTED] H [REDACTED], 7 June 2006, pages 8 and 9.

occurred on 12, 13 and 14 May and 18 July 1998 in this region. On 16 March 2006 during the questioning of F█████ H█████ Isuf Gashi again confirmed the existence of an armed conflict between 18 February 1998 to the end of 1998 (p. 19-20). On 8 February 2006 and again during May 2006 Witness M█████ B█████ spoke of attacks (by Serbians) on Rahovec/Orahovac and its surrounds prior to coming to Kosovo, and of periodic fights before and after the critical period. On 17 May 2006 during questioning, Witnesses “Z” and “TT” spoke of attacks by Serbian Forces on villages in the area, during June/July 1998. On 18 May 2006, Witness “D” spoke of battles in Bellcerka/Orahovac in July 1998 between Serbs and the KLA.

Defence witness K█████ P█████ stated that in May 1998 the situation was very difficult, not only in the village where he used to live, situated nearby a highway connecting the two towns of Xerxe and Rahovec/Orahovac, but all over Kosovo. At that time, together with other friends from his village, due to the events that were happening at that time all over Kosovo, they used to organize gatherings at their school in order to assess the situation²⁰³.

Every night his group composed of seven people had gatherings at that place and they discussed the situation at that time. They used to follow all the movements of the Serbian troops which at that time were increasing every day, including the troops and military vehicles²⁰⁴.

The Serbian police units were moving back and forth and very often entering in the village by organizing checks and controls. The Serbian police units were increasing the number of daily visits in his village and they were being supplied on a daily basis with more sophisticated military equipment. On 27 May 1998 at about 10.10 or 10.20 pm the witness heard strong and noisy shooting²⁰⁵. The place where the shooting occurred was between the villages of Bellacerkve/Bela Crkva and Xerxe, 500 to 700 meters away from his house²⁰⁶. Three people were killed on that night and a memorial has been erected in their memory²⁰⁷. He gave the names of P█████ Th█████ and S█████ B█████²⁰⁸. The shooting lasted about five minutes. The noise was loud and the witness could distinguish that several weapons were being fired at the same time²⁰⁹.

The population was maltreated and beaten by the Serbian troops. The population was not allowed to move freely. Usually after 7:00 p.m. people were too scared to move, even within the village²¹⁰.

The witness and his fellow villagers took “defense measures” to protect the village. They tried to evacuate the civilian population from the village at the point where the Serbian troops would attack the village. They also put some observers around the village. They

²⁰³ See Trial Minutes of defence witness K█████ P█████ 2 June 2006, page 3.

²⁰⁴ Ibid, pages 3 and 4.

²⁰⁵ Ibid, page 4.

²⁰⁶ Ibid, page 6.

²⁰⁷ Ibid, page 6.

²⁰⁸ Ibid, page 9.

²⁰⁹ Ibid, page 9.

²¹⁰ Ibid, page 5.

were observing the Serbian troops and their movements around the village. They wanted to be vigilant and avoid being taken by surprise²¹¹.

They did not have weapons and the Serbian troops could move in and out of the village mostly during the daytime, and sometimes at night²¹².

Many people from the village of the witness and other villages around went missing and were killed during the war. About 70 people from his village were killed, including children and women²¹³.

More than 80 people were killed in the village of Celine; more than 200 people were killed and more than 100 went missing from the village of Krushe e Madhe; more than 100 people were killed from the village of Pastasel; about 100 or 200 from Rahovec/Orahovac; about 40 from Reti village, more than 50 from Brestovc/Brestovac village and from Hoqe e Vogel and Nagevc²¹⁴. Serbian troops penetrated these villages between May and July 1998²¹⁵. The village of the witness was the only one to be attacked²¹⁶. All the villages he mentioned are close to each other. In his village during 18 July 1998, six people were killed. Then in Rahovec/Orahovac on the following day about 100 people were killed. He did not have any specific recollection about the killings that happened around this time. Sometimes one, two or three people were killed²¹⁷.

As far as he remembered the first killing took place on 12 May 1998 at Gradisht. There were fights going on between Serbian troops and the KLA. He had heard that people had been killed there. He thinks that people from the surrounding areas were probably also killed²¹⁸. The situation deteriorated between 27 May and 18 July 1998²¹⁹.

There were no sporadic incidents or large-scale incidents involving the Serbians and the KLA or just the Serbians in the villages²²⁰.

Before the witness could answer a question about whether there was organized resistance, the defence attorney just read what the witness told the Investigating Judge, "Until 18 July when the Serbian offensive happened and we had to leave our village, we all had serious matters to think of"²²¹.

Between the start of May and 18 July 1998 when his village was attacked, there was no KLA unit as such stationed there, but there was some cooperation with the KLA. On 18

²¹¹ Ibid, page 5.

²¹² Ibid, page 5.

²¹³ Ibid, page 6.

²¹⁴ Ibid, page 7.

²¹⁵ Ibid, page 7.

²¹⁶ Ibid, page 7.

²¹⁷ Ibid, page 8.

²¹⁸ Ibid, page 8.

²¹⁹ Ibid, page 8.

²²⁰ Ibid, page 8.

²²¹ Ibid, page 7.

July when that attack happened, the KLA units came to help them along with the villagers²²².

On 27 May 1998 the nearest KLA unit was stationed in Dranovc/Drenovac. The witness added that he did not have any idea if they had any unit closer than Dranovc/Drenovac²²³.

Following the 27 May 1998 incident during the course of which Islam Gashi was injured, there was a Serbian offensive that resulted in many casualties in the village. The population reacted to this by joining the KLA on that day in order to defend the town of Rahovec/Orahovac as the Serbian troops were arriving from Prizren. Later on the Serbs cracked the defence of the village and the villagers left. Those who were captured by the Serbs were executed. Houses were burnt. The villagers escaped to surrounding villages, valleys and mountains²²⁴.

Many of those who had joined the KLA assisted the KLA by digging trenches and providing supplies. According to the witness some might have participated with the KLA "in a more direct way", but the villagers only provided assistance²²⁵. On 18 July there was fighting and the villagers provided assistance to the KLA in order to prevent the Serbs from going to Rahovec/Orahovac, but the Serbs managed to crack the defence of the villagers²²⁶.

Defence witness M [REDACTED] J [REDACTED] testified that KLA fighters who were coming back from Albania to Kosovo carried at least 45 pieces of weaponry or ammunition. That was the main method of getting weapons and ammunition for the other fighters in Kosovo²²⁷. On 7 July 1998 a huge offensive of Serbian forces took place around the village of Vvri and when this offensive ended, the witness went to that village. He also paid a visit to all observations points set up by the KLA in that place²²⁸.

The witness stayed two more days at the border because Serbian forces were heavily observing that border. He wanted to ensure safe passage into Kosovo and it was not possible for him and his comrades to go through those points where the Serbs were²²⁹.

It was put to him that from March to August 1998 there were a number of attacks on Albanian villages and he was asked if he knew whether the conflict became larger or smaller during that period of time. The witness answered that he could not call it a conflict and when he was asked in the same context if the war intensified, he answered affirmatively²³⁰.

²²² Ibid, page 8.

²²³ Ibid, pages 8 and 9.

²²⁴ Ibid, page 14.

²²⁵ Ibid, page 15.

²²⁶ Ibid, page 16.

²²⁷ See Trial Minutes of defence witness M [REDACTED] J [REDACTED], 14 June 2006, page 33.

²²⁸ Ibid, page 35.

²²⁹ Ibid, page 34.

²³⁰ Ibid, page 40.

From May to August 1998 the KLA was not “specifically organized”. It was a small organization, a group for each village. The KLA started to be specifically organized from the month of September 1998²³¹. When asked to be more specific on the words “specifically organized”, he explained “after the organized small groups at village basis, we then we started to organize them in order to be under the same commander as unified and responsible for that command. That was the interest of KLA - to be better organized. This organization was not done so fast, taking into consideration the circumstances of that time due to the pressure caused by the Serbian army offensive on us. The spirit of organization ended approximately mid-September 1998, but I am not quite sure about the exact date when it ended”²³². The KLA was not organized in a kind of hierarchy. The units were such that the commander of each unit belonged to it at the village level²³³. The witness did not recall if Jakup Krasniqi had been appointed spokesman of the KLA during the summer of 1998²³⁴.

He was not aware if the KLA issued any communications on behalf of the general staff of the KLA during the period May to August 1998 and he explained his absence of any such knowledge: “I did not have any kind of position with the KLA at the period of time you have mentioned and I do not have enough information with regard to the fact”²³⁵. When it was put to him that he had stated that a hierarchy was established in September 1998, but that it had in fact come into existence earlier, with the communications issued in May and August 1998, the witness said he could not comment on that²³⁶.

He paid visits to some set points of Vvri in the Municipality of Prizren and there were small organized groups where even soldiers of KLA did not know about each other. There was no area which was under the control of the KLA²³⁷. KLA units for protection were organized at village level and no headquarters existed at that time for all those units. Each unit was in charge of procurement of their own weapons²³⁸.

Defence witness N [REDACTED] M [REDACTED] stated that he had joined the KLA after September 1998 and served as a soldier in the village of Reti²³⁹. He joined the KLA after his mother went missing²⁴⁰. During the Rahovec/Orahovac offensive when the villagers were deported from there, he settled in Krushe Madhe village with his family. That happened after the Serbian forces burned down 30 houses of his neighborhood. They killed twenty five people²⁴¹. He did not know anybody who was serving in the KLA in the

²³¹ Ibid, page 35.

²³² Ibid, pages 35 and 36.

²³³ Ibid, page 36.

²³⁴ Ibid, page 38.

²³⁵ Ibid, page 39.

²³⁶ Ibid, page 39.

²³⁷ Ibid, page 39.

²³⁸ Ibid, page 40.

²³⁹ See Trial Minutes of defence witness N [REDACTED] M [REDACTED] 8 June 2006, page 3.

²⁴⁰ Ibid, page 6.

²⁴¹ Ibid, page 7.

Dranovc/Drenovac area in June/July 1998²⁴². When he went to enrol in the KLA he was told to wait for one month and he joined in September²⁴³.

He knew that there was a free zone in Malisheve in June/July 1998²⁴⁴.

To the question by defence attorney Fatmir Celina “can you tell us the paramilitary Serbian groups which operated in Rahovec/Orahovac during the time when that massacre took place?” the witness gave the following answer, “I have heard about a group called “Dora e Zeze”, which means the “Black Hand” in English, the Lions group, and another group composed of Serbian villagers, and military police and paramilitary forces of the Serbians named Hoca e Madhe. We were very scared of these groups. These groups were also supported by Serbian police units coming from Nis, Vranje, and also a unit composed of 12 Russian paramilitary soldiers”²⁴⁵.

Defence witness R [REDACTED] L [REDACTED] stated that in Germany he and Selim Krasniqi “worked towards assisting and helping in organizing the war in Kosovo”²⁴⁶. In Kosovo there were a lot of volunteers to fight but not enough ammunition²⁴⁷. During his time in Albania he met most of the people that came to Tirana and they were going in groups to Kosovo with arms to fight²⁴⁸. In March 1998 in Albania as representatives of the KLA, the witness and his friends tried their best to collect weapons from civilians and buy them in order to bring them to Kosovo. They succeeded in acquiring many weapons to bring to Kosovo²⁴⁹. In May, June and July, approximately 10,000 volunteers came to Kosovo from Western Europe through Albania with weapons²⁵⁰. Somehow there was a regular supply of weapons coming to Kosovo from Albania and the KLA was organising the delivery²⁵¹.

The witness said that when he was meeting with Selim Krasniqi “we talked about our families, war in Kosovo, organizing the war and stuff like that. And we also talked a lot about how to persuade and convince the international factor to assist us in our clean war. Selim Krasniqi often mentioned that although there were a lot of people who volunteered to come and fight from western countries, there was absence with organization issues and lot of significant factors that you should cover during the war”²⁵².

Defence witness D [REDACTED] K [REDACTED] testified that in June 1998, before and after the day that Agron Krasniqi got back to Denje, he noticed units of KLA in that village. There was a unit of about 30 to 40 persons in his village who had organized themselves to defend the

²⁴² Ibid, page 6.

²⁴³ Ibid, page 7.

²⁴⁴ Ibid, page 6.

²⁴⁵ Ibid, page 8.

²⁴⁶ See Trial Minutes of defence witness R [REDACTED] L [REDACTED], 7 June 2006, page 29.

²⁴⁷ Ibid, page 29.

²⁴⁸ Ibid, pages 30 and 31.

²⁴⁹ Ibid, page 31.

²⁵⁰ Ibid, page 31.

²⁵¹ Ibid, page 31.

²⁵² Ibid, page 32.

village²⁵³. When he was asked to explain what he meant by “organized” the witness stated “it is easy to understand the meaning of the word “mobilized” when used in the organization of people during the war, but we were occupied so I use the word that our internal organization, was mobilized, in order to fight the war”²⁵⁴. It was the kind of organization formed in order to observe if Serbian forces were coming towards the village. It was for internal self protection²⁵⁵. Only three persons who were mobilized were carrying weapons as it was hard to find weapons. The type of weapons that they carried was an AK47-Kalashnikov, a long barrel weapon, M48, and a hunting rifle. No one was wearing a uniform²⁵⁶.

The KLA first appeared in Dranovc/Drenovac village on 26 April 1998. As Dranovc/Drenovac was about 10 to 12 kilometres from his village on 12 May 1998 they set up a unit to protect their village and the witness joined that unit on that very day²⁵⁷. When he was asked if that unit was part of the KLA the witness answered “it was a kind of gathering, not a complete unit, we didn’t have weapons” and he added when the question was put again “to form a unit there are specific requirements, two or three weapons wouldn’t establish a unit”²⁵⁸. He went on to say that “there was the desire, the will, to liberate the country and we found it necessary for that time”²⁵⁹. The witness explained that the KLA unit in Dranovc/Drenovac had nothing to do with the unit in his village, Drenje²⁶⁰. His unit had contact with the Ratkovc unit. He could not remember if any KLA member from Dranovc/Drenovac ever came to his village²⁶¹.

In 1998 Agron Krasniqi and the witness were simple soldiers and had no special duties assigned to them. They were just people from the village being mobilized, and they didn’t have any instructor to give them assignments. They would observe the village in shifts. That was their primary duty²⁶². They didn’t have a military hierarchy and they had contact with Rahovec/Orahovac village and with one Smajl Latifi²⁶³.

In May 1998, the Serbians launched attacks by using troops, helicopters, and tanks. Infantry repression was increased and a civilian was killed in Ratkovc²⁶⁴.

At the end of June 1998 there was some light fighting and skirmishes between Serbian and KLA forces in the village of Dejne²⁶⁵. His village was bombed twice in June and July

²⁵³ See Trial Minutes of defence witness D [REDACTED] K [REDACTED] 14 June 2006, page 8.

²⁵⁴ Ibid, page 8.

²⁵⁵ Ibid, page 8.

²⁵⁶ Ibid, page 8.

²⁵⁷ Ibid, page 16.

²⁵⁸ Ibid, page 17.

²⁵⁹ Ibid, page 17.

²⁶⁰ Ibid, page 19.

²⁶¹ Ibid, page 20.

²⁶² Ibid, page 26.

²⁶³ Ibid, page 26.

²⁶⁴ Ibid, page 30.

²⁶⁵ Ibid, page 8.

1998 and by 4 July 1998 it had been heavily bombed²⁶⁶. Agron Krasniqi was part of the unit in Denje and both the witness and Agron Krasniqi joined “the war, the KLA”²⁶⁷.

On 4 September 1998 his village was attacked by the Serbians and eight people were killed and about 57 to 60 were injured. They were all civilians. All the 200 houses in the village with the exception of approximately 10 were burnt²⁶⁸. The witness saw the Serbian tanks bomb the village²⁶⁹. The villagers took refuge in the forests and mountains and the witness who, along with other persons, was armed was trying to control the civilian population²⁷⁰. After 5 September 1998 they all went back, but the village was completely burnt²⁷¹. Many villagers were kidnapped and imprisoned²⁷².

In addition, there exists a number of open source and other material including UNSCR Resolutions, Documents, Domestic and International Case Law and Reports which have been constantly referred to and admitted into evidence in domestic and International War Crimes trials, which unequivocally demonstrates the protracted nature and intensity of the armed conflict in the territory of Kosovo including Dranovc/Drenovac.

The numerous documents and reports submitted to the court clearly show that the KLA was constantly growing and developing on a territorial level.

The **UN Security Council Resolution 1199 (1998)** dated 23 September 1998, recorded the following statement:

“Noting further the communication by the Prosecutor of the International Tribunal for the Former Yugoslavia to the Contact Group on July 7th 1998, expressing the view that the situation in Kosovo represents an armed conflict within the terms of the mandate of the tribunal.

Gravely concerned at the recent intense fighting in Kosovo and in particular the excessive and indiscriminate use of force by Serbian security forces and the Yugoslav army which have resulted in numerous civilian casualties and according to the estimate of the Secretary General the displacement of over 230,000 persons from their homes.”

The Report of the Secretary General, prepared pursuant to Resolution 1160 (1998) dated 4 September 1998.

“III. Situation in Kosovo.

6. Continued international efforts to facilitate a political solution to the Kosovo crisis have had limited results. As the Security Council is aware the situation in Kosovo

²⁶⁶ Ibid, page 9.

²⁶⁷ Ibid, page 15.

²⁶⁸ Ibid, page 11.

²⁶⁹ Ibid, page 13.

²⁷⁰ Ibid, page 12.

²⁷¹ Ibid, page 13.

²⁷² Ibid, page 13.

remains volatile. In mid-July and early August heavy fighting occurred in the towns of Orahovac and Malisevo, as well as in the Suva Reka and Stimlje areas. By mid-August, fierce fighting was raging in the Western part of Djakovica, Decani and Pec. Towards the end of August, fighting continued in several areas: West Pec in Rugovska Klisura area, along the Stimlje-Suva Reka road, on the Komorane-Kijevo stretch of the Pristina-Pec road and near the Pristina Airport. Although the scale of fighting between the security forces of the Federal Republic of Yugoslavia and the Kosovo Liberation Army (KLA) has decreased, and the Government has announced that life is returning to normal, it is evident that the conflict continues and any predication of its end would be premature. The negotiations process has not been renewed and tensions along the border between the Federal Republic of Yugoslavia and Albania have been evident.

Humanitarian concerns

7. An estimated 600 to 700 civilians have been killed in the fighting in Kosovo since March. The conflict has resulted in the estimated cumulative displacement of over 230,000 persons."

The **OSCE Report**²⁷³, which states "By the beginning of 1998, the nature of the Kosovo situation had changed. A new element had entered the equation in the form of the Kosovo Liberation Army (UCK), and the Serbian authorities were responding with a huge increase in military force." The same passage continues a little later, "The Serbian authorities brought in special security forces in January 1998. They responded to clashes with the UCK by reprisal attacks on villages, using military helicopters and armored personnel carriers, accompanied by brutal house-to-house raids and indiscriminate arrests. Two such attacks on villages in late February were followed by an assault on the village of Donki Prekaze/Prekazi I Poshtem (Srbica/Skenderaj municipality) in early March, where at least 54 people were killed including a local UCK leader, most of his family and other women, children and elderly men. The reprisals continued with further attacks on villages in the central Drenica region, causing many villagers to flee their homes. In this downward spiral of violence, many Kosovo Albanians, including erstwhile supporters of the LDK's non-violent stance, became UCK members or active sympathizers". The same passage also states that, "Substantial additional Serbian military reinforcements were sent in to Kosovo in May 1998", and that a, "strong final warning", from European governments in June was ignored as Serbian forces were concentrated in the Drenica region and along the south-western border, using artillery to force villagers out of their homes and then going in to loot and burn them.

The **Human Rights Watch Report 1999-** "A Village Destroyed" - refers to the existence of KLA in early 1998 - "**From April until mid-July, 1998**, the KLA tenuously held as much as 40 percent of the territory of Kosovo, although most of that territory was retaken by government forces by **August 1998**. Until then, however, the KLA had held a number of strategic towns and villages, and manned checkpoints along some of Kosovo's important roads; by September 1998 their area of control had been reduced to some parts of Drenica and a few scattered pockets in the west, especially at night".

²⁷³ "Kosovo As Seen, As Told", Part 1, Chapter 1, page 30.

The **Report prepared for the Prosecutor of the ICTY**²⁷⁴ provided a detailed account of the KLA as an organized armed group engaged in protracted armed violence. The report states that, “*By the end of 1997, however, it (the KLA) was demonstrating its ability to launch coordinated operations over a fairly wide area, indicating the emergence of a high degree of organizational structure, ...*”, and indicates that KLA numbers had swollen to several thousand towards the summer of 1998. Later, the report states, “*Before the Serbian/FRY offensive at the end of July 1998, the UCK controlled significant regions of Kosovo, from the Drenica area south to Malishevo*”. Whilst the report makes it clear that the KLA was not fully unified and that from time to time its fortunes fluctuated, it rightly emphasizes that the level and duration of the violence described, “*far exceeded the isolated or sporadic attacks characteristic of a civil disturbance*”.

The ICTY after considering at length issues of Organisation of the KLA, Intensity of the conflict, Acting under the Direction of a recognized Civil Authority, and Control over Territory, concluded that prior to 24 March 1999 “*there was sufficient evidence of an armed conflict in Kosovo...*”²⁷⁵.

In the **Fatmir Limaj case** the ICTY after considering at length issues of Organisation of the KLA, Intensity of the conflict, concluded that “*...before the end of May 1998 an armed conflict existed in Kosovo between Serbian Forces and the KLA....Unit Commanders gave combat Orders and subordinate units and soldiers generally acted in compliance with these orders. Steps have been established to introduce disciplinary rules and Military Police By July 1998 the KLA had gained acceptance as a necessary and valid participant in negotiations with international governments and bodies.....Further by the end of May 1998 KLA Units were constantly engaged in armed clashes with substantial Serbian forces... The ability of the KLA to engage in such varied operations is a further indicator of its level of organization. In view of the above, the Chamber is persuaded and finds that an internal armed conflict existed in Kosovo before the end of May 1998. This continued until long after 26 July 1998.*”²⁷⁶

The existence of an internal armed conflict in Kosovo prior to the NATO bombing has additionally been recognized on several occasions by the Courts in Kosovo²⁷⁷.

²⁷⁴ Report on Serious Violations of International Humanitarian Law in Kosovo in 1998, February 1999, pages 15-19.

²⁷⁵ Milošević, ICTY Trial Chamber, Decision on Motion for Judgment of Acquittal, Judgment, 16 June 2004, Case no. IT-02-54-T, paragraphs 14 - 40.

²⁷⁶ Fatmir Limaj et al, ICTY Trial Judgment, 30 November 2005, Case No. IT-03-66-T, paragraphs 171-173.

²⁷⁷ See judgment of the District Court of Mitrovicë/Mitrovica in the case against *Miroslav Vuckovic*, dated 25 October 2002 (pages 38 to 44) and the decision of the Supreme Court of Kosovo in this case, dated 15 July 2004 (pages 20 and 21); Judgment of the District Court of Peja/Pec in *Prosecutor v Veselin Besovic* dated 26 June 2003; Judgment of the District Court of Prishtinë/Pristina in the case of *Prosecutor v Latif Gashi et al*, dated 16 July 2003 (pages 10 to 13) and the decision of the Supreme Court of Kosovo in this case, dated 21 July 2005 (pages 9 to 11).

KLA Military Regulations entitled “*Temporary Regulation on Organization of Internal Military Life*” dated 1998 contain explicit provisions directed to guaranteeing that orders would be executed down the hierarchy²⁷⁸.

The **Report issued by the Office of the Prosecutor ICTY** entitled “*Armed Conflict in Kosovo 1998*” dated 2 August 2004 which consolidates reports from Serbian sources, KLA Sources, European Community Mission Monitor Reports and Miscellaneous sources to provide an analysis of the nature of the Armed Conflict in Kosovo **between January 1998 and September 1998**. In this report it was stated that “Armed confrontations in Kosovo in 1998 occurred between the KLA and Serb Forces.....Armed confrontations became protracted after mid May 1998. They involved both sides using heavy weapons systems such as mortars and artillery (Executive Summary P1).....The already extensive armed conflict underway by early July intensified...KLA communiqués and minutes of Joint Command show two opposing sides pitted against one another in sustained combat operations (Paragraph 47)... Based on the information, it is assessed that combat operations were conducted on a protracted basis in Kosovo. (Para 48)²⁷⁹.

Extract from General Staff KLA Communiqués issued during the period evidencing the intensity of the conflict and the organized nature of the KLA, included the following²⁸⁰.

Date	Source - Central Staff of KLA	Summary
28/02/98	Communiqué No 42	<i>Points out that the KLA conducted attacks against Serb Forces and “liquidated” collaborators in January/February 1998</i>
11/03/98	Communiqué No 45	<i>Describes armed confrontations with Serb Forces in the Drenica and Llap zones along broad fronts</i>
13/05/98	Communiqué No 47	<i>Mentions that on the orders of the KLA General Staff, operations were conducted in March, April, May in the operational subzones Drenica...Pastrik .. 16 KLA were killed....Also reference is made to KLA Intelligence Service and on going operations being conducted.</i>
19/06/98	Communiqué 19/06/98	<i>The KLA declared that it would set up a general mobilization and prepare for a decisive confrontation with Serbia</i>
13/07/98	Communiqué No 49	<i>Describes widening Operations throughout Kosovo against Serb Forces</i>

²⁷⁸ Document 00000445 – 00000461 as furnished by the Office of the Prosecutor ICTY.

²⁷⁹ Document 00083185 – 00083219 as furnished by the Office of the Prosecutor ICTY.

²⁸⁰ Document U0038560, U0038566, U0038573, U0038593, U0038577 AND U0079668 as furnished by the Office of the Prosecutor ICTY - Reference is made to these Communiqués in the Report issued by the Office of the Prosecutor ICTY entitled “Armed Conflict in Kosovo 1998” dated 2 August.

29/08/98	Communiqué General Staff	from	<i>Claims that KLA is carrying out operations "one after the other" against invading Serb Troops in Kosovo.</i>
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Conclusion on the issue of armed conflict

The testimony from both the prosecution and the defendants, as well as from some of the defence witnesses themselves shows that there was an armored conflict going on. During the Investigation, Witnesses U, D, and P, refer to offensives/bombings carried out by the Serbian forces in Dranovc/Drenovac village and in the Orahovac/Rahovec area between July and September 1998, forcing the KLA to partly withdraw from there. A ■■■ H ■■■ who was a doctor in the KLA hospital for Orahovac/Rahovec and Malishevë/Malisevo regions, stated to the Investigating Judge that there were fights in Dranovc/Drenovac region at the time relevant for the indictment. Islam Gashi was allegedly wounded by the Serbian forces in May 1998, whereas his father, Isuf Gashi, would have also been wounded by them in mid-July 1998. Selim Krasniqi, Isuf Gashi and Islam Gashi, explicitly acknowledged, in their investigative statements, the existence of an armed conflict between the KLA and the Serbian forces at the critical time. On 24 May 2004, Isuf Gashi declared to the Investigating Judge that the war started on 12 May 1998 in the Rahovec/Orahovac area by an attack launched by the Serbian forces. He specifically declared having taken part, as a KLA soldier, in the fights against the Serbian forces that occurred on 12, 13 and 14 May and 18 July 1998 in this region. On 16 March 2006 during the questioning of F ■■■ H ■■■, Isuf Gashi again confirmed the existence of an armed conflict between 18 February 1998 to the end of 1998. On 8 February 2006 and again during May 2006, Witness M ■■■ B ■■■ spoke of attacks (by Serbs) on Rahovec/Orahovac and its surrounds prior to coming to Kosovo and of periodic fights before and after the critical period. On 17 May 2006, during questioning, Witnesses "Z" and "TT" spoke of attacks by Serb Forces on villages in the area during June/July 1998. On 18 May 2006, Witness D spoke of battles in Bellcerka/Orahovac in July 1998 between Serbs/KLA.

The evidence shows that there was an armed clash with the Serbians which resulted in the wounding of Islam Gashi and the killing of his comrades. Did this take place or not? There is some evidence to suggest that it did. The evidence of Isuf Gashi, one of the founders of the KLA in Dranovc/Drenovac, as to events in early 1998 where he even mentioned the use by the Serbian aggressors of tanks and helicopters is very revealing. Many witnesses gave evidence of fighting in the months of June and July 1998 and of the fact that civilians were forced by the military actions to leave their homes, villages and that numerous casualties were caused during these incidents. General M ■■■ J ■■■ clearly and unequivocally stated that from March 1998 onwards the "War" in Kosovo increased in intensity. The defendant Selim Krasniqi himself told the court that he came to assist the Dranovc/Drenovac KLA because of the fighting and that he was too busy with this to notice other matters. In addition, there is the evidence of the landmark Battle of Rahovec which occurred in July 1998, where the KLA held the town for two days.

The court concluded that the evidence establishing the armed conflict is overwhelming. On the basis of the above, the court took the view that the conflict was (1) sufficiently protracted and intense and that the KLA had reached (2) the required organizational level, both territorially and regionally, necessary during the critical period, and was (3) in sufficient control to render the conflict an armed conflict, for which the obligations of both Common Article 3 and Additional Protocol II would apply. There existed during the first seven months of 1998 a protracted and intense conflict in the territory of Kosovo which extended into and affected the locality of Dranovc/Drenovac and its surrounding villages.

The binding nature of the applicable international law on the parties

Common Article 3 provides “in the case of armed conflict not of an international character 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 provision...”

Additional Protocol II is not as clear since it does not refer to “parties to the conflict” but only mentions the High Contracting Parties to the Protocol, which are States.

Notwithstanding that fact, international bodies have generally considered the ratification of the relevant norms of a treaty by a territorial state to be a sufficient basis for the obligations of armed opposition groups to comply with those treaty provisions. This is based on the principle of legislative jurisdiction. In other words a treaty or convention ratified by a state (in this case the SFRY²⁸¹) is binding on all of that state’s nationals, since the legally constituted government has the capacity to legislate for all nationals.

Furthermore, in the present case the relevant provisions are applicable under the aegis of both international treaty law and domestic law and the insurgent party had agreed and declared itself bound by such provisions. It follows therefore that the applicable law must be binding on all of the parties. Articles 34-36 of the Vienna Convention on the Law of Treaties, to which the SFRY was a signatory, provide that treaties can impose rights and obligations upon third parties provided that (a) it was the intention of parties to the treaty to do so and (b) the third party assents to these rights or obligations.

In the view of the Court there is no doubt from a reading of both Common Article 3 and Additional Protocol II that it was the intention of the treaty signatories to bind all parties including third parties. In the context of Kosovo and the armed conflict, the Communiqués of the General Staff of the KLA produced as evidence²⁸², clearly show that from the very early stages of this conflict between the KLA and the Serbian regime, the KLA acknowledged to be bound by International Humanitarian Law treaty provisions and remained so throughout the conflict.

Participation of the defendants in the armed conflict

²⁸¹ The Socialist Federal Republic of Yugoslavia ratified the 1949 Convention and Additional Protocol II in 1978.

²⁸² Exhibit 16

All the defendants in either a statement given to the police, the Investigating Judge or the Trial Panel confirmed that they were members of the KLA during the critical period. Selim Krasniqi, Islam Gashi and Bedri Zyberaj were fully fledged members before 1 June 1998.

Agron Krasniqi claims that he did not join up until after his return from University on or about 21 June 1998. But despite the evidence of the accused Agron Krasniqi and his cousin and good friend Sinan Krasniqi, evidence from numerous other witnesses who saw him participating in events before this date, suggest that he had joined earlier. With regard to the incident involving M█████ Rr█████ who was arrested and detained on 10 June 1998, both witnesses N█████ Rr█████ and H█████ Rr█████ clearly identified him as one of the abductors and N█████ Rr█████ told the Trial Panel that he knew the defendant. Anonymous Witness "N" identified him as one of the abductors and Anonymous Witness "TT" stated that when s/he went to the detention centre in Dranovc/Drenovac, s/he met the defendant a number of days later, in early June 1998, at a time that the defendant said he was in Pristina. Anonymous Witness "Z" gave evidence in relation to H█████ P█████. When the witness called at the detention centre in Dranovc/Drenovac approximately a week later, s/he met the defendant, who told Anonymous Witness "Z" to wait.

From the evidence presented, the court found it proved beyond reasonable doubt that each of the accused participated in the armed conflict, particularly during the critical period.

The nexus between the armed conflict and the acts perpetrated

The Law

To meet the jurisdictional preconditions of Article 142 CC SFRY, in addition to the existence of an armed conflict, it must be proved that there was a sufficient link between the alleged acts of the defendants and the armed conflict²⁸³. The armed conflict need not have been causal to the commission of the crime charged, but it must have played a substantial part in the perpetrator's ability to commit that crime.²⁸⁴ In determining whether such nexus exists, international jurisprudence has already ruled that a court may take into account, *inter alia*, (1) whether the perpetrator is a combatant; (2) whether the victim is a non-combatant; (3) whether the victim is a member of the opposing party; (4) whether the act may be said to serve the ultimate goal of a military campaign or (5) whether the crime is committed as part of or in the context of the perpetrator's official duties²⁸⁵.

²⁸³ Tadić, ICTY Trial Chamber, Opinion and Judgement, 7 May 1997, Case no. IT-94-1-T, paragraphs 572-575.

²⁸⁴ Kunarac, Kovac and Vokovic, ICTY Appeals Chamber, Judgment, 12 June 2002, Case no. IT-96-23, paragraph 58.

²⁸⁵ Kunarac, Kovac and Vokovic, ICTY Appeals Chamber, Judgment, 12 June 2002, Case no. IT-96-23, paragraph 59.

Evidence establishing the nexus

The armed conflict played a fundamental role in the ability of the defendants to commit the crimes charged in this case.

The background of the armed conflict in the area, where all incriminated offences were committed, created an objective possibility for certain units and/or individuals of KLA to assume the powers of regular authorities to perform arrests, detentions and interrogations of the civilian population suspected of disloyalty. The conduct and method by which they went about this amounted to War Crimes. The objective possibility for commission of such crimes by KLA is established by the fact that KLA was in factual control of significant part of the area as already mentioned²⁸⁶.

A number of witnesses confirmed that while searching for their relatives who had been reportedly "arrested" by KLA, they were referred by the population only to KLA command in Dranovc/Drenovac, as the organization that was in position to detain and release the arrestees in such circumstances. None of the witnesses stated that s/he complained to regular police forces about those illegal arrests.

The situation of the armed conflict created an atmosphere of fear for the personal safety among the people, but besides that there was a significant scale of uncertainty and suspicion not only between the Albanian and Serbian ethnic communities, but within the Albanian community too. The Serbian population was reporting information about the KLA activities to regular authorities. At the same time, a large part of the Albanian population was cooperating with KLA in order to protect themselves from hostile actions of Serbian police and paramilitaries.

Identification of "Serbian collaborators" among Albanians was one of the tasks of the KLA and its Military Police. The existence of the described objective situation created the possibility for unhindered fulfilling of this task within the controlled territory.

During the investigation and the main trial it became clear that the basic reason for detention of the victims was their alleged collaboration with the Serbs, or because of association with Serbs, or because they were believed to be traitors. It was directly or indirectly confirmed by the statements obtained during the investigation and the Main Trial.

- Selim Krasniqi in his statement given to the Investigating Judge admitted that he knew about people who were held in some offices in Zatri/ć on suspicion of being Serbian collaborators²⁸⁷. In his statement to the police²⁸⁸, he also mentioned that collaborators were questioned. In the course of the trial he stated that G■■■■P■■■■ had conversations with collaborators and confirmed that the policy of the KLA was

²⁸⁶ Kunarac, Kovac and Vokovic, ICTY Appeals Chamber, Judgment, 12 June 2002, Case no. IT-96-23, paragraph 9

²⁸⁷ See Selim Krasniqi's statement to the Investigating Judge, 18 February 2004.

²⁸⁸ Police Statement dated 17 February 2004.

that every person who was behaving in the wrong way was given a chance by KLA to contribute to their own people and not the enemy²⁸⁹.

- Anonymous Witness “W” stated that Selim Krasniqi and other KLA soldiers called her/him: “Come in you traitor”; then s/he was accused of having connection with Serbian authorities, beaten and consequently detained²⁹⁰.
- Anonymous Witness “X” stated that s/he was arrested and detained by KLA, and consequently interrogated both in Reti/Retimlje and Dranovc/Drenovac villages on the issue of her/his alleged cooperation with Serbian authorities²⁹¹.
- Anonymous witness “D” stated that s/he and H■■■■ P■■■■ were stopped and questioned by KLA about a person named H■■■■ R■■■■, whom they both knew as working for Serbian police (SUP) in Rahovec/Orahovac. H■■■■ P■■■■ was consequently arrested by KLA²⁹².
- Anonymous Witness “E” stated that when s/he was arrested by KLA, s/he was interrogated by Bedri Zyberaj, who accused her/him of working with Serbs, staying with them and spying for them against KLA. The witness stated that s/he had all reasons to be afraid of being “liquidated” since “too many people were killed”²⁹³.
- Anonymous Witness “E” stated that some of the KLA soldiers “were fighting against their own people” (means – against Kosovo Albanian population)²⁹⁴.
- Anonymous Witness “Z” speaking about the detention of H■■■■ P■■■■ spoke of the maintenance of a “*Black List*” by KLA²⁹⁵.

However, in several instances behind the formal accusation of collaborating with Serbs, was a simple squaring of accounts with the victims.

- One of the witnesses was beaten on the order of Selim Krasniqi after he had been interrogated on whether he had bad relations with a KLA soldier. Selim Krasniqi asked him “why you are not in a good terms with him”, and then he ordered two KLA soldiers to beat the witness up²⁹⁶.
- Accused Bedri Zyberaj said to another witness that the relative of the latter was detained because he would not let Bedri pass through his field with a tractor, and

²⁸⁹ See Trial Minutes of defendant Selim Krasniqi, 21 June 2006, pages 16 and 18.

²⁹⁰ See Trial Minutes of Anonymous Witness “W”, 18 May 2006, pages 4 and 7.

²⁹¹ See Trial Minutes of Anonymous Witness “X”, 30 November 2006, pages 6 and 7.

²⁹² See Trial Minutes of Anonymous Witness “D”, 18 May 2006, page 22.

²⁹³ See Trial Minutes of Anonymous Witness “E”, 15 March 2006, page 19.

²⁹⁴ See Trial Minutes of Anonymous Witness “E”, 22 March 2006, page 28.

²⁹⁵ See Trial Minutes of Anonymous Witness “Z”, 17 May 2006, page 5, and Investigation Minutes, 8 September 2005.

²⁹⁶ See Trial Minutes of Anonymous Witness “U”, 14 December 2005, page 8.

his son was bothering Bedri's kids. Bedri also added that "he was waiting for this day to come"²⁹⁷.

There is a clarification in the international War Crimes jurisprudence on this matter, saying that "the [war] crime must not be committed by the perpetrator for purely personal motives"²⁹⁸.

In these last two cases, the illegal actions against civilians, which were underlined by personal motives to a higher or lower degree, had become possible only in connection with a certain level of power to control the area and the civilian population living within its limits gained by some of the defendants. That power was directly linked with the positions of influence within the KLA structure and the overall control of the area gained by the KLA by and throughout the period of time relevant to the indictment.

Thus there is a very clear nexus between the criminal acts of War Crimes alleged against the accused and the situation of an armed conflict in Kosovo, as it existed during the period in the indictment.

Status of the Victims

Article 142 of the CC SFRY expressly requires that the victims of any of the underlying crimes be part of the civilian population.

International Humanitarian Law (IHL) makes a distinction between civilians and combatants and, in an armed conflict the targeted persons *must be of a predominantly civilian nature. The presence of certain non-civilians in their midst does not change the character of the population*²⁹⁹. Generally speaking *the civilian population comprises all persons who do not actively participate in the hostilities*³⁰⁰.

In the case of international armed conflicts, civilians, persons rendered "hors de combat" (in other words out of action) and non-combatants are protected by the basic principles of International Humanitarian Law in particular by the Four Geneva Conventions of 1949, and especially their Additional Protocols of 1977. In the case of internal armed conflicts, the same persons are entitled to protection under Article 3 common to all Four Geneva Conventions. It is clear therefore that in the case of internal conflicts, International Humanitarian Law through the provisions of Common Article 3 and Additional Protocols II protects all persons who are not combatants and who do not take either "*an active part*" or "*a direct part*" in hostilities. These provisions, thus at a minimum, are clearly meant to protect civilians.

In the light of the evidence presented the Court concluded that the victims were civilians.

²⁹⁷ See Trial Minutes of the Witness N [REDACTED] Rr [REDACTED] 25 May 2006, page 8.

²⁹⁸ Akayesu, ICTR, Trial judgment, Case no. ICTR-96-4-T, 2 September 1998, paragraph 636.

²⁹⁹ Tadić, ICTY Trial Chamber Judgement, 7 May 1997, Case no. IT-94-1-T, paragraph 638.

³⁰⁰ R. Goldman, *International Humanitarian Law and the Armed Conflicts in El Salvador and Nicaragua*, in *American University Journal of International Law and Policy*, 1987.

There was no evidence to lead to the conclusion that any of the victims were taking either “an active part” or “a direct part” in hostilities contrary to the aims of the KLA or Albanian Nationalists, at the time that they were abducted.

On the contrary, the testimony given by the family members of the principal victims and other witnesses goes to establish that the detainees were civilians who included lawyers, teachers, farmers, agricultural workers, shepherds and bus conductors and who were not taking part in hostilities when the crimes were perpetrated.

Violation of Domestic and International Law effective at the time of the conduct (the duality test).

Under Article 142 CC SFRY the definition of the prohibited conduct must be found among the underlying offences listed in Article 142 CC SFRY³⁰¹. Secondly, such offence must constitute a violation of international treaties³⁰². The Socialist Federal Republic of Yugoslavia ratified the Geneva Conventions and both the Additional Protocols. In relation to acts committed in the internal armed conflict, the act must be committed in violation of the Common Article 3 and/or Additional Protocol II³⁰³.

Humane treatment is the cornerstone of all four Conventions, and constitutes the fundamental basis underlying Common Article 3 and Additional Protocol II since these treaty provisions guarantee the right to humane treatment and expressly prohibit a number of acts. It is impossible to establish an exhaustive list of inhumane acts, but those acts as specifically proscribed by Common Article 3 and Articles 4 and 5 of Additional Protocol II include torture, cruel treatment, outrages upon personal dignity, and humiliating and degrading treatment. These activities are absolutely prohibited at any time and any place whatsoever³⁰⁴ and all protected persons in all circumstances must be treated humanely.³⁰⁵

Particulars of the War Crimes averred

Torture: the legal elements

Among the particulars of the War Crimes averred, torture is listed.

In the Kvočka³⁰⁶ case the ICTY set out the elements of the offence of torture as follows.

³⁰¹ This includes killings, torture, inhuman treatment, immense suffering or violation of bodily integrity or health; application of measures of intimidation and terror.

³⁰² See Supreme Court Decision in appeal of Miroslav Vuckovic, 15 July 2004, page 20.

³⁰³ Article 3(1)(a) Geneva Convention prohibits violence to life and person, cruel treatment and torture; Article 4 Additional Protocol II prohibits violence to life, health or physical or mental wellbeing of persons as well as murder cruel treatment such as torture, mutilation or any form of corporal punishment.

³⁰⁴ Common Article 3(1).

³⁰⁵ Additional Protocol II Article 4.

³⁰⁶ Kvočka, ICTY, Trial Chamber Judgment, 2 November 2001, Case no. IT-98-30/1-T, paragraph 141.

- (i) Torture consists of the infliction, by act or omission, of severe pain or suffering, whether physical or mental;
- (ii) the act or omission must be intentional; and
- (iii) the act or omission must be for a prohibited purpose, such as obtaining information or a confession, punishing, intimidating, humiliating, or coercing the victim or a third person, or discriminating, on any ground, against the victim or a third person.

With regard to the element of suffering, the Kvočka³⁰⁷ case stated,

“Consistent with human rights jurisprudence interpreting torture, the Celebici Trial Chamber has indicated that the severity of the pain or suffering is a distinguishing characteristic of torture that sets it apart from similar offences.

A precise threshold for determining what degree of suffering is sufficient to meet the definition of torture has not been delineated. In assessing the seriousness of any mistreatment, the Trial Chamber must first consider the objective severity of the harm inflicted. Subjective criteria, such as the physical or mental effect of the treatment upon the particular victim and, in some cases, factors such as the victim’s age, sex, or state of health will also be relevant in assessing the gravity of the harm.

The UN Special Rapporteur on Torture, human rights bodies, and legal scholars have listed several acts that are considered severe enough per se to constitute torture and those that are likely to constitute torture depending on the circumstances. Beating, sexual violence, prolonged denial of sleep, food, hygiene, and medical assistance, as well as threats to torture, rape, or kill relatives were among the acts most commonly mentioned as those likely to constitute torture. Mutilation of body parts would be an example of acts per se constituting torture.

The jurisprudence of the Tribunals, consistent with the jurisprudence of human rights bodies, has held that rape may constitute severe pain and suffering amounting to torture, provided that the other elements of torture, such as a prohibited purpose, are met.

In several cases involving Zaire, the U.N. Human Rights Committee found that various combinations of the following acts constituted torture: beatings, electric shocks to the genitals, mock executions, deprivation of food and water, and the “thumb press.” In considering individual complaints brought against Uruguay and Bolivia, the Human Rights Committee found that systematic beatings, electroshocks, burns, extended hanging from hand and/or leg chains, repeated immersion in a mixture of blood, urine, vomit and excrement (‘submarino’), standing for great lengths of time, and simulated executions or amputations amounted to torture.

³⁰⁷ Ibid, paragraphs 142 to 149.

In the post World War II trials held in Japan, the International Military Tribunal for the Far East (IMTFE) found that the most prevalent forms of torture systematically inflicted by Japanese soldiers upon Allied forces or occupied civilians included “water treatment, burning, electric shocks, the knee spread, suspension, kneeling on sharp instruments and flogging.” Clearly, an exhaustive list of torturous practices is impossible to devise.

Although such torture practices often cause permanent damage to the health of the victims, permanent injury is not a requirement for torture.

Damage to physical or mental health will be taken into account in assessing the gravity of the harm inflicted. The Trial Chamber notes that abuse amounting to torture need not necessarily involve physical injury, as mental harm is a prevalent form of inflicting torture. For instance, the mental suffering caused to an individual who is forced to watch severe mistreatment inflicted on a relative would rise to the level of gravity required under the crime of torture. Similarly, the Furundzija Trial Chamber found that being forced to watch serious sexual attacks inflicted on a female acquaintance was torture for the forced observer. The presence of onlookers, particularly family members, also inflicts severe mental harm amounting to torture on the person being raped”.

The other element is the prohibited purpose behind the torture. The Delalic case³⁰⁸ dealt with this point.

“Another critical element of the offence of torture is the presence of a prohibited purpose. As previously stated, the list of such prohibited purposes in the Torture Convention expands upon those enumerated in the Declaration on Torture by adding “discrimination of any kind”. The use of the words “for such purposes” in the customary definition of torture, indicate that the various listed purposes do not constitute an exhaustive list, and should be regarded as merely representative. Further, there is no requirement that the conduct must be solely perpetrated for a prohibited purpose. Thus, in order for this requirement to be met, the prohibited purpose must simply be part of the motivation behind the conduct and need not be the predominating or sole purpose”.

In Kvočka³⁰⁹ the Trial Chamber agreed that the prohibited purpose element should not be limitatively construed and stated.

The Trial Chamber also agrees with the Celebici Trial Chamber that the prohibited purposes listed in the Torture Convention as reflected by customary international law “do not constitute an exhaustive list, and should be regarded as merely representative”, and notes that the Furundzija Trial Chamber concluded that humiliating the victim or a third person constitutes a prohibited purpose for torture under international humanitarian law. [Para. 140]

³⁰⁸ Delalic and others, ICTY Trial Chamber judgment, 16 November 1998, Case no. IT-96-21, paragraph 470

³⁰⁹ Kvočka, ICTY, Trial Chamber Judgment, 2 November 2001, Case no. IT-98-30/1-T

On what amounts to a prohibited purpose, the ICTY in the Kvočka case³¹⁰ stated:

“The jurisprudence of the Tribunals recognizes certain prohibited purposes that qualify as torture. The Akayesu Trial Chamber adopted the prohibited purposes contained in the Convention against Torture, namely to obtain information or a confession from the victim or a third person, to punish the victim or a third person, to intimidate or coerce the victim or the third person, or for any reason based on discrimination of any kind. The Furundzija Trial Chamber added intent to humiliate to the list of prohibited purposes.

The Celebici Trial Chamber rightly emphasized that the prohibited purpose need be neither the sole nor the main purpose of inflicting the severe pain or suffering.

In interpreting the prohibited purposes of torture, the Trial Chambers have regularly found torture existed when the perpetrator’s intent was to punish or to obtain information or a confession. The Tribunals have also found instances when torture was inflicted as a means of discriminating on the basis of gender. Moreover, the Celebici Trial Chamber emphasized that violence inflicted in a detention camp is often committed with the purpose of seeking to intimidate not only the victim but also other inmates”.

The last element is the intentional element. It must be established that the perpetrator intended to act in such a way which in the normal course of events, would cause severe pain or suffering, whether physical or mental, to his victims.

Cruel and Inhuman Treatment

In the Delalic case³¹¹ the ICTY made the following observations on what constitutes inhuman treatment:

“In sum, the Trial Chamber finds that inhuman treatment is an intentional act or omission, that is an act which, judged objectively, is deliberate and not accidental, which causes serious mental or physical suffering or injury or constitutes a serious attack on human dignity. The plain, ordinary meaning of the term inhuman treatment in the context of the Geneva Conventions confirms this approach and clarifies the meaning of the offence. 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 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”³¹².

³¹⁰ Kvočka, ICTY, Trial Chamber Judgment, 2 November 2001, Case no. IT-98-30/1-T, paragraphs 152-154.

³¹¹ Delalic and others, ICTY Trial Chamber Judgment, 16 November 1998, Case no. IT-96-21

³¹² Delalic and others, ICTY Trial Chamber Judgment, 16 November 1998, Case no. IT-96-21, paragraph 543.

“In this framework of offences, all acts found to constitute torture or wilfully causing great suffering or serious injury to body or health would also constitute inhuman treatment. However, this third category of offence is not limited to those acts already incorporated into the other two and extends further to other acts which violate the basic principle of humane treatment, particularly the respect for human dignity. Ultimately, the question of whether any particular act which does not fall within the categories of the core group is inconsistent with the principle of humane treatment, and thus constitutes inhumane treatment, is a question of fact to be judged in all the circumstances of the particular case”³¹³.

“The basis of the inclusion of cruel treatment within Article 3 of the Statute is its prohibition by common article 3(1) of the Geneva Conventions, which proscribes, “violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture”. In addition to its prohibition in common article 3, cruel treatment or cruelty is proscribed by article 87 of the Third Geneva Convention, which deals with penalties for prisoners of war, and article 4 of Additional Protocol II, which provides that the following behaviour is prohibited: *violence to life, health and physical and or mental well being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment*”³¹⁴.

“As with the offence of inhuman treatment, no international instrument defines this offence, although it is specifically prohibited by article 5 of the Universal Declaration of Human Rights, article 7 of the ICCPR, article 5, paragraph 2, of the Inter-American Convention of Human Rights and article 5 of the African Charter of Human and Peoples’ Rights. In each of these instruments, it is mentioned in the same category of offence as inhuman treatment”³¹⁵.

“In the Tadic Judgment, Trial Chamber II provided its view of the meaning of this offence, stating that, according to common article 3, “the prohibition against cruel treatment is a means to an end, the end being that of ensuring that persons taking no active part in hostilities shall in all circumstances be treated humanely.” Thus, that Trial Chamber acknowledged that cruel treatment is treatment that is inhuman”³¹⁶.

“Viewed in the context of common article 3, article 4 of Additional Protocol II, the various human rights instruments mentioned above, and the plain ordinary meaning, the Trial Chamber is of the view that cruel treatment is treatment which causes serious mental or physical suffering or constitutes a serious attack upon human dignity, which is equivalent to the offence of inhuman treatment in the framework of the grave breaches provisions of the Geneva Conventions”³¹⁷.

³¹³ Ibid, paragraph 544.

³¹⁴ Ibid, paragraph 548.

³¹⁵ Ibid, paragraph 549.

³¹⁶ Ibid, paragraph 550.

³¹⁷ Ibid, paragraph 551.

“In light of the foregoing, the Trial Chamber finds that cruel treatment constitutes an intentional act or omission that is an act which, judged objectively, is deliberate and not accidental, which causes serious mental or physical suffering or injury or constitutes a serious attack on human dignity. As such, it carries an equivalent meaning and therefore the same residual function for the purposes of common article 3 of the Statute, as inhuman treatment does in relation to grave breaches of the Geneva Conventions. Accordingly, the offence of torture under common article 3 of the Geneva Conventions is also included within the concept of cruel treatment. Treatment that does not meet the purposive requirement for the offence of torture in Common Article 3, constitutes cruel treatment”³¹⁸.

Briefly, the ICTY Trial Chambers have held that the elements of Cruel Treatment are identical to those of Inhumane Treatment which have been defined “as an intentional act or omission which judged objectively is deliberate and not accidental and which causes serious mental or physical suffering or injury or constitutes a serious threat on human dignity”. The necessary “*mens rea*” requires that the perpetrator acted intentionally but as to the latter category, the perpetrator need not have the specific intent to humiliate or degrade the victim, but he must be able to perceive this as a foreseeable and reasonable consequence of his actions.

In circumstances of war not every aspect of human inconvenience imposed by one person on another will amount to inhumane treatment. As already stated “inhumane treatment” is not limited to causing physical injury or injury to health. Considering that few human rights are more important than liberty of the person, the court considers therefore that certain measures, for example, which might cut the civilian detainees off completely from the outside world and in particular from their families, or which cause grave injury to their human dignity, could reasonably be considered as inhumane treatment. Such measures must include arbitrary arrests, abductions and illegal detention.

In an international conflict the confinement of civilians is permitted in certain limited situations. In the case of internal conflicts, neither Common Article 3 to the Geneva Conventions nor Additional Protocol II specifically provides for the right of detention. Such right, however, can be implied from the language used and it can be inferred that arrests or detentions do not amount to a violation of international treaty law. Nevertheless, the right to be treated humanely is expressly guaranteed and further, such measures can only be taken in cases of absolute necessity and are subject to strict rules and procedural rights. Such provisions have reached a level as to form part of Customary International Law but given the Decisions of the Supreme Court of Kosovo, these do not currently apply in Kosovo³¹⁹.

³¹⁸ Ibid, paragraph 552.

³¹⁹ *Prosecutor v Andjelko v Kolasinac*, Supreme Court of Kosovo, Judgment, 9 January 2004, AP-KZ 230/2003; *Prosecutor v Veselin Besovic*, Supreme Court of Kosovo, Judgment, 27 May 2004, AP-KZ 80/2004; *Prosecutor v Miroslav Vukovic*, Supreme Court of Kosovo, Judgment, 15 July 2004, AP-KZ 183/2003; *Prosecutor v Latif Gashi et al*, Supreme Court of Kosovo, Judgment, 21 July 2005, AP-KZ 139/2004.

Evidence in support of the averments of cruel treatment and/or torture

The term "Detention Centre" was used throughout the trial to describe the place where those who had been taken away were kept and where the relatives of the detainees had access. The Prosecution case was that persons were held or detained by the KLA in the months of May, June and July 1998, in a compound in the village of Dranovc/Drenovac. The compound was described as a school building by some of the witnesses. Other witnesses even described the entrance leading to the prison and the actual state of the detention rooms. Some of the witnesses even identified the compound or part of it from pictures. The Prosecution case is that most prisoners or detainees were held at that compound with no facilities for basic amenities. KLA soldiers who were guarding the prison congregated in this compound and most interrogations and many beatings are alleged to have taken place there. References to detainees are to those who are alleged to have been held in this prison camp at various times relevant to the Indictment.

That a Detention Centre did exist in the Dranovc/Drenovac area at the critical times is not open to doubt. In the Dranovc/Drenovac Village and its surroundings during the critical period, the evidence presented by and corroborated by the testimony of various witnesses clearly establishes a regime of arbitrary abductions and detentions followed by beatings, in which the accused, as members of the KLA, participated. The evidence indicates that the victims were either abducted from their homes by armed KLA men and subsequently taken to the KLA detention centres in Dranovc/Drenovac, or that they were told to report to the KLA Headquarters. Others were abducted while searching for missing relatives. Still others were stopped in their vehicles. Some were even arrested when trying to join the KLA.

H [REDACTED] Rr [REDACTED] stated in regard to pictures 13, 15, 18 and 19, Exhibit D, that the detention centre was located there. The old school had two basements or cells downstairs and it was a prison or Detention Centre. The witness added that there was the entrance with some stairs. Looking at picture 13, Exhibit D, the witness showed the main entrance to the detention area. Such entrance can also be seen in pictures 15 and 18. The window to a detention room can be seen from picture 19.

Witness E [REDACTED] Rr [REDACTED] stated that there were two schools adjacent to each other, an old one and new one. The basement of the old school used to serve as a prison and these schools were located in Dranovc/Drenovac. The witness had been told that the basement of the old school was utilized as a detention facility.

M [REDACTED] B [REDACTED] was told by Bedri Zyberaj whom he saw in Dranovc/Drenovac that he was dealing with the issue of the abduction of A [REDACTED] B [REDACTED] and that he should go to the school/prison and ask for Selim Krasniqi (Celiku).

Witness N [REDACTED] R [REDACTED] said that when he went to look for M [REDACTED] R [REDACTED], he was conversing with Z [REDACTED] B [REDACTED] and he came to know that detainees were being held at the detention centre, at the school in Dranovc/Drenovac. He heard this from many people because everyone knew that the detention centre was there and that the detainees were being held at the school.

The witness described the school and pointed to picture 6, Exhibit D and to a small window in the basement, which is shown at the left on the picture, indicating the location where the detainees were being held. He then explained that he knew this because when he went to that location to bring clothes for M [REDACTED]. There he met with Z [REDACTED] B [REDACTED] to hand over the clothes to him, went up the stairs and overheard that the prisoners were there. He overheard that through the window. He turned around but there were guards standing at the door, this indicated to him that the prisoners were being held there.

According to Anonymous Witness "A" there was a detention centre near the school building in Dranovc/Drenovac that was occupied by the KLA. The soldiers whom the witness saw in Dranovc/Drenovac took her/him inside "that place where they were keeping and beating people". That place had three rooms and one corridor. The army was in one of the rooms and the police in the corridor, while the witness was in one of the two remaining rooms, which was 3x3 meters. There was nothing at all in that room with exception of drawers where books were kept.

Anonymous Witness "B" went to look for A [REDACTED] B [REDACTED] and s/he saw the school in Dranovc. S/he identified the school from picture 3, Exhibit C.

Anonymous Witness "E" confirmed there was a Detention Centre in Dranovc/Drenovac. S/he added that some people were also taken to the Malisheva detention centre, as there was insufficient space in the Dranovc/Drenovac Detention Centre.

According to Anonymous Witness "TT" the military police of the KLA was occupying the old school in Dranovc/Drenovac known as the Coal Barracks. This was where H [REDACTED] K [REDACTED] was taken.

When asked to describe the military headquarters in Dranovc/Drenovac village where s/he was interrogated and beaten, Anonymous Witness "TT" said it was a one-storey building and it was covered by a thin white concrete cover. It had timber walls and glass windows. There were privately owned houses near the headquarters building and down the road there was also the outpatient clinic of the village. The witness was reminded that before the Investigating Judge s/he identified the particular building or the part of it where s/he was detained and s/he was asked to put an "X" on that building or the part of the building which served as her/his detention cell and s/he said that s/he remembered that detail very well and "I remember having done so but was not prepared to speak further on this out of fear".

Anonymous Witness "X" was arrested in Reti and taken to the KLA headquarters there. It was a house and s/he was interrogated there. S/he was kept there two days and then

moved to the basement of the school building in Dranovc/Drenovac. The school building was occupied by the KLA. S/he was kept in a room with a small window.

Anonymous Witness "Z" gave a description of the old school building where the military police was located. That old building had a prison in the basement. The basement had a small window of 50x50cms and there were iron bars. There were also some iron bars at the window "to avoid leaving and entering the place." S/he added that the old school has now been repaired.

The witness identified the school from pictures 6, 7, 8 and 9, as the old school, now repaired. Picture 11 shows the toilet. Picture 13 shows the entrance door of the prison. Picture 18 shows the prison gate. Picture 19 shows the prison window. Picture 20 shows the new school and a little bit further, there is some kind of wall that is raised above the ground, and that was where the witness was sitting when s/he saw H [REDACTED] P [REDACTED].

Defendant Selim Krasniqi himself acknowledged the existence of a Detention Centre in Dranovc/Drenovac. When asked if he knew about the existence of Detention Centres being operated by the KLA in the Dranovc/Drenovac area in April, May or June 1998, he answered "absolutely not". When asked if he was aware of any kind of facility for detaining people in Dranovc/Drenovac village operated by the KLA during the same time frame the defendant answered "it depends on what the Public Prosecutor means by saying 'detention'. I have stated earlier and I repeat that at the time I went to Dranovc/Drenovac the KLA had a couple of offices. One of these offices was located at the old school in Dranovc/Drenovac. The aim of that office, which was led by G [REDACTED] P [REDACTED], was just to allow people to come there and give information and statements in order to help the civilians and to offer assistance".

He added "I never stated that people were kept for one or two days or one week. I am saying that what G [REDACTED] P [REDACTED] may have told me in conversation was that people would give a statement and then mind their own business. Maybe they offered information and then left. Based on what I know I have the impression that G [REDACTED] P [REDACTED] considered them as collaborators, his own collaborators. This is the way he described this to me and the impression I have today and I do not exclude the possibility that even if an enemy collaborator was present in his office, the intention was to correct him and put him in the right way so he could work for his own people and not to further collaborate with the enemy. This is the way I understand the psychology and the work of G [REDACTED] P [REDACTED]".

He was asked whether he stood by those statements and his explanation was the following, "I agree with the way I said it but not the way it is just read. It is written there that persons were kept but what do you understand with the word "kept"? I have also stated that people stayed there until they gave their statements or until they made their reports and again, I repeat, that I am saying whatever I have heard through G [REDACTED] P [REDACTED]. I have never said, and I am not going to say, that a detention centre existed in Dranovc/Drenovac. I have just said that there was an office used for the functions that I mentioned earlier".

The defendant did not know of anyone brought to the offices of the KLA in Dranovc/Drenovac against his or her will. He knew however that people went there voluntarily. He added "maybe there were cases where people were summoned but I am not aware of such cases and I don't want to believe that such cases happened". He did not know whether those people who came there were obligated to stay over for two or three days or more. Since he was not present he did not know what kind of people went there, but he thought that they were people who needed help or who wanted to offer information. They were people who had great respect for the KLA, or people who just wanted to see that office out of curiosity".

He was confronted with his police statement where he stated, when referring to the school building in Dranovc/Drenovac, that he knew "that they had some offices where they kept some people. G [REDACTED] P [REDACTED] was responsible for this". He also stated in that same statement that "G [REDACTED] P [REDACTED] had the right to take people to this building" and that G [REDACTED] P [REDACTED] once told him that "he brought Kosovo Albanians who were suspected to be collaborators of the Serbs and that some of them were caught in action".

In relation to the education/correction of suspected collaborators, he did not know what form that education took and whether it was done individually or in a group. It was never mentioned to him that any sort of method was exercised against the collaborators to make them correct their behaviour. As far as he knew those who spoke to the suspected collaborators did so very humanely. He knew that because he had been told this. He added that if any other method had been used he would have heard about it.

When he asked to elaborate on the expression 'other method' he stated "by 'other method' I imply any other means or way of dealing with them - any other form of communication with them that would be heard of course. I would like to emphasize this conversation was a very spontaneous conversation. I am saying the sporadic example based on what I have heard and what is in my memory because as you understand at the time we were preoccupied by other things. I mentioned yesterday that at that time I was dealing with many other more important things than this". He also added that when he mentioned 'method' and 'other method', he attempted to compare humane and inhumane methods. When asked whether he ever heard of any type of inhumane method used for correction purposes he stated that during the time he spent in Dranovc/Drenovac he did not see any extraordinary thing happening there.

When asked whether he agreed that G [REDACTED] P [REDACTED] had told him he brought suspected collaborators to this office, the defendant's answer was "I admit that he had conversations with such people as well and it seemed to me quite normal". He also added that he had not seen any enemy collaborator, but did not exclude the possibility that an enemy collaborator was present in the office of G [REDACTED] P [REDACTED]. The intention was to correct that collaborator and put him on the "right way". He explained that he could not exclude that possibility because G [REDACTED] P [REDACTED] had told him there were people who brought information to that office and amongst them, were also people who previously used to collaborate with Serbia. He maintained that he had never seen and was not aware of anybody being taken to these offices against their will to be interrogated.

In relation to the collaborators that G■■■■ P■■■■ might have mentioned, he did not know whether they were brought to him or who brought them to G■■■■ P■■■■'s office. When he was asked whether it was the military police, he stated he did not want to speculate and he repeated he did not know. He was referred to his police statement where he had said that he did not know who brought the collaborators to the office, but it could have been a military police and the following question was put to him by the Prosecutor, "Why would you say to the police at that time that it might have been a military police and you are so certain now? Was this just a guess?" His answer was that even at that time he did not know whether a military police force had been established or not. He was not aware if the KLA ever took punitive action towards collaborators. In May and June 1998, he did not know anything about members of the Dranovc/Drenovac unit detaining civilians in or around Dranovc/Drenovac.

He was very close to G■■■■ P■■■■, a very close friend as well as a co-fighter with whom he came from Albania to Kosovo. He agreed that given the nature of the cause for which the KLA was fighting at the time, the interrogation of suspected Serb collaborators was a vital component of the fight of KLA. When he was asked, given his close relationship with G■■■■ P■■■■, whether he was telling the Court that G■■■■ P■■■■ never mentioned this important aspect to him, he answered "I didn't say he never mentioned it, he has mentioned it to me. However, if we go back to the nature of the way I explained this issue yesterday to the Public Prosecutor, in that way those collaborators whose names he didn't mention to me volunteered to give information of their own free will. And any one of them, considering the KLA policy, was subject of the education of the KLA in order to make them work for their people. That is how I got that information. However, we never spoke specifically of any name or any certain case like this". On the rare occasions that Gani Paqarizi allegedly spoke about interrogations he didn't mention any name on that particular point, but he mentioned names of his friends.

The circumstances of the disappearance as described by a number of witnesses.

The circumstances of the disappearance of Sh■■■■ Sh■■■■ as described by H■■■■ M■■■■ cannot be doubted. Both witnesses H■■■■ M■■■■ and F■■■■ H■■■■ stated that Sh■■■■ Sh■■■■ was not allowed to go back with them after their trip with him to Dranovc/Drenovac. The significant part of the testimony of H■■■■ M■■■■ is the fact that a soldier told him "you go home now for this is a very important individual perhaps much more important than you" and the witness then left. According to M■■■■ Sh■■■■, the wife of Sh■■■■ Sh■■■■, H■■■■ M■■■■ had told her that he could leave but that Sh■■■■ would have to stay behind. The father of Sh■■■■ Sh■■■■, R■■■■ Sh■■■■ had seen the car of Sh■■■■ Sh■■■■ in Dranovc/Drenovac when he went to look for his son and a person he did not know told him that Shaban was there.

Anonymous Witness "A" saw B■■■■ B■■■■ in a mountainous area where s/he was taken after being detained and s/he saw blood on the face of B■■■■ S/he was handed over the bloodied shirt of B■■■■ which s/he identified in court. This was corroborated by Anonymous Witness "B" at the trial.

Anonymous Witness "B" stated that on 3 June 1998, KLA soldiers in green army clothes came to her/his brothers' house and they shot in the air three times. When B [REDACTED] B [REDACTED] went out of the house and disclosed his identity, they told him he should accompany them to the headquarters. B [REDACTED] asked them whether he should take his car but they replied in the negative and said that they had their own car. Then they took B [REDACTED] to Dranovc. Witness "B" explained that people saw B [REDACTED] in Ratkovc/Ratkovac for ten minutes and then he was taken to Dranovc. In Ratkovc, B [REDACTED] B [REDACTED] was told by the people that took him that they were going to take him to Dranovc. The following day at 6:00 in the morning the witness headed for the headquarters in Dranovc/Drenovac and asked for B [REDACTED]. S/he was told that B [REDACTED] was going to be kept for two hours or two days and then would be released. The witness then returned to his/her village in Brestovc/Brestovac. The witness went there several times to look for B [REDACTED]. S/he saw B [REDACTED] on 13 July 1998.

Anonymous Witness "TT" described the circumstances of the disappearance of H [REDACTED] K [REDACTED] and confirmed the date after her/his memory was refreshed. Witness "TT" saw Hysen Krasniqi in what s/he called a prison, more precisely in a room upstairs above the prison, for 15 minutes.

Anonymous Witness "N" stated that Agron Krasniqi, Z [REDACTED] B [REDACTED] and another person came on 4 June 1998 and took H [REDACTED] K [REDACTED] away. S/he went to look for him with Anonymous Witness "TT" and it was the latter who did the talking. Anonymous Witness "TT" talked to Isuf Gashi, then Selim Krasniqi and Bedri Zyberaj. Anonymous Witnesses "N" and "TT" again went to Dranovc/Drenovac on some other day. There was a commander called Z [REDACTED] K [REDACTED] and somebody called P [REDACTED]. They were allowed to see H [REDACTED] K [REDACTED]. The visit lasted about twenty minutes. Anonymous Witness "TT" arranged for Anonymous Witness "N" to visit H [REDACTED] K [REDACTED] and the visit permission was given by G [REDACTED] P [REDACTED].

The day after the abduction of B [REDACTED] B [REDACTED] on 3 June 1998, Anonymous Witness "A" went to Dranovc/Drenovac to look for him. When s/he reached Dranovc/Drenovac some soldiers arrested her/him and took him to a basement where they were detaining people. S/he was kept there for three days and then released. During the first three days of her/his stay at that place, there was nobody else there.

The witness also identified H [REDACTED] P [REDACTED], from picture 3, Exhibit B and stated that it was the same person that s/he had seen when s/he was in detention and added "to the best of my recollection it was the same person but I remember when I saw him at that time he was covered with blood".

While being held in Dranovc/Drenovac, Anonymous Witness "E" heard about H [REDACTED] P [REDACTED] and H [REDACTED] D [REDACTED]. The latter two left and never came back. But while Anonymous Witness "E" was in the basement in Dranovc/Drenovac, none of the people holding her/him in detention mentioned the name H [REDACTED] P [REDACTED] or H [REDACTED] D [REDACTED] or any other detainee's name to her/him. There were 20 other persons detained as well. They were from Brestovc/Brestovac, Dranovc, and Senovc and from other villages. S/he did not

know all of them but s/he mentioned a few names and one of them was Murat.

Since Anonymous Witness "E" had stated that s/he could not see anything from the detention, s/he was asked how s/he became aware of the presence of other detainees and how s/he could mention certain names. The witness gave the following explanation: "there were people from other villages in detention but I did not know them, how can I say things about the people whom I don't know" and added "I have heard that many people were held in detention and there were also people I have not known".

Though the evidence of Anonymous Witness "E" appears to be contradictory the Court considered that this witness was testifying to events that s/he had heard and perceived whilst being in detention in difficult circumstances. The Trial Panel had no reason to doubt the evidence given by the witness in reference to three victims, namely H█ P█, H█ D█ (meaning from Denje) and M█. When the witness stated "there were people from other villages in detention but I did not know them, how can I say things about the people whom I don't know" and added "I have heard that many people were held in detention and there were also people I have not known," it was clear that s/he was explaining in an honest way what s/he had actually seen. That spontaneous explanation added to the credibility of the witness. The evidence was considered reliable to establish the presence of H█ P█, H█ from D█ and M█ at the detention centre.

Anonymous Witness "Z" gave the circumstances of the disappearance of H█ P█ and even went to look for him. Anonymous Witness "Z" met defendant Bedri Zyberaj, who told the witness to go to the police. On one occasion when they went there, one █ said, "Anyone can go and see H█", but Bedri Zyberaj said, "They can see H█ but H█ cannot see them".

After leaving Bedri Zyberaj the witness and a friend went to the old school where the police station was situated and they met Selim Krasniqi who was wearing a military uniform and had a knife at his waist. S/he confirmed that s/he had said the following to the Investigating Judge, "█ B█ told us that Agron Krasniqi and █ are the ones who dealt with the maltreatment and the beating up, if such had been done". █ said that H█ was in the hands of the police but did not give any reason for that and the witness did not ask for any either. The witness was reminded of the testimony given to the Investigating Judge that █ came and said "H█ had done nothing wrong but if you bring N█ P█ you could take H█ home right away". The witness agreed that s/he had said so and explained "everything I said at that time I could repeat again but a long time passed since then and maybe I have forgotten couple of things".

At the time the witness saw H█ P█, his hands were tied or handcuffed from behind when they were taking him to █ and Agron Krasniqi was following him. Though the witness saw H█ P█ from a distance of 50 or 60 metres s/he noticed that "his facial expression was not good". On one occasion the witness went to give a repaired dental bridge to H█ P█ and saw defendant Selim Krasniqi again.

The witness met Z■■■■ B■■■■ and Selim Krasniqi on 12 or 13 June 1998. When the witness went to the location of the cooperative, he asked to see the head of the police and they told him that he was not here and to wait downstairs. In the meantime Selim Krasniqi arrived in a white BMW and went upstairs. Persons whom the witness believed were police officers informed Selim Krasniqi that the witness was waiting downstairs and Selim Krasniqi came downstairs and the witness asked him about H■■■■ P■■■■. Selim Krasniqi said that some people from the headquarters were there on the previous day and that they were waiting to receive information. S/he was told by Selim that all prisoners had been removed from Dranovc/Drenovac to Malishevo/Malisevo.

Anonymous Witness "D" went to look for H■■■■ P■■■■ and saw Selim Krasniqi who told her/him he did not know anything about the fate of H■■■■. The witness then replied that s/he would be looking for H■■■■ through the Red Cross. Selim Krasniqi told him/her off and the witness left. At the time s/he saw Selim Krasniqi, the latter was wearing a uniform with a KLA emblem on the arm and cap, and he was carrying a Kalashnikov.

Witness E■■■■ Rr■■■■ saw defendant Agron Krasniqi and one Z■■■■ B■■■■ abduct M■■■■ Rr■■■■. When asked why he had not stated in a prior testimony that he had seen these persons, he explained: "When I testified in 2004 I was told that there was another witness regarding M■■■■ so I was told that there is no need for me to testify". The Trial Panel had no reason to believe that the witness was fabricating evidence. It is quite natural for a witness to answer questions that are asked of her/him. As was pointed out by the ICTY³²⁰ "It has been recognised that 'it lies in the nature of criminal proceedings that a witness may be asked different questions at trial than he was asked in prior interviews and that he may remember additional details when specifically asked in court'³²¹".

By 4:00pm on the same day the witness and her/his uncle N■■■■ went out to look for him. They went to the office of the area. There they asked Z■■■■ B■■■■ about M■■■■ and he replied, "He is doing fine the investigations are in process".

On 11 June they went out to look for M■■■■ again. They went to the cooperative and there they saw Bedri Zyberaj who was Political Commissar. When witness H■■■■ Rr■■■■ asked Bedri Zyberaj about his father, Bedri Zyberaj told him told him, "Every single person fifty years and above, is to be held responsible".

In the presence of H■■■■ Rr■■■■, N■■■■ told Bedri Zyberaj "What did that person do, why have you taken him." Bedri Zyberaj replied "During 1992 you told me 'don't you dare driving the tractor in my piece of land'". The son of the witness's uncle had a fight with the children of Bedri Zyberaj. The latter added "I am the one who took your father away you, do what you have to do, now leave".

Defendant Bedri Zyberaj stated that it was a fact that witnesses H■■■■ and N■■■■ came only once to see him on the premises of the cooperative during the summer of 1998 and they requested that their families be provided with assistance, which the KLA offered to

³²⁰ Fatmir Limaj et al, ICTY Trial Judgment, 30 November 2005, Case No. IT-03-66-T.

³²¹ *Ibid*, paragraph 12 (quoting Naletilic Trial Judgment, paragraph 10).

them at that time.

The witness H■■■■ Rr■■■■ went to look for his father again on 12 June 1998, along with N■■■■. They brought some cigarettes and clothes to his father M■■■■ and gave them to Islam Gashi and Z■■■■ B■■■■ who were in the yard of the school. After doing so they went home.

Then Bedri Zyberaj told them “M■■■■ Rr■■■■ is here, and the police are dealing with him, now you may go out. I have no competences, I am here as a warehouse keeper, the police are dealing with him”³²². The witness and H■■■■ went to see B■■■■ Z■■■■ a second time on the following day, a Friday. They again told him “We are here to learn as to what happened to our brother, whether he is dead or alive and where are you keeping him”.

Bedri Zyberaj then told H■■■■ “During 1992 you did not allow me to use the tractor in your piece of land, and your brother and your uncle’s son have harassed my kids as they were in the yard. Therefore I was obliged to return from that piece of land therefore I ran into a meadow, I got stuck in there. I was looking forward to this day, I was expecting this day, for this reason I have taken away your father, so you do what you have to do”.

Bedri Zyberaj replied, “Yes, I have told your brother because he was here to see me because your brother works in the Secretariat”.

During the second or third attempt to find M■■■■ the witness was coming from the cooperative when he saw Islam Gashi coming from downtown. Islam Gashi was a police officer in the area. In view of the fact that he had told the Investigating Judge that he had seen Islam Gashi and Z■■■■ B■■■■ seated on chairs on the stairs at the old school, he was asked to explain where and when he in fact saw Islam Gashi. He explained that he might have misunderstood the questions of the Investigating Judge and that he answered the question of the judge in a general way.

Anonymous Witness “X” was arrested in Reti and taken to the KLA headquarters located in a house there. S/he was interrogated and asked whether s/he had cooperated with the Serbs. When Anonymous Witness “X” was asked if s/he was beaten during his/her detention, s/he stated that this did not happen. S/he could hear others being beaten up, but could not see anyone being beaten.

To the Investigating Judge, Anonymous Witness “X” had stated on 10 September 2004 that s/he was beaten twice a day when s/he was in the school basement in Dranovc. Anonymous Witness “X” had also told the Investigating Judge that s/he had seen M■■■■ being beaten also. S/he also added the assailants used a wooden stick and beat them on the back mostly. When asked to explain the departure from that statement at the trial, Anonymous Witness “X” stated “I have probably forgotten many things since then. It was long time ago. Perhaps if you remind me I could improve myself”.

³²² See Trial Minutes of witness H■■■■ Rr■■■■ 15 December 2005, page 7.

Anonymous Witness "X" added that the assailants would beat her/him whenever it pleased them and that the beating took place once a day or once a week. S/he was detained for one month in room separate from the other detainees and with no window. During her/his detention s/he was getting food regularly and had to sleep on a piece of wood as there was no bed.

In relation to the contradictions in the testimony of the witness, the Trial Panel was of the view that they did not affect that testimony adversely. It was obvious that the witness was suffering from memory lapses and s/he was candid enough to make an honest statement about the lapses when s/he stated "I have probably forgotten many things since then. It was long time ago. Perhaps if you remind me I could improve myself".

On the day that Anonymous Witness "X" was brought to the basement where s/he was detained, s/he saw M [REDACTED] there in the same room. Anonymous Witness "X" could not give her/his family name. The witness learnt from the detainees that M [REDACTED] was from Dranovc/Drenovac. M [REDACTED] and another detainee came together after ten days. It was daylight when Anonymous Witness "X" was taken to the room and s/he could see both of them. The witness described M [REDACTED] as a 50 year old person, short and corpulent and identified him from picture 8, Exhibit B.

The defence sought to find a contradiction in the testimony of Anonymous Witness "X" on the circumstances in which that witness saw M [REDACTED]. The Trial Panel was not of that view. Anonymous Witness "X" was only trying to give details of the circumstances and this did not detract from the core testimony that s/he did see M [REDACTED] at the Detention Centre.

Witness Zenel Tarajani explained the circumstances of the abduction of H [REDACTED] T [REDACTED] and Anonymous Witness "X" saw H [REDACTED] being beaten when s/he was detained.

After the abduction of A [REDACTED] B [REDACTED], witness M [REDACTED] B [REDACTED] went to look for him and met Bedri Zyberaj. The witness met Bedri Zyberaj because it was a very well known name and everyone would say that he was the leader. He asked Bedri Zyberaj "would it be possible to learn why A [REDACTED] B [REDACTED] was abducted and also his whereabouts?" At one point Bedri Zyberaj told the witness that he was not the one dealing with this issue but advised him that he should go to the school/prison and ask for Celiku, Selim Krasniqi. Bedri Zyberaj sent him to Selim Krasniqi because the latter "was the man in charge of the military police".

The witness asked Selim Krasniqi about A [REDACTED] B [REDACTED]. He answered: "there is no one here in Dranovc/Drenovac they are somewhere in Drenica. We cannot bring them over here given the very bad road conditions. This is why they are in Drenica". When asked what he meant by "they" the witness answered "I meant to say I was told that my father was somewhere in Drenica." The witness continued asking Selim Krasniqi other questions and he replied "I have nothing else to tell you. Come by the end of the week in order to clear out some things". The witness could not go at the end of the week as the Serbian paramilitaries had started their offensive and therefore could not get an answer to

his questions.

Anonymous Witness "X" was arrested in Reti and taken to the KLA headquarters there where s/he was kept for two days and then moved to the basement of the school building in Dranovc/Drenovac. The school building was occupied by the KLA. S/he was kept in a room with a small window.

Anonymous Witness "E" was detained in Dranovc/Drenovac in 1998 and s/he mentioned, among others, the names of detainees H■■■■ P■■■■, M■■■■ and H■■■■ D■■■■.

The witness was detained in a barrack where s/he met and was interrogated by the accused Bedri Zyberaj. Isuf Gashi then came by and told Bedri Zyberaj, "Why are you interrogating him, you better liquidate this jerk, get rid of her/him". The witness was alone then. Bedri Zyberaj accused her/him of being a spy for the Serbs. Isuf Gashi told him/her "You are spying against the KLA and you are working for the Serbs". S/he was interrogated only once.

When the witness was asked to explain all the departures and contradictions in her/his testimony and when asked whether s/he was lying and misleading the Court, s/he replied "I am not here to lie to the court but to tell the truth" and "I know that what I said is the truth and I am illiterate person and could not take notes so that I could remember things better". The Trial Panel considered the contradictions in the evidence of that witness, especially on whom, between Bedri Zyberaj and Isuf Gashi, had threatened him/her and how s/he came to know the nickname of Selim Krasniqi which he said was Celik.

The Trial Panel paid great attention to these issues. Was the witness making a mistake? Was s/he confused? Or was s/he trying to bring in details that s/he might have heard of from the last time s/he testified? The evidence of the witness was scrutinized in the context of his/her overall evidence. That witness contradicted himself/herself on other issues, namely whether s/he was beaten; an issue that is dealt with below.

The Trial Panel attributed these lapses to the passage of time, memory failure and illiteracy. After a thorough analysis of the evidence and judging from her/his demeanour, which could be gathered only through her/his voice as s/he was an anonymous witness, the Trial Panel formed the view that the witness was speaking the truth and was neither inventing anything nor telling lies. The Trial Panel considered that this witness was indeed illiterate. S/he was, as in the case of all the other witnesses, testifying to events that had occurred in 1998. In addition, the Court considered that, despite the fact that s/he had been kept and beaten in detention, s/he managed to give a coherent account of the events s/he had seen and experienced.

Agron Krasniqi and Z■■■■ K■■■■ came down to her/his village and took Anonymous Witness "U" to the military headquarters in Dranovc/Drenovac. Agron Krasniqi used a baton to beat her/him, whereas Z■■■■ K■■■■ used a 60 cm long metal tube. The witness stated that s/he had been beaten for half an hour. Later s/he stated that s/he was interrogated for 40 minutes by Selim Krasniqi and beaten for 15 minutes. S/he was

beaten once by Agron Krasniqi. After s/he had been beaten up s/he was taken back to Selim Krasniqi's office and the latter told him/her, "If anything else happens we are going to waste you" and s/he was released. Selim Krasniqi interrogated the witness at the military headquarters in Dranovc/Drenovac on whether s/he had bad relations with a KLA soldier and he asked the witness why s/he was not on good terms with that soldier. He then ordered two KLA soldiers to beat the witness up. G [REDACTED] P [REDACTED] was present during the interrogation.

The witness was reminded that on 6 August 2004, s/he had told the Investigating Judge that s/he had been interrogated for four hours, whereas in court s/he stated "to the best of my knowledge is that the interrogation took approximately 40 minutes. This is because of the notes that I had regarding that interrogation'. He declined to produce the notes for fear of revealing her/his identity.

The interrogation took place on 16 June 1998. When s/he was reminded that s/he had told the Investigating Judge that it took place on 16 July, s/he first gave the date 12 June and after consulting her/his notes s/he repeated it was 16 June. (The panel saw the notes: there was the date 16 June written on them and another date had been erased. This fact was communicated to all the parties).

There were two contradictions in the testimony of that witness, namely the date when s/he was interrogated and the length of the interrogation. Admittedly, the witness contradicted herself/himself on these issues. The Trial Panel took the view that if a witness genuinely makes a mistake, and honestly corrects it during the course of his or her testimony, that should not affect the testimony of the witness adversely.

Anonymous Witness "W" was told by a family member that s/he had to go to Dranovc/Drenovac. When s/he went there "they" told her/him "come in you traitor", and they told her/him that s/he had connections with the Serbs. The witness denied this. S/he clarified that when s/he used the word "they" s/he was referring to Selim Krasniqi. The conversation took place on the ground floor of the building that was being used as a detention centre.

Selim Krasniqi struck her/him on the nose and s/he fell from the chair where s/he was. Selim Krasniqi told her/him "I got angry with the words of them who told me you gave to the Serbs both dead and alive meat, and this means that you served your wife to them and gave them to eat something". S/he was slapped only once. S/he bled and took a handkerchief to wipe the blood.

During this meeting with Selim Krasniqi, he asked the witness how s/he was related to H [REDACTED] K [REDACTED].

Findings on the issues of torture and cruel treatment

It was submitted by the prosecution that all the elements of torture were present.

During the course of the investigation and trial, a number of prosecution witnesses testified about the circumstances of their abduction from various places, in and surrounding Dranovc/Drenovac, and the treatment meted out to them.

Though the combined evidence of these witnesses establishes the existence of a regime of punishment and as well as detention in an inhumane environment, the court was not convinced that these acts amounted to torture. One of the important prerequisites of torture is the infliction of immense suffering. The nature of the beatings, conditions of detentions resulting in injuries, does not, in the view of the Trial Panel, reach the threshold of the severe acts and suffering required for torture as explained in the jurisprudence of the ICTY.

On the other hand the Trial Court had no doubt that the treatment to which the detainees were subjected was implemented with such serious disregard for the detainee's fundamental rights and in such a degrading and humiliating manner, that clearly the fundamental rights of the detainees to humane treatment were violated. Together with other actions perpetrated during the critical period, they certainly constituted acts of cruel or inhumane treatment.

In whichever manner the abductions or detentions occurred, it would appear that they were "*ab initio*" illegal, given the fact that they were unjustified and unreasonable.

The participation of the accused in the offences

Were the defendants properly identified/ recognized?

The witnesses identified the defendants from photo line ups or photo spread.

Witness M [REDACTED] B [REDACTED] after describing the accused Selim Krasniqi identified him from a photo line up, Exhibit C.

Anonymous Witness "A" described Selim Krasniqi as a middle aged man, not fat, not slim, corpulent and approximately 170 to 175 centimetres tall (though s/he had mentioned 183 centimetres before the Investigating Judge). When s/he was shown the photo line up, Exhibit C, and asked if s/he could identify anybody from it, the witness stated "I cannot really see that well and therefore I am unable to identify any of the persons shown in Exhibit C. S/he confirmed however that s/he had properly identified that person before the Investigating Judge as her/his sight was better then.

Anonymous Witness "D" identified Selim Krasniqi in the photo line up, picture 8, Exhibit C.

Anonymous Witness "TT" identified Selim Krasniqi from the photo line up, picture 8, Exhibit C.

Witness M [REDACTED] B [REDACTED], after describing the accused Bedri Zyberaj, identified him from a photo line up, Exhibit C.

Witness N [REDACTED] R [REDACTED] said that he and Bedri Zyberaj are of the same age and he has known him since elementary school. He added that Bedri Zyberaj is slightly bald in front. He identified Bedri Zyberaj from the photo line up, picture 16, Exhibit C.

Anonymous Witness "B" described Bedri Zyberaj as a short person, not so tall, with a round shaped face and having a slightly dark complexion and he put his age at about 30 years. S/he did not know Bedri Zyberaj personally before the date s/he met him. The witness was presented with a photo line up (Exhibit C) and s/he indicated picture 15 or 16 as showing Bedri Zyberaj. The witness also identified Bedri Zyberaj before the police and had seen him on TV three or four times.

Anonymous Witness "D" identified Bedri Zyberaj in the photo line up, picture 16, Exhibit C.

Anonymous Witness "E" described Bedri Zyberaj as being of average height, bald and not fat. He added that s/he did not know how Bedri Zyberaj looked now because s/he had not seen him for six years.

The witness did not know Bedri Zyberaj before s/he met him and described him as bald, a bit short and possibly 40 years old or more. S/he identified Bedri Zyberaj from the photo line up, picture 16, Exhibit C.

H [REDACTED] R [REDACTED] identified defendant Bedri Zyberaj whom he has known since they were kids. He described him as a bit fat and a bit bald in the forehead area and that description was consistent with the appearance of the defendant.

Anonymous Witness "TT" described Islam Gashi as a tall person with black hair and identified that defendant from a photo line up, picture 27, Exhibit C.

Witness N [REDACTED] R [REDACTED] described Islam Gashi as having dark features, a round face and 1.75 or 1.80 meters high. The witness also stated that Islam Gashi and he came from the same place. He identified Islam Gashi from the photo line up, picture 27, Exhibit C.

Anonymous Witness "TT" described Agron Krasniqi as a person who was not that tall, short and young. S/he knew Agron Krasniqi from the village of H [REDACTED] K [REDACTED] and s/he knew him before the critical day. The witness identified Agron Krasniqi in picture 2 from the photo line up (Exhibit C) as the same person who took H [REDACTED] K [REDACTED] away³²³.

Agron Krasniqi is a cousin of witness N [REDACTED] K [REDACTED] and they have close family ties³²⁴. When he saw Agron Krasniqi he had black hair. He added that he is of average build and 1.65 meters tall. He identified Agron Krasniqi from the photo line up, picture 2, Exhibit

³²³ See Trial Minutes of Anonymous Witness "TT", 17 May 2006, page 38.

³²⁴ See Trial Minutes of witness N [REDACTED] K [REDACTED] 15 February 2006 page 9.

C and added “I am not certain 100% because I did not see him in a while but I think it is him”.

Anonymous Witness “N” identified Bedri Krasniqi from a photo line up, picture 16, Exhibit C.

Witness E [REDACTED] Rr [REDACTED] identified defendant Agron Krasniqi from a photo line up, picture 1, Exhibit C.

H [REDACTED] Rr [REDACTED] did not recognize Agron Krasniqi right away for he did not know him. He learnt who Agron Krasniqi was, when the bombing started and the villagers were obliged to leave their village for Dejne. He could not describe Agron Krasniqi because that was difficult after seven years and he had not seen him over that period.

In all the cases the witnesses had seen the defendants, whom they identified/recognized from the photo line up during the trial. It was more a process of recognition than identification for the first time. Nonetheless the Trial Panel considered the word of warning of the ICTY with regards to the use of photo line up or photo spread for the purpose of recognition or identification in the case of Prosecutor v Fatmir Limaj et al³²⁵:

“A particular concern with photo spread identification is that the photograph used of the Accused may not be a typical likeness even though it accurately records the features of the Accused as they appeared at one particular moment. To this, the Chamber would add, as other relevant factors, the clarity or quality of the photograph of the Accused used in the photo spread, and the limitations inherent in a small two-dimensional photograph by contrast with a three-dimensional view of a live person. It is also a material factor whether the witness was previously familiar with the subject of the identification, i.e. whether he is “recognising” someone previously known or “identifying” a stranger.²⁶ While the Chamber has not been prepared to disregard every identification made using a photo spread of one or more of the Accused in the present case, it has endeavoured to analyse all the circumstances as disclosed in the evidence, and potentially affecting such identifications, conscious of their limitations and potential unreliability, and has assessed the reliability of these identifications with considerable care and caution. Among the matters the Chamber regarded as being of particular relevance to this exercise was whether the photograph was clear enough and matched the description of the Accused at the time of the events, whether the Accused blended with or stood out among the foils, whether a long time had elapsed between the original sighting of the Accused and the photo spread identification, whether the identification was made immediately and with confidence, or otherwise, whether there were opportunities for the witness to become familiar with the appearance of the Accused after the events and before the identification, be it in person or through the media³²⁶”.

³²⁵ Fatmir Limaj et al, ICTY Trial Judgment, 30 November 2005, Case No. IT-03-66-T.

³²⁶ Ibid, paragraph 19.

The Trial Panel considered the testimony of Anonymous Witness "E" with regard to the identification of Selim Krasniqi in view of certain contradictions and departures from his/her previous testimony. In the testimony given to the Investigating Judge, the following appears in regard to the nickname of Selim Krasniqi, "*Destan Rukiqi (Defence Attorney)*: Could you state again for the court which name he was known at? "A": he was not known as Selim Krasniqi. He was known as ██████ (which means Danger in English). *Destan Rukiqi*: So on the day that you were stopped by B ██████ B ██████, you knew Selim Krasniqi only by the name ██████? "A": yes. *Destan Rukiqi*: is it true that ██████ hit you with a Kalashnikov butt? "A": if these were not true then why would I even bother to show up here today".

In the light of this evidence, s/he was asked to give further clarification on the nickname of Selim Krasniqi and s/he replied "I cannot remember everything because I am illiterate person and I am not educated". On further questioning s/he stated that Selim Krasniqi was Celik and that when s/he said ██████ it was a mistake because s/he could not remember everything.

With regard to the evidence of the other witnesses, the Panel noted that some of the witnesses frankly stated that they could not recognize or identify anyone because a long time had gone by. For example, when Anonymous Witness "A" was shown the photo line up Exhibit C and asked if s/he could identify anybody from it, the witness stated that "I cannot really see that well and therefore I am unable to identify any of the persons shown in Exhibit C. S/he confirmed however that s/he had properly identified that person before the Investigating Judge as his/her sight was better then.

In other cases, the witnesses stated that though they could identify or recognize the person from the photo line up, they expressed some reservations.

In the case of other witnesses, the Trial Panel was of the view that their good faith and honesty was a key feature of their evidence. None of them attempted to invent identification as it were. Each of the witnesses was able to give a fairly good description of the defendants they had seen. As pointed out above, each of the witnesses was honest enough to express reservations or inability in relation to the identification.

Forms of liability

Complicity

Article 22 of the CC SFRY provides, "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".

Article 22 declares criminally responsible individuals who jointly commit a criminal act by participating in the act of commission, or in some other way. Under Article 22, complicity exists simply when several people participate in the act of committing a crime and there is a conscious and willing act of associating with those participants with the

intent of jointly committing a certain deed. Participation and intent therefore are the key factors in establishing culpability for any crime. Thus, it follows that any type of activity of a single participant can render him or her an accomplice, if the deed occurs within the framework of mutual or joint performance, and if such participant exhibits the will or intent for committing a certain deed.

The commentaries state that “complicity exists when several people participate in the act of committing a crime. Thus, complicity is a conscious and willing act of associating with other participants, with intent of jointly accomplishing a certain deed. Such a situation exists when several people who meet all the requirements pertaining to the main actor of a particular deed jointly agree to act as accomplices”³²⁷. An accomplice is further described as someone who, together with the others, carries out the decided act performing it in such a “...way which labels him as a person with an important role in the process of the performance of the (criminal) deed. The fact that he is a participant of such a decision and a part of this process of realisation – in a decisive way makes him a perpetrator of the act, because he is thus in the position to – along with another person – hold the act of perpetration in his hands, i.e. to have authority (ownership of) over the act”³²⁸.

Complicity requires both a subjective and objective element.

Objectively, the evidence and testimony in the present case demonstrate a well organized coordination of activities against the victims, in which the same group of individuals regularly participated, in one form or another, in the commission of the crimes charged.

Admittedly, while there is no direct evidence of the defendants participating in a formal decision to arrest, detain, beat or treat the victims in an inhumane manner, there is sufficient evidence from the circumstances to conclude that there was a common aim by the group from the KLA in Dranovc/Drenovac, to arrest and detain members of the civilian population, and thereafter take them either to the KLA Headquarters or the Detention Centre in Dranovc/Drenovac, where they were mistreated.

The evidence indicates that the treatment meted out to and endured by the victims, was the product of a regular and organized method of dealing with individuals who were suspected by the KLA of being collaborators of the Serbs.

Furthermore, there can be no doubt that there was a Detention Centre in Dranovc/Drenovac. Time after time witnesses testified to either to being held in Dranovc/Drenovac in the old school building or of travelling either there or to the KLA Head Quarters to enquire about the detainees. The accused Selim Krasniqi, while denying knowledge of a Detention Centre, stated that the KLA occupied the old school building. He told the Court about seeing H [REDACTED] K [REDACTED] in the yard of the old school. He had heard of H [REDACTED] P [REDACTED]

³²⁷ Lubjsa Lazarevic, Commentaries on the Criminal Code of FRY, 1995, Art.22

³²⁸ Lubjsa Lazarevic, Commentaries on the Criminal Code of FRY, 1995, Art.22

the fact that they would be continued and of the ongoing abuse of detainees.

Criminal group (Joint Criminal Enterprise)

Article 26 of the CC SFRY provides as follows:

“Anybody creating or making use of an organization, gang, cabal, group or any other association for the purpose of committing criminal acts is criminally responsible for all criminal acts resulting from the criminal design of these associations and shall be punished as if he himself committed them, irrespective of whether and in what manner he himself directly participated in the commission of any of those acts.”

The Court relied on the reasoning of the Confirmation Judge³²⁹ that reads, “Article 26 of the CC SFRY is analogous to the doctrine of joint criminal enterprise (or common purpose or design), as interpreted by the ICTY in the Tadic case. According to this doctrine when a crime results from the action of a multitude of persons, all participants are equally responsible if they participate in the action whatever their position and extent of contribution and intend to engage in the common criminal action”.

The Tadic decision, ruled: “there is no necessity for this plan, design or purpose to have been previously arranged or formulated. The common plan or purpose may materialize extemporaneously and be inferred from the fact that a plurality of persons act in unison to put into effect a joint criminal enterprise...” Furthermore responsibility for a crime other than the one agreed upon or envisaged at the beginning may arise if it was foreseeable that such a crime might be perpetrated by one or other members of the group and the accused willingly took that risk.

Three types of joint criminal enterprise have been identified in the jurisprudence of the ICTY. They all require, as to the *actus reus*, a plurality of persons, the existence of a common plan design or purpose, which amounts to or involves the commission of a crime/violation provided for in Art 142 of the CC SFRY as well as Common Article 3 and Additional Protocol II, and participation of the accused in the common design.

In the first type of joint criminal enterprise the defendant, acting pursuant to a common purpose, intends to perpetrate a crime and this intent is shared by all co-perpetrators. Shared intent may be inferred from knowledge of the plan and participation in its advancement. In the second type of joint criminal enterprise the accused has knowledge of a system of repression or ill-treatment, in which s/he participates, and s/he intends to further the common plan to ill-treat. In such cases the requisite intent may also be inferred from proven knowledge of the crimes being perpetrated and continued, participation in the functioning of the system of ill-treatment, as well as from the position of authority held by an accused. The third type of joint criminal enterprise concerns cases in which one of the participants commits a crime outside the common design and the crime was a “natural and foreseeable” consequence of the common plan or purpose.

³²⁹ Ruling of Confirmation Judge, Timothy Baland, 21 May 2005.

The *mens rea* in such cases is twofold. First, the accused must have the intention to take part in and contribute to the common criminal purpose. Second, in order to be held responsible for crimes which were not part of the common criminal purpose, but which were nevertheless a natural and foreseeable consequence of it, the accused must also know that such a crime might be perpetrated by a member of the group, and willingly take the risk that the crime might occur by joining or continuing to participate in the enterprise. The presence of the participant in the joint criminal enterprise at the time the crime is committed by the principal offender is not required.

In the present case, the common criminal plan can be implied from the actions of the accused and other participants and was simple - the illegal arrest, detention of suspected collaborators, followed in some cases by their beating and cruel treatment and the keeping of the victims in detention without the provision of any procedural safeguards. The evidence demonstrates that the four accused from May through to September targeted Albanian civilians, perceived to be collaborators of the Serbs, for arrest, imprisonment and ill-treatment.

During the periods in which they were held, the detainees were consistently ill-treated in a manner and in conditions which were humiliating and degrading, in an effort to “correct” or “rehabilitate” them. The plan was clearly proved when considering the number of persons arrested and detained by the KLA group from Dranovc/Drenovac over the critical period, the similar manner and method of their arrest, the conditions that they were forced to endure, and the nature of the accusations.

Another piece of strong evidence is that the accused are named time and time again, either individually or in complicity with others, as those who carried out the initial arrest and detention, who participated in the running of the detention centre, or who were involved in interrogations and beatings. It can also be reasonably concluded from the number of visits made to the victims by friends and family to KLA in Dranovc/Drenovac, that the accused must have been aware that the seven primary victims and others held were being mistreated, beaten and held in difficult conditions, and that there was a substantial risk that this would continue if they were not released.

General Denial

All the accused denied the charges and qualified them as lies and fabrication. All the defendants have completely denied their implication and have taken the position that there has been a massive conspiracy to accuse them unjustly. They claim that they were without authority, without knowledge, not involved; that there was no Military Police; the KLA were not organized; there was no detention centre; no civilians were detained and there was no ill-treatment.

In addition, Defendants Agron Krasniqi and Islam Gashi raised an alibi as a line of defence. Defendant Selim Krasniqi raised an alibi in respect of a date in July as according to him and witnesses he called on his behalf, he was in Albania at the relevant time.

In the case of Agron Krasniqi he stated that he could not have been in the area of Dranovc/Drenovac at the time relevant to the indictment as he was studying in Pristina and traveling to his home village was very risky and difficult in view of the presence of the Serbs.

As for Islam Gashi his defence was that he had sustained serious injuries at the end of May 1998 and was almost handicapped in his movements and therefore could not have been at the places where the various witnesses had seen him. In support, he called a witness who attended to him initially, and Dr H [REDACTED] who treated him afterwards.

Though an alibi is commonly called a defence, it is still for the prosecution to negate it, provided that the accused has laid a foundation by adducing sufficient evidence to make the defence a live issue. This is not done casually. It requires particularized characterization of the place and activities undertaken by the accused at the time the offence was being committed. Though the burden always remains on the prosecution to negate the alibi, it is not enough for an accused to merely assert he was not at the scene of the crime; he must present evidence that would effectively exclude his presence at the scene of the crime without in any way having the burden of proof cast on him.

Fabrication Claim

Time and again the defendants stated through their questions or comments or testimony that the evidence led by the prosecution had been fabricated.

It was the view of the Trial Panel that there were no obvious similarities between the evidence given by the witnesses. The witnesses were careful to identify that which they had seen with their own eyes and admitted to those things, which they had not themselves observed but had been told by others, or inferred from their initial observations. When challenged with inconsistencies in prior statements given to the Investigating Judge, many witnesses were quite frank in correcting their earlier statements. Other witnesses alleged problems in translations, or that they had not been asked to elaborate at the time they were interrogated by the Investigating Judge. While inconsistencies in witnesses' evidence before the Investigating Judge and the main trial might suggest unreliability, they did not establish the allegation that facts had been fabricated.

Evidence implicating the defendants

Defendant Selim Krasniqi

According to Selim Krasniqi himself, he arrived in the Dranovc/Drenovac area around May 1998 to assist in the fighting. He claims to have been a simple soldier and was not assigned any specific duties. He served with the Dranovc/Drenovac Unit during the months of May and June and part of July 1998 when he then claims to have left for Albania, returning to Kosovo in or around 11 August 1998. He denied any knowledge of civilians being detained in Dranovc/Drenovac during the critical period and categorically rejected any suggestion that he was involved in such activities. Despite having referred

on a number of occasions during questioning by Police and the Investigating Judge to the existence of Military Police in Dranovc/Drenovac he sought to back track on their existence during the Main Trial.

He did acknowledge that collaborators were interviewed by G. P. with the purposes of bringing them back on the right track. He further acknowledged that the KLA occupied the Agricultural Building in Dranovc/Drenovac and had offices in the old school building, but sought to give the impression that he knew little about either and claimed not to have worked there. Apart from seeing H. K., he knew nothing about the other missing persons, although he did state that he had heard the name Sh. Sh. and that it was associated with collaborators. He later gave a contradictory explanation to the Panel about this. He stated that he had no difficulties with any of the locals.

The Trial Panel analysed this evidence in the light of the evidence of the various witness and the conclusion is that much of Mr. Krasniqi's denial rings hollow and untrue. The evidence of the defendant himself and the various witnesses heard, clearly indicate his active participation in the events. In some instances, the evidence points to the actual participation of the defendant Selim Krasniqi in the beatings and ill-treatment of the victims.

In his police statement, defendant Bedri Zyberaj stated that Selim Krasniqi "started to work at our HQ." The question arises why Bedri Zyberaj would mention this if it were not true. This is the first contradiction to what defendant Selim Krasniqi told the court.

On 2 June 1998, Sh. Sh. was detained when he went to meet the KLA in Dranovc/Drenovac. According to the testimony of the three Sh. family members, they were told by H. M., who had accompanied Sh. to Dranovc, that Selim Krasniqi or Celiku was one of those who had been responsible for or knew about the detention of Sh. H. M. denied this when called to give evidence and sought to blacken the name of the Sh. family suggesting that they had threatened him, but there is nothing to suggest that these witnesses are lying.

H. M.'s reported words are not sufficient by themselves to prove Selim Krasniqi's involvement in that or other events. However, there are a number of other corroborating factors that do confirm his presence there and involvement.

There was evidence that between 3 and 7 June 1998, B. B., H. K. and H. P. were abducted by Selim Krasniqi's co-defendants and detained at the old school premises in Dranovc/Drenovac. The presence of H. K. at the old school is confirmed by Selim Krasniqi himself, who told the police, the Investigating Judge and the Trial Panel that he saw H. K. as he was being brought to the old school.

Anonymous Witness "A", who had gone to the KLA in Dranovc/Drenovac on 4 June 1998 in search of B. B., testified to having been her/himself detained for three days during which time s/he met B. B., Sh. Sh. and a certain H. from

the village of Denje with KLA guards. Anonymous Witness "A" noticed B█████ B█████'s cheek all swollen, while Sh█████ Sh█████ and H█████ were full of blood. Anonymous Witness "A" testified that during those first three days s/he was beaten by three men, one of whom s/he consistently identified as Celik and whom s/he later learnt was Selim Krasniqi. Anonymous Witness "A" testified that s/he was released but was detained again some days later at Dranovc/Drenovac where s/he was again beaten by Celik and others.

On the second occasion, which appears to have been sometime around 10 June 1998, Anonymous Witness "A" again saw Sh█████ Sh█████ who s/he stated was covered in blood as well as another prisoner called H█████ P█████ who s/he described also as covered in blood. Anonymous Witness "A" became aware of their names while they were detained there and the names were later confirmed by family members of the victims.

Anonymous Witness "A" described Selim Krasniqi to the Panel as being between 170 and 175 cms tall, not fat, not slim, while s/he gave a slightly different description to the Investigating Judge. S/he was however not able to pick out the defendant Selim Krasniqi from a photo lineup presented to her/him during the investigation or main trial owing to her/his bad eyesight.

Both Anonymous Witnesses "N" and "TT" testified that on the day following the arrest of Hysen Krasniqi, they went to the Dranovc/Drenovac HQ where they met with various KLA members including Selim Krasniqi who told them he knew nothing about H█████'s disappearance, despite the fact that he had stated that he had seen H█████ the previous day. During the investigation, Anonymous Witness "TT" recalled that when s/he went and talked to Bedri Zyberaj, as suggested by Selim Krasniqi, Bedri Zyberaj told him/her that they should talk to Selim Krasniqi because this was his competence and he was the commander of the police.

Anonymous Witness "TT" also testified to the Investigating Judge that s/he went back on subsequent days and again spoke to Selim Krasniqi, who at that stage accepted to take a change of clothes and foodstuff for H█████. A number of weeks later, both Anonymous Witnesses "N" and "TT" were allowed to see H█████ and Selim Krasniqi was present. There was even evidence from Anonymous Witness "N" that it was Selim Krasniqi who arranged for them to see H█████. During her/his testimony to the Trial Panel however, Anonymous Witness "TT" claimed that s/he could not remember mentioning Selim Krasniqi during the Investigation. However, in her/his 2 June 2001 police statement s/he clearly mentions meeting and speaking to Selim Krasniqi on a number of occasions.

Additionally, Anonymous Witness "N" sought to depart from his/her earlier testimony implicating Selim Krasniqi, suggesting to the Trial Panel that s/he had mentioned Z█████ K█████ and not Selim Krasniqi. However, again in his 29 November 2001 police statement, when identifying the picture of Selim Krasniqi, s/he stated that s/he got permission from Selim to visit H█████.

Both Witnesses "TT" and "N" gave reasonably accurate descriptions of the accused, but more importantly were able to consistently identify the accused from the photographs

presented.

The evidence of Anonymous Witness "A" further implicates Selim Krasniqi in the detention of H■■ P■■ some days before 7 June 1998 following which s/he was apparently questioned as to her/his association with H■■ R■■, a policeman. S/he was released the same day. However Anonymous Witness "D" stated that P■■ was again detained on 7 June 1998 by the KLA and taken to Dranovc/Drenovac. Anonymous Witness "Z" also gave consistent testimony that s/he went to Dranovc/Drenovac on 16 June 1998 to look for H■■ P■■ who had been taken on 07 June 1998. On being given conditions for H■■'s release s/he returned a number of days later and spoke to Selim Krasniqi who was doing the negotiating. When Anonymous Witness "Z" told Selim Krasniqi that s/he could not comply with the conditions for the release of H■■, Selim Krasniqi replied: "that condition stands and if you bring that person you can have H■■". Anonymous Witness "D" claimed to have met Selim Krasniqi in June 1998 at which time Krasniqi assured her/him that P■■ was "safe and sound".

There is then the evidence of Anonymous Witness "E", who claims that s/he was taken by car to Dranovc/Drenovac during which time s/he was beaten by Selim Krasniqi and ■■■ (also known as G■■ P■■) an acknowledged friend and associate of Selim. In her/his 17 July 2004 police statement s/he stated that this occurred in mid June 1998. S/he was however unable to identify Selim Krasniqi from any photographs shown to her/him at any stage during the proceedings.

Anonymous Witness "U" further testified that in either June or July 1998, s/he was taken to the Detention Centre by Agron Krasniqi and another. S/he was interrogated by Selim Krasniqi, following which Selim Krasniqi ordered Agron Krasniqi and Z■■ B■■ to beat Anonymous Witness "U". During the investigation, Anonymous Witness "U" did not identify Selim Krasniqi from the photographs, but during the Main Trial s/he recognized Photo 8, which was the photo of Selim Krasniqi.

On the existence of the Detention Centre and the interrogation of people suspected of being Serb collaborators, the explanation of Selim Krasniqi that there was a centre where people would come to give statements voluntarily could not be accepted as this was in contradiction with what he had told the police on the questioning of suspected collaborators. Nor could that explanation be accepted in the light of the overwhelming evidence from some of the witnesses that they were told that the victims had been taken or were being kept for interrogation.

Selim Krasniqi explained that G■■ P■■ had never mentioned to him the presence and questioning of people at the detention centre. The Trial Panel took the view that this explanation was very unconvincing, given the close relationship between that defendant and G■■ P■■. In his 17 February 2004 police statement, he stated that the KLA was trying to correct people; that he knew that there were some offices where they kept people and that G■■ P■■ had told him once that he brought Kosovo Albanians who were suspected to be Serb collaborators there, and that some of them were caught in action. He visited G■■ in his office several times, and three or four times he saw that

Gani had people in his office whom he was questioning. He was asked whether he stood by those statements and his explanation was the following, "I agree with the way I said it but not the way it was just read. It is written there that persons were kept, but what do you understand with the word "kept"? I have also stated that people stayed there until they gave their statements or until they made their reports". The Trial Panel took the view that the defendant was caught in the maze of his own contradiction and having realized the consequence of his statement he tried to wriggle out of it by giving that explanation³³⁰.

The accused presented a number of alibi witnesses who testified that he went to Albania in early July. This evidence all came from former comrades in arms, close friends or current TMK officers with whom he had been serving at the time of his arrest. Witness M■■■ J■■■ came to know the accused, Selim Krasniqi, whom he met the first time on 8 or 12 August 1998 in Vlora³³¹, (situated south west coast of Albania). The witness went to Albania at the end of July or the beginning of August and he met Selim Krasniqi there between 8 and 10 August 1998.

Witness R■■■ R■■■ stated that he had met Selim Krasniqi in Tirana in July 1998. It could have been between 8, 9 or 10 July. He was not quite sure about the date. Then he stated "we entered Kosovo on 9 August 1998". His testimony right after was the following "We got into a taxi from Tirana. The taxi drove us to Kruma and then we got into another vehicle. From Kruma we went to a village named Vlora. There at that village we spent three or four hours approximately. That night I crossed the border while Selim Krasniqi remained in the village of Vlora. When I came to Kosovo, in Drenica two or three days later I heard that Selim Krasniqi was on his own way to Kosovo".

R■■■ L■■■ stated that he met Selim Krasniqi in Tirana some time in the first week of July and stayed together and met often until the last week of August in Tirana. Selim Krasniqi stayed in Albania for one month and the witness stayed longer. The witness did not know the address where Selim Krasniqi was staying. Selim Krasniqi decided to leave Albania and he left through Kukes (situated north east of Albania, almost on the border with Prizren in Kosovo) in the last week of August. The witness corrected himself and said it was in the "last bit of the first week of August" that Selim Krasniqi returned to

³³⁰ "If there was a detention centre of Dranovc/Drenovac of Zatriq, the suspect says that he knows that they had some offices where they kept some people. These offices were located in the school building approximately 500 meters away from the UCK HQ. G■■■ P■■■ was responsible for this, and he also has his office in the same building" and "Questioning: who kept some people there, the suspect says that only G■■■ P■■■ had the right to take people to this building. Questioning who were brought to this building, the suspect says that he does not know this. G■■■ told him once that he brought Kosovo Albanians who were suspected to be collaborators to the Serbian Forces, and that some of them were caught in action. Questioning, the suspects says that he does not know the names of any of them who were brought to G■■■'s office. The suspect says that he visited G■■■ in his office several times, and three or four times he saw that G■■■ had people in his office who he questioned. When this happened, the suspect talked to G■■■ about the reason for why the suspect visited G■■■ and the suspect then left immediately. What he saw, was G■■■ questioning like the report writer now is questioning him. He adds that he never saw anything else in G■■■'s office, and he does not know any of the people he saw in G■■■'s office." Extract from 17 February 2004 police statement of Selim Krasniqi.

³³¹ In the trial minutes that name has incorrectly been typed as Vlanae

Kosovo. Later he said that there are two main roads that lead toward the north border, Durres or Bajram Curri, but he did not know which one Selim Krasniqi took. Selim Krasniqi left Tirana with R■■■■ R■■■■. After the witness had given that answer, defence attorney for Selim Krasniqi intervened to say that the witness had not understood the question, but the witness repeated that Selim Krasniqi had left Tirana for north Albania with R■■■■ R■■■■.

The witness came to know that Selim Krasniqi entered Kosovo by the end of the second week of August, probably on a Saturday or Sunday. He got this information through the satellite phone from his brother, Fehmi. He could not give the date of that phone call and explained "that it could have been 11 or 12 August but "don't count me on that because it could be few days prior or two days after" though, he saw Selim Krasniqi and R■■■■ R■■■■ off after they had come to his office. The witness was unable to say what means of transport Selim Krasniqi used. He added that it could have been a taxi or that a transport by car had been arranged for him.

F■■■■ B■■■■ stated that on 6 July 1998, when he reached his place in the village, his wife told him there were two guests sleeping there. They had come there to proceed to Albania. The house of the witness was a guesthouse for soldiers who were passing through going to or coming back from Albania. The two guests were Selim Krasniqi and H■■■■ K■■■■. The witness informed some friends who accompanied Selim Krasniqi and H■■■■ K■■■■. The witness stayed behind and was not in a position to say if in fact the two guests did actually leave for Albania, but he got the information from other persons that these two had gone to Albania.

The Trial panel found that there was a material contradiction in the testimony of the alibi witnesses called by the defence, R■■■■ R■■■■ and R■■■■ L■■■■. R■■■■ R■■■■ stated that Selim Krasniqi and he left from Tirana to go to Kruma and from there to Vlora where they spent three to four hours. R■■■■ L■■■■ on the other hand, stated that Seim Krasniqi had left left Tirana through Kukes by taking the way through Durres. Two witnesses who witnessed the departure of Selim Krasniqi gave two different versions on the route and destination of the accused. The court found this evidence contradictory and unreliable and rejected it. The court was satisfied that the evidence presented by the prosecution relating to the presence of Selim Krasniqi in the Dranovc/Drenovac in July and August had overwhelming negated the alibi of Selim Krasniqi that he was in Tirana during the period mentioned by him.

The Indictment charges the defendants with events that occurred on dates ranging between May and August 1998. There is evidence that Selim Krasniqi continued his association with the Dranovc/Drenovac Unit in August 1998.

M■■■■ B■■■■ testified that he went to Dranovc/Drenovac in early August 1998 in search of his father, A■■■■ B■■■■ who been detained on 13 July 1998 and that Bedri Zyberaj referred him to the police and told him to ask for Celiku. He was told by I■■■■ B■■■■ that Selim Krasniqi was Celiku and that he was the main person in charge of police and that A■■■■ B■■■■ had been kept at Dranovc. When Selim Krasniqi arrived, he

told B [REDACTED] that his father had been moved to Drenica and that because of the condition of the road he could not be brought back. B [REDACTED] gave a description of Selim Krasniqi and identified him from the photo line up.

Anonymous Witness "D" also stated that s/he met Selim Krasniqi at Dranovc/Drenovac in September 1998 when s/he addressed an enquiry to him about H [REDACTED] P [REDACTED].

Anonymous Witness "W" testified that on 19 August 1998, her/his son had been beaten by Serbian police. He was then picked up by KLA soldiers who interrogated him as to what he told the Serbian police and why he was released. Her/His son told Anonymous Witness "W" that he was beaten by Selim Krasniqi in a school building in Dranovc/Drenovac village. When the son arrived home, he told Anonymous Witness "W" that s/he should go to the school the following day at 9:00 a.m. Anonymous Witness "W" did as told by his/her son. Upon her/his arrival at the school building, Selim Krasniqi called him/her a traitor and accused him/her of providing food to Serbians. Selim Krasniqi slapped him/her so hard that s/he fell from the chair. During the trial s/he identified Selim Krasniqi as the man who had beaten her/him from the photo line up.

Throughout the proceedings none of these witnesses demonstrated any known conflict with Selim Krasniqi. Although the quality of their identification differs, all appear to be certain that it was Selim Krasniqi whom they saw or were dealing with. There is no known reason why they would unnecessarily implicate him.

There was no evidence presented during the Investigation to directly implicate the accused in the abductions, detention and mistreatment of either M [REDACTED] R [REDACTED] or H [REDACTED] T [REDACTED], who were arrested and detained on 10 June 1998 and 2 July 1998 respectively. However, given the fact that these two detainees were taken to Dranovc/Drenovac at a time when the accused was known to be participating in other detentions and associated beatings, the Trial Panel found that it is reasonable to conclude that these two detainees were also detained as part of the wider joint criminal enterprise of which Selim Krasniqi was clearly a part.

From the combined evidence of the witnesses, as well as of the defendant, the Trial Panel found it proved that Selim Krasniqi was very much involved in arrests, detentions, beatings and ill-treatment during the period May, June, July and August 1998 of the victims mentioned in the Indictment, and that he actively participated personally or jointly in a joint criminal enterprise in these acts.

The evidence of the witnesses called by the prosecution, who have testified that they saw and had dealings with Selim Krasniqi in July, is so compelling that the alibi cannot stand.

Defendant Bedri Zyberaj

Bedri Zyberaj has declined to give any statement apart from that given to the police. In that statement he claimed to have become a KLA member in March 1998. His main task

was to help in the distribution of food and in the dissemination of information. He claimed that he never wore a military uniform and he had no specific rank. He acknowledged knowing Selim Krasniqi since June 1998 when the latter started to work at the KLA headquarters in Dranovc/Drenovac village. He presented witnesses who testified on his character; who stated that during the critical period, Bedri Zyberaj was involved in charitable work or managing a warehouse where relief goods were received, stored and distributed to villagers. Those witnesses never saw him in uniform or armed.

However, this image of a well meaning, educated man who knew nothing about arrests and detentions or beatings, and whose only function was to assist his fellow villagers in the humanitarian field is not supported by the evidence of other witnesses.

There is evidence that Bedri Zyberaj was influential and held some position of authority within the KLA. There is also evidence that Zyberaj regularly frequented or worked at the KLA headquarters in Dranovc/Drenovac. In numerous instances he was named as the person whom people coming to the KLA headquarters met or were referred to, as a first step in trying to locate their loved ones. There is further evidence to implicate him in the inhumane treatment that occurred there.

Anonymous Witness "B", the members of the Sh████ Family, M████ and H████ R████, Anonymous Witnesses "TT" and "Z", Witness M████ B████, when giving evidence on separate events, testified that they had local information that Bedri Zyberaj was either the Political Commissar or Secretary, or the person to go and see about the disappearances in Dranovc/Drenovac. When N████ R████ made enquiries about M████ R████, the evidence is that Z████ B████ said he would make enquiries with Bedri Zyberaj. Although there is no direct evidence to show that the defendant Bedri Zyberaj held any military or political rank, there are a number of separate instances when this is mentioned. This evidence was considered along with other evidence in establishing the involvement of the defendant Zyberaj.

There was indisputable evidence that Bedri Zyberaj was closely connected to the decisions that were taken regarding detainees. He was the one who told Anonymous Witness "B", when s/he went to look for B████ B████ in Dranovc/Drenovac, that "everything would be good in 4 to 5 days", implying that B████ B████ would be released within 4 to 5 days.

The Sh████ Family testified that they heard from H████ M████ that Bedri Zyberaj was one of those involved in detaining Sh████ Sh████ at Dranovc/Drenovac. When it was decided to let people visit H████ P████ in detention, the evidence of Anonymous Witness "Z" was that Bedri Zyberaj was not fully in agreement and was reluctant to allow this. N████ R████ and H████ R████ testified that Bedri Zyberaj acknowledged to them that he was the one who had taken M████ R████

Anonymous Witness "D" testified before the Investigating Judge that it was Bedri Zyberaj who issued the order to take the body mistaken for H████ P████ to Dranovc/Drenovac and then to the Serbian Police Station in Rahovac. This could not, as

pointed out by the prosecutor, be “the responsibility OR mandate of a warehousekeeper!”. Anonymous Witness “E” stated that when s/he was released from custody having been interrogated by Zyberaj and accused by him of spying for Serbs, it was Zyberaj who released her/him and warned her/him not to tell anyone as to what had happened.

In his statement to the Police, Bedri Zyberaj, in marked contrast to the other accused, acknowledged hearing about the existence of the Dranovc/Drenovac Detention Centre which was used to discipline soldiers. This piece of evidence, when taken together with evidence from a number of witnesses and defendant Selim Krasniqi, leads to the inescapable conclusion that the defendant Bedri Zyberaj knew that this centre was used for more sinister purposes. In some instances there was testimony that Bedri Zyberaj would send people looking for detainees to the Military Police in Dranovc/Drenovac and this was simply because he knew full well that it was the Military Police who held these detainees, and was acquainted with those involved.

Even though some witnesses may have never seen Bedri Zyberaj in uniform or armed, there is other credible and persuasive evidence to suggest that he was uniformed, armed and was not afraid to use his weapon in a threatening manner. Anonymous Witness “Z” saw Bedri Zyberaj dressed in military clothes when s/he met him at the headquarters in Dranovc. Anonymous Witness “D” also saw him uniformed when s/he went to Dranovc. Anonymous Witness “E” gave reasonably consistent evidence that, on having been detained in Dranovc, it was Bedri Zyberaj who interrogated her/him and threatened her/him with a weapon. This was before s/he was taken away and beaten in the basement of the old school by other KLA members whom s/he could not identify.

Bedri Zyberaj was a clearly well known individual. Nearly all witnesses who gave evidence either gave an accurate description of him or identified him from the photo line up. Bedri Zyberaj can be described as the common denominator in this case. He is mentioned by almost all the witnesses and had a key role to play in all the incidents which are averred in the Indictment. What he put forward as his defence amounts to a philosophical treatise on himself. He used that self glorification to explain that his educational background and his sense of philanthropy towards his people place him outside the ambit of the facts presented against him. The Court had no difficulty to reject that weak evidence as to his involvement in the offences, and to act on the testimony of all the witnesses who had seen and talked to him whenever they went to look for their relatives or next of kin that had been abducted or had disappeared.

On the totality of the evidence, it is clearly established that Bedri Zyberaj had an active and passive involvement in all the arrests, detentions and beatings that went on at Dranovc/Drenovac which are the subject of this indictment, and that it implicates him at the very least as a fully fledged participant in the joint criminal enterprise. The evidence also shows that he personally or jointly participated or was involved in the arrests, detention and inhumane treatment of M█████, Rr█████, H█████, P█████ and Anonymous Witness “E”.

Defendant Islam Gashi

As submitted by the prosecutor, in marked contrast to the other accused, the case against Islam Gashi is more complex given the presence of apparent exculpatory evidence. It was the view of the prosecution that in view of certain contradictions, uncertainties and inconsistencies in the evidence led on behalf of Islam Gashi, his overall account of events leads to the conclusion that the inculpatory evidence outweighs the exculpatory evidence presented.

According to Islam Gashi he joined the KLA as a simple soldier on 26 April 1998 and remained as such from the beginning to the end. His duties consisted only of manning the observation point on the Dranovc/Drenovac – Rahovec/Orahovac road in order to monitor the traffic and stop possible attempts of Serbian forces to penetrate the village; he and another person at that “point” were armed with a light mortar for that task. His evidence is that he never personally participated in any other KLA activity. He denied having any knowledge about a detention centre in Dranovc/Drenovac village.

The only interruption of his service in the KLA was because of the serious wounds which he received on 27 May 1998, while three other soldiers were killed. He was taken to the field ambulance of the KLA in Gajrak village where he was given first aid. After that he claims to have stayed in hospital for the time ranging from two weeks to one month because he was unable to walk. Later he was taken to his house in Dranovc/Drenovac where he continued his recovery. As a result of the injuries he sustained he was not able to continue service with the KLA for a long time and was not present at all during the critical period.

During September 1998 he was already fit enough to assist with the evacuation of people from the Gajrak area because of the Serbian offensive. After the September attacks he had to go to Albania and stayed there for about one and a half months. In January 1999, he returned to Kosovo and re-joined the KLA.

However, during the investigation, his co-accused Selim Krasniqi stated with certainty that Islam Gashi was assigned to the Military Police. That statement is supported by what N [REDACTED] Rr [REDACTED] from the village of Dranovc/Drenovac also told this Panel when he testified that Islam was a police officer.

Accused Islam Gashi testified during the investigation and trial that he did not have any proof of KLA membership issued to him; that the KLA soldiers usually did not even know each other, even in such a small village like Dranovc/Drenovac; that he had gone to collect weapons for the KLA on 27 May 1998 with a person (S [REDACTED] B [REDACTED]) whom he saw just for the second time in his life, but at the same time who he knew was in charge of supplying weapons for KLA. On the day when he risked his life, he did not even know where they were going to get the weapons and where they should have been delivered.

According to the statement of K [REDACTED] P [REDACTED], Islam Gashi was still able to reach his place on foot, even though it was immediately after receiving the injuries on that critical night,

when he walked to his house from the scene of shooting. There is also the testimony of Dr. H [REDACTED] who treated Islam. According to Dr. H [REDACTED], the medical unit did not have the proper equipment to make a clear assessment of the seriousness of his wounds. They were cleaned, the bleeding stopped, and pieces of projectiles were removed and bandaged. Dr H [REDACTED] stated that Islam was hospitalized immediately afterwards and he saw Islam each day for a number of weeks while he did his rounds.

Anonymous Witness "A" stated that s/he was beaten on 4 June 1998 by Islam Gashi, who used a baton with wires wrapped around it, and by two other KLA soldiers. On or about 10 June 1998, s/he was again brought to the KLA Headquarters in Dranovc/Drenovac and beaten again by Islam Gashi and others. While s/he was not able to identify Islam Gashi on the pictures or give an accurate physical description of the defendant her/his reference to Islam as to "Islam Isufi", whose father's name was Isuf Sherifi, was definite and left no room for uncertainty as to who he meant.

Islam Gashi was also coincidentally seen on 4 June 1998 by Anonymous Witness "N" and Anonymous Witness "TT" who both witnessed the abduction of Hysen Krasniqi and identified Islam Gashi as one of the abductors. Anonymous Witness "N" also met him on another occasion, about 3 weeks later, when the defendant, along with other KLA operatives, was present in the room where the Anonymous Witness "N" met with the victim H [REDACTED] K [REDACTED]. This is corroborated by Anonymous Witness "TT" as they were together in their attempts to locate and free the victim. Anonymous Witness "TT" told of seeing Islam in the old school yard with friends carrying a crutch. Anonymous Witness "NN" and Anonymous Witness "TT" both identified the defendant on the photo lineup and described him. Anonymous Witness "TT", who was her/himself a KLA soldier, mentioned that s/he saw him in the Military Police compound in the village with part of his face covered after the injury. This witness did not know the name of one of the abductors, and called him "Islam's uncle's son". In fact that was B [REDACTED] G [REDACTED], who is a relative of the former co-defendant Isuf Gashi. That clearly shows that Anonymous Witness "TT" knows the members of Gashi's clan.

Witness N [REDACTED] Rr [REDACTED] also stated that he had seen Islam Gashi a week later, on 11 June 1998, when he went to the detention centre in the Dranovc/Drenovac village to look for his brother/victim M [REDACTED] Rr [REDACTED]. Islam Gashi was standing near the so-called "office of the area", was in uniform, and with no visible signs of wounds. He also picked out Islam Gashi's picture from the photo line-up and gave his description.

Islam Gashi's presence at the detention centre is further corroborated by the testimony of H [REDACTED] Rr [REDACTED] who recalled that he saw Islam Gashi at the detention centre on 12 June 1998, when he, together with N [REDACTED] Rr [REDACTED], came again to look for the victim and brought him fresh clothes. They gave the clothes to the accused Islam Gashi and Z [REDACTED] B [REDACTED]. Again the witness also described the accused and recognized him on the picture from the presented photo line-up. This witness is also from the same village with the defendant, and referred to Islam Gashi as the "son of Isuf Gashi", who is a relative of Rr [REDACTED]'s family.

E█████ Rr█████ also saw Islam Gashi in similar circumstances when he went to take clothes to M█████

Anonymous Witness "Z" saw Islam Gashi sitting in a car with ██████ on the day when the body, which was wrongly believed to be H█████ P█████'s, was found. H█████ P█████ had been abducted on 7 June 1998 and this was a number of days later. He did not notice any signs of the injuries since Islam Gashi did not step out of the car.

There is no doubt that the defendant was injured during the incident on 27 May 1998. There is also no reason to believe that all the witnesses who stated that they had seen Islam Gashi at different places were either lying or falsely accusing him. None of the witnesses had any known conflict with Islam Gashi. Admittedly no medical documents describing his wounds were presented by the defence to prove the kind and seriousness of the injuries he sustained. The medical documents from the United States that were produced provide an idea of the condition of his injuries as they appeared in 2002.

The Panel was of the view that there was no reason to reject the evidence of the witnesses who testified to having seen Islam Gashi. From the combined evidence of the witnesses, as well as of the defendant, there is evidence to implicate the defendant in arrests, detentions, beatings and ill treatment and therefore that he participated personally or jointly in a joint criminal enterprise during the critical period.

The Panel also considered the evidence of the defendant on his injuries and his incapacity to move around together with the evidence of the two witnesses called on his behalf, Dr. H█████ and K█████ P█████. The Trial Panel could equally find no reason to reject that evidence. It is presumably for that reason that the prosecutor very fairly submitted that if, notwithstanding the evidence of the prosecution, there was any doubt in the mind of the Court, the accused must be entitled to the benefit of that doubt.

Since the evidence of the prosecution and that of the defence stood on an equal footing the Trial Panel had no alternative than to give the defendant the benefit of the doubt on the basis of the *in dubio pro reo* principle.

Defendant Agron Krasniqi

There is evidence to prove that at all times material to the current Indictment, Agron Krasniqi was a member of the KLA Military Police unit operating in both Denje and Dranovc/Drenovac village. Several witnesses testified about Agron Krasniqi acting as KLA Military Police, actually arresting Kosovo Albanian civilians, or acting as a guard at the Detention Centre in the Dranovc/Drenovac village.

Even his co-defendant Selim Krasniqi stated that Agron Krasniqi was assigned to the Military Police unit together with Islam Gashi.

His participation in abductions was first evidenced by Anonymous Witness "N" who stated to the court that Agron Krasniqi, together with Islam Gashi, Z█████ B█████ and

B [REDACTED] G [REDACTED] abducted the victim H [REDACTED] K [REDACTED] on 4 June 1998.

Anonymous Witness "TT" (who was a KLA member her/himself) confirmed the statement of Witness "N" regarding the abduction of H [REDACTED] K [REDACTED]. Both identified the defendant from the photo lineup.

Agron Krasniqi was seen again by N [REDACTED] Rr [REDACTED] who consistently identified Agron Krasniqi as one of three abductors who took away his brother, M [REDACTED] Rr [REDACTED], on 10 June 1998. This witness knew Agron Krasniqi from before the events, gave a good description of the defendant and identified him from the photo lineup.

H [REDACTED] Rr [REDACTED] also witnessed the abduction of M [REDACTED] Rr [REDACTED] and fully corroborated N [REDACTED] Rr [REDACTED]'s statement.

Anonymous Witness "U" testified that on 16 June 1998 s/he was abducted by Agron Krasniqi and Z [REDACTED] B [REDACTED] and brought to the headquarters in Dranovc/Drenovac village where s/he was interrogated by Selim Krasniqi. Selim Krasniqi ordered Agron Krasniqi and Z [REDACTED] B [REDACTED] to beat Anonymous Witness "U". They beat Anonymous Witness "U" with a baton for half an hour. This witness also knew Agron Krasniqi from before and additionally gave a good description of him. The Trial Panel had no doubt on this identification evidence. Indeed it would be preposterous to conclude that this witness, or anyone else, would forget or mix-up the face of some known person who arrested, detained and beat him.

Anonymous Witness "Z" stated that s/he met with Agron Krasniqi and Z [REDACTED] B [REDACTED] at the Military Police station, which was at the old school, while looking for H [REDACTED] P [REDACTED] after his abduction on 9 June 1998. S/he gave a very good description of the defendant, Agron Krasniqi, and identified him from the photo line up at the main trial.

Agron Krasniqi testified that he joined the KLA only after his return to his village Dejne on 21 June 1998. He also denied knowing any of the other accused, including Islam Gashi, or having any association with the KLA unit in Dranovc/Drenovac village. He claimed he had no specific duties and had never served outside his village. He additionally stated that he travelled to Albania at the end of June 1998, where he remained until the end of July 1998. It is significant to note that at no time does Agron Krasniqi mention that his friend D [REDACTED] K [REDACTED] was with him in Albania, even though he called D [REDACTED] K [REDACTED] as a witness and D [REDACTED] K [REDACTED] testified about that trip to Albania.

During his student days he was not travelling every day to his village. He would go home once every two or three months. Thus, he was not in Pristina during the time he claimed he was there prior to 20 or 21 June 1998.

Between the dates of his marriage until the date Agron Krasniqi was arrested, he travelled to Kosovo from Switzerland two or three times, during his annual leave or holidays. The last time he was in Kosovo prior to his arrest in 2005 was during the summer of 2004, 5

or 6 July, as far as he could remember. After he had settled in Switzerland, the defendant did not always spend his summer holidays in Kosovo, but may have taken holidays in Albania or Turkey³³². When asked if he had gone on holidays in 2005, he stated that he did not as he did not have any leave that year. He was asked the following question: "Are you telling us that you had leave between 1999 and 2004, but no leave during 2005"? The defendant answered: "I had leave and I could go on holidays, but I did not go to Kosovo that year. I went to Turkey". He explained that he chose to skip Kosovo in 2005 because he found it more reasonable to go for summer holidays somewhere else. He was aware about the arrest of the other accused in 2004, but that was not the reason he skipped Kosovo in 2005 for his holidays. The Trial Panel found this to be a rather a singular coincidence and concluded that the defendant was avoiding Kosovo as he had learnt about the arrest of the other defendants.

Only one witness, Mr. S█████K█████, who himself admitted to being a close relative and friend of Agron Krasniqi, was presented as an alibi witness for the defendant. The witness stated that Agron Krasniqi was a student in Pristina from 1997 until the end of June 1998, maybe 20 June. He was not quite sure of the exact date. The witness himself was in Germany between 1994 and 1997 and came to know that Agron Krasniqi was studying law in Pristina because he had discussed the matter with his own family and because Agron Krasniqi was a relative.

S█████K█████ took particular interest in the studies of Agron Krasniqi because he had been abroad for some time and when he came back he was interested in knowing about his relatives. But by the end of April 1998, he was not so interested in the studies of Agron Krasniqi, saying that he was not his parent and he did not see him. He just knew that he used to be a student. He said that he also knew that Agron Krasniqi stayed continuously in Pristina between 1997 and 1998. He added however that he learnt from the mother of Agron Krasniqi, that he was coming home once or twice every month or two.

S█████K█████ confirmed that Agron Krasniqi returned to Dejne from studies in Pristina some time in June 1998. He was not sure whether it was 19, 20 or 21 June. When he was asked whether he was expecting the return of Agron Krasniqi, he said that he met the defendant by chance. Agron Krasniqi then travelled to Albania at the end of June 1998, either 28 or 29. The witness came back on 2 or 3 July, whereas Agron Krasniqi remained in Albania until the end of July 1998. However, while the witness could specifically remember this date, he was unable to remember what happened the week before.

Sinan Krasniqi also stated that their group was not a part of KLA and had minimum contacts with its structures or operations. He stated that they did not need permission from anyone in order to go across the border and obtain weapons. The testimony of that witness, that any group of people could freely cross the border to Albania, buy weapons from "unknown persons" and move back to Kosovo without being stopped by either Serbian border patrols or KLA units, both of which were fighting over the border control in the area, was rejected by the Trial Panel. In fact there is evidence that it was not so

³³² See Trial Minutes of defendant Agron Krasniqi, 19 July 2006, page 17.

easy to cross the borders. R [REDACTED] L [REDACTED] gave evidence that he and his comrades were ambushed by the Serbian forces on exactly the same occasion, while bringing weapons to Kosovo. Two fighters were killed and some were injured.

The evidence of S [REDACTED] K [REDACTED] was found to be unreliable. The witness, who was in Germany between 1994 and 1997, said he became interested in the studies of Agron Krasniqi because he had discussions about this matter with his own family, and because Agron Krasniqi was a relative. That same witness, who was so interested in the studies of Agron Krasniqi from a distance in Germany, lost all interest in those studies by the end of April 1998 because he was not Agron Krasniqi's parent and did not see him at the end of 1998. He had no direct or personal knowledge that Agron Krasniqi was staying in Pristina all the time during this period. He said he knew that Agron Krasniqi this was in Pristina during this period, but could not explain how he came to know that.

The defence stressed on several occasions that the records of Agron Krasniqi's attendance at the classes in 1998 do exist, and could be made available at any time when needed. However, the only document which was presented to the Court is a certificate from the secretary of the Pristina University confirming that Agron Krasniqi was enrolled in the class in the 1997-1998 academic years. In the assessment of the Trial Panel, that document does not, in any way, prove the actual everyday presence of the defendant in Pristina. The Trial Panel rejected his evidence that he stayed in Pristina throughout the whole period when the active military actions had already started in the areas of Rahovec/Orahovac, Gjakova/Djakovica, and Malishevo/Malisevo, which are close to the defendant's home village.

The Panel concluded that the alibi of Agron Krasniqi was not reliable in direct contrast to the evidence of the prosecution witnesses, none of whom proved to have past or present conflict with Agron Krasniqi, and all of whom were sure that it was Agron Krasniqi whom they saw or were dealing with.

The defendant also stated that he had never met any of the other defendants, including Selim Krasniqi. When asked if there was any reason why Selim Krasniqi would have known him, he answered "I did not know that he knew me, but he might have seen me during the offensive of September". Of equal significance is his assertion that he had never taken part in the battle in Ratish, when Selim Krasniqi himself testified that he might have seen the defendant in Ratish. In the view of the Trial Panel the defendant was attempting to show that he had nothing to do with any of the other defendants when the totality of the evidence indicate that this was not the case.

As with the other defendants, Agron Krasniqi is charged with participation in a joint criminal enterprise. His participation in the individual crimes with which he is charged has clearly been established. The evidence has established that acting in concert with his co-defendants and other unidentified persons, he participated in the unlawful arrest, detention and beating of civilian detainees, in furtherance of a common criminal plan.

The Court therefore found it proved that all of the accused played a key role in the

furtherance of the common plan mentioned. From the evidence presented the accused were directly involved. In other cases they participated at various levels. Overall there can be no doubt that they all played a key part through their direct and indirect participation.

Singularity of War Crimes

“The statutory definition of war crime against civilian population as set out in Article 142 CL FRY is constructed upon underlying offences listed in this Article, in such a way that the criminal act, dependent of circumstances, can be directed against the civilian population as a whole or against particular individuals or property. A war crime against civilian population can contain several transactions, some of which, ordinarily, i.e., out of the context of the situation of an armed conflict and without the nexus to the armed conflict, could qualify as other criminal acts, such as murder, bodily injury, robbery, kidnapping etc. For the occurrence of the criminal act of war crime required is a presence of one or more of underlying offences; multiplicity of the underlying offences however, does not exclude the singularity of a criminal act of a war crime”³³³.

Endorsing the position taken by Ljubisa Lazarevic on the concept of singularity of the act of war crime³³⁴, the Supreme Court also recognized “that the concept of singularity for a war crime under Article 142 CL FRY is not absolute. Among factual scenarios of concrete cases there can be instances where qualifying several underlying offences as several War Crimes would be justifiable”³³⁵. The Supreme Court further found that “acts discernible upon a combination of subjective and objective elements, specifically the element of criminal intent in conjunction with significant time intervals between the criminal transactions should be treated as separate War Crimes. Accordingly, a perpetrator who launches or executes an order to kill civilians will be responsible for one war crime irrespective of the multiplicity of individual acts of killing, diversity of places and the time span of his actions, as long as the unity of underlying offences ensues from the same order constituting an attack against civilian population as a whole”³³⁶. The Court went on to note that “repeated acts of underlying offences, especially when committed in the same opportunity, would often justify a conclusion about a single intent, whereas circumstances indicating separate acts of war crime can practically be rare”³³⁷.

The Panel endorsed the view expressed by the confirmation judge that “The Supreme Court’s decision in the Kolasinac case effectively informs us that two main factors have to be taken into account in deciding whether there is a singularity or a plurality of war crime against the civilian population: (1) the time proximity of the events and whether they are causally related, and (2) the unity of criminal intent and opportunity”³³⁸.

³³³ Andjelko Kolasinac case, Supreme Court Judgment, 22 October 2003, No.AP-KZ 230/2003

³³⁴ Ljubisa Lazarevic, Commentary to the Criminal Law of CC SFRY, 1995, Article 142

³³⁵ Andjelko Kolasinac case, Supreme Court Judgment, dated 22 October 2003, No.AP-KZ 230/2003

³³⁶ Andjelko Kolasinac case, Supreme Court Judgment, dated 22 October 2003, No.AP-KZ 230/2003

³³⁷ Andjelko Kolasinac case, Supreme Court Judgment, dated 22 October 2003, No.AP-KZ 230/2003

³³⁸ Ruling of International Confirmation Judge, Timothy Baland, District Court of Prizren, dated 21 April 2005, No.PK. No. 17/2005

The Amended Indictment charged the defendants in relation to events that occurred during a specific period of time, 2 June to 13 July 1998, and that are causally related through the place of occurrence which is the Detention Centre in Dranovc/Drenovac. In addition, the fact that the Defendants were all members of the KLA working in Dranovc/Drenovac suggests that they shared a common intent and purpose of arresting, detaining and interrogating Kosovo Albanian civilians suspected of collaborating with the Serbian Authorities and to punish them for their alleged disloyalty to the KLA, by torturing, beating, and in some instances, killing them.

Therefore, it is clear that the public prosecutor did not necessarily intend to charge the defendants with four separate offences of War Crimes, but only with one criminal offence of War Crimes, with the four separate Counts serving to identify the different types of conduct which, if proved, would justify a finding that a war crime had been committed.

SENTENCING

Factors governing sentencing

These factors are listed in Article 64 of the PCCK. The terminology of Article 64 of the PCCK, which has replaced Article 41 of the CC SFRY, is not very different in substance. In assessing the appropriate penalty, the Trial Panel was guided by the commentaries on Article 41 of the CC SFRY and the sentencing guidelines adopted by the ICTY.

The first factor is the degree of criminal responsibility of the perpetrator. "Accountability and guiltiness as components of criminal responsibility are gradable. It is particularly true for guiltiness. It is not only important which form of guiltiness exists in the given case, but also, grading can be done within the individual forms of guiltiness. For instance, it is important how much intensity there was in the offender's desire for the consequence to occur. In evaluating the voluntary element in premeditation, it is significant that the offender had shown a marked persistence and ruthlessness"³³⁹.

The second factor that should be considered consists of the "motives for which the act is committed. Motives can be ethically evaluated, which is significant for determining the punishment (for instance, whether somebody committed a theft to satisfy his elementary needs of life or to gamble)"³⁴⁰.

The third factor is the "degree of danger or injury to the protected object. When prescribing the punishment the legislator evaluates the degree to which certain conduct, generally, can threaten or pose danger to the protected object. However, when deciding upon the punishment, this circumstance cannot be considered abstractly, it must be concretized and the degree to which the criminal act put into jeopardy or violated the protected object must be established. One arrives to that by evaluating the manner of

³³⁹ Stonajovic, Commentary on the Criminal Code of Yugoslavia 1999, Article 41.

³⁴⁰ Stonajovic, Commentary on the Criminal Code of Yugoslavia 1999, Article 41.

commission of the act, the means of commission etc., and especially the consequence is important in this regard”³⁴¹.

The fourth factor consists of “circumstances under which the act had been committed. These circumstances are of heterogeneous character. What will be understood by them depends also on whether the circumstances, on which depends the evaluation of the graveness of the violation or threat to the protected object, are understood in an extensive or restrictive way”³⁴².

From Article 64, as explained in the commentaries on Article 41 CC SFRY, it results that punishment is dependent on both [1] factors that are connected to the elements of crime and [2] factors that are not connected to the elements of crime, but concern the circumstances of the act and the offender that are otherwise relevant for the purposes of punishment.

In the Delalic case³⁴³, Zdravko Mucic was found guilty of willful killing and murder, as well as for willfully causing great suffering or serious injury to body or health, and cruel treatment and torture of a number of persons. He was sentenced to seven years imprisonment. The ICTY considered the defiant attitude and lack of respect of the defendant for the judicial process and for the participants in the trial, as well as a lack of awareness of the gravity of the offences for which he was charged and the solemnity of the judicial process.

In the Kvočka case³⁴⁴ the defendant was sentenced to seven years imprisonment for crimes of persecution, murder and torture committed against vulnerable detainees within a joint criminal enterprise and his substantial participation in this system. The persecution involved the widespread and systematic murder, torture and beatings, sexual violence, harassment, humiliation and psychological abuse, and confinement in inhumane conditions of detainees who had been held as helpless prisoners in a camp. Many of the detainees did not survive the violence and intense suffering. The ICTY found that his participation in the enterprise rendered him a co-perpetrator of the joint criminal enterprise. He played a key role in facilitating and maintaining the functioning of the camp, which allowed the crimes to continue. On a few occasions he assisted detainees and attempted to prevent crimes, but the vast majority of these instances involved relatives or friends.

In the same case Dragolub Prcac was found guilty by virtue of his individual criminal responsibility on offences involving widespread and systematic murder, torture and beatings, sexual violence, harassment, humiliation and psychological abuse, and confinement in inhumane condition of detainees. He was sentenced to five years’ imprisonment. The ICTY found that Prcac “participated as a co-perpetrator in the crimes ascribed to him as part of the joint criminal enterprise. He facilitated and maintained the

³⁴¹ Stonajovic, Commentary on the Criminal Code of Yugoslavia 1999, Article 41.

³⁴² Stonajovic, Commentary on the Criminal Code of Yugoslavia 1999, Article 41.

³⁴³ Delalic and others, ICTY Trial Chamber Judgment, 16 November 1998, Case no. IT-96-21

³⁴⁴ Kvočka, ICTY, Trial Chamber, Judgment, 2 November 2001, Case no. IT-98-30/1-T.

functioning of the camp, which allowed the crimes to continue. On a few occasions he assisted detainees and attempted to prevent crimes, but the vast majority of these instances involved former colleagues or friends³⁴⁵”.

The defendant Milojica Kos was sentenced to six years imprisonment for his participation in the same offences in the Kvocak case because of his knowledge of crimes committed against vulnerable detainees within a joint criminal enterprise and his substantial participation in this system, which made these crimes possible, rendered him responsible as a co-perpetrator of War Crimes and Crimes Against Humanity for persecution, murder, and torture. The persecution involved the widespread and systematic murder, torture and beatings of detainees.

In the Kronejelac case³⁴⁶ the defendant was charged with torture; cruel treatment; murder; slavery, persecutions on political, racial and religious grounds; torture; inhumane acts; murder; imprisonment. He was sentenced to undergo seven and half years’ imprisonment.

Whilst taking the ICTY case law as a guide, the Trial Panel was also mindful of the word of caution issued by the Supreme Court of Kosovo on such a practice and the need to look at the specific offence or offences in passing sentence. The Supreme Court observed, “Concerning the deference to standards applied by international tribunals, the Supreme Court considers it appropriate as far as the trial court finds it persuasive and relevant to the facts and the law of the case before it on this matter. It appears, eg that general factors governing punishment identified by the trial court upon selected ICTY and ICTR cases did not differ from such factors defined in Article 41 CL FRY. The trial court should however be cautious in allowing itself to be guided by the length of punishments imposed by international tribunals, and this could only constitute a point of reference where the court evaluates decisive factors in these cases in comparison with the case before it. However, a reference to the judgments of the international tribunals cannot simply replace a substantive discussion of the gravity of the crime, including the specific elements of the acts attributed to the accused, the concerns of prevention and specifics of mitigating and aggravating circumstances, when such are present”³⁴⁷.

Sentence passed on the defendants

The evidence accepted by the Trial Panel proves that several victims, most of whom were never found, were abducted and detained in circumstances that amounted to cruel treatment. The combined evidence of the witnesses establishes the existence of a regime of punishment as well as detention in an inhumane environment. The nature of the beatings and conditions of detention resulting in injuries, though they did not reach the threshold of the severe acts and suffering required for torture as explained in the jurisprudence of the ICTY, nonetheless amounted to serious disregard for the detainees’ fundamental rights. They were treated in a degrading and humiliating manner. Their fundamental rights to humane treatment were violated. Together with other actions

³⁴⁵ Kvocka, ICTY, Trial Chamber, Judgment, 2 November 2001, Case no. IT-98-30/1-T, paragraph 723.

³⁴⁶ Kronejelac, ICTY, Trial Judgment, 15 March 2002, Case no. IT-97-25

³⁴⁷ Veselin Besovic Case, Supreme Court Judgment dated 7 September 2004, No. AP-KZ NO.80 /2004

perpetrated during the critical period, they certainly constituted acts of cruel or inhuman treatment. The Trial Panel found no mitigating circumstances. On the contrary the Trial Panel found the attitude of the defendants to be defiant. They were obsessed by claims that the evidence against them had been fabricated and that the prosecution was just humiliating and looking down on the role that the KLA played during the war.

Therefore, the Court decided to impose a sentence of seven (7) years imprisonment as the proper punishment.

