

Овај документ прибављен је од Канцеларије Шефа особља Мисије Европске уније на Косову.

Документ достављен је организацији „Три тачке“ као одговор на допис / захтев упућен Мисији ЕУЛЕКС 8. јануара 2020. године.

# Basic Court of Mitrovicë/a

P 98/14

30 March 2016

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**IN THE NAME OF THE PEOPLE**

**THE BASIC COURT OF MITROVICĚ/A**, in the Trial Panel composed of EULEX Judge Roxana Comsa, as Presiding Judge, EULEX Judges Vitor Pardal and Nuno de Madureira as Panel Members, with the participation of EULEX Legal Officer Asja Zujo, as recording officer, in the criminal case against:

**1. O.I.**, father's name \_\_\_\_\_, mother's name \_\_\_\_\_, born on \_\_\_\_\_ in \_\_\_\_\_, residing in \_\_\_\_\_, Kosovo Serb;

*Charged in the Indictment PPS 04/2013 with the criminal offences of:*

**War Crimes against the Civilian Population**, in serious violation of Article 3 § 1(a) Common to four Geneva Conventions of 12 August 1949 relative to the Protection of Civilian Persons in Time of War and Article 4 § 2(a) of the Additional Protocol II relating to the protection of Victims of Non-International Armed Conflicts of 8 June 1977, pursuant to Article 152 § 1 and 2.1 in conjunction with Articles 16 and 32 of the Criminal Code of Kosovo (CCK) and criminalized also at the time of the commission of the offence under Article 142 of the Criminal Code of the Socialist Federal Republic of Yugoslavia dated 28<sup>th</sup> September 1976 (published in the Official Gazette SFRY No. 44 of October 8, 1976) (CCSFRY);

*And further in co-perpetration with:*

**2. D.D.**, father's name \_\_\_\_\_, mother's name \_\_\_\_\_, born on \_\_\_\_\_ in \_\_\_\_\_, residing in \_\_\_\_\_, Kosovo Serb;

*With the criminal offences of:*

**Incitement to commit the offence of aggravated murder** *in the form of depriving another person of his or her life because of national motives*, in co-perpetration and pursuant to Article 179 (1.10) in conjunction with Article 31 and 32 of the CCK and criminalized also in the time of the commission of the criminal offence under Article 30 Paragraph (2) of the CLSAPK in conjunction with Articles 22 and 23 of the CC SFRY;

**Incitement to commit the offence of attempted aggravated murder** *in the form of depriving another person of his or her life because of national motives*, resulting in grievous bodily injury in co-perpetration, pursuant to Article 179 (1.10) and Article 189 (2.1) and (5) in conjunction with Articles 28, 31 of the CCK, and criminalized also in the time of the commission of the criminal offence under Article 30 Paragraph (2) and Article 38 Paragraph (2) of the CLSAPK in conjunction with Articles 19, 22 and 23 of the CC SFRY;

**Incitement to commit the offence of attempted aggravated murder** *in the form of depriving another person of his or her life because of national motives* in co-perpetration, pursuant to Article 179 (1.10) in conjunction with Article 28, 31 and 32 of the CCK, and criminalized also in the time of the commission of the criminal offence under Article 30 Paragraph (2) of the CLSAPK in conjunction with Articles 19, 22 and 23 of the CC SFRY.

*And*

3. **N.V.1**, father's name \_\_\_\_\_, mother's name \_\_\_\_\_, born on \_\_\_\_\_ in \_\_\_\_\_, residing in \_\_\_\_\_, Kosovo Serb;

4. **I.V.**, father's name \_\_\_\_\_, mother's name \_\_\_\_\_, born on \_\_\_\_\_ in village \_\_\_\_\_, residing in \_\_\_\_\_, Kosovo Serb;

5. **A. (S.) L.**, father's name \_\_\_\_\_, mother's name \_\_\_\_\_, born on \_\_\_\_\_ in \_\_\_\_\_, residing in \_\_\_\_\_, Kosovo Serb;

*All three charged in the Indictment PPS 04/13 with:*

**'Aggravated murder'** in the form of depriving another person of his or her life because of national motives in co-perpetration, pursuant to Art. 179 § 1.10 in conjunction with Art. 31 of the CCK and criminalized also in the time of the commission of the offence under Art. 30 § 2 of the CLSAPK in conjunction with Art. 22 of the CCSFRY;

**'Attempted Aggravated murder'** in the form of depriving another person of his or her life because of national motives in co-perpetration, resulting in grievous bodily injury in co-perpetration, pursuant to Art. 179 § 1.10 and 189 § 2.1 and 5 in conjunction with Art. 28 and 31 of the CCK and criminalized also in the time of the commission of the offence under Art. 30 § 2 and Art. 38 § 2 of the CLSAPK in conjunction with Art.19 and 22 of the CCSFRY;

**'Attempted Aggravated murder'** in the form of depriving another person of his or her life because of national motives in co-perpetration, pursuant to Art. 179 § 1.10 in conjunction with Art. 28 and 31 of the CCK and criminalized also in the time of the commission of the offence under Art. 30 § 2 of the CLSAPK in conjunction with Art.19 and 22 of the CCSFRY;

*After having held the main trial hearings on 18 December 2014, on 21, 22, 23 and 26 January 2015, 18-26 February 2015, 11, 24-30 March 2015, 22-27 April 2015, 5-8, 11-14, on 20 May 2015, 15, 29, 30 June 2015, 2, 6-9, 13-15, 21-23, 28-31 July 2015, 3 and 4 August 2015, on 10, 11, 15, 16, 17, 21 September 2015, on 6-8, 13, 14, 20, 21, 27, 28 October 2015, on 10, 17, 19, 20, 23 and 24 November 2015, on 1, 2, 4, 8-10, 15 and 17 December 2015, and on 18 January 2016 in the presence of the Defendants, their respective Defence Counsel and SPRK Prosecutor. The injured parties and a representative from Victims' Advocate Office were present during certain sessions according to the minutes. The Main Trial sessions were open to the public, except for the sessions on 28, 29 and 30 July 2015 and partly on 10 September 2015 and 27 October 2015 which were declared closed to the public;*

*Following* the Trial Panel's deliberation and voting held on 19 and 20 January 2016;

*Pursuant* to Articles 359 – 366 of the *Criminal Procedure Code (CPC)*, pronounced on 21 January 2016 in public and in the presence of the Defendants, Defence Counsel, the Injured Party Representative, Injured Parties and the Prosecutor, as recorded in the minutes;

*Renders* the following:

## **JUDGEMENT**

### **I. Count 1: Events of 14 April 1999 in Mitrovicë/a south:**

**A.** The following facts are established beyond reasonable doubt:

1. During 1998-1999 there was a conflict in Kosovo between Serbian forces and Kosovo Liberation Army (KLA), which intensified with the NATO involvement and its bombings that commenced on 24 March 1999.
2. Against this background, on 14 April 1999 the Serbian forces organized a mop-up operation in Mitrovicë/a south, with the aim of expelling and killing ethnic Albanians.
3. On that day, at around 12h00 numerous Albanian families living in the area of Miladin Popović street (now Ahmet Selaci street) and Njegos street (now formed by “Mehmet Gradica” and 11 Marsi streets) were forcefully removed from their houses by the Serbian forces and gathered together outside in the streets.
4. Women, children and elderly men were then separated from the remaining men, ushered towards the direction of the bus station in Mitrovicë/a and ordered to go to Albania.
5. A number of 15 Albanian males were grouped together and escorted by soldiers to a wall of a house situated on Njegos Street. These were: F.M., I.M.1, Xh.S., B.F., M.M.1, I.M.2, S.P., K.A., L.A.1, A.A.1, B.A., S.K.1, M.S. (F.), Sh.K.1 and Sh.K.2.
6. There, they were leaned against the wall and were taken over from the army by a group of armed Serbian paramilitary/policemen and were kept there for around an hour

with their hands clasped behind their necks. During that time the group of paramilitaries/policemen were questioning them about the KLA. Some of the arrested men were threatened and assaulted.

7. Then the whole group, escorted by the paramilitaries/policemen, moved along the street until they reached the main road – Miladin Popović street, where they were stopped.

8. In front of them, at the intersection between Miladin Popović street and Rruga per Bajr street there was a police/paramilitary checkpoint.

9. Six of the men were separated from the rest, were let go and told to go to Albania. These were: L.A.1, K.A., B.A., S.K.1, I.M.2, Sh.K.2.

10. The rest of the nine were escorted by the paramilitaries/police in a line on Miladin Popović street, towards the checkpoint. These were: F.M., I.M., Xh.S., B.F., M.M.1, S.P., A.A.1, M.S. (F.) and Sh.K.1.

11. On that occasion **O.I.** was part of the group paramilitaries/policemen present at the checkpoint.

12. He was wearing a blue uniform and he was armed.

13. Before the nine men mentioned above at point 10 passed through the checkpoint, one member of the Serbian police/paramilitary unit who was escorting them asked **O.I.** something along the lines “What are we going to do with them chief?”, to which **O.I.** replied something to the effect of: “Why ask me, apply the orders!”

14. The nine Albanians were then escorted through the checkpoint and they were led a few meters further on Rruga per Bajr street, where they were stopped.

15. The paramilitaries/police took them away two by two, starting from the end of the line, towards the houses situated on each side on the road and shot them. The following four men were shot: S.P., F.M., A.A.1 and M.S. (F.).

16. While these events were ongoing, a Pitzhauer vehicle arrived with a uniformed person who gave an order which stopped the shooting.

17. This person then escorted the remaining five men back onto Miladin Popović street in the direction of the bus station. These were: I.M.1, Xh.S., B.F., M.M.1 and Sh.K.1.

18. At the bus station, they were reunited with their families and together they went to Albania.



19. **O.I.** was aware of the operation of expelling and killing civilian ethnic Albanians; on that day, by acting as described above, he willingly complied with the plan, knowing that it would result in the killings.

20. **O.I.** was fully mentally competent.

21. At that time, **O.I.** was a well-known figure in Mitrovicë/a, with a successful sports record in martial arts, various commercial enterprises and a prominent position in the state-owned industrial conglomerate 'FERRONIKEL'. He also spoke fluent Albanian.

**B.** It could not be established beyond reasonable doubt that:

1. When undertaking the above, **O.I.** acted in the capacity of a leader of a Serbian paramilitary/police unit.

2. **O.I.** "incited the group of paramilitary/police officers by ordering them" to commit murder.

**C. Therefore**, having regard to Article 3 paragraph 1 and 2 of the Criminal Code of the Republic of Kosovo,

**O.I.** is **FOUND GUILTY** of the criminal offense of "War crime against the civilian population" criminalised under Article 142 of the Criminal Code of the Federal Republic of Yugoslavia (CCFRY) and in violation of Article 3 § 1(a) Common to four Geneva Convention of 12 August 1949 relative to the Protection of Civilian Persons in Time of War and Article 4 § 2(a) of the Additional Protocol II relating to the Protection of Victims of Non-International Armed Conflicts of 8 June 1977.

**D.** The accused **O.I.** is **SENTENCED**

to 9/nine/years of imprisonment.

**Count 2: Events of 3 February 2000 in Mitrovicë/a north**

## **II. Regarding the Accused O.I., personal data as above,**

### **For subcharge Ad. 1.**

**A.** The following facts are established beyond reasonable doubt:

1. On 03 February 2000 in Mitrovicë/a north, in the evening hours, an explosion occurred at “Bel Ami” coffee shop, injuring a number of Serbs.
2. Sometime later, at night time, spontaneous groups of Serbs entered the buildings situated in Knjaz Miloš street, Lola Ribara street, Tanaska Rajića street, Sutjeska street and Kralja Petra street inhabited by families of Albanian ethnicity, with the aim to expel them and they murdered the following persons:
  - a. N.A.1
  - b. NXH.
  - c. S.A.1
  - d. R.C.
  - e. M.S.1
  - f. S.B.
  - g. N.V.2
  - h. Sh.V.
  - i. B.R.1
  - j. N.S.1 (S.).

**B.** It could not be established beyond reasonable doubt that:

1. Defendant **O.I.** had the capacity of a leader of a paramilitary Serbian group known as “Bridge Watchers”.
2. On that occasion, defendant **O.I.** acted in co-perpetration with **D.D.**, upon a previously agreed common plan nor that with the intent to compel ethnic Albanians to abandon their houses and leave the territory of Mitrovicë/a north he incited/ordered the group of police or “Bridge Watchers” to raid several buildings located on the above mentioned streets and to forcefully clear them of ethnic Albanians.

3. On that occasion groups of Police officers of the Ministry of Interior of the Federal Republic of Yugoslavia (MUP) or “Bridge Watchers” were part of the spontaneous group of Serbs who entered the above mentioned buildings.

### **C. Therefore**

**O.I.** is **FOUND NOT GUILTY** and **ACQUITTED**, according to Article 364 paragraph 1 subparagraph 1.3 CPC, of the criminal offense of incitement to commit the offence of aggravated murder in the form of *depriving another person of his or her life because of national motives* in co-perpetration, pursuant to Article 179 § 1.10 in conjunction with Articles 31 and 32 of the CCK and criminalized also at the time of the commission of the offence under Article 30 § 2 of the CLSAPK in conjunction with Articles 22 and 23 of the CCSFRY;

### **For subcharge Ad. 2.**

**D.** The following facts are established beyond reasonable doubt:

1. On 03 February 2000 in Mitrović/a north, in the evening hours, an explosion occurred at “Bel Ami” coffee shop, injuring a number of Serbs.
2. Sometime later, at night time, spontaneous groups of Serbs entered the buildings situated in Knjaz Miloš street, Lola Ribara street, Tanaska Rajića street, Sutjeska street and Kralja Petra street inhabited by families of Albanian ethnicity, with the aim to expel and kill them and they injured the following persons:
  - a. R.A.
  - b. N.A.2
  - c. A.A.2
  - d. E.XH.

**E.** It could not be established beyond reasonable doubt that:

1. Defendant **O.I.** had the capacity of a leader of a paramilitary Serbian group known as “Bridge Watchers”.

2. On that occasion, defendant **O.I.** acted in co-perpetration with **D.D.**, upon a previously agreed common plan nor that with the intent to compel ethnic Albanians to abandon their houses and leave the territory of Mitrovicë/a north he incited/ordered the group of police or “Bridge Watchers” to raid several buildings located on the above mentioned streets and to forcefully clear them of ethnic Albanians.
3. On that occasion groups of MUP officers or “Bridge Watchers” were part of the spontaneous group of Serbs who entered the above mentioned buildings.

**F. Therefore**

**O.I.** is **FOUND NOT GUILTY** and **ACQUITTED**, according to Article 364 paragraph 1 subparagraph 1.3 CPC, of the criminal offense of incitement to commit the offence of attempted aggravated murder in the form of *depriving another person of his or her life because of national motives* in co-perpetration, resulting in grievous bodily injury in co-perpetration, pursuant to Articles 179 § 1.10 and 189 § 2.1 and 5 in conjunction with Articles 28, 31 of the CCK and criminalized also at the time of the commission of the offence under Articles 30 § 2 and 38 § 2 of the CLSAPK in conjunction with Articles 19, 22 and 23 of the CCSFRY;

**For subcharge Ad. 3.**

**G.** The following facts are established beyond reasonable doubt:

1. On 03 February 2000, in Mitrovicë/a north, in the evening hours, and explosion occurred at “Bel Ami” coffee shop, injuring a number of Serbs.
2. Sometime later, at night time, spontaneous groups of Serbs entered the buildings situated in Knjaz Miloš street, Lola Ribara street, Tanaska Rajića street, Sutjeska street and Kralja Petra street inhabited by families of Albanian ethnicity, with the aim to expel them and kill them and they attacked the following persons:
  - a. S.A.2
  - b. U.A.
  - c. Sh.A.
  - d. V.A.

- e. G.XH.
- f. G.R.
- g. M.H.1
- h. H.R.
- i. H.S.1

**H.** It could not be established beyond reasonable doubt that:

1. Defendant **O.I.** had the capacity of a leader of a paramilitary Serbian group known as “Bridge Watchers”.
2. On that occasion, defendant **O.I.** acted in co-perpetration with **D.D.**, upon a previously agreed common plan nor that with the intent to compel ethnic Albanians to abandon their houses and leave the territory of Mitrovicë/a north he incited/ordered the group of police or “Bridge Watchers” to raid several buildings located on the above mentioned streets and to forcefully clear them of ethnic Albanians.
3. On that occasion groups of MUP officers or “Bridge Watchers” were part of the spontaneous group of Serbs who entered the above mentioned buildings.

### **I. Therefore**

**O.I.** is **FOUND NOT GUILTY** and **ACQUITTED**, according to Article 364 paragraph 1 subparagraph 1.3 CPC, of the criminal offense of incitement to commit the offence of attempted aggravated murder in the form of *depriving another person of his or her life because of national motives* in co-perpetration, pursuant to Article 179 § 1.10 in conjunction with Articles 28, 31 and 32 of the CCK and criminalized also at the time of the commission of the offence under Article 30 § 2 of the CLSAPK in conjunction with Articles 19, 22 and 23 of the CCSFRY;

### **III. Regarding the Accused D.D., personal data as above.**

**For subcharge Ad. 1.**

**A.** The following facts are established beyond reasonable doubt:

1. On 03 February 2000 in Mitrovicë/a north, in the evening hours, an explosion occurred at “Bel Ami” coffee shop, injuring a number of Serbs.

2. Sometime later, at night time, spontaneous groups of Serbs, entered the buildings situated in Knjaz Miloš street, Lola Ribara street, Tanaska Rajića street, Sutjeska street and Kralja Petra street, inhabited by families of Albanian ethnicity, with the aim to expel and kill them and they murdered the following persons:

- a. N.A.1
- b. N.XH.
- c. S.A.1
- d. R.C.
- e. M.S.1
- f. S.B.
- g. N.V.2
- h. Sh.V.
- i. B.R.1
- j. N.S.1 (S.).

3. Defendant **D.D.** had the capacity of Mitrovicë/a Police station commander of the Ministry of Interior of the Federal Republic of Yugoslavia (MUP).

**B.** It could not be established beyond reasonable doubt that:

1. On that occasion, defendant **D.D.** acted in co-perpetration with **O.I.**, upon a previously agreed common plan nor that with the intent to compel ethnic Albanians to abandon their houses and leave the territory of Mitrovicë/a north he incited/ordered the group of police or “Bridge Watchers” to raid several buildings located on the above mentioned streets and to forcefully clear them of ethnic Albanians.

2. On that occasion groups of MUP officers or “Bridge Watchers” were part of the spontaneous group of Serbs who entered the above mentioned buildings.

### **C. Therefore**

**D.D.** is **FOUND NOT GUILTY** and **ACQUITTED**, according to Article 364 paragraph 1 subparagraph 1.3 CPC, of the criminal offense of incitement to commit the offence of aggravated murder in the form of *depriving another person of his or her life because of national motives* in co-perpetration, pursuant to Article 179 § 1.10 in conjunction with Articles 31 and 32 of the CCK and criminalized also at the time of the commission of the offence under Article 30 § 2 of the CLSAPK in conjunction with Articles 22 and 23 of the CCSFRY.

### **For subcharge Ad. 2.**

**D.** The following facts are established beyond reasonable doubt:

1. On 03 February 2000 in Mitrovicë/a north, in the evening hours, an explosion occurred at “Bel Ami” coffee shop, injuring a number of Serbs.
2. Sometime later at night time, spontaneous groups of Serbs, entered the buildings situated in Knjaz Miloš street, Lola Ribara street, Tanaska Rajića street, Sutjeska street and Kralja Petra street inhabited by families of Albanian ethnicity, with the aim to expel and kill them and injured the following persons:
  - a. R.A.
  - b. N.A.2
  - c. A.A.2
  - d. E.XH.
3. Defendant **D.D.** had the capacity of Mitrovicë/a Police station commander of the Ministry of Interior of the Federal Republic of Yugoslavia (MUP).

**E.** It could not be established beyond reasonable doubt that:

1. On that occasion, defendant **D.D.** acted in co-perpetration with **O.I.**, upon a previously agreed common plan nor that with the intent to compel ethnic Albanians to abandon their houses and leave the territory of Mitrovicë/a north he incited/ordered the group of police or “Bridge Watchers” to raid several buildings located on the above mentioned streets and to forcefully clear them of ethnic Albanians.
2. On that occasion groups of MUP officers or “Bridge Watchers” were part of the spontaneous group of Serbs who entered the above mentioned buildings.

#### **F. Therefore**

**D.D.** is **FOUND NOT GUILTY** and **ACQUITTED**, according to Article 364 paragraph 1 subparagraph 1.3 CPC, of the criminal offense of incitement to commit the offence of attempted aggravated murder in the form of *depriving another person of his or her life because of national motives* in co-perpetration, resulting in grievous bodily injury in co-perpetration, pursuant to Articles 179 § 1.10 and 189 § 2.1 and 5 in conjunction with Articles 28, 31 of the CCK and criminalized also at the time of the commission of the offence under Articles 30 § 2 and 38 § 2 of the CLSAPK in conjunction with Articles 19, 22 and 23 of the CCSFRY;

#### **For subcharge Ad. 3.**

**G.** The following facts are established beyond reasonable doubt:

1. On 03 February 2000 in Mitrovicë/a north, in the evening hours, an explosion occurred at “Bel Ami” coffee shop, injuring a number of Serbs.
2. Sometime later at night time, spontaneous groups of Serbs, entered the buildings situated in Knjaz Miloš street, Lola Ribara street, Tanaska Rajića street, Sutjeska street and Kralja Petra street inhabited by families of Albanian ethnicity, with the aim to expel and kill them and attacked the following persons:
  - a. S. A.2
  - b. U.A.
  - c. Sh.A.
  - d. V.A.



- e. G.XH.
- f. G.R.
- g. M.H.1
- h. H.R.
- i. H.S.1

3. Defendant **D.D.** had the capacity of Mitrovicë/a Police station commander of the Ministry of Interior of the Federal Republic of Yugoslavia (MUP).

**H.** It could not be established beyond reasonable doubt that:

1. On that occasion, defendant **D.D.** acted in co-perpetration with **O.I.**, upon a previously agreed common plan nor that with the intent to compel ethnic Albanians to abandon their houses and leave the territory of Mitrovicë/a north he incited/ordered the group of police or “Bridge Watchers” to raid several buildings located on the above mentioned streets and to forcefully clear them of ethnic Albanians.
2. On that occasion groups of MUP officers or “Bridge Watchers” were part of the spontaneous group of Serbs who entered the above mentioned buildings.

#### **I. Therefore**

**D.D.** is **FOUND NOT GUILTY** and **ACQUITTED**, according to Article 364 paragraph 1 subparagraph 1.3 CPC, of the criminal offense of incitement to commit the offence of attempted aggravated murder in the form of *depriving another person of his or her life because of national motives* in co-perpetration, pursuant to Article 179 § 1.10 in conjunction with Articles 28, 31 and 32 of the CCK and criminalized also at the time of the commission of the offence under Article 30 § 2 of the CLSAPK in conjunction with Articles 19, 22 and 23 of the CCSFRY;

#### **IV. Regarding the Accused N.V.1, personal data as above**

**For subcharge Ad. 1.**

**A.** The following facts are established beyond reasonable doubt:

1. On 03 February 2000 in Mitrovicë/a north, in the evening hours, an explosion occurred at “Bel Ami” coffee shop, injuring a number of Serbs.
2. Sometime later, at night time, spontaneous groups of Serbs launched an attack with the use of explosive devices on the flat located at Lola Ribara Street No 3 occupied by the A.1 and XH. families and murdered the following persons:
  - a. N.A.1
  - b. N.XH.

**B.** It could not be established beyond reasonable doubt that:

1. **N.V.1** had the capacity of member of the paramilitary Serbian group known as “Bridge Watchers”.
2. On that occasion, **N.V.1** acted in co-perpetration with **I.V.** and **A.S.L.**, upon a previously agreed common plan and launched an attack with the use of explosive devices on the above mentioned flat.

**C. Therefore**

**N.V.1** is **FOUND NOT GUILTY** and **ACQUITTED**, according to Article 364 paragraph 1 subparagraph 1.3 CPC, of the criminal offense of aggravated murder in the form of *depriving another person of his or her life because of national motives* in co-perpetration, pursuant to Article 179 § 1.10 in conjunction with Article 31 of the CCK and criminalized also at the time of the commission of the offence under Article 30 § 2 of the CLSAPK in conjunction with Article 22 of the CCSFRY.

For subcharge **Ad. 2.**

**D.** The following facts are established beyond reasonable doubt:

1. On 03 February 2000 in Mitrovicë/a north, in the evening hours, an explosion occurred at “Bel Ami” coffee shop, injuring a number of Serbs.

2. Sometime later, at night time, spontaneous groups of Serbs launched an attack with the use of explosive devices on the flat located at Lola Ribara Street No 3 occupied by the A.1 and XH. families and injured the following persons:

- a. R.A.
- b. N.A.2
- c. A.A.2
- d. E.XH.

**E.** It could not be established beyond reasonable doubt that:

1. **N.V.1** had the capacity of member of the paramilitary Serbian group known as “Bridge Watchers”
2. On that occasion, **N.V.1** acted in co-perpetration with **I.V.** and **A.S.L.** upon a previously agreed common plan and launched an attack with the use of explosive devices on the above mentioned flat.

**F. Therefore**

**N.V.1** is **FOUND NOT GUILTY** and **ACQUITTED**, according to Article 364 paragraph 1 subparagraph 1.3 CPC, of the criminal offense of attempted aggravated murder in the form of *depriving another person of his or her life because of national motives* in co-perpetration, resulting in grievous bodily injury in co-perpetration, pursuant to Articles 179 § 1.10 and 189 § 2.1 and 5 in conjunction with Articles 28 and 31 of the CCK and criminalized also at the time of the commission of the offence under Articles 30 § 2 and 38 § 2 of the CLSAPK in conjunction with Articles 19 and 22 of the CCSFRY.

**For subcharge Ad. 3.**

**G.** The following facts are established beyond reasonable doubt:

1. On 03 February 2000 in Mitrović/a north, in the evening hours, an explosion occurred at “Bel Ami” coffee shop, injuring a number of Serbs.

2. Sometime later, at night time, with the intent to kill, spontaneous groups of Serbs used explosive devices on the flat located at Lola Ribara Street No 3 occupied by the A.1 and XH. families and launched an attack against the following persons:

- a. S.A.2
- b. U.A.
- c. Sh.A.
- d. V.A.
- e. G.XH.

**H.** It could not be established beyond reasonable doubt that:

1. **N.V.1** had the capacity of member of the paramilitary Serbian group known as “Bridge Watchers”.
2. On that occasion, **N.V.1** acted in co-perpetration with **I.V.** and **A.S.L.** upon a previously agreed common plan and launched an attack with the use of explosive devices on the above mentioned flat.

### **I. Therefore**

**N.V.1** is **FOUND NOT GUILTY** and **ACQUITTED**, according to Article 364 paragraph 1 subparagraph 1.3 CPC, of the criminal offense of attempted aggravated murder in the form of *depriving another person of his or her life because of national motives* in co-perpetration, pursuant to Article 179 § 1.10 in conjunction with Articles 28 and 31 of the CCK and criminalized also at the time of the commission of the offence under Article 30 § 2 of the CLSAPK in conjunction with Articles 19 and 22 of the CCSFRY.

### **V. Regarding the Accused I.V., personal data as above**

**For subcharge Ad. 1.**

**A.** The following facts are established beyond reasonable doubt:

1. On 03 February 2000 in Mitrovicë/a north, in the evening hours, an explosion occurred at “Bel Ami” coffee shop, injuring a number of Serbs.
2. Sometime later, at night time, spontaneous groups of Serbs launched an attack with the use of explosive devices on the flat located at Lola Ribara Street No 3 occupied by the A.1 and XH. families and murdered the following persons:
  - a. N.A.1
  - b. N.XH.

**B.** It could not be established beyond reasonable doubt that:

1. **I.V.** had the capacity of member of the paramilitary Serbian group known as “Bridge Watchers”.
2. On that occasion, **I.V.** acted in co-perpetration with **N.V.1** and **A.S.L.**, upon a previously agreed common plan and launched an attack with the use of explosive devices on the above mentioned flat.

**C. Therefore**

**I.V.** is **FOUND NOT GUILTY** and **ACQUITTED**, according to Article 364 paragraph 1 subparagraph 1.3 CPC, of the criminal offense of aggravated murder in the form of *depriving another person of his or her life because of national motives* in co-perpetration, pursuant to Article 179 § 1.10 in conjunction with Article 31 of the CCK and criminalized also at the time of the commission of the offence under Article 30 § 2 of the CLSAPK in conjunction with Article 22 of the CCSFRY.

**For subcharge Ad. 2.**

**D.** The following facts are established beyond reasonable doubt:

1. On 03 February 2000 in Mitrovicë/a north, in the evening hours, an explosion occurred at “Bel Ami” coffee shop, injuring a number of Serbs.

2. Sometime later, at night time, spontaneous groups of Serbs launched an attack with the use of explosive devices on the flat located at Lola Ribara Street No 3 occupied by the A.1 and XH. families and injured the following persons:

- a. R.A.
- b. N.A.2
- c. A.A.2
- d. E.XH.

**E.** It could not be established beyond reasonable doubt that:

1. **I.V.** had the capacity of member of the paramilitary Serbian group known as “Bridge Watchers”.
2. On that occasion, **I.V.** acted in co-perpetration with **N.V.1** and **A.S.L.** upon a previously agreed common plan and launched an attack with the use of explosive devices on the above mentioned flat.

**F. Therefore**

**I.V.** is **FOUND NOT GUILTY** and **ACQUITTED**, according to Article 364 paragraph 1 subparagraph 1.3 CPC, of the criminal offense of attempted aggravated murder in the form of *depriving another person of his or her life because of national motives* in co-perpetration, resulting in grievous bodily injury in co-perpetration, pursuant to Articles 179 § 1.10 and 189 § 2.1 and 5 in conjunction with Articles 28 and 31 of the CCK and criminalized also at the time of the commission of the offence under Articles 30 § 2 and 38 § 2 of the CLSAPK in conjunction with Articles 19 and 22 of the CCSFRY.

For subcharge **Ad. 3.**

**G.** The following facts are established beyond reasonable doubt:

1. On 03 February 2000 in Mitrovicë/a north, in the evening hours, an explosion occurred at “Bel Ami” coffee shop, injuring a number of Serbs.

2. Sometime later, at night time, with the intent to kill, spontaneous groups of Serbs used explosive devices on the flat located at Lola Ribara Street No 3 occupied by the A.1 and XH. families and launched an attack against the following persons:

- a. S.A.2
- b. U.A.
- c. Sh.A.
- d. V.A.
- e. G.XH.

**H.** It could not be established beyond reasonable doubt that:

1. **I.V.** had the capacity of member of the paramilitary Serbian group known as “Bridge Watchers”.
2. On that occasion, **I.V.** acted in co-perpetration with **N.V.1** and **A.S.L.** upon a previously agreed common plan and launched an attack with the use of explosive devices on the above mentioned flat.

### **I. Therefore**

**I.V.** is **FOUND NOT GUILTY** and **ACQUITTED**, according to Article 364 paragraph 1 subparagraph 1.3 CPC, of the criminal offense of attempted aggravated murder in the form of *depriving another person of his or her life because of national motives* in co-perpetration, pursuant to Article 179 § 1.10 in conjunction with Articles 28 and 31 of the CCK and criminalized also at the time of the commission of the offence under Article 30 § 2 of the CLSAPK in conjunction with Articles 19 and 22 of the CCSFRY.

### **VI. Regarding the Accused A.S.L., personal data as above**

**For subcharge Ad. 1.**

**A.** The following facts are established beyond reasonable doubt:

1. On 03 February 2000 in Mitrovicë/a north, in the evening hours, an explosion occurred at “Bel Ami” coffee shop, injuring a number of Serbs.

2. Sometime later, at night time, spontaneous groups of Serbs launched an attack with the use of explosive devices on the flat located at Lola Ribara Street No 3 occupied by the A.1 and XH. families and murdered the following persons:

- a. N.A.1
- b. N. XH.

**B.** It could not be established beyond reasonable doubt that:

1. **A.S.L.** had the capacity of member of the paramilitary Serbian group known as “Bridge Watchers”.
2. On that occasion, **A.S.L.** acted in co-perpetration with **I.V.** and **N.V.1** upon a previously agreed common plan and launched an attack with the use of explosive devices on the above mentioned flat.

**C. Therefore**

**A.S.L.** is **FOUND NOT GUILTY** and **ACQUITTED**, according to Article 364 paragraph 1 subparagraph 1.3 CPC, of the criminal offense of aggravated murder in the form of *depriving another person of his or her life because of national motives* in co-perpetration, pursuant to Article 179 § 1.10 in conjunction with Article 31 of the CCK and criminalized also at the time of the commission of the offence under Article 30 § 2 of the CLSAPK in conjunction with Article 22 of the CCSFRY.

For subcharge **Ad. 2.**

**D.** The following facts are established beyond reasonable doubt:

1. On 03 February 2000 in Mitrovicë/a north, in the evening hours, an explosion occurred at “Bel Ami” coffee shop, injuring a number of Serbs.
2. Sometime later, at night time, spontaneous groups of Serbs launched an attack with the use of explosive devices on the flat located at Lola Ribara Street No 3 occupied by the A.1 and XH. families and injured the following persons:



- a. R. A.
- b. N.A.2
- c. A.A.2
- d. E.XH.

**E.** It could not be established beyond reasonable doubt that:

1. **A.S.L.** had the capacity of member of the paramilitary Serbian group known as “Bridge Watchers”.
2. On that occasion, **A.S.L.** acted in co-perpetration with **I.V** and **N.V.1** upon a previously agreed common plan and launched an attack with the use of explosive devices on the above mentioned flat.

**F. Therefore**

**A.S.L.** is **FOUND NOT GUILTY** and **ACQUITTED**, according to Article 364 paragraph 1 subparagraph 1.3 CPC, of the criminal offense of attempted aggravated murder in the form of *depriving another person of his or her life because of national motives* in co-perpetration, resulting in grievous bodily injury in co-perpetration, pursuant to Articles 179 § 1.10 and 189 § 2.1 and 5 in conjunction with Articles 28 and 31 of the CCK and criminalized also at the time of the commission of the offence under Articles 30 § 2 and 38 § 2 of the CLSAPK in conjunction with Articles 19 and 22 of the CCSFRY.

For subcharge **Ad. 3.**

**G.** The following facts are established beyond reasonable doubt:

1. On 03 February 2000 in Mitrovicë/a north, in the evening hours, an explosion occurred at “Bel Ami” coffee shop, injuring a number of Serbs.
2. Sometime later, at night time, with the intent to kill, spontaneous groups of Serbs used explosive devices on the flat located at Lola Ribara Street No 3 occupied by the A.1 and XH. families and launched an attack against the following persons:

- a. S.A.2
- b. U.A.
- c. Sh.A.
- d. V.A.
- e. G.XH.

**H.** It could not be established beyond reasonable doubt that:

1. **A.S.L.** had the capacity of member of the paramilitary Serbian group known as “Bridge Watchers”.
2. On that occasion, **A.S.L.** acted in co-perpetration with **I.V.** and **N.V.1** upon a previously agreed common plan and launched an attack with the use of explosive devices on the above mentioned flat.

**I. Therefore**

**A.S.L.** is **FOUND NOT GUILTY** and **ACQUITTED**, according to Article 364 paragraph 1 subparagraph 1.3 CPC, of the criminal offense of attempted aggravated murder in the form of *depriving another person of his or her life because of national motives* in co-perpetration, pursuant to Article 179 § 1.10 in conjunction with Articles 28 and 31 of the CCK and criminalized also at the time of the commission of the offence under Article 30 § 2 of the CLSAPK in conjunction with Articles 19 and 22 of the CCSFRY.

**VII. Calculation of Detention**

For defendant **O.I.**, with a view to his conviction for Count 1, the time spent in detention between 27 January 2014 and 18 September 2015 and the time spent in house detention from 18 September 2015 until the present day is to be credited to the duration of the punishment, pursuant to Article 83 paragraphs (1) and (4) of the CCK in conjunction with Article 365 paragraph (1. 5) CPC.

**VIII. Costs of Proceedings**

According to Articles 450-457 CPC and Article 365 paragraph 1.6 CPC the accused **O.I.** shall reimburse 750 (seven hundred and fifty) Euro as part of the costs of criminal proceedings while any remaining cost of the criminal proceedings shall be paid from the budgetary resources.

### **IX. Property claims**

According to Article 365 paragraph 1.6 CPC, the Injured Parties Xh.S., Sh.K.1, K.A., as well as R.A., S.A.2, E.Xh., G.Xh., Gj.S., Sh.C.2, L.A.2, H.S.1, H.R., M.H.1 and U.A. are instructed that they may pursue their property claim in civil litigation pursuant to article 463 Paragraph (1) CPC.

The Panel will not address the property claim by M.Ll. since he does not have the capacity of injured party in this case.

## **PART TWO: REASONING**

### **I. PROCEDURAL BACKGROUND**

#### **I. A. PROCEDURAL HISTORY**

1. The criminal investigation in the case was initiated on 21 February 2013 by a Ruling of the Prosecutor. On 1 October 2013 the investigation was expanded against Defendant **O.I.** to include the criminal offence of “War Crime against the Civilian Population.” The investigation was subsequently expanded on 10 March and 14 April 2014, to include other suspects. On 2 April 2014, additional evidence was submitted to the Basic Court of Mitrovicë/a together with the 10 March Decision to Expand the Investigation.
2. Defendants **O.I.** and **D.D.** were under the measure of detention on remand since their arrest, on 27 January 2014 and 4 February 2014 respectively, until 18 September 2015 when detention on remand was replaced with the measure of house detention. House

detention against both Defendants was subsequently extended and lasted until the pronouncement of the verdict. Defendant **N.V.1** was placed under the measure of detention on remand following his arrest on 15 April 2014 until 25 June 2014 when the measure of detention was replaced by house detention. On 19 August 2014, following the filing of the Indictment in this case, the Presiding Judge held a detention hearing and ordered detention on remand against Defendants **N.V.1** and **A.L.**, while Defendant **I.V.** was placed under the measures of prohibition of approaching a specific place or person and attendance at police station. On 5 August 2015 the measure of detention on remand against Defendants **N.V.1** and **A.L.** was replaced by the measures of prohibition of approaching a specific place or person and reporting to police station. These two Defendants and Defendant **I.V.** remained under prohibition measures until the pronouncement of the verdict.

3. On 11 August 2014, the Special Prosecution of the Republic of Kosovo (“the Prosecutor”) filed the Indictment PPS 04/2013 against the five Defendants with the Registry of the Basic Court of Mitrovicë/a. The Prosecutor subsequently made certain non-substantive corrections to the Indictment, including the correct spelling of locations mentioned therein.<sup>1</sup>
4. On 30 May 2014, the Law no. 04/L-273 on Amending and Supplementing the Laws related to the Mandate of European Union Rule of Law Mission in the Republic of Kosovo - OGRK no. 32/2014 - 15 May 2014 (“Law on EULEX Mandate”), entered into force. Following the entry into force of the Law on EULEX Mandate, on 18 June 2014 an Agreement was signed between the Head of EULEX Kosovo and the Kosovo Judicial Council on Relevant Aspects of the Activity and Cooperation of EULEX Judges with the Kosovo Judges Working in the Local Courts (“The Agreement”).
5. In order to satisfy the requirements of the Law on EULEX Mandate and as further specified in the Agreement, with the Ruling GJA nr. 458/14, dated 11.08.2014, the President of the Basic Court of Mitrovicë/Mitrovica assigned the EULEX Judge Roxana Comsa as Presiding Trial Judge in the case.
6. On 26 August 2014, the Presiding Trial Judge held the Initial Hearing pursuant to Article 245 of the CPC. In the Initial Hearing all Defendants pleaded not guilty to all charges.

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<sup>1</sup> See Record of the main trial, 21 January 2015, paras. 20-27.

7. In lieu of holding a second hearing, the Presiding Judge requested the parties to file written submissions in accordance with Articles 245 (5) and 256 of the CPC within thirty (30) days – namely by 26 September 2014.
8. The request of the Defence Counsel of Defendant **O.I.**, Mr N.V.3 and Mr Lj.P., to extend the deadline for the filing of motions was rejected as ungrounded on 10 September 2014.
9. On 30 September 2014, new evidence was submitted by the Prosecutor pursuant to Article 244 Paragraph (3) of the CPC. The mentioned evidence was duly served on the Defence.
10. The Presiding Trial Judge issued a Ruling, dated 31 October 2014, rejecting as unfounded all of the Defence motions regarding the objections to the evidence and requests to dismiss the indictment. The Ruling was served on the parties on 11 November 2014. No appeals were filed against this Ruling.
11. On 18 December 2014, the Main Trial proceedings commenced. Subsequent main trial sessions were held on 21, 22, 23 and 26 January 2015, 18-26 February 2015, 11, 24-30 March 2015, 22-27 April 2015, 5-8, 11-14, and 20 May 2015, 15, 29 and 30 June 2015, 2, 6-9, 13-15, 21-23, 28-31 July 2015, 3 and 4 August 2015, 10, 11, 15, 16, 17, 21 September 2015, 6-8, 13, 14, 20, 21, 27, 28 October 2015, 10, 17, 19, 20, 23 and 24 November 2015, 1, 2, 4, 8-10, 15 and 17 December 2015, and 18 January 2016. The Court heard a total of 86 witnesses, including all of the Defendants.
12. On 21 January 2016 the Panel orally pronounced the verdict in the presence of the Parties.

## **I. B. PROCEDURAL CODE**

13. On 1 January 2013 a new Criminal Procedure Code came into force in Kosovo. The Criminal Procedure Code (Criminal No. 04/L-123) (CPC) replaced the Provisional Criminal Procedure Code of Kosovo (as amended) (UNMIK Regulation 2003/26) (CPCK) (Articles 545(2) and 547 of the CPC). The new CPC was applied to the proceedings in the present case, in accordance with the transitional provisions of this code.<sup>2</sup>

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<sup>2</sup> See Article 539 CPC.

## **I. C. COMPETENCE**

14. Under Article 11 Paragraph 1 of the Law on Courts,<sup>3</sup> Basic Courts are competent to adjudicate in the first instance all cases, except otherwise foreseen by Law.
15. Article 9 Paragraph 2 Subparagraph 2.7 of the same Law states that the Basic Court of Mitrovicë/a is established for the territory of the Municipalities of Mitrovicë/a South and Mitrovicë/a North, Leposaviq/Leposavić, Zubin Potok, Zvečan/Zveçan, Skenderaj/Srbica and Vushtrri/Vučitrn. Based on the filed Indictment, the alleged criminal offences took place in the southern and northern parts of Mitrovicë/a and, therefore, fall within the territorial jurisdiction of the Basic Court of Mitrovicë/a, as per Article 29 Paragraph 1 of the CPC.
16. According to Article 15 Paragraph 1 Subparagraph 1.11 of the above-mentioned Law on Courts, the criminal offences of War Crime against the Civilian Population and Aggravated Murder fall within the jurisdiction of the Serious Crimes Department of the Basic Court. Therefore, the entire case was adjudicated by the Serious Crime Department.
17. In accordance with Paragraph 2 of Article 15 of the Law on Courts, and pursuant to the Law on the Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo,<sup>4</sup> the case was heard by a Trial Panel composed of EULEX Judge Roxana Comsa, acting as Presiding Judge, EULEX Judge Vitor Pardal and EULEX Judge Nuno de Madureira, as Panel Members. No objections were put forward in regards to the Panel composition.

## **I. D. EVIDENCE PRESENTED**

### **A. In-Court Testimony**

18. The Trial Panel heard the testimony of the following witnesses during the main trial:

#### Prosecution witnesses:

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<sup>3</sup> Law no. 03/L-199.

<sup>4</sup> Law No. 03/L-053.

1. I.M.1 (Count I), on 21 and 22 January 2015
2. Xh.S. (Count I), on 22 and 23 January 2015
3. M.Ll. (Count I), on 23 and 26 January 2015
4. Sh.K.1 (Count I), 18 February 2015
5. K.A. (Count I), on 19 February 2015
6. B.F. (Count I), on 20 February 2015
7. M.M.1 (Count I), on 23 February 2015
8. F.P. (Count I), on 24 February 2015
9. Z.A. (Count I), on 25 February 2015
10. N.A.3 (Count I), on 25 February 2015
11. F.H. (Count I), on 26 February 2015
12. Ç.I. (Count I), on 11 March 2015
13. B.S.1 (Count I), on 11 March 2015
14. B.M. (Count I), on 24 March 2015
15. B.I. (Count I), on 24 March 2015
16. B.R.2 (Counts I and II), on 25 March 2015
17. M.H.2 (Count I), on 26 March 2015
18. Sh.C.1 (Count I), on 27 March 2015
19. H.B. (Count II), on 30 March 2015
20. Sh.C.2 (Count II), on 22 April 2015
21. G.Xh. (Count II), on 23 April 2015
22. R.A. (Count II), on 24 April 2015
23. S.A.2 (Count II), on 27 April 2015
24. P.A. (Count II), on 5 May 2015
25. B.S.2 (Count II), on 7 May 2015
26. R.N.1 (Count II), 7 May 2015
27. E.S. (Count II), 8 May 2015
28. Sh.A. (Count II), 11 and 12 May 2015
29. V.A.(Count II), 13 and 20 May 2015
30. Gj.S. (Count II), 14 May 2015

31. A.A.2 (Count II), 15 June 2015
32. I.M.3 (Count II), 29 June 2015
33. Sh.H. (Count II), 30 June 2015
34. H.R. (Count II), 2 July 2015
35. Witness X (Count II), 6, 7 and 8 July 2015
36. I.R.1 (Count II), 9 July 2015
37. A.V. (Count II), 13 July 2015
38. M.M.2(Count II), 14 July 2015
39. A.S.1 (Count II), 15 July 2015
40. E.B. (Count II), 21 July 2015
41. E.D. (Count II), 22 July 2015
42. F.J. (Count II), 23 July 2015
43. E.J. (Count II), 23 July 2015
44. Witness Y (Count II), 28, 29 and 30 July 2015
45. N.H. (Count II), 3 August 2015
46. G.R. (Count II), 4 August 2015
47. L.A.2 (Count II), 10 September 2015
48. I.R.2 (Count II), 10 September 2015
49. B.P. (Count II), 11 September 2015
50. M.Sh. (Count II), 15 September 2015
51. D. Sh. (Count II), 15 September 2015
52. H.S.1 (Count II), 16 September 2015
53. M.H.3 (Count II), 16 September 2015
54. G.M. (Count II), 17 September 2015
55. M.H.1 (Count II), 1 December 2015

Witnesses proposed by the defence of O.I.:

56. L.A.1 (Count I), 26 March 2015
57. B.K. (Count I), on 6 October 2015
58. D.M.1 (Count I), on 7 October 2015



59. A.D. (Counts I and II), on 8 October 2015
60. N.K. (Counts I and II), on 8 and 13 October 2015
61. R.J. (Count II), on 13 October 2015
62. N.S.2 (Count II), on 14 October 2015
63. Z.Đ. (Count II), on 14 October 2015
64. G.P. (Count II), 15 October 2015
65. O.M. (Counts I and II), on 15 October 2015
66. D.M.2 (Count II), on 20 October 2015

Witnesses proposed by the defence of D.D.:

67. Lj.M. (Count II), on 20 and 21 October 2015
68. R.Š. (Count II), on 27 October 2015
69. J.G.1 (Count II), on 27 October 2015
70. S.K.2 (Count II), on 28 October 2015
71. V.V. (Count II), on 17 November 2015
72. N.S.3 (Count II), on 17 November 2015
73. S.R. (Count II), 19 November 2015
74. D.M.3 (Count II), 24 November 2015

Witnesses proposed by the defence of N. and I. V.:

75. M.T. (Count II), on 10 November 2015
76. I.D. (Count II), on 10 November 2015
77. D.K. (Count II), on 20 November 2015
78. M.S.2 (Count II), on 20 November 2015
79. N.V.4 (Count II), on 23 November 2015
80. B.G. (Count II), on 23 November 2015
81. R.V. (Count II), on 24 November 2015

All of the Defendants testified as follows:

- **O.I.** on 4 and 8 December 2015
- **D.D.** on 9 December 2015
- **N.V.1** on 9 December 2015
- **I.V.** on 10 December 2015
- **A.L.** on 10 December 2015

The following witnesses were rejected by the Panel:

- A friend of V.A. (name unknown) mentioned by this witness in her in-court testimony on 20 May 2015.<sup>5</sup>

## **B. Exhibits admitted into evidence**

19. The following exhibits were admitted into evidence:

- I. Exhibit 1 – a sketch drawn by witness I.M.1
- II. Exhibit 2 - a sketch drawn by witness I.M.1
- III. Exhibit 3 - a sketch drawn by witness Xh.S.
- IV. Exhibit 4 - a sketch drawn by witness M.Ll.
- V. Exhibit 5 - a sketch drawn by witness M.Ll.
- VI. Exhibit 6 - a sketch drawn by witness Sh.K.1
- VII. Exhibit 7 - a sketch drawn by witness B.F.
- VIII. Exhibit 8 - a sketch drawn by witness M.M.1
- IX. Exhibit 9 - a sketch drawn by witness F.P.
- X. Exhibit 10 - a sketch drawn by witness G.Xh.
- XI. Exhibit 11 – a plan of the A.1’s apartment, submitted by the defence of **D.D.**
- XII. Exhibit 12 - a sketch drawn by witness R.A.
- XIII. Exhibit 13 - a plan of the A.1’s apartment, submitted by the defence of **O.I.**
- XIV. Exhibit 14 – a copy of Exhibit 13 marked by witness R.A.

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<sup>5</sup> The Panel’s reasoning as to why this witness proposed by the Defence of **O.I.** is not accepted is contained in the record of the main trial, 17 November 2015, paras. 331-336.

- XV. Exhibit 15 - a plan of the floor where the A.1's apartment is located, submitted by the defence of **O.I.**
- XVI. Exhibit 16 - a copy of Exhibit 13 marked by witness S.A.2
- XVII. Exhibit 17 - a copy of Exhibit 13 marked by witness Sh.A.
- XVIII. Exhibit 18 - a copy of Exhibit 13 marked by witness V.A.
- XIX. Exhibit 19 - a copy of Exhibit 13 marked by witness A.A.2
- XX. Exhibit 20 - a sketch drawn by witness I.M.3
- XXI. Exhibit 21 - a photograph submitted by the defence of **D.D.** and marked by witness Sh.H.
- XXII. Exhibit 22 - a photograph submitted by the defence of **D.D.**, commented on and marked by witness Sh.H.<sup>6</sup>
- XXIII. Exhibit 23 - a sketch of Šumadija square submitted by defence of **D.D.**, commented on and marked by witness Sh.H.
- XXIV. Exhibit 24 - a sketch submitted by the defence of **D.D.** and commented on by witness X
- XXV. Exhibit 25 - a sketch drawn by witness Y
- XXVI. Exhibit 26 - a sketch submitted by the defence of **I.V.** and commented on by witness N.V.4.

### **C. Documentary evidence**

20. The following documentary evidence was admitted into evidence:

#### Evidence tendered by the Prosecution:

- 1. UNMIK Police, Interoffice Memorandum, dated 22/09/2000 (ref. 1999/00286), 705-718 (Binder III)

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<sup>6</sup> Note: The marking in yellow was done by the defence for their internal use and is not relevant to the witness' testimony. See Record of the main trial, 30 June 2015, paras. 344-345.

2. EULEX Police, Photographs of the crime scene with the participation of B.F. dated 22/08/2013, 719-738 (Binder III)
3. UNMIK Police, Photographs of the crime scene, dated 26/05/2000, 739-744 (Binder III)
4. Inspection of the crime scene by B.M., dated 15/04/1999, 745-753 (Binder III)
5. UNMIK Police, Ante Mortem Report of F.M. dated 21/10/2004 and other documents related to the death of F.M., 754-775 (Binder III)
6. Death Certificates of A.A.1, S.P., M.S. and F.M. issued on 18/06/2013, 776-778 (Binder III)
7. UNMIK list of missing persons identified in Vidomiric, compared to the list of the missing persons in Popović street 14/04/1999, 779-783 (Binder III)
8. KFOR, Biographical Notice of **O.I.**, dated 12/11/2001, 784-810 (Binder III)
9. KFOR, Biography of **O.I.**, dated March 2000, 811-827 (Binder III)
10. Letter of the Ministry of Interior of Serbia, Police Directorate Criminal Police Administration, Department for Revealing of war crimes, dated 04/03/2014 (ref. 76-2/14-12), 828-844 (Binder III)
11. Ç.I.'s statement of 02/03/1999 given to H.B., 845-847 (Binder III)
12. UNMIK Police Commissioner's Office Archive Files, 1999, Code Cable Binder-2, Outgoing Code Cable, TO 'MIYET, UNATIONS, New York', FROM: 'Kouchner, UNMIK, Pristina', dated 22/10/1999, 1907-1910 (Binder VI)
13. UNMIK Police Commissioner's Office Archive Files, 1999, Code Cable Binder-3, Outgoing Code Cable, TO 'MIYET, UNATIONS, New York', FROM: 'Kouchner, UNMIK, Pristina', dated 30/11/1999, 1911-1914 (Binder VI)
14. UNMIK Police Commissioner's Office Archive Files, 1999, Code Cable Binder-3, Outgoing Code Cable, TO 'MIYET, UNATIONS, New York', FROM: 'Kouchner, UNMIK, Pristina', dated 03/01/2000, 1915-1918 (Binder VI)
15. UNMIK Police Commissioner's Office Archive Files, 1999, Code Cable Binder-3, Outgoing Code Cable, TO 'MIYET, UNATIONS, New York', FROM: 'Kouchner, UNMIK, Pristina', dated 04/01/2000, 1919-1929 (Binder VI)

16. UNMIK Police Commissioner's Office Archive Files, 1999, Code Cable Binder-3, Outgoing Code Cable, TO 'MIYET, UNATIONS, New York', FROM: 'Kouchner, UNMIK, Pristina', dated 08/02/2000', 1930-1934 (Binder VI)
17. UNMIK, Press Release, SRSG Kouchner Visits Mitrovica, dated 06/02/2000 1935-1936 (Binder VI)
18. European community Monitor Mission, Regional Office Pristina, Weekly Assessment # 28-00, 15-21 July 2000, 1937-1941 (Binder VI)
19. *Kosovo heads for ethnic partition*, The Independent, by Raymond Whitaker in Mitrovica, Kosovo, dated 27/02/2000, 1942-1945 (Binder VI)
20. *12 years after the carnage in Mitrovica, Serbian criminals has passed on politicians'*, www.lajmeshqip.com, dated 03/02/2012, 1946-1968 (Binder VI)
21. *We must fight*, www.ex-yupress.com, by Petar Arsic, dated 17/02/2000, 1969-1974 (Binder VI)
22. *Our History is Growing, our Geography is Shrinking*, www.ex-yupress.com, by Slavisa Lekic, dated 08/03/2000, 1975-1986 (Binder VI)
23. **O.I.** *changed the name of the list*, www.rts.rs, dated November 2013, 1987-1988 (Binder VI)
24. *I..: A wrong decision unified list*, Beta, dated 15/09/2013, 1989-1992 (Binder VI)
25. *K-For 'stood back' in Mitrovica*, BBC NEWS, by Nicholas Wood in Kosovo, dated 09/02/2000, 1993-2002 (Binder VI)
26. *French Troops in Kosovo Accused of Retreat*, The Washington Post Online, by R. Jeffrey Smith, dated 09/02/2000, 2003-2008 (Binder VI)
27. *Serbs Nurse Rage After Attack in Kosovo City*, The New York Times Online, by Carlotta Gall, 09/02/2000, 2009-2013 (Binder VI)
28. *Ethnic Albanians Flee Fighting in Mitrovica*, The Irish Times, by Christian Jennings, 14/02/2000, 2014-2017 (Binder VI)
29. Decision of Ministry of Interior of Serbia dated 25/10/1999 (ref. 112-2/99) on the nomination of **D.D.** to the position of Commander of the Police Station in Mitrovica, 2018-2020 (Binder VI)
30. *Penetrated by Rocket*, KFOR, by Maj Morten Karlsen, dated February 2000, 2021-2026 (Binder VI)

31. Document 'Pandora' on the activity of Serb Police in breach of Resolution 1244 indicating **D.D.** as a Police Commander – SUP Head, 2027-2052 (Binder VI)
32. KFOR, Biographical Notice of **D.D.**, dated 09/09/2001, 2053-2058 (Binder VI)
33. *Violence escalates in Kosovo*, The Washington Post Online, by. R. Jeffrey Smith, dated 14/02/2000, 2059-2065 (Binder VI)
34. UNMIK: Situation in Mitrovica, Briefing to the Security Council, dated 02/02/2000 and 03/02/2000, 2066-2071 (Binder VI)
35. Japanese TV program (CD), 2072 (Binder VI)
36. EULEX Police, Crime Scene Photographs, dated 12/11/2013, 2073-2084 (Binder VI)
37. *Night of Murders In Mitrovica*, KOHA Ditore, dated 05/02/2000, 2085-2089 (Binder VI)
38. *French throw teargas to Albanians, Serbs applaud*, KOHA Ditore, dated 06/02/2000, 2090-2093 (Binder VI)

The following documents are from the case file PPN 30/00 from the Prosecution Mitrovica – murder of V.1:

39. UNMIK Police, Initial/ Incident Report, dated 04/02/2000, 2094-2101 (Binder VI)
40. UNMIK Police, Initial Report, dated 04/02/2000, 2102-2104 (Binder VI)
41. UNMIK Police, Investigation Report, dated 04/02/2000, 2105-2115 (Binder VI)
42. UNMIK Police, Forensic Identification Report, dated 04/02/2000 and 10/02/2000, 2116-2130 (Binder VI)
43. Death Certificate of Sh.V., dated 14/11/2001, 2131 (Binder VI)
44. Death Certificate of N.V.2, dated 14/11/2001, 2132 (Binder VI)
45. UNMIK Police, Autopsy Presence Report, dated 07/02/2000, 2133-2135 (Binder VI)
46. Forensic Institute Pristina, Autopsy Report of Sh.V., dated 07/02/2000, 2136-2147 (Binder VI)
47. Forensic Institute Pristina, Autopsy Report of N.V.2, dated 07/02/2000, 2148-2159 (Binder VI)
48. UNMIK Police, List of Exhibits, dated 04/02/2000, 2160-2161 (Binder VI)
49. Ministry of Internal Affairs, Research Institute of Criminalistics and Criminology, dated 11/09/2000, 2162-2177 (Binder VI)

The following documents are from the case file PP 73/00 from the Prosecution Mitrovica – murder of C.1:

50. UNMIK Police, Initial/Incident Report, dated 04/02/2000, 2178-2179 (Binder VI)
51. UNMIK Police, Initial Report, dated 04/02/2000 , 2180-2184 (Binder VI)
52. UNMIK Police, Forensic Identification Report, dated 04/02/2000, 2185-2190 (Binder VI)
53. Death Certificate of R.C., dated 03/09/2001, 2191 (Binder VI)
54. UNMIK Police, Crime Scene Photographs, 2192-2201 (Binder VI)
55. UNMIK Police, Autopsy Photographs, 2202-2215 (Binder VI)
56. Institute for Forensic Medicine Pristina, Autopsy Report of R.C., dated 07/02/2000, 2216-2227 (Binder VI)
57. UNMIK Police, List of Exhibits, dated 17/02/2000, 2228-2229 (Binder VI)
58. UNMIK Police, Supplement/Continuation Form, dated 17/02/2000 and ANNEX, 2230-2232 (Binder VI)
59. UNMIK Police, Investigation Report, dated 04/02/2000, 2233-2244 (Binder VI)

The following documents are related to the murder of A.2:

60. UNMIK Police, Initial/Incident Report, dated 15/02/2000, 2245-2254 (Binder VII)
61. Death Certificate of S.A.1, dated 15/05/2002, 2255 (Binder VII)

The following documents are related to the murders of A.1 and XH.:

62. UNMIK Mitrovica, Incident Log., dated 03/02/2000, 04/02/2000 and 05/02/2000, 2256-2272 (Binder VII)
63. UNMIK Police, Initial/Incident Report dated 11/02/2001, 2273-2286 (Binder VII)
64. UNMIK Police, Investigation Actions Report, dated 11/02/2001, 2287-2289 (Binder VII)
65. UNMIK Police, Interoffice memorandum, dated 04/09/2000, 2290-2291 (Binder VII)
66. Death Certificate of N.Xh., dated 18/04/2002, 2292 (Binder VII)
67. Forensic Institute Pristina, Autopsy Report of N.A.1, dated 08/02/2000, 2293-2307 (Binder VII)

68. Medical Faculty Pristina, The history of the illness of R.A., dated 05/02/2000, 2308-2375 (Binder VII)

The following documents are from the case file PP 60/02 from the Prosecution Mitrovica – murder of S.1:

69. UNMIK Police, Initial Report, dated 04/02/2000, 2376-2377 (Binder VII)
70. UNMIK Police, Supplement Form, dated 04/02/2000, 2378-2379 (Binder VII)
71. UNMIK Police, Supplement Form, dated 16/02/2000, 2380-2381 (Binder VII)
72. UNMIK Police, Supplement Form, dated 18/03/2000, 2382-2383 (Binder VII)
73. UNMIK Police, Crime Scene Report, dated 04/02/2000, 2384-2385 (Binder VII)
74. UNMIK Police, Forensic Identification Report, dated 04/02/2000, 2386-2391 (Binder VII)
75. UNMIK Police, Scene and Autopsy Photographs, 2392-2438 (Binder VII)
76. Forensic Institute Pristina, Autopsy Report of M.S.1, dated 10/02/2000, 2439-2456 (Binder VII)
77. Death Certificate of M.S.1, dated 26/02/2002, 2457 (Binder VII)
78. UNMIK Police, List of Exhibits, dated 14/07/2001, 2458-2459 (Binder VII)
79. Protocol No. 240, from the Ministry of Interior of the Republic of Bulgaria, Research Institute of Criminalistics and Criminology, dated 30/08/2001, 2460-2463 (Binder VII)

The following documents are in relation to the murder of B.:

80. UNMIK Police, Initial/ Incident Report, dated 05/02/2002, 2464-2467 (Binder VII)
81. UNMIK Police, Supplement/Continuation Form, dated 10/09/2002, 2468-2473 (Binder VII)
82. District Court of Mitrovica, Autopsy Report of S.B., dated 09/02/2000, 2474-2496 (Binder VII)

The following documents are in relation to the attempted murder of G.1:

83. UNMIK certificate of expulsion of D.G. dated 08/02/2000, 2497-2502 (Binder VII)
84. Medical Report of J.G.2 and T.G. certifying that these daughters of D.G. suffered from post-traumatic stress, 2503-2504 (Binder VII)



Additional documentary evidence:

85. *Ethnic Cleansing in Kosovo: An Accounting*, U.S. State Department Report, December 1999
86. *Under Orders – War Crimes in Kosovo*, Human Rights Watch, 2001

Additional witness statement:

87. Minutes of the interrogation of the Witness N.A.2, District Court of Mitrovica, Hep: nr. 139/02, dated 27.01.2003<sup>7</sup>

Evidence tendered by the Defence of O.I.:

88. Case number P 44/2000, against the defendant D.J. et al., before the District Court of Mitrovica, where only I.S. stood trial<sup>8</sup>
89. Two diaries of Defendant **O.I.** from 1999 and 2000<sup>9</sup>
90. Employment Booklet of the Defendant **O.I.** (copy)<sup>10</sup>
91. Regulation on organization and execution of working obligations published in the Official Gazette of the FRY No. 36/1998 date 24 July 1998 and amendments published in the Official Gazette of the FRY No. 20/1999 dated 2 April 1999<sup>11</sup>
92. Statements of witness Sh.C.1 in case before the District Court in Mitrovica against I.S. (D.J. et al.):
  - On 03 November 1999 to the investigative judge of the District Court in Mitrovica under number HEP. No. 2/99 (or Kio No. 2/99)<sup>12</sup>
  - On 14 February 2000 in main trial before UNMIK Court in a panel presided by Swedish Judge Christofer Karphammar (the witness was examined for a number of days, namely on 14, 20, 21, 28 February and 1 march 2000)<sup>13</sup>

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<sup>7</sup> See Court Binder X, Main Trial, tab 9. See also copy of the HEP 139/2002 file.

<sup>8</sup> Notice on evidence, dated 24 September 2014, Court Binder II, Main Trial, tab 3. List of evidence, 24 November 2015, Court Binder X, Main Trial, tab 10.

<sup>9</sup> Court Binder XIII, Main Trial. Copies of relevant pages from these dairies were previously submitted with the Notice on evidence, dated 24 September 2014, Court Binder II, Main Trial, tab 3.

<sup>10</sup> Notice on evidence with copies of documents, dated 24 September 2014, Court Binder II, Main Trial, tab 3.

<sup>11</sup> List of evidence with documents, 24 November 2015, Court Binder X, Main Trial, tab 10.

<sup>12</sup> Prosecution binder I, "Statements not relied on".

<sup>13</sup> Court Binder V, Main Trial, tab 2.

93. Article of Hague Tribunal and Chicago Tribune *Taken in By Hoaxters*, 1 March 2002<sup>14</sup>
94. Report of Human Rights Watch *Failure to Protect: Anti-Minority Violence in Kosovo, March 2004*, July 2004<sup>15</sup>
95. OSCE Report *The Role of the Media in the March 2004 Events in Kosovo*, Vienna 2004<sup>16</sup>
96. Temporary Media Commissioner *Findings and Recommendation*, 23 April 2004<sup>17</sup>
97. An article from the newspaper Politika, *15 years from air strike on SUP building in Kosovska Mitrovica*, 14 May 2015<sup>18</sup>
98. *Civilian Victims of NATO Bombing During Operation Allied Force*, Human Rights Watch 2000, downloaded from<sup>19</sup>  
<https://www.hrw.org/reports/2000/nato/Natbm200-03.htm>  
<https://www.hrw.org/reports/2000/nato/Natbm200-02.htm>
99. Statements of nine international officials present in Mitrovica or in Kosovo in 1999 and 2000<sup>20</sup>
- Statement of H.S.<sup>21</sup>
  - Statement of B.L.B.<sup>22</sup>
  - Statement of W.L.N.<sup>23</sup>
  - Statement of J.H.F.<sup>24</sup>
  - Statement of A.C.W.<sup>25</sup>
  - Statement of C.M.<sup>26</sup>
  - Statement of J.N.<sup>27</sup>
  - Statement of G.M.G., PhD<sup>28</sup>

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<sup>14</sup> Court Binder VI, Main Trial, tab 5.

<sup>15</sup> Court Binder VI, Main Trial, tab 5.

<sup>16</sup> Court Binder VI, Main Trial, tab 5.

<sup>17</sup> Court Binder VI, Main Trial, tab 5.

<sup>18</sup> Court Binder VII, Main Trial, tab 10.

<sup>19</sup> Court Binder VII, Main Trial, tab 10.

<sup>20</sup> See Record of the main trial, 17 November 2015, para. 337.

<sup>21</sup> Statement from October 2014, Court Binder III, Main Trial, tab 12.

<sup>22</sup> Statement dated 4 November 2014, Court Binder III, Main Trial, tab 12.

<sup>23</sup> Statement dated 11 November 2014, Court Binder III, Main Trial, tab 12.

<sup>24</sup> Statement dated 13 November 2014, Court Binder III, Main Trial, tab 12.

<sup>25</sup> Statement dated 24 November 2014, 2014, Court Binder III, Main Trial, tab 12.

<sup>26</sup> Statement dated 6 December 2014, Court Binder III, Main Trial, tab 12.

<sup>27</sup> Statement dated 14 February 2015, Court Binder III, Main Trial, tab 12.

<sup>28</sup> Statement dated 13 February 2015, Court Main Trial Binder III, tab 12.

- Statement of M.K.<sup>29</sup>

100. List of documents from the criminal cases HEP 139/2002, K. 44/2000 against D.J. et al., and P. 45/2002 against S.Ž., submitted by the Defence on 1 December 2015<sup>30</sup>

Evidence tendered by the Defence of **D.D.**:

101. Organization chart of SUP Kosovska Mitrovica<sup>31</sup>
102. Memo (response) of owner of Motel "BB"<sup>32</sup>
103. Memo (response) of owner of sports betting "Gvozd", dated 18.09.2014<sup>33</sup>
104. Memo (response) of Radical Party in Kosovska Mitrovica, No. 19/2014, dated 18.09.2014<sup>34</sup>
105. IKM report in Kraljevo, dated 24.08.2015<sup>35</sup>
106. Judgments and rulings in disciplinary proceedings led against witness "Y"<sup>36</sup>
107. IKM report in relation to person Š.D., mentioned in the Indictment as member of MUP - 03/18/3 no. 1846/14, dated 20.11.2014<sup>37</sup>
108. List of documents from the criminal case HEP 139/00 submitted by the Defence on 1 December 2015<sup>38</sup>

Evidence tendered by the Defence of **N.V.1** and **I.V.**:

109. Post Office certificate in relation to **N.V.1**, No: 2014-171154/2, dated 13.11.2014<sup>39</sup>
110. Post Office director R.N.2 evaluation of **N.V.1**, dated 26.05.2014<sup>40</sup>
111. Lawyer booklet for **I.V.**, No 123, dated 16.04.1984<sup>41</sup>

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<sup>29</sup> Statement dated 10 December 2014, Court Binder III, Main Trial, tab 12.

<sup>30</sup> See List of documents dated 1 December 2015, submitted by the Defence of **O.I.**, Court Binder X, Main Trial, tab 7. The documents were admitted into evidence by the Court in the main trial session of 2 December 2015, see para. 9 of the record of the main trial.

<sup>31</sup> List of evidence with documents, 24 November 2015, Court Binder X, Main Trial, tab 10.

<sup>32</sup> List of evidence with documents, 24 November 2015, Court Binder X, Main Trial, tab 10.

<sup>33</sup> List of evidence with documents, 24 November 2015, Court Binder X, Main Trial, tab 10.

<sup>34</sup> List of evidence with documents, 24 November 2015, Court Binder X, Main Trial, tab 10.

<sup>35</sup> List of evidence with documents, 24 November 2015, Court Binder X, Main Trial, tab 10.

<sup>36</sup> Court Binder XIII, Main Trial.

<sup>37</sup> List of evidence with documents, 24 November 2015, Court Binder X, Main Trial, tab 10.

<sup>38</sup> See List of documents from the criminal case HEP 139/00 submitted by the Defence of **D.D.** on 1 December 2015, Court Binder X, Main Trial, tab 6. The documents were admitted into evidence by the Court in the main trial session of 2 December 2015, see para. 9 of the record of the main trial.

<sup>39</sup> List of evidence with documents, 24 November 2015, Court Binder X, Main Trial, tab 10.

<sup>40</sup> List of evidence with documents, 24 November 2015, Court Binder X, Main Trial, tab 10.

- 112. Letter no. 03/4-7-1 number 76-2/14 dated 30.07.2014 MIA Serbia<sup>42</sup>
- 113. Picture of **N.V.1**– end of January and beginning of February 2000<sup>43</sup>
- 114. Response of public utility company Standard, no. 873 dated 23.10.2015 with attachments<sup>44</sup>
- 115. Picture of the apartment of **I.V.** with all damages, especially on the entrance door to the apartment<sup>45</sup>
- 116. Sketch of the apartment of **I.V.**, Lole Ribara street C-3/11, Mitrovica<sup>46</sup>
- 117. Interpretation of the Ministry of Justice of the RS KTR-86/15 dated 19.06.2015 in relation to retrial<sup>47</sup>
- 118. Minutes of the site inspection, confirmation of established, seized and found items at the scene originating from the critical night as a consequence of the attack in the apartment, photographs with the sketch of the crime scene in the apartment of **N.A.2** and **I.V.** and joint corridor – UNMIK Police dated 03/04.02.2000<sup>48</sup>
- 119. Findings, evaluation and opinion regarding the health of **I.V.**, No. 16/1-23, issued by the JNA Military Commission, dated 23 January 1976<sup>49</sup>

Evidence tendered by the Defence of **A.S.L.**:

- 120. Copy of blood donor card, bearing the date 03.02.2000<sup>50</sup>
- 121. Copy of certificate from the book of records of blood donors<sup>51</sup>

The following evidence was admitted upon proposal of more than one or all parties:

- 122. Case HEP 139/2002<sup>52</sup>

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<sup>41</sup> List of evidence with documents, 24 November 2015, Court Binder X, Main Trial, tab 10.

<sup>42</sup> List of evidence with documents, 24 November 2015, Court Binder X, Main Trial, tab 10.

<sup>43</sup> List of evidence with documents, 24 November 2015, Court Binder X, Main Trial, tab 10.

<sup>44</sup> List of evidence with documents, 24 November 2015, Court Binder X, Main Trial, tab 10.

<sup>45</sup> List of evidence with documents, 24 November 2015, Court Binder X, Main Trial, tab 10.

<sup>46</sup> List of evidence with documents, 24 November 2015, Court Binder X, Main Trial, tab 10.

<sup>47</sup> See Record of the main trial, 2 December 2015, para. 9.

<sup>48</sup> See Case file HEP 139/2002.

<sup>49</sup> See Court Binder X, Main Trial, tab 8.

<sup>50</sup> See Court Binder X, Main Trial, tab 5.

<sup>51</sup> See Court Binder X, Main Trial, tab 5.

<sup>52</sup> Copy of the case file is part of this case (one binder).

123. Video recording of the statement given by N.A.2 to H.B., page 902 (transcripts in English page 906, Serbian 931, Albanian 953). Note on the date of the interview page 908<sup>53</sup>
124. Biography of the Serbian Minister of Internal Affairs Dušan Mihajlović, downloaded from the web page Wikipedia<sup>54</sup>

The following video recordings were presented in court:

125. Recording of a Japanese TV program concerning Defendant **O.I.**, shown in court on 2 December 2015<sup>55</sup>
126. Video recordings of statements given to H.B.<sup>56</sup> (one CD) which were considered as watched, and the transcript thereof were considered as read into the record, in the session of 2 December 2015<sup>57</sup>

The following evidence was rejected by the Trial Panel:

127. Unedited copy of witness X's personal data, in relation to a question posed to the witness by a panel member during the session held on 8 July 2015 (paras. 355-356), and requested by the Defence of **O.I.** at the main trial session held on 1 December 2015 (paras. 37-39)<sup>58</sup>
128. A greeting card sent to Defendant **D.D.** while he was in prison<sup>59</sup>
129. Statement of M.I. dated 29 October 2013, contained in Prosecution's binder "Statements not relied upon – Binder I"<sup>60</sup>
130. Records concerning the number of persons convicted of perjury, false statement under oath, false report or charge, or similar criminal offences against the judiciary in cases

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<sup>53</sup> See reference in footnotes 56 and 57 below.

<sup>54</sup> Court Binder VIII, Main Trial, tab 8.

<sup>55</sup> See Record of the main trial, 2 December 2015, paras. 9-17 and 38-42. The document is listed under Evidence tendered by the Prosecution, no. 37 above.

<sup>56</sup> See Prosecution Binder I with witness statements from 2000, CD attached to the statement of H.B. dated 25 February 2013, p. 902, also mentioned under no. 123. above.

<sup>57</sup> See Record of the main trial, 2 December 2015, paras. 12-18 and 38-41.

<sup>58</sup> The request was rejected by the Panel during the session of 2 December 2015. See Record of the main trial, para. 9.

<sup>59</sup> Record of the main trial, 2 December 2015, para. 9.

<sup>60</sup> See Record of the main trial, 2 December 2015, para. 9.

with an interethnic element involving war crimes and murder, on the territory of Kosovo since 10 June 1999<sup>61</sup>

131. Additional expertize to be conducted by a court expert of construction/ballistics<sup>62</sup> profession about the damages to the entrance door to the apartment of **I.V.** and other damages, requested by the Defence of **N.V.1.**

#### **D. Site visit**

21. Evidence administered during the site visit conducted on 21 September 2015:

132. Police report of the site visit conducted in North Mitrovica on 21 September 2015<sup>63</sup>

133. Police report of the site visit conducted on 21 September 2015<sup>64</sup>46

#### **E. Property Claims:**

22. The following injured parties submitted property claims: Xh.S., Sh.K.1, K.A., as well as R.A., S.A.2, E.Xh.a, G.Xh., Gj.S., Sh.C.2, L.A.2, H.S.1, H.R., M.H.1 and U.A.. Witness M.Ll. also submitted a property claim.<sup>65</sup>

### **I. E. ADMISSIBILITY OF EVIDENCE AND OTHER PROCEDURAL MOTIONS**

23. The Court has issued a number of procedural rulings throughout the course of the main trial. A summary of the most important of these rulings is provided below, while the rulings, including the full reasoning, are enclosed in the case file.

#### **I. E. 1. Injured party representative**

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<sup>61</sup> The request to obtain such information was submitted to the Court by the Defence of **O.I.** See Record of the main trial, 17 November 2015, para. 347 *et seq.*

<sup>62</sup> See Record of the main trial, 11 September 2015, para.5.

<sup>63</sup> See Main trial binder with documents related to the site visit conducted on 21 September 2015.

<sup>64</sup> *Id.*

<sup>65</sup> See Court Binder X, Main Trial, tab 4.

24. On 17 November 2015<sup>66</sup>, the Trial Panel issued an oral ruling concerning the representation of injured parties by a representative of the Victim Protection and Assistance Office (“Victims Advocate”), and in relation to a motion by the Defence Counsel for **O.I.** dated 28 October 2015. The Defence Counsel requested to be informed which injured parties are represented by the Victims’ Advocate and to be provided with copies of powers of attorney signed by the injured parties, in accordance with the Standard Operating Procedures for Victim Protection and Assistance Office.
25. Having considered the arguments of the Defence, the response of the Prosecutor, and the relevant provisions of the CPC and the Standard Operating Procedures for Victim Protection and Assistance Office, the Panel ruled that the consent of the injured parties to be represented by the Victims Advocate and their request to him to attend court hearings do not have to be expressed in a formal way. Here, the Panel referred to the practice of the courts that the presentation of the identity card by the Victims’ Advocate is sufficient for him to represent injured parties in court. The Panel noted that the injured parties were present during a number of hearings and that many of them testified as witnesses in the case and were examined by the Victims’ Advocate. On these occasions, they were informed by the Court of the role of the Victims’ Advocate and none of them raised any objections to being represented by him. Moreover, a number of injured parties submitted property claims through the Victims’ Advocate.
26. The Panel further noted that, considering the gravity of the charges in the present case, it is in the interest of justice for the injured parties to have legal representation and that it was the Court itself that requested the Victims’ Advocate to liaise with the injured parties and informed them of their rights in the proceedings. Even if the Court were to find that a formal power of attorney were required, its absence would not represent a substantial violation of proceedings of the kind covered by Article 386 CPC and should not have an impact on the further conduct of the proceedings. This would not be in the interest of any parties, including the Defendants who are under restrictive measures. Nonetheless, the Panel reiterated the duty of the Victims’ Advocate to provide the Defence with all of the

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<sup>66</sup> Record of the main trial, 17 November 2015, paras. 337-346.

information necessary for the preparation of their defence, including information about property claims filed by the injured parties.

### **I. E. 2. Rules concerning the examination of witnesses**

27. The Ruling of the Trial Panel on the Examination of Witnesses, dated 16 July 2015, set out the following rules:

28. For the purpose of facilitating further procedural actions by the parties in order to be followed and understood by all, the Court hereby decided to set its own legal interpretation, legal criteria and grounds on the specific following issues:

#### Direct examination:

29. The facts are introduced into evidence by the means of direct examination. Only the party sponsoring the witness conducts direct examination of that witness.

#### Cross-examination:

30. The other parties cross – examine (including Injured Party’s representative). The framework of cross-examination is established by examination in chief, together with the pre-trial statement of the witness.

31. The sponsoring party conducts re-direct examination of a witness, only following cross-examination.

#### Re-direct examination:

32. The scope of re-direct examination is dictated, in principle, by the issues raised in cross-examination. The re-examiner may deal with all matters relevant to those raised in cross-examination, even if not dealt with expressly by the cross-examiner.



33. Similarly to cross-examination, the examining party may confront the witness with discrepancies in his statements when examining in re-direct.
34. The Panel can anytime take active steps to clarify certain aspects or mandate the parties to do so.

### **I. E. 3. Applicability of the principle *ne bis in idem***

35. The Court has been called on to decide on the issue of the applicability of the *ne bis in idem* principle, in relation to Count 2 of the Indictment, on several occasions. Namely, all of the Defendants have raised the argument that the proceedings in the HEP 139/2002 case before the District Court of Mitrovica<sup>67</sup> barred criminal prosecution in the present case. The Court rejected the Defence's contention in a number of rulings which are summarized below.

#### *History of the case*

36. The criminal case HEP 139/2002 before the District Court of Mitrovica concerned only a small number of charges covered by the present case, specifically "the double murder and attempted murders of the A.1 and Xh. families in Mitrovica on Feb. 3, 2000, which resulted in the deaths of A.N. and Xh.N., with four others injured". The case was reviewed by the international prosecutor, who on 12 March 2002 issued a Rejection of Charge against Defendants **D.D.**, **O.I.**, **N.V.1**, **I.V.** and **A.L.**, by which he "rejected the possible charge and institution of preliminary investigation" against the defendants, on the ground that there is insufficient reliable evidence. The injured parties were informed of the decision.
37. On 8 April 2002, injured parties N.A.2 and G.Xh. filed a Request to Conduct Investigation pursuant to Article 60(2) of the CPC SFRY against the above-named suspects. On 2 August 2002, international investigative judge V.J. assessed the request and recommended "not to accept the request for an investigation", on the ground that "after examining the police

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<sup>67</sup> The documents from the HEP 139/2002 are part of the case file in the present case.

records and the request from the injured parties,” he concluded that there is insufficient reliable evidence to support a well-founded suspicion the above-named persons committed the afore-mentioned criminal acts. Consequently, the international investigative judge V.J. referred the request to conduct the investigation filed by the injured parties, together with his proposal to the District Court of Mitrovica panel pursuant to Article 159(7) of CPC SFRY.

38. On 3 August 2002, a panel composed of three international judges, rendered a “decision partly to reject and partly to accept the proposal of the investigative judge”. Namely, in respect to the Defendant **D.D.**, they rejected the proposal of the investigative judge and decided that an investigation should be undertaken. They assessed that there existed a grounded suspicion that **D.D.** committed the acts of which he is suspected. The panel found insufficient evidence with regard to the other suspects and therefore accepted the proposal of the investigative judge that an investigation was not to be conducted.
39. Pursuant to this decision, the investigative judge conducted an investigation with regard to the Defendant **D.D.**, by interviewing the suspect, and injured parties N.A.2, G.Xh., V.A. and Sh.A. The injured party R.A. did not appear for a scheduled interview and the suspect also did not appear to testify “on rebuttal and/or his witnesses.”
40. On 21 February 2003, the investigative judge issued a decision stating that the investigation conducted in respect to the Defendant **D.D.** was completed and that the injured parties have the right to file an indictment within eight days or they would be considered to have withdrawn from prosecution and the proceedings will be dismissed by a decision. The investigative judge sent a letter to the two injured parties, N.A.2 and G.Xh., to this effect on the same day. There are no records in the case file of what occurred further on.

#### *Decision of the Court*

41. The Court first dealt with the applicability of the principle of ne bis in idem in its Ruling on Extension of Detention against **D.D.**, dated 3 March 2015.<sup>68</sup> Although the ruling concerned only Defendant **D.**, the Court included its opinion with regard to the applicability of the ne

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<sup>68</sup> The issue was also dealt with by the Pre-Trial Judge in his Rulings dated 15 April 2014 and 14 May 2014 (case Ppr. 11/2013) and upheld by the Court of Appeals in Rulings dated 20 April 2014 (Case number PN1. No. 775/14) and 17 May 2014 (Case number PN1. No. 952/14).

bis in idem principle to the other Defendants as well. These findings were reiterated in the Ruling on Security Measures concerning Defendants **N.V.1, I.V., and A.S.L.**, dated 19 March 2015, which was confirmed by the Court of Appeals<sup>69</sup> and the Supreme Court of Kosovo.<sup>70</sup>

42. As regards Defendants **O.I., N.V.1, I.V., and A.S.L.**, the Court found that the decision of the Panel of the District Court in Mitrovica was “simply that an investigation ‘should not be ordered’ in the pre-trial phase. This means that no investigation was even opened, initiated or conducted against the defendants. No such final decision of termination of investigation was taken by the court.”<sup>71</sup> The Court observed that Article 403(1) CPC SFRY, applicable at the time of the previous proceedings allowed for the possibility of reopening the proceedings “if new evidence is presented which persuades the Court that conditions have occurred for reopening the investigation.” The same possibility exists under Article 422(2) of the current CPC, even after the indictment was dismissed.<sup>72</sup>
43. The Court further found the object of the current proceedings to be much broader than the previous, as it concerned numerous victims and injured parties who had not been included before. Moreover, with regard to the facts which were subject of the previous proceedings, the Court found that new evidence has come to light which would warrant the reopening of criminal proceedings under the provisions cited above and would bar the application of the principle of *ne bis in idem*.<sup>73</sup>
44. The Court came to the same conclusion with regard to Defendant **D.D.** The previous proceedings against this defendant had reached a later stage in that the investigative judge had concluded the investigation and instructed the two injured parties (private prosecutors) that they had eight days to file an indictment. There is no indication that an indictment was ever filed by the private prosecutors and it appears that the investigative

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<sup>69</sup> Ruling of the Court of Appeals PN 1. 496/2015, 27 March 2015 (in relation to an appeal filed by Defendant **N.V.1**), Court Binder III, Detention on Remand – **N.V.1, I.V., A.L.**, tab 3.

<sup>70</sup> Judgment of the Supreme Court, Pml.Kzz 91/2015, 14 May 2015, paras. 4.4-4.8 (in relation to a request for protection of legality filed by the Defendant **N.V.1**), Court Binder IV, Detention on Remand – **N.V.1, I.V., A.L.**, tab 10. *See also* Decision on Defence Objections to Evidence and Requests to Dismiss the Indictment, 31 October 2014, pp. 32-33, Court Binder II, Main Trial, tab 1.

<sup>71</sup> Ruling on Extension of Detention on Remand against **D.D.**, 3 March 2015, para.12, Court Binder II, Detention on Remand – **O.I. and D.D.**, tab 2; Ruling on Security Measures, 19 March 2015, para. 18, Court Binder III, Detention on Remand – **N.V.1, I.V., A.L.**, tab 6.

<sup>72</sup> Ruling on Security Measures, 19 March 2015, paras. 22-24, Court Binder III, Detention on Remand – **N.V.1, I.V., A.L.**, tab 6.

<sup>73</sup> Ruling on Security Measures, 19 March 2015, paras. 25-27, Court Binder III, Detention on Remand – **N.V.1, I.V., A.L.**, tab 6.

judge never issued a decision to dismiss the proceedings on the basis of the withdrawal of the private prosecutor.<sup>74</sup> Nonetheless, the Court found that the effect of these procedural steps is only the possibility that “the proceedings could be considered as dismissed with regard to the injured parties and in this case it is certain that those parties would not have had the ability to seek the reopening of proceedings under SFRY law (Art. 403(3)).”<sup>75</sup>

45. On the other hand, the Court found that even if the proceedings were considered dismissed, “Article 403(1) explicitly allows the public prosecutor to seek the reopening of proceedings when the criminal proceedings were dismissed during the investigation or before commencement of the main trial, by a final decision... if ‘new evidence is presented which persuades the court that conditions have occurred for reopening the criminal proceedings.’”<sup>76</sup> The Court concluded from this that the decision not to prosecute did not have a definitive effect and that, therefore, proceedings could be reopened under Article 403(1) CPC SFRY and Article 422(2) CPC, if new evidence was presented.<sup>77</sup>
46. The Court then reiterated the same finding concerning the existence of new evidence as in relation to the other four defendants, and concluded that the principle of ne bis in idem was not applicable in relation to Defendant **D.D.**<sup>78</sup>

#### **I. E. 4. Admissibility of the statement of deceased witness N. A.2 and other evidentiary motions**

47. On 27 April 2015, having considered the submissions of the parties, the Trial Panel issued a Ruling on the Admissibility of the Statements of N.A.2 and Other Evidentiary Motions.<sup>79</sup> The Panel first pointed out that all relevant evidence is deemed admissible unless expressly provided otherwise by a provision of the CPC. This is in line with Article 257(2) and Article

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<sup>74</sup> Ruling on Extension of Detention on Remand against **D.D.**, 3 March 2015, paras. 17-20, Court Binder II, Detention on Remand – **O.I.** and **D.D.**, tab 2.

<sup>75</sup> *Id.* at para. 21.

<sup>76</sup> *Id.* at para. 23.

<sup>77</sup> *Id.* at paras. 23-27.

<sup>78</sup> *Id.* at paras. 28-31.

<sup>79</sup> The appeal to the Ruling by the Prosecutor was dismissed as inadmissible by the Court of Appeals in its Ruling PN 253/15, dated 4 June 2015, Court Binder VII, Main Trial, tab 5.

329(1). Conversely, all evidence that is deemed manifestly irrelevant, as defined in Article 259(1) CPC, is inadmissible in criminal proceedings.

48. In addition, the Code provides for three other situations in which evidence is deemed inadmissible and must be excluded from the case file. Namely, this is the case when the evidence was unlawfully obtained by the police, state prosecutor, or other government entity, it violates the rules in Chapter XVI of the CPC, or the evidence is intrinsically unreliable.
49. However, even when deemed admissible, the use of a statement may be limited depending on its qualification under the provisions governing the use of prior statements. Specifically, Article 123 CPC distinguishes between pre-trial interviews, pre-trial testimony and statements provided as part of a special investigative opportunity. Only the latter two types of statements may be used as direct evidence in the main trial, provided that the witness is unavailable due to death, illness, assertion of privilege or lack of presence within Kosovo. On the contrary, the use of pre-trial interviews is limited to the impeachment of a witness during cross-examination and may not be used as direct evidence during main trial.
50. With regard to the issue of whether the witness was given a warning prior to giving the statement, the Panel opined that Article 257 CPC provides that the evidence obtained in violation of the provisions of criminal procedure shall be inadmissible when the Code or other provisions of the law expressly so prescribe, and that Article 128 CPC provides when a witness statement is inadmissible. It is not explicitly provided by the Code that the fact a witness is not warned would render his statement inadmissible.

#### *Statements given to the police*

51. In light of these rules, the Panel found that the statements given by the deceased N.A.2 to the police, namely to the French KFOR (10.02.2000), UNMIK Police (undated), and the statement dated 3 February 2000, contained in the Request to Conduct Investigations dated 8 April 2000, cannot be used as evidence at trial. The same was decided with regard to any other police documents containing the testimony of N.A.2. The Panel found that the statements were collected in accordance with the then applicable Criminal Procedure Code of SFRY, but pointed out that the lawfulness of the investigative action which led to the

evidence in question is distinct from the overall question of admissibility of such evidence, which depends on the applicable provisions of the CPC.<sup>80</sup>

52. Therefore, the Panel concluded that, although the statements were collected lawfully and are relevant, their use in the main trial is limited under Articles 123(2) and 337 of the CPC. Namely, the statements can be characterized at the most as the equivalent of the pre-trial interview under the CPC currently in force. As such, they cannot be used as direct evidence in the main trial. Rather, their content may only be used during cross-examination for the purpose of impeaching the witness. At the very least, the statements can qualify as interviews by Police under Article 73 (which does not even require a warning) and this can also be used in cross examining the witness, according to Article 337 (5) CPC. In both situations – be it police interview or pre-trial interview, due to the fact that the witness is deceased and thus unavailable to testify, the cross-examination of the witness cannot take place. Therefore, no probative value can be attached to these police statements.
53. Article 338 (1) (1.1), on which the Prosecutor relies is not applicable here, as it only refers to reading into the record of previous “testimonies” of the witness, and not to interviews. This is concluded based on the wording of the text: in paragraph 1, the word “testimony” is used, whereas paragraph 2 refers to “examinations”. Moreover, it would be lacking logic to read into the record a pre-trial interview, whose only probative value – that is in cross-examination – would be rendered useless by the absence of the witness in front of the Court (and Article 338 paragraph 1 CPC deals precisely with situations when the witness is absent).

*Statement in front of the District Court Mitrovica*

54. On the other hand, the Panel found that the statement of N.A.2 before the District Court of Mitrovica, dated 27.01.2003, is admissible and should be read into the record. The witness was interviewed, according to the procedural law in force at the time, by an investigative judge within the District Court of Mitrovica, and he was warned about his rights and obligations. Moreover, the defence counsel of the suspect (Defendant **D.D.**) was duly summoned.

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<sup>80</sup> The Panel referred to the Court of Appeal Decision in case number PN 577/2013, 10 December 2013, paras. 29 and 30.

55. Therefore, the statement fulfils the conditions of a pre-trial testimony as per Article 132 CPC, and may be used during the main trial as prescribed under Article 123 paragraph 3 CPC. Moreover, Article 338 CPC is applicable here, which provides in paragraph 1 that records containing witness testimony may be read into evidence in cases where the witness is unavailable to testify for one of the reasons enumerated in subparagraphs 1.1-1.3. Subparagraph 1.1. of Article 338(1) provides specifically for the situation where the witness has died, as is the case here.
56. The Panel further noted that when the statement was collected, the investigation was ongoing only in respect to **D.D.**, and not to the other defendants. Therefore, in relation to the latter, this statement does not fulfil the conditions of a pre-trial testimony as these defendants were not part of those proceedings and therefore were not summoned. Consequently, the statement cannot be used as direct evidence with regard to those defendants.

*Statements of other witnesses*

57. In line with the rules articulated above, the Panel decided that the prior statements of witnesses A.A.2, Sh.A., G.Xh. and A.V. were collected lawfully and that they are admissible. Even if these witnesses were not presented the warning, their interview has at least the value of a police interview and it may be used in cross-examination based on Article 337(5) CPC. Moreover, since the witnesses were to be examined directly in court, their previous statements may only be used in cross-examination or to refresh their memory.
58. Furthermore, the Panel found that in spite of the above ruling with regard to the admissibility of N.A.2's statements and their use as direct evidence, other witnesses from the A.1 and Xh. families may be asked what they know from the deceased in reference to all defendants. This is considered pertinent and relevant to the case and may have corroborative value. Moreover, there is no prohibition of hearsay evidence in the CPC. The source of the witness' knowledge will be an element to assess the weight to be attached to his/her statement.

**I. E. 5. Relevance of witness testimony**

59. In the course of the main trial, the Court decided on a number of objections and request concerning the relevance and admissibility of witness testimony. These decisions are summarized below.
60. On 3 March 2015,<sup>81</sup> the Presiding Judge issued a Ruling rejecting as ungrounded the motion not to hear prosecution witnesses Ç.I., B.S.1, B.I., B.R.2, M.H.2 and H.B., on the grounds that their testimony is not relevant for the case. The Presiding Judge ruled that the contested witnesses are likely to testify about aspects deemed relevant, such as the general context of the events, the activities of the Defendant **O.I.** or the investigation. Therefore, the judge found that, as long as the evidence is not manifestly irrelevant or intrinsically unreliable (and thus inadmissible according to Article 259 CPC), the Defence may not limit the scope of administering the evidence only to direct evidence. The issue of the weight to be attached to each piece of evidence and the assessment of the evidence as a whole, would be dealt with by the Panel in deliberations.
61. On 17 November 2015,<sup>82</sup> the Presiding Judge announced the decision rejecting the request of the Defence Counsel of **O.I.** to hear the friend of witness V.A., mentioned in her testimony before the Court. The decision was based on the fact that the only purpose of the testimony of V.A.'s friend would be to counter her account of certain facts which are not subject of the charges and are therefore not relevant for the case. Moreover, the Presiding judge pointed out that the Defence itself considered these allegations irrelevant, and that they did not take advantage of the opportunity to cross-examine the witness with regard to the identity and contact details of her friend, when specifically offered the opportunity.

#### **I. E. 6. Testimony of witnesses via video-link**

62. On 26 February 2015, the Presiding Trial Judge issued a ruling rejecting the request of the Defence Counsel of Defendant **O.I.** that the prosecution witness Sh.C.1, residing in \_\_\_\_\_, be heard in open court rather than via video-link. The decision was based on the fact that

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<sup>81</sup> See Ruling dated 3 March 2015, Court Binder V, tab. 4.

<sup>82</sup> Record of the main trial, 17 November 2015, paras. 331-336.



the witness was of advanced age and in poor health, as well as that there were sufficient guarantees that the examination of the witness would be conducted in accordance with all the relevant legal requirements. Namely, the fact that the witness would be heard in an official set-up, arranged through the mutual legal assistance with \_\_\_\_\_, would ensure that her testimony would reflect her free will and that she would not be subjected to any outside influence. The Judge further found that all of the conditions concerning the testimony via video-link articulated in the *Tadić* case were satisfied.<sup>83</sup>

63. The Court also decided on the requests to hear witnesses X and Y in court rather than through video-link. The requests were rejected<sup>84</sup> in light of the protected measures granted to the witnesses and taking into account the same conditions and requirements stipulated in the Ruling of 26 February 2015, concerning witness Sh.C.1 mentioned above. Witnesses Sh.A., V.A., and A.A.2 were also heard via video-link.

#### **I. E. 7. Protected Witnesses**

64. Two Prosecution witnesses were granted the measures of anonymity from the defendants and the public by the Pre-Trial Judge.<sup>85</sup> The witnesses were referred to by the pseudonyms of X and Y throughout the proceedings. The same measures of anonymity were maintained with regard to Witness X during the main trial, and the witness testified via video-link with face and voice distortion, in a session open to the public.<sup>86</sup> The measure of anonymity from the defendants was lifted in relation to Witness Y, but the witness remained anonymous to the public and testified in closed session via video-link.<sup>87</sup>

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<sup>83</sup> Prosecutor v. Tadić (IT-94-1-T), *Decision on the Defence Motions to Summon and Protect Defence Witnesses, and on the Giving of Evidence by Video-Link*, 25 June 1996 (RP D9148-D9162) (“Tadić Decision”).

<sup>84</sup> Minutes of closed hearing of 6 July 2015, para. 95. *See also* Ruling dated 6 July 2015, concerning witness X, and Ruling dated 21 July 2015, concerning witness Y.

<sup>85</sup> *See* Ruling dated 27 January 2014, Pre-Trial Binder I, **O.I.** tab 19, Rulings dated 6 March 2014 and 13 June 2014.

<sup>86</sup> *See* Ruling dated 14 January 2015, Court Binder III, Main Trial, tab 3; Ruling dated 6 July 2015, concerning witness X, Court Binder XII, Main Trial, tab 7. *See also* Record of the main trial, 6, 7 and 8 July 2015.

<sup>87</sup> *See* Ruling dated 14 January 2015, Court Binder III, Main Trial, tab 3; Ruling dated 21 July 2015, concerning witness Y, Court Binder XII, Main Trial, tab 7. *See also* Record of the main trial, 28, 29 and 30 July 2015.

### **I. E. 8. Public character of the main trial**

65. The main trial was open to the public in accordance with Article 293 CPC, except for the sessions on 28, 29 and 30 July 2015, and partly on 10 September 2015, 27 October 2015 and 1 December 2015, which were declared closed to the public.

### **I. E. 9. Language of the proceedings, interpretation and court recording**

66. Based on Article 16 of the Law on Jurisdiction and competencies of EULEX Judges and Prosecutors in Kosovo, the language used in the court proceedings was English.

67. In accordance with Article 1 Paragraph 2 of the CPC, interpreters translated the court proceedings and all court documents relevant to the trial from English into Serbian and Albanian, and vice-versa. On some occasions the parties raised objections to the quality of translation. All the objections were immediately given consideration by the trial panel and the clarification was put in the record.

68. Accuracy of the written record was controlled by the presiding judge in real time. The computer screen displaying the record was placed in front of her. This manner of recording made use of other recording methods redundant as it appeared unlikely to achieve any better accuracy of the semantic content of the record.

## **II. LEGAL REASONING**

69. The case is structured in two separate Counts.

70. Count 1 is directed only against **O.I.** This count is charged as war crime against civilian population and deals with events occurred on 14 April 1999.

71. Count 2 is directed against all five Defendants and deals with several attacks executed on 3 February 2000 on the Albanian population living in Mitrovica north and resulted in the death of ten persons and the injury of 13 others. These allegations support three counts of

incitement to aggravated murder- when it comes to **O.I.** and **D.D.**- and three counts of aggravated murder and attempted aggravated murder - when it comes to **N.V.1**, **I.V.** and **A.S.L.**

72. The two counts will be assessed separately in the following chapters.

## **II. A. COUNT 1: EVENTS OF 14 APRIL 1999 IN MITROVICË/A SOUTH**

### **II. A. 1 Facts**

73. The following facts are established beyond reasonable doubt:

- I. During 1998-1999 there was a conflict in Kosovo between Serbian forces and Kosovo Liberation Army (KLA), which intensified with the North Atlantic Treaty Organization (NATO) involvement and its bombings that commenced on 24 March 1999.
- II. Against this background, on 14 April 1999 the Serbian forces organized a mop-up operation in Mitrovicë/a south, with the aim of expelling and killing ethnic Albanians.
- III. On that day, at around 12h00 numerous Albanian families living in the area of Miladin Popović street (now Ahmet Selaci street) and Njegos street (now formed by “Mehmet Gradica” and 11 Marsi streets) were forcefully removed from their houses by the Serbian forces and gathered together outside in the streets.
- IV. Women, children and elderly men were then separated from the remaining men, ushered towards the direction of the bus station in Mitrovicë/a and ordered to go to Albania.
- V. A number of 15 Albanian males were grouped together and escorted by soldiers to a wall of a house situated on Njegos street. These were: F.M., I.M.1, Xh.S., B.F., M.M.1, I.M.2, Sk.P., K.A., L.A.1, A.A.1, B.A., S.K.1, M.S.(F.), Sh.K.1 and Sh.K.2.
- VI. There, they were leaned against the wall and were taken over from the army by a group of armed Serbian paramilitary/policemen and were kept there for around an hour with their hands clasped behind their necks. During that time the group of paramilitaries/policemen were questioning them about the KLA. Some of the arrested men were threatened and assaulted.

- VII. Then the whole group, escorted by the paramilitaries/policemen, moved along the street until they reached the main road – Miladin Popović street, where they were stopped.
- VIII. In front of them, at the intersection between Miladin Popović street and Rruga per Bajr street there was a police/paramilitary checkpoint.
- IX. Six of the men were separated from the rest, were let go and told to go to Albania. These were: L.A.1, K.A., B.A., S.K.1, I.M.2, Sh.K.2.
- X. The rest of the nine were escorted by the paramilitaries/police in a line on Miladin Popović street, towards the checkpoint. These were: F.M., I.M.1, Xh.S., B.F., M.M.1, S.P., A.A.1, M.S.(F.) and Sh.K.1.
- XI. On that occasion **O.I.** was part of the group of paramilitaries/policemen present at the checkpoint.
- XII. He was wearing a blue uniform and he was armed.
- XIII. Before the nine men mentioned above at point 10 passed through the checkpoint, one member of the Serbian police/paramilitary unit who was escorting them asked **O.I.** something along the lines “What are we going to do with them chief?”, to which **O.I.** replied something to the effect of: “Why ask me, apply the orders!”
- XIV. The nine Albanians were then escorted through the checkpoint and they were led a few meters further on Rruga per Bajr street, where they were stopped.
- XV. The paramilitaries/police took them away two by two, starting from the end of the line, towards the houses situated on each side of the road and shot them. The following four men were shot: S.P., F.M., A.A.1 and M.S.(F.).
- XVI. While these events were ongoing, a Pinzgauer vehicle arrived with a uniformed person who gave an order which stopped the shooting.
- XVII. This person then escorted the remaining five men back onto Miladin Popović street in the direction of the bus station. These were: I.M.1, Xh.S., B.F., M.M.1 and Sh.K.1.
- XVIII. At the bus station, they were reunited with their families and together they went to Albania.
- XIX. **O.I.** was aware of the operation of expelling and killing civilian ethnic Albanians; on that day, by acting as described above, he willingly complied with the plan, knowing that it would result in the killings.

XX. **O.I.** was fully mentally competent.

XXI. At that time, **O.I.** was a well-known figure in Mitrovicë/a, with a successful sports record in martial arts, various commercial enterprises and a prominent position in the state-owned industrial conglomerate 'FERRONIKEL'. He also spoke fluent Albanian.

74. It could **not** be established beyond reasonable doubt that:

XXII. When undertaking the above, **O.I.** acted in the capacity of a leader of a Serbian paramilitary/police unit.

XXIII.**O.I.** "incited the group of paramilitary/police officers by ordering them" to commit murder.

Preliminary remarks:

75. The Indictment alleges the following:

"on 14/04/1999 at around 12:00hrs in Mitrovica<sup>88</sup> at Miladin Popoviç (now Ahmet Selaci) street and Rruga per Bajr street, acting in serious violation of Article 3 common to four Geneva Conventions of 1949 and Additional Protocol II, and acting in his capacity as a leader of a Serbian paramilitary/Police unit, incited the group of subordinate paramilitaries/Police officers to commit war crimes in the context of an armed conflict not of an international character against persons taking no active part in the hostilities, by ordering them to murder the following victims of Albanian ethnicity:

- a. F.M.
- b. S.P.
- c. A.A.1
- d. M.S.(F.)
- e. I.M.1
- f. Xh.S.

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<sup>88</sup> As per the corrected Indictment, Record of the main trial, 21 January 2015, para. 20 *et seq.*

- g. B.F.
- h. M.M.1
- i. Sh.K.1

and as a result F.M., S.P., A.A.1 and M.S.(F.) were shot dead by unidentified paramilitaries/Police officers under the effective command and control of the defendant.”

76. The Indictment, in its enacting clause does not elaborate more on the factual situation. The alleged facts are described in the reasoning part of the Indictment and intercalated with the argumentation of the prosecutor, in a rather unprecise way. The Panel looked at both the enacting clause and the reasoning as a whole and endeavoured to assess the facts relevant to the criminal offence subject to the Indictment as identified in both parts.
77. The Prosecution administered 17 witnesses on this Count. Out of these, five of the witnesses were part of the “execution line”<sup>89</sup> and survived: I.M.1, Xh.S., Sh.K.1, B.F. and M.M.1. (The other four people in the execution line were killed.)
78. Witnesses K.A. and L.A.1 were part of the bigger group of 15 Kosovo Albanians who were initially apprehended and interrogated, but later on released; the latter was examined at the request of the Defence.
79. Witnesses F.P., B.S.1, Sh.C.1 and M.Ll. were also expelled from the neighbourhood on the same day. Several of their family members were killed that day, but they are not included in the subject matter of the Indictment.
80. Witnesses Ç.I., Z.A. and N.A.3 stated that they saw **O.I.** wearing a uniform during the conflict.
81. Witness B.I. is a former employee of Ferronikel and testified mainly about the company’s activities during the war.
82. Several witnesses, such as B.R.2, H.B., Witness Y and F.H. were called to testify in relation to Count 2, but touched upon aspects pertaining to Count 1 as well.
83. The Defence proposed witnesses B.K., D.M.1, A.D., N.K. and O.M., as alibi witnesses and to prove the Accused’s activities at the time or his support of the ethnic Albanians.

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<sup>89</sup> To simplify the explanation, we will use the term “execution line” to refer to the line of the nine Kosovo Albanians escorted from the last separation point on Miladin Popović to the place where the execution took place. They are: F.M., I.M.1, Xh.S., B.F., M.M.1, S.P., A.A.1, M.S.(F.) and Sh.K.1.

84. When assessing it, the evidence will be grouped in five main categories:

- (a) Evidence related to the events of 14 April 1999 in Mitrovica
- (b) Evidence related to the affiliation of **O.I.** with the Serbian forces in 1999
- (c) Evidence related to the presence of **O.I.** at Ferronikel on 14 April 1999 and to his activities as a civilian in 1999
- (d) Role of **O.I.** in the events of 14 April 1999 in Mitrovica
- (e) Analysis of the conditions of the armed conflict, the civilian status of the targeted population and the nexus with the armed conflict.

(a) Evidence establishing the events of 14 April 1999 in Mitrovica

Route of the victims from expulsion to execution and the way out for the survivors:

85. Numerous witnesses<sup>90</sup> recount how on 14 April 1999 they were expelled from their homes situated in the area of Miladin Popović street (Kovaq)<sup>91</sup> by armed Serbian forces. They were congregated outside their houses, in the streets. Women, children and elderly men were then separated from the remaining men, ushered towards the direction of the bus station in Mitrovica and ordered to go to Albania. The rest of the men were apprehended by the Serbian forces and some of them were executed.
86. The Panel remarks from the outset that the Prosecution mentioned in the Indictment, “for the completeness of the story,”<sup>92</sup> that a total of 27 individuals of Albanian ethnicity were killed in this police/paramilitary raid. However, only the nine individuals mentioned above - out of which four were killed on that occasion - are expressly listed in the Indictment. Therefore, in this decision the Panel will only examine the fate of these nine. These nine

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<sup>90</sup> As detailed below.

<sup>91</sup> For a better representation of the geography of the area, see the sketch and report of the site visit conducted on 21 September 2015, drafted by Forensics Unit, Mitrovica Regional Police Directorate, dated 21 September 2015 and filed with the Court on 28 September 2015.

<sup>92</sup> Indictment, page 10, English version.

persons had initially been part of a bigger group of 15; all of them were expelled from houses situated on Njegoš street and apprehended under similar circumstances as presented below.

87. Witness I.M.1 recounted how on 14 April 1999, around 12:00, while he was at home together with his family - among whom was witness Sh.K.1,<sup>93</sup> military forces came to their place and demanded that they vacate the house. They also entered the neighbours' apartments and ordered them to leave as well. They were armed, equipped with full military gear - helmets and vests - and they were wearing green camouflage uniforms. They were all between 30-40 years old and they spoke Serbian. Based on their age, the witness purports that they were all reservists and that none of them was from the Mitrovica area.<sup>94</sup> The witness, his family, as well as their neighbours, were taken out in the street, where the Serbian forces separated the men above the age of 18-19 from the rest of the elderly men, women and children.
88. A person in a military uniform ordered the group of elderly men, women and children to leave the place and "moved them away" following Fočanska/Foča street, which leads to Miladin Popović street and further on to the bus station.<sup>95</sup> The rest of them, the men above the age of 18-19 were escorted by the army officers further down on Njegoš street, where they were placed against the wall of a house.
89. Witness Xh.S. describes similar events as I.M.1. He clearly stated that he was also living on Njegoš Street and on the critical day, 14 April 1999, he was at home together with his family - among whom was witness B.F.<sup>96</sup> It was around noon, between 11:00 and 12:00 when members of the regular army entered the house and expelled them into the street. They were armed, clad in military "greenish and grey" uniforms. They spoke Serbian.
90. According to his statement, on that day, witness K.A. and his entire family (25 members in total) were staying over at L.A.1's house situated on Njegoš street.<sup>97</sup> His sons A.A.1 and B.A. were there too. Their first neighbour S.P. and M.S. were also there (A.A.1, S.P., and M.S. were

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<sup>93</sup> I.M.1, Record of the main trial, 21 January 2015, para. 56; Sh.K.1, Record of the main trial, 18 February 2015, paras. 34, 440-441.

<sup>94</sup> I.M.1, Record of the main trial, 21 January 2015, para. 88.

<sup>95</sup> I.M.1, Record of the main trial, 21 January 2015, para. 125 *et seq.*

<sup>96</sup> Xh.S., Record of the main trial, 22 January 2015, para. 515 *et seq.*

<sup>97</sup> K.A., Record of the main trial, 19 February 2015, para. 21 *et seq.*



killed shortly after). At around 10:00 or 10:30,<sup>98</sup> three officers dressed in green military uniforms, wearing masks and armed with automatic rifles, stormed inside and shouted in Serbian “everyone out, you asked for NATO and now everyone out.”<sup>99</sup>

91. Witness L.A.1 confirms K.A.’s account.<sup>100</sup> He recounts how on the critical day, around 11:00h, “paramilitary forces or military forces” came to his house and expelled all the occupants. All of them were taken out in the street where young males were separated from the rest.
92. Witness B.F. stated that on the same day he was visiting A.S.2 who lived in the area of Kovaq street,<sup>101</sup> in the same house as witness Xh.S. (Even if this particular witness does not recall the exact location, we can establish based on Xh.S.’s testimony that the house was situated on Njegos̄ street). It was about 10:00 a.m. when around ten police officers dressed in blue uniform and armed with automatic rifles, bombs and some of them with axes as well, stormed the house and ordered them to leave. They left the house and gathered in front of the building. The officers were speaking in Serbian and the witness thinks they were Serbian police. He went downstairs holding a child of Xh.S.’s in his arms. Once downstairs, a man wearing the same type of uniform and who the witness believes was a commander asked him to put down the crying child. The child was taken away from him. Serbian forces started to separate the men from women and children, while the “commander” was urging them: “faster, faster!”. Following the separation, the witness was escorted to the wall close to the house of B.V.
93. On 14th of April 1999 witness M.M.1 was at his house on Njegos̄ Street<sup>102</sup> when Serbian armed forces came by and expelled his family. They initially did not find him as he had hidden himself in the basement; however, shortly after, his father came back escorted by two Serbian men in uniform and they fetched him. He was taken outside the house and joined the rest of the group expelled from the neighbourhood. This happened sometime between 10:00 and 11:00 a.m. The uniformed men who evicted them were wearing blue police uniforms and they had green vests and two rocket propelled grenades on the back.

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<sup>98</sup> K.A., Record of the main trial, 19 February 2015, para. 203.

<sup>99</sup> K.A., Record of the main trial, 19 February 2015, para. 35.

<sup>100</sup> L.A.1, Record of the main trial, 26 March 2015, para. 90 *et seq.*

<sup>101</sup> B.F., Record of the main trial, 20 February 2015, para. 25 *et seq.*

<sup>102</sup> M.M.1, Record of the main trial, 23 February 2015, para. 27 *et seq.*

While expelling the witness and his family, the officers told them “we gave you everything and you didn’t want it, now NATO is helping you and we have Russia.” The witness did not recognise any familiar faces and therefore he assumed they had come from Serbia proper.

94. All the testimonies were consistent as to the procedure: whole families were expelled from their houses. Once outside, females, children and elders were separated and ordered to march in the direction of the bus station, while the men were held behind and apprehended by armed Serbian forces.
95. After the separation from their families, the following men were escorted and lined up against the wall of a house situated on Njegoš street:<sup>103</sup> S.K.1, S.P., K.A., L.A.1, B.A., A.A.1, M.S., Sh.K.2, I.M.2, F.S.M., Sh.K.1, I.M.1, Xh.I. and B.F. M.M.1, who managed to go unnoticed when the soldiers initially searched his family house (as he hid himself in the basement), was brought in later by two soldiers and forced to join the others at the wall.<sup>104</sup>
96. The 15 Kosovo Albanians were leaned against the wall with their hands up, fingers interlaced at the back of the heads and their foreheads placed against the wall. They were kept at gun point, searched and interrogated<sup>105</sup> for around one hour.<sup>106</sup> They were asked if they were KLA members, they were addressed with swear words and threatened to be killed.<sup>107</sup> One of the men in uniform was carrying an axe and prodded I.M.1 in the back with it.<sup>108</sup>
97. From the wall, they were then arranged in a line and escorted back onto Njegoš street towards Miladin Popović street. After climbing up the stairs linking Njegoš street to Miladin Popović, they were made to turn left and walk a few meters on that street and then they were stopped.
98. They were distributed in a line one behind the other, at a very close distance, approximately one step<sup>109</sup> or “at arm’s length”.<sup>110</sup>

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<sup>103</sup> The segment of Njegoš Street currently called “11 Marsi”.

<sup>104</sup> I.M.1, Record of the main trial, 21 January 2015, para 113, and M.M.1, paras 40-63; K.A., Record of the main trial, 19 February 2015, para. 45.

<sup>105</sup> K.A., Record of the main trial, 19 February 2015, para. 45.

<sup>106</sup> I.M.1, Record of the main trial, 21 January 2015, para. 113; K.A., Record of the main trial, 19 February 2015, para. 41.

<sup>107</sup> I.M.1, Record of the main trial, 21 January 2015, para. 228 *et seq.*

<sup>108</sup> I.M.1, Record of the main trial, 21 January 2015, para. 188 *et seq.*

<sup>109</sup> Sh.K.1, Record of the main trial, 18 February 2015, para. 314.

<sup>110</sup> I.M.1, Record of the main trial, 22 January 2015, para. 156.

99. Immediately when they turned left on Miladin Popović, they noticed a checkpoint with police and paramilitaries, and possibly army. It was situated at the intersection in front of them, between Kovaq/ Miladin Popović street, the small street leading to the former “Meto Bajraktari” school and Rruga Per Bajr.
100. They marched a few metres on Miladin Popović and they were stopped approximately ten meters before the checkpoint.<sup>111</sup>
101. Here the uniformed men who escorted them there handed them over to some other “blues”.<sup>112</sup>
102. A person from the checkpoint in blue police uniform<sup>113</sup> and wearing a mask approached them. He selected some from the group, released them and ushered them back onto Miladin Popović street, in the direction of the bus station. This first group consisted of six men: L.A.1, K.A.,<sup>114</sup> B.A., S.K.1, I.M.2, and Sh.K.2.<sup>115</sup>
103. The remaining nine men were escorted by the paramilitaries/police in the opposite direction on Miladin Popović, towards the intersection with the checkpoint. These were: F.M., I.M.1, Xh.S., B.F.,<sup>116</sup> M.M.1,<sup>117</sup> S.P., A.A.1, M.S.(F.) and Sh.K.1.<sup>118</sup>
104. According to I.M.1, the order of the line, starting from the front to the back, was the following: M.M.1, Xh.S., B.F., I.M.1, Sh.K.1, followed by the four who were executed, and who were F.M., A.A.1, S.P. and M.S.<sup>119</sup>
105. Sh.K.1 confirms that I.M.1 was in front of him and F.M. was behind him, but does not remember the order of the others.<sup>120</sup>
106. M.M.1 indicates that he was the first in line, behind him was I.M.1 and then the others, but he is not sure about their exact order.<sup>121</sup>

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<sup>111</sup> I.M.1, Record of the main trial, 22 January 2015, paras. 175-176.

<sup>112</sup> I.M.1, Record of the main trial, 22 January 2015, paras. 423-428. For the simplification of the explanation, the terms “blues” and “greens” will be used herein to indicate the troops dressed in blue uniforms or green uniforms respectively; the aspect of the uniforms will be assessed in more details further on in the judgement.

<sup>113</sup> I.M.1, Record of the main trial, 22 January 2015, para. 449.

<sup>114</sup> Statements of K.A. of 05/08/2013, 08/12/1999 and 24/01/2000.

<sup>115</sup> I.M.1, Record of the main trial, 21 January 2015, para. 273; Xh.S., Record of the main trial, 22 January 2015, paras. 635-646.

<sup>116</sup> Statements of B.F. of 18/07/2013, 22/08/2013 and 28/01/2000.

<sup>117</sup> Statement of M.M.1 of 13/08/2013.

<sup>118</sup> I.M.1, Record of the main trial, 21 January 2015, para. 275.

<sup>119</sup> I.M.1, Record of the main trial, 21 January 2015, para. 370.

<sup>120</sup> Sh.K.1, Record of the main trial, 18 February 2015, para. 230.

<sup>121</sup> M.M.1, Record of the main trial, 23 February 2015, para. 210.

107. The recollection that Xh.S. has is that the first in line was M.M.1, followed by himself or by his brother in law;<sup>122</sup> behind them was I.M.1 or Sh.K.1.<sup>123</sup>
108. B.F. indicated that after their last separation, he was positioned between Xh.S. and I.M.1, the others were M.M.1 and I.M.1's guest<sup>124</sup> - "in total five people."<sup>125</sup>
109. Based on the above, it is established that the line started with the five people who survived: the first one was M.M.1 and the fifth in line was Sh.K.1. They were followed by the four men who were executed. All the witnesses were consistent in the above. It is therefore clear that the group of the five survivors started with M.M.1 and ended with Sh.K.1; Xh.S., B.F. and I.M.1 were in between. When it comes to the order of these three, there are certain discrepancies in the witnesses' testimonies, which can be reasonably attributed to the passage of time or to the stressful situation. Therefore, we cannot establish with certainty the order of the second, third and fourth persons in line. However, their identity is established: Xh.S., B.F. and I.M.1.

From separation to execution:

110. Despite some discrepancies regarding the colours of the uniforms of different troops involved in different actions, the testimonies are consistent as to the fact that it was the "blues group" who took charge of the group of nine Kosovo Albanians after their last separation on Miladin Popović Street.
111. They were ordered to continue marching on Miladin Popović street, towards the intersection with the checkpoint.<sup>126</sup> All nine were ordered to march, passed by the checkpoint and continued further onto the Rruga per Bajr. They were escorted by the "blues" and with no "greens" in sight.<sup>127</sup> When they approached the checkpoint, the men in uniform positioned there pulled down the masks.

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<sup>122</sup> Xh.S.'s brother-in-law is B.F. See Xh.S.'s testimony, Record of the main trial, 22 January 2015, para. 648.

<sup>123</sup> Xh.S., Record of the main trial, 23 January 2015, paras. 16-18.

<sup>124</sup> I.M.1's guest is Sh.K.1. See I.M.1's testimony, Record of the main trial, 21 January 2015, paras. 52-58.

<sup>125</sup> B.F., Record of the main trial, 20 February 2015, paras. 150-151.

<sup>126</sup> Xh.S., Record of the main trial, 22 January 2015, para. 592; I.M.1, Record of the main trial, 21 January 2015, para. 162 *et seq.*

<sup>127</sup> I.M.1, Record of the main trial, 22 January 2015, paras. 431-434.

People killed:

112. The last four Kosovo Albanians in line were killed. The armed guards took them away from the rest of the group towards the houses situated on each side of the road<sup>128</sup> and shot them. The following four men were shot: S.P., F.M., A.A.1 and M.S. The testimonies of all five survivors are unanimous in this respect. Even if none of them observed the execution itself, they heard the Serbian forces urging the four victims to move to the side houses and heard gun shots shortly after.<sup>129</sup>
113. The Panel received evidence about the collection of the victims' bodies killed that day. Witness B.M. was an investigative judge at the time and was called in this capacity to attend a site inspection the next day after the execution. Several bodies had been found in King Milutin Street<sup>130</sup> in Mitrovica. The investigative judge describes his findings in his report Kri no. 58/99 dated 15 April 1999. The authenticity of the report was certified on 23 May 2014 before the Special Chamber for War Crimes of the Higher Court in Belgrade, as evidenced by the handwritten note, the signature and stamp on the last page of the document.<sup>131</sup> The report reflects which of the victims were identified, following papillary dactyloscopy examination. All four victims subject to the Indictment proved to be among the bodies retrieved on 15 April 1999.<sup>132</sup> The investigative judge ordered the bodies to be buried in a site in Vidomiric village, as this seemed to be the most efficient solution given the volatility of the security situation at the time.<sup>133</sup> The remains of the four victims were later exhumed and identified by UNMIK in the specified location<sup>134</sup>. Witness K.A. testified that he recovered

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<sup>128</sup> The houses belonging to H.K. and S.K. *See* I.M.1, Record of the main trial, 21 January 2015, para. 386.

<sup>129</sup> M.M.1, Record of the main trial, 23 February 2015, paras. 210 – 214 and 271-274; Xh.S., Record of the main trial, 22 January 2015, paras. 16-18; I.M.1, Record of the main trial, 21 January 2015, para. 370; Sh.K.1, Record of the main trial, 18 February 2015, para. 228.

<sup>130</sup> Another name used for Miladin Popović street / Kovači street, *see* F.P., Record of the main trial, 24 February 2015, para. 25; B.M., Record of the main trial, 24 March 2015, paras. 35-37; Record of the site visit conducted in South Mitrovica on 21 September 2015, para. 16.

<sup>131</sup> *See* Report on the Inspection of the crime scene by B.M., dated 15/04/1999, Prosecution Binder I, Documentary Evidence, pp. 745-753.

<sup>132</sup> B.M., Record of the main trial, 24 March 2015, paras. 35 *et seq.*, and para. 110; *see also* Report on the Inspection of the crime scene by B.M., dated 15/04/1999, pp. 745-753.

<sup>133</sup> B.M., Record of the main trial, 24 March 2015, para. 74.

<sup>134</sup> Report on Inspection of the crime scene by B.M., dated 15/04/1999 pp. 745-753.

his son A.3's body three months later<sup>135</sup> from Vidomiric. Similarly, F.M.'s remains were handed over to his family.<sup>136</sup>

114. Death certificates were issued for all four victims.<sup>137</sup> There are certain errors that can be remarked on the certificates, when it comes to entries such as dates of birth or death.<sup>138</sup> However, these are considered some mere *de minimus* material errors. Given the overall above mentioned evidence, these minor material errors were not sufficient to install any reasonable doubt in the conviction of the Panel that the four victims were killed on that critical day.

Execution interrupted:

115. The five witnesses who were in the execution line – namely I.M.1, Xh.S., Sh.K.1, B.F. and M.M.1 unanimously indicated that a uniformed person arrived at the place of the execution and ordered the police/paramilitaries to stop. Due to his intervention, the execution was discontinued and the five were released. They were escorted towards the bus station by this “saviour”, who drove next to them in a Pinzgauer vehicle in which he arrived. Most testimonies are consistent that he was wearing a green uniform and a mask.<sup>139</sup>

Presence of O.I. at the checkpoint:

116. Since the main contentious matter is the presence of O.I. at the place of the events, this aspect will be assessed in more depth.
117. We will go back to the moment when the 15 Kosovo Albanian men were escorted in a line from Njegoš street to Miladin Popović street. Once they climbed the stairs connecting the two streets and they turned to the left, they noticed a checkpoint a few meters ahead. The

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<sup>135</sup> K.A., Record of the main trial, 19 February 2015, para. 161.

<sup>136</sup> UNMIK Police, Ante Mortem Report of F.M. dated 21/10/2004 and other documents related to the death of F.M., pp. 754-775.

<sup>137</sup> Death Certificates of A.A.1, S.P., M.S. and F.M. issued on 18/06/2013, pp. 776-777.

<sup>138</sup> Example: for M.S., the date of death precedes the date of birth and both are in 1999; for S.P. both the dates of birth and death are recorded as 14 April 1999.

<sup>139</sup> Except for Sh.K.1 who indicated he was wearing a blue uniform and was not masked; Sh.K.1, Record of the main trial, 18 February 2015, paras. 255 and 306.

checkpoint was situated in front of some old shops, in the intersection between the former Kovaq street,<sup>140</sup> the access road to former “Meto Bajraktari” school, the Road to Bajr<sup>141</sup> and Miladin Popović street. The distance between the most distant corner of this intersection and the stairs connecting the former Njegoš street to Miladin Popović street<sup>142</sup> is 49 meters. The checkpoint consisted of “uniformed persons, police and soldiers”<sup>143</sup>; their number was around 30-40;<sup>144</sup> they were armed and disposed in two parallel lines situated on opposite sides of the road<sup>145</sup> in the area of the intersection. I.M.1 estimated that they were placed at around 25-30 meters from the stairs between the former Njegoš street and Miladin Popović street. This is considered credible, since the distance recorded in the site-visit report is measured, as specified before, to the most distant corner of the intersection with the checkpoint. Given their significant number, not all the soldiers could have been concentrated in one point, therefore it is reasonable to conclude that they were spread also in the intersection itself, therefore closer to the stairs. Therefore, when the line of the 15 Kosovo Albanians turned onto Miladin Popović street, they observed the soldiers at the checkpoint from a distance of less than 50 meters. Some of the armed forces were wearing balaclavas, some not.<sup>146</sup>

118. This is when the witness I.M.1 noticed **O.I.** among the group. He first noticed him from a distance of ten meters.<sup>147</sup> **O.I.** was dressed in full police uniform, with a black hood that can be turned into a balaclava, armed with a pistol, a rifle and a knife.<sup>148</sup> I.M.1 could observe **O.I.’s** face for approximately two minutes before he pulled his hood on.<sup>149</sup> He also recognized some of the other civilians, each of them armed with an automatic rifle.<sup>150</sup>

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<sup>140</sup> Or Lagija e Kovaqve.

<sup>141</sup> Azem Galica street, former Dane Brklaq street; see Minutes, sketch and report of the site visit conducted on 21.09.2015.

<sup>142</sup> See sketch and report of the site visit conducted on 21 September 2015 drafted by Forensics Unit, Mitrovica Regional Police Directorate dated 21 September 2015 and filed with the Court on 28 September 2015.

<sup>143</sup> I.M.1, Record of the main trial, 22 January 2015, para. 164.

<sup>144</sup> I.M.1, Record of the main trial, 22 January 2015, paras. 182 and 340.

<sup>145</sup> I.M.1, Record of the main trial, 22 January 2015, para. 172.

<sup>146</sup> I.M.1, Record of the main trial, 22 January 2015, para. 183.

<sup>147</sup> I.M.1, Record of the main trial, 21 January 2015, paras. 429 – 430, and Record of the main trial, 22 January 2015, para. 209.

<sup>148</sup> I.M.1, Record of the main trial, 21 January 2015, paras. 287-297.

<sup>149</sup> I.M.1, Record of the main trial, 22 January 2015, para. 349.

<sup>150</sup> I.M.1, Record of the main trial, 21 January 2015, paras. 349-355. The civilians are I.S., V. and S.A.; in relation to them, the Panel chose not to be specific, as they are not subject to the Indictment; moreover, when

119. The Defence pointed out to what they deemed to be a contradiction with the previous statement given by the witness on 4 March 2000<sup>151</sup> where he said that “**O.I.** when he saw us then he put his mask on”. The Panel does not assess this as a contradiction. Firstly, it might be possible that it was the witness who was the first to notice **O.I.** and only after this, when the Defendant saw the Kosovo Albanians approaching, he pulled his mask on. Secondly, it is not unusual that in 16 years, a witness will give slightly modified accounts regarding the exact duration of the encounter. In any case, this statement establishes with certainty that he got his eyes on **O.I.** for a short period of time. According to the witness, this was enough to allow him to identify **O.I.** and to “absolutely have no doubts”.<sup>152</sup> I.M.1 knew very well who **O.I.** was – director of the sports hall and karate player. I.M.1 himself was a referee and was interested in sport. He saw **O.I.** playing several times and he knew the others at the sports hall called him “O.”<sup>153</sup>
120. The Defence brings up another inconsistency between the same statements: in the statement from 2000, the witness had stated that **O.I.** was sitting on the stairs of the shop and not standing. The witness does not have any particular explanation for this and he stands by this in-court statement. The Panel does not deem this contradiction to be of a major character as to raise doubts concerning the honesty and objectivity of the witness or bring into question the identification of the Defendant.
121. Overall, I.M.1 is constant in his statements when it comes to the main aspects of his testimony. The Panel considers his testimony as reliable, also taking into account the considerations elaborated further on.
122. Witness Sh.K.1 was also in the same prisoners’ line when he saw **O.I.**<sup>154</sup> from a distance of 20-30 meters,<sup>155</sup> dressed in blue camouflage clothing and armed.<sup>156</sup> The witness testifies: “*when we went up at the street, when we went close to the apartment blocks, I could notice **O.** who was not wearing a mask for that time being, but as soon as he noticed us, he put his mask*

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it comes to I.S., the Panel endeavored not to prejudice the “*res judicata*” and “*ne bis in idem*” principles triggered by the Decision dated 09.04.01 in case P 44/2000.

<sup>151</sup> Pages 327-329 of the case file.

<sup>152</sup> I.M.1, Record of the main trial, 22 January 2015, para 353.

<sup>153</sup> I.M.1, Record of the main trial, 21 January 2015, para. 303 *et seq.*, and para. 340 *et seq.*

<sup>154</sup> Sh.K.1, Record of the main trial, 18 February 2015, paras. 148-150.

<sup>155</sup> Sh.K.1, Record of the main trial, 18 February 2015, para. 174.

<sup>156</sup> Sh.K.1, Record of the main trial, 18 February 2015, paras. 159-172.



down.”<sup>157</sup> In cross-examination, Sh.K.1 was confronted with his previous statements when it comes to the identification of the accused. The ensuing testimony of the witness is reproduced below:<sup>158</sup>

*“ Lj.P.: How can we interpret that part of your statement, it is not clear to me at least, which you gave in front of the investigative judge on 23 November 1999, page 413 of the English version, where for this person who was sitting on the stairs, for who you claim to be O.I., I will quote this part of your statement, ‘I say that this person reminds me of a person who was manager of the sports hall and into Karate... etc.’ So, that time you said this person resembles O.I. and not that it was O.I. Explain this to the court please.*

*Sh.K.1: That moment at my first sight, I could see that it was O.I. but I was doubtful, and in my conversation with I.M.1 I asked him if that person was O., he answered, ‘yes it was him himself’.*

*Lj.P.: Few minutes ago, you said that you were absolutely sure that it was O.I. and now you are saying that you had some doubts and that I.M.1 clarified this with you.*

*Sh.K.1: I was sure 100% that it was O., but I wanted to know if the other person agreed with me in order to be sure that I am not mistaken.*

*Lj.P.: Were you sure at that time that the person you saw at that time was O.I.?*

*Sh.K.1: There is no contradiction to the two accounts that I stated. If there is a thing that you see and at the same time you ask another person because it was a war situation and we didn’t know what will happen with our destiny. I have seen and I wanted to be sure in order not to be mistaken and not to be another person instead of him, in order not to label another person who was not there; I am not claiming that I have seen him committing an execution or something like that.*

*Lj.P.: Mr. Sh.K.1, is it fair to say that you were convinced 100% that it was O.I. only after your discussion with I.M.1?*

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<sup>157</sup> Sh.K.1, Record of the main trial, 18 February 2015, para. 148.

<sup>158</sup> Sh.K.1, Record of the main trial, 18 February 2015, para. 364 *et seq.*

*Sh.K.1: At that time, I was convinced 100% that I am not wrong.*

*Lj.P.: At what time were you convinced 100%?*

*Sh.K.1: After Mokra Gora, when we were separated from the column, after we found our women and children and we had more time to discuss about it.*

*Lj.P.: So, is it true to say that when all of you came together, it was the time when you were reassured 100% that it was **O.I.**?*

*Sh.K.1: At that time, we had time, while during our travel which lasted to 3 hours, after we found our women and children, we didn't have time even to breathe, let alone to discuss about **O.** or who participated or didn't participate."*

123. In the Defence's submission the fact that the witness was not absolutely sure about **O.I.**'s identity when he first noticed him raises a certain element of doubt concerning the identification of the accused. It indeed seems that Sh.K.1 felt the need to cross check his observation of the defendant before starting to point fingers at him on such serious accusations. This provided clear indication to the Panel that the witness acted in good will and did not wish to make certain allegations lightly. However, the Panel acknowledges that this aspect slightly diminishes the weight of this witness' testimony. Still, the doubt raised is little and Sh.K.1's statement indicates with a high degree of probability that **O.I.** was present at the checkpoint.

124. The defence also pointed out that the witness was inconsistent in his statements concerning whether he knew the accused by the full name back then. The witness gives the following evidence:

*"Lj.P.: Why then in your statement before the investigative judge in the district court of Mitrovica you said 'the person who I have seen reminds me of a person who was a manager of the sport hall, he was involved into Karate and I know he was called **O.** but I don't know his full name and last name.' Now, you just stated that at that time you knew this person by his name and last name.*

*Sh.K.1: At that moment, I don't remember to have stated that. I just remember saying that they called **O.I.**, O., he worked in the sports hall,*

*Lj.P.: However, in your statement, literally it says "I don't know his name and last name, I only know that he goes by O."*

*Sh.K.1: It is possible that at that moment I wasn't able to remember. Even for the people who were there to be executed, I know their names but it might happen that for a moment I don't remember their names.*

*Lj.P.: You said earlier that before this unfortunate event you never had the opportunity to talk with **O.I.** I am curious to know because today you stated this, how do you know that he is fluent in Albanian language.*

*Sh.K.1: I saw him in town talking to Albanians. He was talking in Albanian all the time.*<sup>159</sup>

125. In the Panel's assessment, this possible hesitancy does not raise any doubt over the identification of the accused. The evidence is unanimous that in a small town such as Mitrovica, the accused was a prominent character and well known among the common people mostly for three things: he played Karate and managed the sport-hall, he was a business man and he spoke fluent Albanian. At the time, it is undisputed that it was a common occurrence that ethnic Albanians would speak Serbian – the governmental language – and not the other way around. The accused was also well known by appearance and he used to go under the nickname of "O." These elements are sufficient to firmly establish the identity of the accused, even if the witness would not recall the latter's full formal name.
126. I.M.1 and Sh.K.1 are the only two witnesses from the line of prisoners who noticed **O.I.** Their statements are further corroborated by those of other witnesses who were present in the area during the same events.
127. Sh.C.1 stated that she was expelled from her apartment on the same occasion. Shortly before noon (between 10:00-11:30), Police forces which Sh.C.1 describes as paramilitaries,

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<sup>159</sup> Sh.K.1, Record of the main trial, 18 February 2015, paras. 356-361.

armed with rifles and without masks<sup>160</sup> stormed into her apartment. Both she and her son E. were thrown into the street. Once outside the building she saw **O.I.** and she pled with him “**O.**, save my son”.<sup>161</sup> Sh.C.1 only noticed **O.I.** shortly,<sup>162</sup> as she was rushed away by the paramilitaries. But she stated that she saw **O.I.** clearly.<sup>163</sup> She did not notice that he was armed. He was dressed “like in military clothes”, but which she categorizes as “civilian”. He had dark green clothes but different from paramilitaries who were wearing blue. However, the witness specifies that she cannot clearly point out the distinction since she had not been in the army. The Panel considers this explanation is reasonable and does not taint in any way the rest of her account. She was then ushered away. Her son was held hostage and subsequently killed.

128. Sh.C.1 testified before the Court via video-link and during her examination she initially referred to the accused as “O.M.” and she corrected herself afterwards. This may be attributed to the passage of time and the fact that for a long time, the witness has been living abroad and she has therefore been disconnected from the local reality. Most importantly, the Panel again points out that a firm positive identification is not necessarily dependent on the witness’s knowing the accused by his full name. She offers details that leave no doubt that she referred to **O.I.**: he plays karate, and he speaks Albanian. The rest of the considerations presented with regard to witness Sh.K.1 are hereby reiterated.<sup>164</sup>
129. Sh.C.1 also identified the defendant in Court, out of four persons. However, the Panel does not attach much value to it. In-court identifications must be approached with considerable caution given the suggestiveness of the environment in which they are conducted. The Panel is conscious that an identification of an Accused in a courtroom may well have been unduly and unconsciously influenced by the physical placement of the Accused and the other factors which make the Accused the focus of attention in the courtroom.
130. However, the Panel is satisfied, based on the consideration presented above that it was indeed **O.I.** that Sh.C.1 noticed that day.

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<sup>160</sup> Sh.C.1, Record of the main trial, 27 March 2015, para. 27 *et seq.*

<sup>161</sup> Sh.C.1, Record of the main trial, 27 March 2015, para. 42 *et seq.*

<sup>162</sup> Sh.C.1, Record of the main trial, 27 March 2015, paras. 87-90, 115.

<sup>163</sup> Sh.C.1, Record of the main trial, 27 March 2015, paras. 93-94.

<sup>164</sup> See paragraph 124 above.

131. According to Sh.C.1, he was near a group of paramilitaries, standing on the opposite side of the road from them.<sup>165</sup> When she exited her building, the witness noticed **O.I.** right in front. It is relevant where Sh.C.1's apartment building was situated: former Lagjja e Kovaqeve or street Kralja Milutina.<sup>166</sup> This places the accused in the area of the checkpoint.
132. The Defence raised the issue that Sh.C.1's current statement differs from the one she gave previously.<sup>167</sup> There, the witness stated that it was her son E. who had the exchange of words with **O.I.** and not herself.
133. Whether it was Sh.C.1 or her son exchanging the words with **O.I.**, this does not change the fact that Sh.C.1 noticed and identified the Defendant. However, the Panel decided to give more credit to the statement given by the witness in the present case and established that it was Sh.C.1 who addressed the Accused. And this, since her statement is corroborated by F.P.'s testimony, as follows:
134. Witness F.P. was Sh.C.1's neighbour and was expelled into the street on the same occasion. She confirms that Sh.C.1 addressed the following words to someone "O, **O.** save my son", but did not properly observe the addressee. She saw **O.** "in a blur", but did not see his face.<sup>168</sup> According to her testimony, the episode remained imprinted in F.P.'s memory for one reason: she was revolted to hear that Sh.C.1 is pleading for help only for her son disregarding the rest of the people. The two women were ushered away from the area by the soldiers and while they were on the run, F.P. inquired more about **O.**: "*I asked her 'How did you know him'. She told me 'I know him as an old citizen of Mitrovica as a karate man and he knows my son.'*"<sup>169</sup> This adds more credibility to Sh.C.1's in-court account.
135. F.P. confirms once more the presence of paramilitaries around the checkpoint. According to her, the episode when Sh.C.1 addressed **O.** occurred near their apartment building – point C on the sketch drawn by F.P.<sup>170</sup> This is opposite the shop on Miladin Popović street, therefore where the other witnesses indicated the position of the checkpoint. F.P. also testifies to the presence of paramilitaries in that area, some of them wearing masks; some of them put

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<sup>165</sup> Sh.C.1, Record of the main trial, 27 March 2015, paras. 110-113.

<sup>166</sup> F.P., Record of the main trial, 24 February 2015, para. 34; F.P. and Sh.C.1 lived in the same apartment building.

<sup>167</sup> Statement of Sh.C.1 of 21 September 1999, Prosecution Binder II, pp. 498-544.

<sup>168</sup> F.P., Record of the main trial, 24 February 2015, para. 34.

<sup>169</sup> F.P., Record of the main trial, 24 February 2015, para. 34.

<sup>170</sup> F.P., Record of the main trial, 24 February 2015, paras. 38 *et seq.*, and 86-88; see also Exhibit 9.

their masks on later and were “*putting them on and off*”; she was able to recognize amongst them some neighbours,<sup>171</sup> who actually are the same as those indicated by I.M.1.

136. The Defence alerts us to the fact that in her pre-trial statement from 1999, F.P. describes other persons that she saw, but omitted to mention either Sh.C.1 or **O.I.** The Panel considers that this does not discount her statement as dishonest, as this could be a detail not explored in the investigation stage. It is reasonable to believe that in the absence of any such specific question, the witness did not deem relevant to volunteer such detailed information to the police. After all, this concerned overhearing something that her neighbour said. F.P. explained that she left it up to Sh.C.1 to provide this information herself.<sup>172</sup> The Panel considers that the explanation she offered is reasonable.

137. Another witness who noticed **O.I.** in the area at the time of the events is M.Ll. He was living on Miladin Popović street at some 20 meters air distance from I.M.1’s house.<sup>173</sup> He was expelled from his building together with his family at about 10:30 in the morning, shortly before I.M.1’s family.<sup>174</sup> Once outside, he started to walk away towards the left of the exit of his building. After 150 meters, he then quickly turned from the main street onto a side dead-end alley, jumped two fences and managed to escape the vigilance of the guards. Right before leaving Miladin Popović street to turn to the side alley he was summoned by a voice which said in Serbian “Where are you going?” He turned his head and noticed that it was **O.I.** who addressed him. He was walking one-two steps in front of a group of approximately 30 police officers, all wearing the same uniform.<sup>175</sup> **O.I.** was also dressed in police uniform, “with blue dominating” and wearing a bullet proof vest and a black cap as headwear. He was armed with a rifle and two swords. This occurred in front of the ten-storey building on Miladin Popović street,<sup>176</sup> approximately 50-60 meters from the checkpoint The group of police officers were walking up on Miladin Popović street, in the

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<sup>171</sup> F.P., Record of the main trial, 24 February 2015, paras. 34, 109-111. These are I.S., V. and S.A. In relation to them, the Panel chose not to be specific, as they are not subject to the Indictment; moreover, when it comes to I.S., the Panel endeavored not prejudice the *res judicata* and *ne bis in idem* principles triggered by the Decision dated 09.04.01 in case P 44/2000.

<sup>172</sup> F.P., Record of the main trial, 24 February 2015, paras. 191-194.

<sup>173</sup> M.Ll., Record of the main trial, 23 January 2015, para. 395 *et seq.*

<sup>174</sup> M.Ll., Record of the main trial, 23 January 2015, para. 480.

<sup>175</sup> M.Ll., Record of the main trial, 23 January 2015, paras. 427-437.

<sup>176</sup> Point 4, sketch of the area enclosed in the photo album related to the site visit conducted on 21 September 2015, drafted by Forensics Unit, Mitrovica Regional Police Directorate dated 21 September 2015 and filed with the Court on 28 September 2015.

direction of the checkpoint.<sup>177</sup> M.Ll. only observed **O.I.** “for a brief moment,”<sup>178</sup> when he turned his head aside,<sup>179</sup> “in a very blitz moment.”<sup>180</sup> However, the panel found sufficient reasons to conclude that he was well acquainted with **O.I.**: he is a tin worker and a few times he was hired by **O.I.** to fix his shop roof; the witness also had dealings with **O.I.** when renting out the sports hall for some football matches.<sup>181</sup> On that day, M.Ll. noticed **O.I.** from a short distance, approximately 15 meters,<sup>182</sup> thus making his identification certain even if the time of exposure was short.

138. The Defence points out certain discrepancies with the previous statements:
139. Before the Court, the witness said that **O.I.** addressed him in Serbian,<sup>183</sup> whereas in his pre-trial statement he mentioned that the words had been uttered in Albanian. This confusion is normal since the witness is fluent in both languages<sup>184</sup> and it does not raise doubts about the witness’ honesty.
140. Also, before the Court, the witness says that he did not reply in any way to **O.I.**’s summons. However, according to one of his pre-trial statement given on 17.08.1999, the witness replied to **O.I.** and told him that he had been allowed by S.2 to join the women’s group.<sup>185</sup>
141. The Panel does not find it unusual that, after 15 years from the critical events and from the first statement, things are forgotten or left out and the account is simplified. It would have been concerning if the opposite thing happened and the witness would have offered later many more details which, even if crucial, had been omitted from the previous statement.
142. The witness had been consistent throughout his statements about seeing **O.I.** and about the latter’s appearance. His statement was considered reliable.
143. To conclude, there are four witnesses who identified the Defendant: two of these, I.M.1 and Sh.K.1 were part of the execution line, the other two are Sh.C.1 and M.Ll. F.P. also reinforces Sh.C.1’s account. The last three witnesses were expelled on the same occasion together with the rest of the Kosovo Albanians. All of them noticed **O.I.** at the place and time of the

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<sup>177</sup> M.Ll., Record of the main trial, 23 January 2015, para. 478.

<sup>178</sup> M.Ll., Record of the main trial, 23 January 2015, para. 425.

<sup>179</sup> M.Ll., Record of the main trial, 23 January 2015, para. 401.

<sup>180</sup> M.Ll., Record of the main trial, 23 January 2015, para. 454.

<sup>181</sup> M.Ll., Record of the main trial, 23 January 2015, paras. 419 and 490.

<sup>182</sup> M.Ll., Record of the main trial, 26 January 2015, paras. 196-197.

<sup>183</sup> M.Ll., Record of the main trial, 26 January 2015, paras. 92-101.

<sup>184</sup> M.Ll., Record of the main trial, 26 January 2015, para. 113.

<sup>185</sup> M.Ll., statement dated 17.08.1999, p. 384.

critical events and from different vantage points.<sup>186</sup> The Panel assesses all these testimonies as being honest and reliable. As already mentioned before, there are certain deviations from their previous statements or inconsistencies amongst different accounts, when it comes to aspects such as the description of different uniforms. For the reasons detailed above, these discrepancies are considered normal and do not taint the identification of the Defendant.

144. The Kosovo Albanian witnesses who testified about their own expulsion and that of many others came from a broad cross-section of that community, generally with no connection to one another beyond their victimization, and it is inconceivable that they could or would all have concocted such detailed and consistent accounts of the events that they experienced and witnessed.
145. More importantly, the Panel found no apparent reason why these witnesses would team up against the Defendant. There is no history of any conflict or animosity between any of them and the Accused. This is consistent with the Defendant's own admission.<sup>187</sup> With some of them, the Defendant even interacted in a cordial way.<sup>188</sup> It could be speculated that, given the fact that they all are ethnic Albanians, they would turn against a Serbian. However, there is no evidence tendered or suggested as to why any of these witnesses would turn against this particular Serbian.
146. Besides the traumatic events they experienced themselves, some of the witnesses suffered significant losses in their families: I.M.1 lost his cousin F.M., Sh.C.1 lost her son E., M.Ll. lost his brother Z., F.P. lost her brother A.4 and her uncle E.P. If they would have been driven in their testimonies by revenge and hatred, they most likely would have gone to greater length to fabricate their accounts. Conversely, the witnesses do not offer a lot of details about the actions of the Accused because, according to them, they did not have time to notice. This very clearly points to the conclusion that the witnesses testified about something that they actually saw and experienced rather than about a certain subsequently learned-about event or in an attempt to incriminate the Accused for no other reason but to make somebody liable.

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<sup>186</sup> From the direction of Miladin Popović street and from the direction of Kovaq street, respectively.

<sup>187</sup> **O.I.**, Record of the main trial, 8 December 2015, paras. 230-237.

<sup>188</sup> I.M.1 and M.Ll., see details above.



147. I.M.1's statement was particularly convincing. He was consistent in his statements when it comes to the main aspects of his testimony. Several witnesses confirmed that I.M.1 mentioned **O.I.**'s participation and he did so immediately after he escaped execution and joined the convoy of people heading to Albania. These statements, even if they do not confirm **O.I.**'s identification, they add even more credit to I.M.1's account.
148. The fact that he indicated **O.I.** immediately after the incident, *in loco*<sup>189</sup> adds a lot of weight to his account: in a moment when he had nearly escaped death and he was deeply concerned about his fate and his family's, it is not logical that he would focus on framing someone. Plus, the Panel reiterates that there is no proven interest in framing **O.I.** It is not accepted that this could be a move directed against the Accused's political career as suggested by the Defence,<sup>190</sup> as back then I.M.1 could not possibly have anticipated **O.I.**'s further accession as a politician.
149. The Panel is aware of the fact that each of the above mentioned witnesses noticed **O.I.** for a short while. However, each of them knew exactly who he was from before. That is why the Panel considers that even a short exposure allowed the positive identification of the Accused. Even if one of them could be slightly mistaken, the combined testimony of all of them leaves no reasonable doubt that the Defendant was present at the place.
150. K.A. is another witness who noticed **O.I.** in the area, even though not exactly at the time of the commission of the criminal offence, but approximately 2 hours before the incident. That morning, around 8:00-8:30, he went to buy bread in the Kovaq area.<sup>191</sup> On that occasion, he noticed **O.I.** from a distance of 15-20 meters. He was dressed in civilian clothes and he was in the company of some military personnel, in green uniforms and armed.<sup>192</sup> The witness knew **O.I.** very well by appearance from before, from childhood, as they grew up in the same area.<sup>193</sup> For this time frame, the Defendant vehemently denied being in that area.<sup>194</sup> In the Panel's assessment, this testimony contradicted the Defence's theory and added even more credibility to the four witnesses assessed above.

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<sup>189</sup> Sh.K.1, Record of the main trial, 18 February 2015, para. 275.

<sup>190</sup> Record of the Detention Hearing held on 28 January 2014, Pre-Trial Binder I, **O.I.**, tab 15..

<sup>191</sup> K.A., Record of the main trial, 19 February 2015, paras. 319-326.

<sup>192</sup> K.A., Record of the main trial, 19 February 2015, paras. 134-149 and 246-251.

<sup>193</sup> K.A., Record of the main trial, 19 February 2015, para. 133.

<sup>194</sup> **O.I.**, Record of the main trial, 4 December 2015, paras. 80-86

151. In the end the Panel will address the testimony of L.A.1. He stated that on that occasion, some pension coupons were taken away from his house and later on cashed in somewhere in Serbia proper.<sup>195</sup> In the view of Defence, this would support the conclusion that the troops who entered the house were from Serbia proper as well. The Panel disagrees; there is no indication of how the pension checks ended up there. Besides, the fact that some troops were from Serbia proper does not exclude the participation of local combatants as well.

(b) Evidence related to the affiliation of O.I. to the Serbian forces in 1999

152. Apart from the witnesses who saw O.I. that day, there is evidence about the involvement of O.I. with Serbian armed forces in 1999.

153. In February 1999, in Mitrovica, during evening hours, while on his way to visit some relatives, witness Ç.I. saw O.I., dressed in police uniform and armed with a rifle.<sup>196</sup> He was in a group of other police officers close to the Bajr neighbourhood in Mitrovica. They engaged in a brief exchange of words: O.I. called the witness by his nickname "Ç.". The witness was surprised to see O.I. together with the police officers and he told him "*O., you are also here*". He replied: "*Yes, Valla*".<sup>197</sup>

154. The episode was short in duration. The witness only raised his head shortly to converse with O.I., as he was afraid for him and his family given that the street was full of Serbian police. However, the episode registered deeply in his memory. According to his own explanation, the witness "*was surprised to see how a humanist, a sportsman, could put police uniform and join the other forces to commit violence*".<sup>198</sup> Therefore, the witness is positive that his interlocutor was O.I.

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<sup>195</sup> Ç.I., Record of the main trial, 26 March 2015, para. 141 *et seq.*

<sup>196</sup> Ç.I., Record of the main trial, 11 March 2015, para. 52.

<sup>197</sup> Expression used by both Albanians and Serbians meaning "Yes, indeed"; Ç.I., Record of the main trial, 11 March 2015, paras. 52-54.

<sup>198</sup> Ç.I., Record of the main trial, 11 March 2015, para. 156.

155. Ç.I. is a journalist. He would often go to sports events when **O.I.** was playing karate and sometimes he would cover such events.<sup>199</sup>
156. His testimony is considered credible and served to establish the association of the Accused with the armed Serbian forces in a period for which he denied any such involvement.
157. Two other witnesses stated that they saw **O.I.** in uniform in 1999. These two are the spouses Z.A. and N.A.3 They used to live in Gjakova and during the NATO bombing their house got burnt. That made them seek refuge abroad. They were travelling by bus from Gjakova to Montenegro and while on their way, they were stopped by **O.I.** near Gjurakovc. **O.I.** was accompanied by another soldier, the latter armed. Both were wearing winter army SMT uniforms, grey in colour. **O.I.** ordered the other to “*put the old man under the ground*” (referring to Z.A.). They were asked to get off the bus and **O.I.** checked their IDs. After approximately half an hour they were allowed to continue on their way. **O.I.** had told the driver not to go via Peja/ Rozaje, as KLA was there. They crossed via Raška instead. Z.A. says that he did not know **O.I.** at that time. He only realized his identity later, when he saw him on TV, giving interviews and in the Parliament.<sup>200</sup> Once he recognized **O.I.** on TV, he informed his wife as well that this was the man from the bus.<sup>201</sup> His wife N.A.3 confirms almost entirely the account of her husband, apart from one aspect: she says that her husband told her right away, on the way to Montenegro that it was **O.I.** who stopped them. They also saw him later on TV and they recalled the events.<sup>202</sup>
158. Since Z.A. - who according to his wife was the originator of the information on the identity of **O.I.** - does not confirm N.A.3’s account, the Panel can only conclude that the two witnesses did not know **O.I.** in 1999. This is reasonable to believe since, unlike the other witnesses, these two are not from the Mitrovica area.
159. While the Panel entirely accepts the honesty of both their testimonies, it is essential to bear in mind the fact that the two spouses, unlike the other witnesses mentioned above, did not know **O.I.** before. They only observed him under traumatic circumstances, when they were fearing for their lives. There is no evidence produced about the TV programmes that prompted this identification and their degree of suggestiveness. There is a possibility that

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<sup>199</sup> Ç.I., Record of the main trial, 11 March 2015, paras. 98, 226 and 246.

<sup>200</sup> Z.A., Record of the main trial, 25 February 2015, paras. 427-437.

<sup>201</sup> Z.A., Record of the main trial, 25 February 2015, paras. 284, 374-379, and 391.

<sup>202</sup> N.A.3, Record of the main trial, 25 February 2015, paras. 470, 512-522, and 475.

subconsciously, Z.A. may have purported to recognize **O.I.** because of his extensive public exposure in the media. Also, **O.I.**'s identification and, as a matter of fact, the overall testimony of N.A.3, by the way she recounted the events and built up her narrative, came across as highly influenced by her husband's account. The conclusion of a positive identification cannot be reached with confidence.

160. N.A.3 also identified the Defendant in Court. As presented in another section of the judgement, the court environment is suggestive. Therefore, the in-court identification is not entirely reliable, especially 15 years after the event. Consequently, the Panel does not assign much weight to the identification of the Accused by these two witnesses.
161. In the end the Panel will briefly address an aspect mentioned by witness H.B. At some point of his in-court testimony he declared that on 16 April 1999 he saw **O.I.** at 'Te Shelgjet' junction in Mitrovica. The Accused was armed, dressed in blue uniform and was having a discussion with some police officers or paramilitaries. Some of them were wearing masks. At that time, numerous Kosovo Albanians who had been expelled were marching out of Mitrovica in a convoy. **O.I.** and his group pulled out nine ethnic Albanians from the convoy and dragged them in a yard. The witness heard shots shortly after.<sup>203</sup>
162. The Panel remarks that the witness mentioned this aspect for the very first time before the Court and approximately 16 years after the event. Unlike most of the other witnesses, H.B. cannot be qualified as a layman when it comes to law and law violations. He is a human rights activist and it is logical to conclude that he knew very well the consequences of his observations. In fact, this is a reasonable inference for any average person. During the conflict in Kosovo H.B. collected numerous accounts from victims of abuses. However, when faced with incriminating evidence such as the above, he stays silent for more than 16 years and volunteers the information only before the Court and only towards the end of his examination by the Prosecutor.
163. It lies in the nature of criminal proceedings that there may be inconsistencies or omissions in the accounts given at previous times. A witness might have been asked different questions at different times or he might have forgotten or remembered certain details. While the credibility of a witness is not automatically affected by the presence of certain

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<sup>203</sup> H.B., Record of the main trial, 30 March 2015, para. 218 *et seq.*

inconsistencies in the various accounts, they do call for careful scrutiny when determining the weight which ought to be attached to the witness' evidence. In the light of the arguments presented in the paragraph above, not much weight can be attached to H.B.'s evidence.

(c) Evidence regarding the presence of O.I. at Ferronikel on 14 April 1999 and to his activity as a civilian in 1999

164. The Defence constantly argued that on the referenced day the Accused was not in the area of the events and that at this particular time he was at work at Ferronikel. During the entire course of the proceedings, the Defence endeavoured to prove that the Accused neither knew about, nor participated in any phase of the realization of the operation.
165. B.K., D.M.1 and N.K. are alibi witnesses. All three worked at the Ferronikel company during 1998-1999. Ferronikel was an industrial conglomerate and the third biggest enterprise in Kosovo. Within Ferronikel, there were production plants located in Gllgovac where the ore was dried and processed. They also had a pump plant in Bivolak and a water factory located on the hill above Gllgovac.<sup>204</sup> The administration and commercial buildings were in Pristina.<sup>205</sup> During the war in 1999, the company had around 300 employees, out of which approximately 70% Albanians.<sup>206</sup>
166. B.K. was the General Director, D.M.1 was the Head of Commercial Affairs Unit and N.K. Head of Legal Department. When it comes to O.I., he was the Deputy Director of the company, starting with October 1998. His tasks were mainly related to the commercial and financial aspects of the company.<sup>207</sup> He was in charge of banking operations, salary payments and discharge of goods.<sup>208</sup> In fact, O.I. and the General Director were the only two persons in the company who had authorised signatures in the bank.<sup>209</sup> Therefore he had to go every day for payments to several banks such as Jugobanka, Vojvodjanska Banka,

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<sup>204</sup> B.K., Record of the main trial, 6 October 2015, para. 173.

<sup>205</sup> B.K., Record of the main trial, 6 October 2015, para. 23.

<sup>206</sup> B.K., Record of the main trial, 6 October 2015, paras. 29-35 and 228.

<sup>207</sup> B.K., Record of the main trial, 6 October 2015, para. 55.

<sup>208</sup> B.K., Record of the main trial, 6 October 2015, para. 87.

<sup>209</sup> B.K., Record of the main trial, 6 October 2015, para. 340.

Beogradska Banka, Kosovo Metohija Banka or Komercijalna Banka.<sup>210</sup> He was also responsible for coordination of certain working groups involved in a program of maintenance and revitalization of the production plant.<sup>211</sup> **O.I.**'s office was in the administration building in Pristina. However, he would often need to go to Golesh and Glogovac for different company activities.<sup>212</sup>

167. During the war in 1999, the factory in Glogovac was operating under special circumstances. In fact, the production had to be stopped altogether because of the conflict. However, the factory could not be shut down and had to be maintained in a "warm state" (or maintenance state). Only by doing this could they have saved the metal they had in stock, estimated at around 10 million dollars. Also, in 1996/1997 the factory had been the beneficiary of a major overhaul, valued at approximately 12,5 million dollars coming from foreign investments.<sup>213</sup> Therefore, the foreign investors were interested in preserving the production potential of the company and they demanded regular reporting on this. It was also **O.I.** who was liaising with them. At the end of 1998, Ferronikel branched out and a new enterprise was created- FNG. The Defendant became its director.<sup>214</sup>
168. To sum up, the year 1999 was a busy year for Ferronikel and the maintenance state of the factory in Glogovac involved even more activities than usual.
169. Witness B.K. states that both himself and **O.I.** were living in Mitrovica at the time and were commuting together to Pristina. They were driving in the same vehicle, usually starting at 7:00 from Mitrovica and returning in the evening hours.<sup>215</sup> This lasted from October 1998 until June 1999. During the working hours, **O.I.** would sometimes be together with B.K. If he would go to Glogovac or Golesh, he would usually go with B.K. or with someone else. Only when he was going to the banks was he going alone.<sup>216</sup>
170. His attire was civilian, usually a suit.

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<sup>210</sup> B.K., Record of the main trial, 6 October 2015, para. 91.

<sup>211</sup> B.K., Record of the main trial, 6 October 2015, para. 59.

<sup>212</sup> B.K., Record of the main trial, 6 October 2015, para. 69.

<sup>213</sup> B.K., Record of the main trial, 6 October 2015, paras. 35-41.

<sup>214</sup> B.K., Record of the main trial, 6 October 2015, paras. 65 and 199.

<sup>215</sup> B.K., Record of the main trial, 6 October 2015, para. 79.

<sup>216</sup> B.K., Record of the main trial, 6 October 2015, para. 333.

171. During the war, a law on working obligations was enforced. By virtue of this law, all managerial staff in Kosovo were assigned to their work place. In case of absence they would be reported.<sup>217</sup> This applied also to the Accused.
172. Regarding the critical day of 14 April 1999, the witness does not recall what exact activities **O.I.** performed. But, given that it fell on a Wednesday, the witness concluded that the Defendant must have been busy with the regular activities described above.<sup>218</sup> It would have been very difficult for the Accused to miss work without an “*extremely good reason*”. In case of absence, he would have had to report to the General Director and this did not happen.<sup>219</sup>
173. These aspects are confirmed by the other two witnesses who worked together with the Defendant, D.M.1 and N.K.
174. To complement the evidence regarding the daily activities of the Accused, the Defence also submitted into evidence two of his diaries, covering certain periods in 1999 and 2000, including the critical day.<sup>220</sup> Under the date 14<sup>th</sup> April 1999, the diary contains 7 pages of notes. They generally consist of names and phone numbers.
175. By both the diaries as well as the above mentioned witnesses, the Defence intended to place the Accused at his work place during the critical day and exclude his presence in the Mitrovica area. However, the Panel finds the presented alibi utterly generalistic and thus not convincing. None of the witnesses provided any concrete evidence about the Defendant’s whereabouts that day. Even if he showed up for work that day, it was shown that the Accused had flexible activities and therefore could easily conceal his absence from work.
176. The Defence presented the Regulation on organising and executing work duty<sup>221</sup> that stipulated that during a state of war, the work duty in a state authority may be imposed upon citizens. Witnesses B.K., D.M.1 and N.K. stated that this was the case with the Defendant: he was assigned to his work place. The Panel assesses that the existence of this Regulation on working obligation did not entirely exclude an employee’s absence from his

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<sup>217</sup> B.K., Record of the main trial, 6 October 2015, paras. 65 and 199.

<sup>218</sup> B.K., Record of the main trial, 6 October 2015, paras. 248-264.

<sup>219</sup> B.K., Record of the main trial, 6 October 2015, paras. 357-360.

<sup>220</sup> See Court Binder XIII.

<sup>221</sup> Regulation published in the “Official Gazzete” of FRY, No. 36, of 24 July 1998; 20/99; See Court Binder X, Main Trial, tab 10.

work place. According to the Defendant's own statement, if it happened that due to security reasons the workers from a village could not come to work, they had to contact other workers who would be able to go so they would inform the management.<sup>222</sup> Even if we admit that a potential absence would have to be reported to the management, the management consisted of the Defendant, as Deputy Director and B.K., the Director General. According to B.K., **O.I.** was his "well-trusted confidant".<sup>223</sup> They cooperated closely and they were friends. In fact, **O.I.** took over the position as Deputy Director following B.K.'s personal request. Another telling fact is that besides him, B.K. authorised only the Defendant to sign for banking operations. Not even D.M.1 who was the Head of Commercial Affairs and Financial Unit could sign payment orders and similar documents. His pre-existing right to signature was revoked once B.K. became Director General.<sup>224</sup> The Defendant enjoyed a high level of trust. It is reasonable to believe that he was not kept on a tight leash, but had a certain degree of independence in his daily activities. Besides, it is not unreasonable to accept that the involvement in paramilitary or reserve police activities did not require a certain schedule or constant presence but, in certain operational emergencies, could be required on an *ad-hoc* basis.

177. To sum up, the Panel cannot rely on these witnesses' testimony to trace the activities of the Defendant on 14 April 1999.
178. On the other hand, in case his absence was noticed, the Director General would have to report the Accused to the authorities.<sup>225</sup> However, it was exactly "the authorities" who organised the mop-up operation in Mitrovica, therefore in their eyes the absence would be justifiable.
179. The diaries presented by the Defendant do not carry much evidentiary value. They do not represent official or impartial records. They were drawn by the Defendant and there is no other evidence, apart from the explanations provided by the Defendant, as to how and

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<sup>222</sup> **O.I.**, Record of the main trial, 8 December 2015, paras. 17-19.

<sup>223</sup> B.K., Record of the main trial, 6 October 2015, para. 276.

<sup>224</sup> D.M.1 stated: "Mr. B.K. took away this right from me and it was only Mr. B.K. and Mr. **O.I.** who had this right. During the period of R.V. I was also responsible for that, I had that right; Judge Nuno Madureira: You are saying for a factory employing 1200 persons and a lot of facilities spread all over the territory only two persons were allowed to sign for the expenses?; D.M.1: Yes, I am saying exactly that. It is obvious that Mr. B.K. did not place too much trust in me." See D.M.1, Record of the main trial, 7 October 2015, paras. 224-227.

<sup>225</sup> B.K., Record of the main trial, 6 October 2015, paras. 361-362.



when they were kept. The dates are included also by handwriting. The Defendant could not recall his exact activities on 14 April 1999, but he assumed he was at work as on any other working day. Given that under that specific date there are seven pages of entries, the Defendant concludes that it must have been a very busy day.<sup>226</sup> However, the entries immediately prior to 14 April 1999 are registered under 6 April 1999. And the next recorded date is 23 April 1999. Therefore, the notes in the diary are under dates separated by 8-9 days. According to the Defendant, he would go every day to work and he used to be very busy. It is not clear why the entries of the diary are so distanced in time. We can only conclude that the diaries do not accurately reflect the daily activities of the Accused. In addition, the entries under 14 April do not represent a list of tasks, or meetings, neither do they contain any indication about the time frame of any activity or whether they were accomplished or not. The diary contains a list of names and phone numbers and this cannot be used by the Panel to ground any conclusion. The diary cannot raise any reasonable doubt regarding the presence of the Accused at the critical place on 14 April 1999.

180. To conclude, the alibi only offers general information about the Defendant's activity at the time and is contradicted by concrete evidence as detailed above.
181. We will also mention that witness B.I., proposed by Prosecution also testified about the activities of Ferronikel. During his testimony, he mentioned the presence of Serbian armed forces in the factory while he was employed there. However, the witness stopped working in the summer of 1998<sup>227</sup> and that is before the Defendant even started his activity over there. Therefore, his testimony was found not to be relevant.
182. In his testimony, witness B.R.2 also touched upon the activities in Ferronikel, however without offering any inside information which could be considered relevant.
183. The Panel takes note that several witnesses close to the Defendant, including his next door neighbour G.P., stated that they never saw him in uniform.<sup>228</sup> This is a general negative statement and does not exclude this option, especially given the possible clandestine nature of paramilitary activities. More importantly, this general statement is discounted by the very evidence of the Accused. According to his own admission, he used to be in the

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<sup>226</sup> O.I., Record of the main trial, 4 December 2015, paras. 85-90.

<sup>227</sup> B.I., Record of the main trial, 24 March 2015, para. 144 *et seq.*

<sup>228</sup> G.P., Record of the main trial, 15 October 2015, para. 122.

police reserve forces previously and he had a blue uniform.<sup>229</sup> Witness Y also testified about the same fact.<sup>230</sup>

184. In the end, the Panel is mindful of the large body of evidence about **O.I.**'s good character, and his good attitude towards Albanians. His sport club promoted ethnic inclusion. According to B.K.,<sup>231</sup> D.M.1,<sup>232</sup> A.D.<sup>233</sup> and O.M. while working at Ferronikel, he was involved in organizing a convoy to transport mostly Kosovo Albanians outside the Kosovo border, mainly to current FYROM. The convoy was formed of one bus and around 30 vehicles and transported 200-300 persons, former employees of Ferronickel and their families and other Albanian families, some of them from Mitrovica.<sup>234</sup> **O.I.** had also attempted previously to take A.D. out of the country by a private vehicle, but the operation was unsuccessful. All the above endeavours were undertaken following numerous pleas by the Kosovo Albanians, who were afterwards very grateful to the organizers. This evidence is indeed supportive of the conclusion that the Defendant showed a humane and friendly attitude towards Albanians.
185. This whole operation could also be indicative of a means to achieve a common purpose: the removal of Albanians from Kosovo. However, without concrete evidence to support the latter assumption, the Panel takes note of the good character of the Defendant.
186. Numerous character letters are also tendered into evidence. They originate from several international officials who collaborated with the Defendant in different periods after June 1999<sup>235</sup> and they are a testament to his attitude supportive of the inclusion of Kosovo Albanians and reconciliation between the two communities.
187. The Defence for **O.I.** has essentially suggested, both in its submissions and in the evidence that his character was thoroughly inconsistent with the allegations set forth in the Indictment. In a very graphical way, the Defence presents the following in their opening statements from 18 December 2014: **O.I.** "*was acting as deputy director of an important*

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<sup>229</sup> **O.I.**, Record of the main trial, 4 December 2015, paras. 264-267.

<sup>230</sup> Witness Y, Record of the main trial, 28 July 2015, paras. 46-47.

<sup>231</sup> B.K., Record of the main trial, 6 October 2015, para. 120 *et seq.*

<sup>232</sup> D.M.1, Record of the main trial, 7 October 2015, para. 96 *et seq.*

<sup>233</sup> A.D., Record of the main trial, 8 October 2015, para. 111 *et seq.*

<sup>234</sup> B.K., Record of the main trial, 6 October 2015, para. 145 *et seq.*

<sup>235</sup> See Court Binder III, Main Trial, tab 12.

*company, and he spent entire war conducting his duties. He wore a suit and a tie, not a uniform, and everybody knows that. He was not a “weekend warrior”, who acted as director of a company during the week, and who ordered murders during weekend, by turning from peaceful Dr. Jekyll into blood-thirsty Mr. Hyde.”*

188. In the view of the Panel the character of an Accused would not be a very telling consideration, if there is satisfactory evidence to the contrary, especially having regard to the manifest commitment to the achievement of the military and political objectives of the Serbian forces. The alibi and character do not exclude **O.I.**'s involvement if there were compelling reasons why he had to take part in the event. His good character could not make much of a difference when he was acting as a mere participant in a broader collective action. The character statements can be considered only as mitigating factors.
189. Based on the overall evidence assessed under this point, the Panel establishes beyond reasonable doubt that on that occasion **O.I.** was part of the group of paramilitaries/policemen present at the checkpoint and that he was wearing a blue uniform and he was armed.

(d) Role of **O.I.** in the events of 14 April 1999 in Mitrovica

Behaviour of **O.I.** at the checkpoint:

190. While on Miladin Popović street, a person separated and released six Kosovo Albanians from the rest of nine who were then escorted to the execution place. The witnesses are unanimous as to this aspect.
191. Furthermore, according to witness I.M.1, “the person who separated the six,”<sup>236</sup> addressed **O.I.**: “what we are going to do with them?” **O.I.** replied in Serbian “why are you asking me, act according to the order.”<sup>237</sup> He also called **O.I.** “chief”.<sup>238</sup> I.M.1 claims to remember these utterances very well.<sup>239</sup>

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<sup>236</sup> I.M.1, Record of the main trial, 21 January 2015, para. 281.

<sup>237</sup> I.M.1, Record of the main trial, 21 January 2015, paras. 277-279, 314, and 318-321.

<sup>238</sup> I.M.1, Record of the main trial, 21 January 2015, paras. 322-330 and 333-334.

<sup>239</sup> I.M.1, Record of the main trial, 21 January 2015, para. 322.

192. It seems that the exchange of words took place immediately after the separation.<sup>240</sup> This is consistent with the fact that I.M.1 stated that the “blue” separated them without being ordered by anyone.<sup>241</sup> Here there is a slight contradiction between his statements: in his pre-trial statement he gave the following account “there was one person **O.I.** who ordered to divide us.”<sup>242</sup> It would seem that the “order” would have been uttered before the separation and not after, as he declared before the Court. This contradiction does not render I.M.1’s statement not credible. The confusion may be caused by the fact that the separation and then the escorting of the nine Kosovo Albanians onto Rruga per Bajr happened very fast, it only lasted for a few minutes.<sup>243</sup> However, the position of the witness seems to incline more towards the fact that the exchange of words took place after the separation. I.M.1 reinforced this stance in front of the Court when, following a different narrative, he again provided a similar account: “*He [O.I.] replied in Serbian ‘why are you asking me, act according to the order.’ Then all of them put their balaclavas on their head and took us on this road to the right instantly.*”<sup>244</sup>
193. Sh.K.1 heard a voice say only: “Apply the rules”,<sup>245</sup> without noticing the originator. It seems that in his pre-trial statement dated 24 of January 2000, the witness stated that it was **O.I.** who uttered these words. However, before the Court, the witness decisively stated that he did not notice the Accused since his hands were interlaced behind his neck and his head was lowered.<sup>246</sup> The Panel finds his statement credible, even if it came only after his memory was refreshed. The fact that the witness censored his pre-trial statement as presented above and offered a logical explanation for this change of stance demonstrated that he is carefully scrutinizing what he really experienced and what not.

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<sup>240</sup> “They left and we stayed there and ,one of them addressed to **O.I.**”; I.M.1, Record of the main trial, 21 January 2015, para. 277.

<sup>241</sup> I.M.1, Record of the main trial 22 January 2015, paras. 450-451.

<sup>242</sup> I.M.1, Record of the main trial, 22 January 2015, para. 452.

<sup>243</sup> I.M.1, Record of the main trial, 22 January 2015, para. 447.

<sup>244</sup> I.M.1, Record of the main trial, 21 January 2015, para. 279.

<sup>245</sup> Sh.K.1, Record of the main trial, 18 February 2015, paras. 325-332.

<sup>246</sup> Sh.K.1, Record of the main trial, 18 February 2015, para. 325.

194. Xh.S. heard the voice too,<sup>247</sup> but he offered this information only after he was repeatedly questioned and after his memory was refreshed. Therefore, the Panel assigns a diminished value to it. However, his account bears weight as corroborative evidence.
195. L.A.1, even if he previously mentioned a similar exchange of words, did not endorse this before the Court.<sup>248</sup> When the witness testifies in court, the use of his prior statements is strictly limited by the CPC. Namely, prior statements may only be used to refresh the witness's memory during direct examination and to challenge the credibility of the witness on cross-examination (Art. 123 CPC). In both cases, the content of the prior statement is only used to assist the party in achieving these goals and may not be admitted as direct evidence of facts. Therefore, no particular probative value may be attached to L.A.1's pre-trial statement.
196. Therefore, based on the above combined body of evidence, the Panel established beyond a reasonable doubt that before the nine Kosovo Albanian men passed through the checkpoint towards the execution point, one member of the Serbian police/paramilitary unit who was escorting them asked **O.I.** something along the lines "What are we going to do with them chief?", to which **O.I.** replied something to the effect of: "Why ask me, apply the orders!".
197. I.M.1 also mentioned that after the "saviour" stopped the execution, when the five survivors walked back towards the checkpoint, he heard a voice saying something like "*Now go to Albania*". He recognized the voice as belonging to **O.I.**<sup>249</sup> However, the Panel cannot sufficiently rely on this information to establish beyond a reasonable doubt that it was indeed the Accused who uttered these last words. All the police/paramilitary members around the checkpoint were masked at that point and the witness could not see **O.I.**'s face. The voice recognition was assessed as not reliable enough to positively identify the Defendant.

### Commanding role of **O.I.**:

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<sup>247</sup> Xh.S., Record of the main trial, 22 January 2015, paras. 667-684.

<sup>248</sup> L.A.1, Record of the main trial, 26 March 2015, para. 203-217.

<sup>249</sup> I.M.1, Record of the main trial, 21 January 2015, para. 456, and Record of the main trial, 22 January 2015, para. 316.

198. According to I.M.1, during the exchange of words between the “blue” men in uniform and **O.I.**,<sup>250</sup> the latter was called “chief”.<sup>251</sup>
199. The Panel found that the use of the term “chief” may be equivocal. Even I.M.1 himself admitted that **O.I.** could have got orders from someone else.
200. The notion of “Chief” is not very supportive of any firm conclusion regarding the position of the Accused amongst the troops. The notion of “chief”, in itself, may have been understood loosely by some paramilitaries at the time, as some of them might have used the term merely as a mark of respect or to acknowledge influence. It could have been the social position of the Accused that triggered the respect and not his official or de facto authority within the Serbian armed forces.
201. Moreover, **O.I.**’s reply – “Why ask me, apply the orders!” - is more suggestive of the fact that it was not him issuing the order, but that the originator of the order was someone else.
202. When witness M.Ll. noticed **O.I.**, the latter was positioned in front of a group of other armed persons. According to the witness, “the leader of the group is always in front of the group.”<sup>252</sup> The Panel does not adhere to this conclusion and considers it as a mere personal opinion of the witness, lacking any evidentiary value.
203. In the end of her statement Sh.C.1 mentioned “he was indeed their leader; he was a criminal; he gave the order to execute”.<sup>253</sup> However, she did not hear any orders or words of command and her assessment is entirely unsupported by facts.
204. Z.A. also suggested that “**O.I.** was leading”, based on the fact that he was walking ahead of the other and that he did the talking.<sup>254</sup> Firstly, as presented above, the value assigned to his statement when it comes to the identification of the Accused is very little. Secondly, the same argument that was made for M.Ll.’s account is reiterated herein: this represents a mere opinion of the witness. The physical distribution of soldiers within a group may not ground a decisive conclusion of who is in command.
205. The only information provided by someone who was internally connected with police activities came from Witness Y, who used to be a police officer. The witness stated that he

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<sup>250</sup> As described above.

<sup>251</sup> I.M.1, Record of the main trial, 21 January 2015, paras. 322-330, 333-334.

<sup>252</sup> M.Ll., Record of the main trial, 23 January 2015, paras. 435, 448-454.

<sup>253</sup> Sh.C.1, Record of the main trial, 27 March 2015, para. 137

<sup>254</sup> Z.A., Record of the main trial, 25 February 2015, paras. 51 - 71 and 96.

once secured a checkpoint in Vushtrri together with **O.I.** and the latter was his subordinate. Even if this episode occurred one year prior to the events at trial, and therefore it is in no way determinative for us, it still raises even more doubts about the Defendant's command position.

206. The witness F.H. stated that "**O.I.** was the key person for the crimes that happened in Mitrovica, in particular in the street known as 'Kovaqeve' in 1999"<sup>255</sup>. However, as the witness elaborated further, this conclusion was based on no more than hearsay and rumours<sup>256</sup>. He had no personal knowledge about the events at trial. Therefore the Panel places little weight on such unsubstantiated hearsay reports.
207. Several KFOR and UNMIK reports and memorandums portraying **O.I.** as leader or commander of paramilitary/police formations were submitted as documentary evidence. There is no indication as to their sources, nor have these been in any way corroborated in court. Therefore, no evidentiary value is attached to these documents.
208. This aspect could not be established.

Common plan and coordination between troops of FRY and Serbia- official (police/military) and unofficial:

209. The evidence establishes that the armed Serbian and FRY forces acted in concert and in realization of a common purpose.
210. The Panel remarks that there is no necessity for the common purpose even to have been previously arranged or formulated; it may materialize extemporaneously and be inferred from the concrete facts.<sup>257</sup> The existence of a common plan may be inferred, among others, from the way the underlying offence is committed.<sup>258</sup>

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<sup>255</sup> F.H., Record of the main trial, 26 February 2015, paras. 125 and 93.

<sup>256</sup> F.H., Record of the main trial, 26 February 2015, paras. 127-128 and 136.

<sup>257</sup> *Tadić* Appeal Judgement, para 227; *Krnojelac* Appeal Judgement, para 97; *Vasiljević* Appeal Judgement, paras. 100, 109; *Brđanin* Appeal Judgement, paras. 415, 418.

<sup>258</sup> *Vasiljević* Appeal Judgement, paras. 100, 109; *Furundžija* Appeal Judgement, para. 119; *Tadić* Appeal Judgement, para. 227; *Ntakirutimana* Appeal Judgement, para. 466; *Blagojević* Trial Judgement, para. 699; *Brđanin* Trial Judgement, para. 262; *Simić* Trial Judgement, para. 158; *Krnojelac* Trial Judgement, para. 80; *Krstić* Trial Judgement, para. 611; *Milutinović* Trial Judgement, Volume I, para. 102.

211. Witnesses unanimously testified about a combined presence in the area of the army, police and of what they identify as “paramilitary” (or irregular army). They mentioned two main types of uniforms: green and blue. To simplify, we have been herein referring to the forces wearing them as “greens” or “blues”.
212. The Indictment uses the wording “paramilitary/police”. “Paramilitary” is a term used in humanitarian law instruments, such as Additional Protocol I to the Geneva Conventions, though it is not defined therein. A paramilitary group generally describes a force or unit whose function and organization are analogous or ancillary to those of a professional military force, but which is not regarded as having professional or legitimate status.<sup>259</sup> In its jurisprudence, the ICTY has ascribed the term “paramilitary” to groups fighting alongside military or police forces in the conflicts on the territory of the former SFRY, which were identifiable by their uniform, training, and leadership, and which were often incorporated into reserve forces.<sup>260</sup>
213. However, the distinction between police (active or reserve) and paramilitary is not very clear cut in our evidentiary material. According to the witnesses’ testimonies, both used uniforms which were predominantly blue; however, some of them were wearing masks or similar black headwear. Some of the witnesses referred to the latter as “paramilitaries” or “members of the irregular army”.<sup>261</sup> It has to be borne in mind that the witnesses were civilians and that none of them possessed advanced or recent military training to be able to clearly distinguish between types of uniforms.
214. The evidence consistently showed that it was the “greens” who expelled them from their houses, congregated them in the streets and after separating them from their families,

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<sup>259</sup> Oxford English Dictionary.

<sup>260</sup> See *Martić* Appeal Judgement, paras. 195, 205; *Krajišnik* Appeal Judgement, para. 246; *Brđanin* Appeal Judgement, paras. 146, 236; *Đorđević* Trial Judgement, para. 191.

<sup>261</sup> As an example, I.M.1 has the following perception: “N.V.3: *What is the difference between the regular army and reserves?*; I.M.1: *As I said yesterday I based myself on their age and uniform*; N.V.3: *So the regular army and the reserves are not the same, right?*; I.M.1: *No*; N.V.3: *When you use the phrase paramilitary what do you think about?*; I.M.1: *I don’t know if I mentioned that word but if I did it means the persons can be paramilitary civilians and with uniform*; N.V.3: *What are these paramilitary uniforms?*; I.M.1: *Yesterday I mentioned two types of uniforms which were police blue camouflaged uniform and camouflaged green military uniforms*; N.V.3: *If that is the case, the two types of uniform, then how can you differentiate the paramilitary uniform?* I.M.1: *As far as I know I never mentioned the word paramilitary, I mentioned only police and military*; N.V.3: *That means that you said on that day only police and army was there at your house?*; I.M.1: *Yes. The police in uniform and the police with scarves. They were in police uniforms and had black scarves.*”; see I.M.1, Record of the main trial, 22 January 2015, paras. 22-33.



escorted the 15 Kosovo Albanian men to the house wall in Njegoš Street. Here, they were taken over by the blues and interrogated. Afterwards, they were again moved under escort. The accounts of the witnesses differ when it comes to who led them from the wall to Miladin Popović street. However, the accounts are unanimous as to the fact that it was the “blues” who took them over after the last separation on Miladin Popović street and escorted them to the execution place.

215. Regarding those who had interrogated the men at the wall, most testimonies are similar as to the fact that they were the “blues”. Soldiers handed over the 15 men to the “blues”, who kept them against the wall. I.M.1 describes them as wearing blue police camouflage uniforms with some “*black hoods similar to scarves*”.<sup>262</sup> Divergently, Sh.K.1 described them as soldiers.<sup>263</sup>
216. After the interrogation at the wall finished, the 15 persons were escorted back to Njegoš (now Mehmet Gradica) street, up the stairs then onto Miladin Popović street by the “greens”.<sup>264</sup> I.M.1 did not notice where the “blues” were.<sup>265</sup> Similarly, Sh.K.1 also maintained that those who escorted them to the place of the last separation, on Miladin Popović were soldiers.<sup>266</sup> Xh.S. stated that members of irregular army escorted them to Miladin Popović street.<sup>267</sup>
217. The fact that there might be discrepancies in the testimonies regarding the colour of uniforms of those who performed certain actions is not considered as undermining the weight of their statements. These discrepancies are not considered as substantial since they do not actually concern important elements of fact. The evidence produced before the Panel clearly showed that the witnesses experienced extremely traumatic events: they were forcibly removed from their houses, separated from their dear ones and held hostage with no idea about what their future holds. During this period of around one hour they saw armed uniformed forces, predominantly wearing two different types of uniforms. It is not unusual to mix up who among them performed which action exactly. In the Panel’s assessment, the difference between a civilian and a uniformed person stays more easily

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<sup>262</sup> I.M.1, Record of the main trial, 21 January 2015, para. 113.

<sup>263</sup> Sh.K.1, Record of the main trial, 18 February 2015, paras. 99-104.

<sup>264</sup> I.M.1, Record of the main trial, 22 January 2015, para. 420.

<sup>265</sup> I.M.1, Record of the main trial, 22 January 2015, paras. 421-422.

<sup>266</sup> Sh.K.1, Record of the main trial, 18 February 2015, paras. 102, 128-132.

<sup>267</sup> Xh.S., Record of the main trial, 22 January 2015, paras. 594-596.

imprinted in the memory than the specific type of uniform worn by a person. In fact, with a view to the time elapsed between the described events and the witnesses' testimonies before the Court, such inconsistencies – either internal<sup>268</sup> or external<sup>269</sup> - are not surprising or unusual and do not diminish the value of their evidence.

218. Moreover, the different accounts might not even be indicative of discrepancies. The fact that the “blues” came into play once the group of 15 men were led to the wall on Njegoš street, does not necessarily mean that the “greens” departed from the area. In fact, there is solid evidence indicating the contrary. According to witness I.M.1, after handing them over to the “blues”, the “greens” did not leave the area, but stayed on in the vicinity.<sup>270</sup> The witness also specifically referred to the presence of all “*uniformed persons, police and soldiers*”<sup>271</sup> at the checkpoint.
219. It is found reasonable to conclude that both “greens” and “blues” were around and, in the middle of the whole commotion and turmoil, different witnesses could have observed different uniformed men, especially since the latter were great in number. Illustrative of this is the fact that witness Xh.S. stated that he was unsure if they were escorted to Miladin Popović by the same persons who had interrogated them at the wall, “*because that street was full of members of irregular army*”.<sup>272</sup>
220. Witness F.P. recounted how, while people were being expelled, police as well as masked paramilitaries were outside, showing them contempt. Her testimony in this regard was particularly illustrative: “*There we started crying as we knew it was war and war does not retribute but it only takes away. The police took from my brother the infant of two months old as he was holding him in his hand and my brother joined to the group of laid people. Normally, at that moment we started to cry and cry loud, scream, the paramilitaries who wore masks close to a supermarket, they started imitating our cry. They had masks.*”<sup>273</sup>
221. It is established that the troops of “greens” and “blues” and paramilitaries had a combined presence in the area.

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<sup>268</sup> Certain witnesses recall a different uniform in their testimony before the Court, as opposed to their previous statements.

<sup>269</sup> Differences between the statements of different witnesses.

<sup>270</sup> I.M.1, Record of the main trial, 22 January 2015, paras. 414-415.

<sup>271</sup> I.M.1, Record of the main trial, 22 January 2015, para. 164.

<sup>272</sup> Xh.S., Record of the main trial, 22 January 2015, paras. 594-596.

<sup>273</sup> F.P., Record of the main trial, 24 February 2015, para. 34.

222. Furthermore, those who were expelled received similar instructions from all the groups of armed forces. The witnesses testified as to how they were told “Go to Albania” both by soldiers and police as well as by paramilitaries. In general, the actions of the Serbian forces indicated that they had specific tasks, with some troops securing the area, some searching the houses, some handling the people.
223. When it comes to the actions undertaken against the group of nine Kosovo Albanian victims listed in the Indictment, the different Serbian groups proved to be clearly coordinated. Each group handed them over to the other several times, they acted without hesitation, purposefully and knowing what to do. Witness I.M.1 stated that he could not hear any exchange of words between the “blues” and “greens” during their interaction.<sup>274</sup>
224. Also, while marching towards Miladin Popović street, I.M.1 struck up a conversation with a soldier who was escorting them, in an attempt to save himself. I.M.1 testifies: *“he (the soldier<sup>275</sup>) said that when we reach the end of the street we will have people who will identify us. So all 15 of us continued our way together with the military and when we reached the end of the street there were four or five stairs. Then they turned us left on Miladin Popović and there used to be some old shops. When we reached the end and turned left there was a checkpoint where there were paramilitary and police”*.<sup>276</sup> This shows that the soldier was aware of the presence of the police and paramilitary around the corner at the checkpoint.
225. Moving on to the next stage – the execution – the police/paramilitaries who remained behind at the checkpoint could observe the execution scene from a short distance of only a few meters.<sup>277</sup> They did not display any sign of astonishment, nor did they exhibit other exterior signs which would be natural to express shock or surprise.
226. The fact that the execution was stopped by a “green” does not come into contradiction with their coordination. It simply indicates the fact that the troops on the ground (or at least the “blues”) might have overstepped the initial common order or that the methods employed for the expulsion of the Kosovo Albanians were disapproved by some superiors. As a matter of fact, this interruption did not come as a surprise for the police/paramilitaries.

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<sup>274</sup> I.M.1, Record of the main trial, 22 January 2015, paras. 417-418.

<sup>275</sup> Emphasis added.

<sup>276</sup> I.M.1, Record of the main trial, 21 January 2015, para. 248.

<sup>277</sup> See sketch and report of the site visit conducted on 21 September 2015, drafted by Forensics Unit, Mitrovica Regional Police Directorate dated 21 September 2015 and filed with the Court on 28 September 2015.

They did not try to question the order to interrupt, or clarify it, but rather to negotiate on it. As shown by Sh.K.1's account: "*a person shouted in loud voice, he ordered to terminate the killings, the police officer who was close to me said 'just this one' and the other person said 'not a single one more'.*"<sup>278</sup> Seeing that the soldier forbade them to continue with the execution, the police/paramilitaries resumed their previous harassing conduct towards the Kosovo Albanians by telling them to "go to Albania". The fact that the "saviour" escorted them with the Pinzgauer towards the bus station demonstrates that he was still concerned that the other armed forces could exceed the initial order.

227. However, to conclude, the Panel views the overall behaviour of the troops as described above as clear evidence that, despite of the fact that the details of the plan were not entirely fine-tuned or adhered to, the army, police and irregular Serbian forces acted based on a common plan and with the common purpose of displacing the Kosovo Albanian population from the area. Their coordinated action is starkly clear from the evidence.

(e) Analysis of the conditions of the armed conflict, the civilian status of the targeted population and the nexus with the armed conflict

Internal conflict:

228. The facts in the Indictment took place shortly after the commencement of NATO bombing.

229. To assess the existence of an armed conflict of a non-international character, the Trial Panel adhered to the functional definition provided by the jurisprudence of the International Criminal Tribunal for the Former Yugoslavia (ICTY) in the *Tadić* case:<sup>279</sup>

230. "An armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State".

231. This test has been applied consistently in the subsequent jurisprudence.<sup>280</sup>

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<sup>278</sup> Sh.K.1, Record of the main trial, 18 February 2015, para. 228.

<sup>279</sup> *Tadić* Jurisdiction Decision, para. 70,

<sup>280</sup> *Prosecutor v. Delalić, Mucić, Delić and Landžo*, Trial Chamber Judgment, 16 November 1998, ICTY Case No. IT-96-21-T, para. 183; *Prosecutor v. Furundžija*, Trial Chamber Judgment, 10 December 1998, ICTY Case No. IT-95-17/1, para. 59; *Prosecutor v. Kordić and Čerkez*, Trial Chamber Judgment, 26 February 2001, ICTY Case

232. The ICTY jurisprudence refers to two essential criteria of protracted armed conflict: the organization of the parties and the intensity of the violence.
233. It is presumed that regular or government-controlled forces - in this case the armed forces of FRY and Serbia- meet these criteria. In relation to non-governmental armed groups such as the KLA, they do not necessarily need to be as organized as the armed forces of a State, but it is sufficient that they have "some degree of organization."<sup>281</sup> The leadership of the group must, as a minimum, have the ability to exercise some control over its members so that the basic obligations of Common Article 3 of the Geneva Conventions may be implemented.<sup>282</sup> These are factual elements which need to be determined on a case-by-case basis.<sup>283</sup> The following elements appear to be decisive: the existence of a command structure, the authority to launch operations bringing together different units, the ability to recruit and train new combatants or the existence of internal rules.
234. The Trial Panel took judicial notice of the findings of the ICTY in the *Prosecutor v. Limaj* case: "The Chamber is satisfied that before the end of May 1998 an armed conflict existed in Kosovo between the Serbian forces and the KLA. By that time the KLA had a General

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No. IT-95-14/2-T, para. 24; *Prosecutor v. Kordić and Čerkez*, Appeals Chamber Judgment, 17 December 2004, ICTY Case No. IT-95-14/2-T, para. 336; *Prosecutor v. Kunarac, Kovač and Vuković*, Trial Chamber Judgment, 22 February 2001, ICTY Case No. IT-96-23, para. 402; *Prosecutor v. Kunarac, Kovač and Vuković*, Appeals Chamber Judgment, 12 June 2002, ICTY Case No. IT-96-23, para. 56; *Prosecutor v. Naletilić and Martinović*, Trial Chamber Judgment, 31 March 2003, ICTY Case No. IT-98-34-T, para. 177; *Prosecutor v. Stakić*, Case No. IT-97-24-T, Judgment, Trial Chamber II, 31 July 2003, para. 568; *Prosecutor v. Slobodan Milošević*, Third Chamber Decision on Motion for Judgment of Acquittal (Milošević Rule 98bis Decision), ICTY Case No. IT-02-54-T, 16 June 2004, para. 16; *Prosecutor v. Blagojević and Jokić*, Case No. IT-02-60-T, Judgment, Trial Chamber I, 17 January 2005, para. 536; *Prosecutor v. Strugar*, Case No. IT-01-42-T, Judgment, Trial Chamber II, 31 January 2005, para. 215; *Prosecutor v. Limaj, Bala, and Musliu*, Case No. IT-03-66-T, Judgment, 30 November 2005, para. 84; *Prosecutor v. Orić*, Judgment, Case No. IT-03-68-T, Trial Chamber II, 30 June 2006, para. 254; *Prosecutor v. Haradinaj, Balaj and Brahimaj*, Judgment, Case No. IT-04-8bis-T, Trial Chamber II, 29 November 2012, para. 393.

<sup>281</sup> *Boškoski* Trial Judgment, paras 196-198; *Limaj* Trial Judgment, para. 89; *Orić* Trial Judgment, para. 254; *Đorđević* Trial Judgment, para. 1525; *Prosecutor v. Haradinaj, Balaj and Brahimaj*, Judgment, Case No. IT-04-8bis-T, Trial Chamber II, 29 November 2012, para. 393.

<sup>282</sup> *Đorđević* Trial Judgment, para. 1525; *Boškoski* Trial Judgment, para. 196, citing ICRC Commentary to Geneva Convention II, p. 34 (observing that if a non-State group does not apply Common Article 3, "it will prove that those who regard its actions as mere acts of anarchy or brigandage are right"). See also ICRC, "International Humanitarian Law and the Challenges of Contemporary Armed Conflicts", Report prepared by the International Committee of the Red Cross, 28th International Conference of the Red Cross and Red Crescent, Geneva, 2 to 6 December 2003, at p. 19 (referring to "armed forces or armed groups with a certain level of organization, command structure and, therefore, the ability to implement international humanitarian law"); *Prosecutor v. Haradinaj, Balaj and Brahimaj*, Judgment, Case No. IT-04-8bis-T, Trial Chamber II, 29 November 2012, para. 393.

<sup>283</sup> *Đorđević* Trial Judgment, para. 1522; *Prosecutor v. Haradinaj, Balaj and Brahimaj*, Judgment, Case No. IT-04-8bis-T, Trial Chamber II, 29 November 2012, para. 393.

Staff, which appointed zone commanders, gave directions to the various units formed or in the process of being formed, and issued public statements on behalf of the organization. Unit commanders gave combat orders and subordinate units and soldiers generally acted in accordance with these orders.<sup>284</sup>

235. The jurisprudence in Kosovo has shown a similar approach. The Supreme Court Decision of 21 July 2005 in *L.G. et al.* also found that between August 1998 and mid-June 1999 the organizational structure of the KLA satisfied the requirements under Common Article 3 of the Geneva conventions and Additional Protocol II.<sup>285</sup>
236. This aspect is confirmed also during the current proceedings. Witness B.R.2 was living in Mitrovica at the time, but stated that he was not around during the events, as in 1999 and until the end of the conflict, he was in the mountains. He was a surgeon in the KLA and was based in the mountains. He talked about operational zones and brigades of the KLA. He was “in charge of health issues” over the operational zone in Shala which had two brigades, the brigade 141 which was mainly situated in Shala e Bajgores and the brigade 142 which covered Vaganica, Oshlan and other places. He also mentions the existence of other brigades, such as Drenica, where he performed some surgical interventions.<sup>286</sup> This confirms once more the high level of organization of the KLA.
237. When it comes to the intensity of armed clashes at the critical time, this was assessed by the Panel with consideration given to: the engagement of governmental troops, the destruction of property, the displacement of local population, all of which were proven in the main trial, as well as the existence of casualties which is known as a notorious fact. The Panel followed the concept applied by the ICTY in the *Prosecutor v. Milošević* case.<sup>287</sup> In the case at hand, the witnesses heard on Count 1 unanimously recounted how their entire neighbourhood in Mitrovica was expelled. Entire families were ordered to walk towards Albania in convoys, notwithstanding their age. Starting with the babies and finishing with the old and sick, entire areas of Mitrovica were evicted. The family members who were too

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<sup>284</sup> *Prosecutor v. Limaj, Bala and Musliu*, Case No. IT-03-66-T, Judgment, 30 November 2005, para 171.

<sup>285</sup> Supreme Court Decision in *L.G. et al.*, 21 July 2005, page 10, English version.

<sup>286</sup> B.R.2, Record of the main trial, 25 March 2015, paras. 9-13.

<sup>287</sup> *Prosecutor v Slobodan Milošević*, Case No. IT-02-54-T, Rule 98 bis Decision, 16 June 2004, paras. 26-32.

sick to walk or had a disability were simply carried on wheel barrels.<sup>288</sup> The witnesses themselves were part of this living convoy.

238. Witness B.F. also mentions that on the critical day, while he walked towards the bus station, the houses on the way were burning.<sup>289</sup>
239. During the same period, ethnic Albanians were expelled also from other areas of Kosovo. Witnesses Z.A. and N.A.3 had their house in Gjakova burnt down and had to flee their home and leave to Montenegro.<sup>290</sup> They left by bus via Raška and on their way out they passed Mitrovica and noticed a large convoy of people leaving the town on foot and heading towards Peja.<sup>291</sup> Significant to the level of destruction in Mitrovica area, witness Z.A. referred to that day as “the day Mitrovica got burnt down”.<sup>292</sup> This happened a few days after NATO airstrike began, that is, a few days after Bajram.<sup>293</sup>
240. Lastly, it should be stressed that the provisions of common Article 3 to the Geneva Conventions apply also outside the actual theatre of combat operations which means in the whole territory under the control of a warring party whether or not actual combat takes place there.
241. This is consistent with the current jurisprudence in Kosovo. The existence of an armed conflict between the Yugoslav and Serbian forces and the KLA during the Kosovo war has been established by the Supreme Court of Kosovo in the *K.* case, Decision of 5 August 2004,<sup>294</sup> and confirmed in the Supreme Court Decision of 21 July 2005 in *L.G. et al.*<sup>295</sup>
242. On 24 March 1999, the NATO embarked upon a military campaign against the armed forces of FRY and Serbia. This operation did not immediately result in a termination of the internal conflict in Kosovo, but rather led to its aggravation in the period material to the Indictment.

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<sup>288</sup> Z.A., Record of the main trial, 25 February 2015, para. 325.

<sup>289</sup> B.F., Record of the main trial, 20 February 2015, para. 137.

<sup>290</sup> Z.A., Record of the main trial, 25 February 2015, paras. 21-27.

<sup>291</sup> Z.A., Record of the main trial, 25 February 2015, para. 325.

<sup>292</sup> Z.A., Record of the main trial, 25 February 2015, paras. 127-139; the witness is not certain when it comes to the exact date.

<sup>293</sup> Bajram that year fell on 28 March 1999; see Record of the main trial, 25 February 2015, para. 536.

<sup>294</sup> Supreme Court Decision in the *K.* case AP-KZ 230/2003, 21 July 2005.

<sup>295</sup> Supreme Court Decision in *L.G. et al.*, 21 July 2005, pp. 10 - 11, English version.

243. The non-international armed conflict ends when a peaceful settlement is reached.<sup>296</sup> On 09 June 1999 the Kumanovo Agreement (Military Technical Agreement between the International Security Force ["KFOR"] and the Governments of the Federal Republic of Yugoslavia and the Republic of Serbia) was signed and this marked the moment when the Yugoslav and Serbian army forces started their withdrawal from Kosovo. This agreement foresaw the phased withdrawal of the armed forces from Kosovo within 11 days after the signing of the agreement. The withdrawal was completed on 21 June 1999 when the last Yugoslav and Serbian troops left the territory of Kosovo.
244. Therefore, the Trial Panel concluded that there was a non-international armed conflict within the meaning of common Article 3 going on in the Mitrovica region at the time of the actions attributed to the Accused.
245. The existence of such a conflict was not contested by the defence counsel.

#### Nexus with the armed conflict

246. The Panel followed the concept observed by the ICTY in relation to the necessity of a nexus between the accused's action and the conflict in order to classify a criminal act as a war crime.
247. In the Tadić case, the ICTY expressed the opinion that:
- "There must be an obvious link between the criminal act and the armed conflict [. . .] It is sufficient that the alleged crimes were closely related to the hostilities occurring in other parts of the territories controlled by the parties to the conflict."*<sup>297</sup>
248. In the same case, the ICTY stressed the fact that a war crime can be perpetrated even if *"substantial clashes were not occurring in the region at the time and place where the crimes were allegedly committed."*<sup>298</sup>
249. A more detailed explanation on this issue was presented by the ICTY Appeals Chamber in the Kunarac case:

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<sup>296</sup> Tadić Jurisdiction Decision, para. 70; Kunarac Appeal Judgement, para. 57; Prosecutor v. Haradinaj, Balaj and Brahimaj, Judgment, Case No. IT-04-8bis-T, Trial Chamber II, 29 November 2012, para. 396.

<sup>297</sup> Prosecutor v Tadić, Case No. IT-94-1, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995, para. 70.

<sup>298</sup> Ibidem.



*“What ultimately distinguishes a war crime from a purely domestic offence is that a war crime is shaped by or dependent upon the environment – the armed conflict – in which it is committed. It need not have been planned or supported by some form of plan or policy. The armed conflict need not have been causal to the commission of the crime, but the existence of an armed conflict must, at a minimum, have played a substantial part in the perpetrator’s ability to commit it, his decision to commit it, the manner in which it was committed or the purpose for which it was committed. Hence, if it can be established, as in the present case that the perpetrator acted in furtherance of or under the guise of the armed conflict it would be sufficient to conclude that his acts were closely related to the armed conflict.”*<sup>299</sup>

250. The Panel assessed that the actions subject to the Indictment were explicitly linked to the ongoing armed conflict:
251. All the perpetrators were members of the Serbian armed groups, official or unofficial, including state-run law enforcement which took a position of an enemy and persecutor of the Albanian population. Therefore, civilians of Albanian ethnicity were deprived of any form of legal protection against the governmental forces that turned against them. The culprits enjoyed temporary impunity.
252. Some of the expelled Albanians recounted how the Serbian forces scolded them in relation with the NATO campaign. Witness M.M.1 recounted how, while expelling him, they told him the following words: *“we gave you everything and you didn’t want it now NATO is helping you and we have Russia”*.<sup>300</sup> Witness B.F. testified to similar utterances. Whilst keeping the 15 men against the wall, Serbian police told them: *“Why you are asking for NATO?! Now ask help from NATO”* and *“We will take care of you”*.<sup>301</sup>
253. Moreover, the 15 men were kept against the wall and interrogated about any affiliation to the KLA.<sup>302</sup>
254. The Panel is satisfied that the requisite nexus is fulfilled.

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<sup>299</sup>, *Prosecutor v. Kunarac, Kovač and Vuković*, Appeal Judgment, 12 June 2002, paras 58 and 59.

<sup>300</sup> M.M.1, Record of the main trial, 23 February 2015, para. 52.

<sup>301</sup> B.F., Record of the main trial, 20 February 2015, para. 123.

<sup>302</sup> I.M.1, Record of the main trial, 21 January 2015, para. 213; Sh.K.1, Record of the main trial, 18 February 2015, para. 86; L.A.1, Record of the main trial, 26 March 2015, paras. 94 and 190.

Civilian status of victims:

255. As Common Article 3 of the Geneva Conventions protects persons taking no active part in the hostilities, it must be established that the victims of the alleged violation were not taking an active part in the hostilities at the time the crime was committed.<sup>303</sup>
256. Even if certain distinctions were made regarding how women, children and the elderly men were treated as opposed to the other men, still, actions by the Serbian forces were undertaken against all groups.
257. All the ethnic Albanians who were expelled that day were extracted from their homes. Entire families, including the children, the elderly and the sick, were evicted. They opposed no resistance and they immediately went out into the streets as ordered, some of them wearing only flip-flops. There is no evidence that any of them were uniformed or armed in any way.
258. In fact, it seems that the soldiers themselves expected to encounter civilians and not combatants. They acted composed, self-assured and did not employ extremely offensive means. Witness I.M.1 recounted how the soldiers who expelled him from the house “behaved very well”.<sup>304</sup> Witness B.S.1 also mentioned the good behaviour of the troops.<sup>305</sup> The testimony of F.P. is particularly telling. She recalled how “*two of them from the special unit went further up on a pair of staircases and started crying. They said ‘It is not easy for us.’*”<sup>306</sup> The fact that the troops who expelled the ethnic Albanians did not display any aggressive behaviour towards them shows that they did not expect any particular resistance or confrontation. Additionally, the fact that some of the troops even acted apologetically shows that they knew they were directing their actions against civilians.
259. Some of them were interrogated in relation to their affiliation to the KLA. I.M.1 maintains that none of the men were KLA.<sup>307</sup> There is no suggestion in the evidence to the contrary. None of them was wearing any kind of uniform nor were they armed. The clothes of the victims are described by the investigative judge who collected their bodies as civilian.<sup>308</sup>

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<sup>303</sup> *Kvočka* Trial Judgement, para 124; *Blagojević* Trial Judgement, para 540.

<sup>304</sup> I.M.1, Record of the main trial, 21 January 2015, para. 186.

<sup>305</sup> B.S.1, Record of the main trial, 11 March 2015, para. 386.

<sup>306</sup> F.P., Record of the main trial, 24 February 2015, para. 34.

<sup>307</sup> I.M.1, Record of the main trial, 21 January 2015, paras. 232-235.

<sup>308</sup> Inspection of the crime scene by B.M., dated 15/04/1999. pp. 745-753.

260. Furthermore, had there been any KLA fighters or supporters amongst the civilian population - which is not in the least proven - this would not have altered the fact that the attack targeted primarily a civilian population.
261. Moreover, there is no evidence suggesting that the Serbian forces undertook a real and effective attempt to distinguish between KLA members and the rest of the Kosovo Albanians. Their initial inquiries about any KLA affiliation proved to be unsupported by real action which would lead to the identification of the suspected KLA members. The Panel recalls one telling example of the witness I.M.1 who, in an attempt to save his life, tried to explain to the police forces escorting him that he should not be mistreated, as he had been living in the area and entertained good neighbourly relations with Serbs.<sup>309</sup> His argument did not prompt the policeman to look into this aspect further. Neither did it have any effect in deterring the policeman from escorting them to the execution place where the armed forces went on to kill four of the Kosovo Albanians.
262. These specific actions by Serbian forces reveal that their objective was not the arrest, interrogation or the killing of KLA members and supporters only.
263. In the commission of the above mentioned crimes, the Serbian forces acted indiscriminately. They directed their attacks against the entire Kosovo Albanian population specifically based on their ethnicity. No distinction was made, or attempted to be made, between civilians and combatants. The civilian population was not an incidental, but rather the primary target.
264. Ultimately, the whole operation was motivated by the mere fact that the victims were ethnic Albanians. All the expelled families were urged to go to Albania. They were addressed with insults in relation to their ethnicity, such as: "*Mother fuckers, these Shiptars,*<sup>310</sup> *all their mothers should be fucked and all of them are members of KLA.*"<sup>311</sup> B.F. also recounts how "*they received insults in the national aspect.*"<sup>312</sup>

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<sup>309</sup> I.M.1, Record of the main trial, 21 January 2015, para. 248.

<sup>310</sup> An offensive word for ethnic Albanians.

<sup>311</sup> I.M.1, Record of the main trial, 21 January 2015, para. 223; B.F., Record of the main trial, 20 February 2015, para. 123.

<sup>312</sup> B.F., Record of the main trial, 20 February 2015, para. 123.

265. Witness I.M.1 was repeatedly asked, due to his darker complexion, if he belonged to the Roma minority.<sup>313</sup> When I.M.1 denied and answered that he was an Albanian, the Serbian man in uniform, according to Sh.K.1, replied “*you can blame yourself for that - meaning - why aren’t you saying that you are Roma and you will be released.*”<sup>314</sup>
266. The Panel concludes that the victims were not taking active part in the hostilities at the time the crime was committed.

## II. A. 2. Law

267. Article 3.1 of the CCK, which is currently in force, stipulates that the law in effect at the time of the commission of the criminal offence is applicable to the criminal offence. On 14 April 1999, the law in force was the Criminal Code of the Federal Republic of Yugoslavia (CC FRY).
268. According to its Article 142 CC FRY:

*“Whoever in violation of the rules of international law effective at the time of war, armed conflict or occupation, orders ...that the civilian population be subjected to killings [...], or who commits one of the foregoing acts, shall be punished by imprisonment of not less than five years or 40 years”.*

269. In order for criminal liability to exist under Article 142 CC FRY, the following must be proven:<sup>315</sup>
1. The conduct constitutes a violation of international law effective at the time of the commission;
  2. The act must be committed during the time of war, armed conflict or occupation;
  3. There must be a *nexus* between the act of the perpetrator and the war, armed conflict or occupation;
  4. The perpetrator must order or commit the act in question.

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<sup>313</sup> B.F., Record of the main trial, 20 February 2015, para. 117.

<sup>314</sup> Sh.K.1, Record of the main trial, 18 February 2015, para. 98.

<sup>315</sup> Supreme Court Decision in *L.G. et al.*, 21 July 2005.; even if the Decision refers to the CC SFRY, the provisions of CC FRY when it comes to the elements of the crime are the same.

270. The first three requirements are known as the chapeau elements, while the fourth relates to the commission of the underlying criminal offence. Each element will be analysed in turn below.

1. Article 142 CC FRY requires that the act committed by the perpetrator constitute a violation of international law effective at the time of commission.

271. The commentary to this article defines international law as “[P]rinciples and provisions of international law prohibiting certain conduct and defining them as criminal acts whose perpetrators need to be called to criminal responsibility and punished accordingly.”<sup>316</sup>

272. International criminal law is defined as a “[g]roup of legal rules established by international treaties and other agreements, as well as by international custom, violation of which represents a criminal act and results in individual criminal responsibility and application of a criminal sanction.”<sup>317</sup>

273. The Geneva Conventions of 1949 were ratified by the Socialist Federal Republic of Yugoslavia in 1950 and the Fourth 1949 Geneva Convention relative to the Protection of Civilian Persons in Time of War came into force on 21 October 1950. The Protocols to the Geneva Conventions were ratified in 1979 and Additional Protocol II of the Geneva Conventions came into force on 7 December 1978. Moreover, Common Article 3 of the Geneva Conventions is widely accepted as having become part of the customary international law and therefore binding on non-signatories as well.<sup>318</sup>

274. Since the war in Kosovo has been characterized as an internal armed conflict,<sup>319</sup> Article 3 Common to the 1949 Geneva Conventions and Additional Protocol II (AP II) are the norms of international law applicable in the present case. Common Article 3 of the Geneva Conventions and Additional Protocol II represent the relevant international law that Article 142 CC FRY refers to.<sup>320</sup>

275. Common Article 3 of the Geneva Conventions stipulates the following:

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<sup>316</sup> Ljubiša Lazarević, Commentary of the Criminal Code of FRY 1995, 5<sup>th</sup> Edition; Savremena Administracija; Belgrade.

<sup>317</sup> Ibidem.

<sup>318</sup> See *Kunarac* Trial Judgment, para. 406.

<sup>319</sup> See the reasoning at paras. 228-245 above.

<sup>320</sup> Supreme Court Decision in *L.G. et al.*, 21 July 2005.

*“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 provisions:*

*Persons taking no active part in the hostilities, including members of the armed forces who have laid down their arms and those placed ‘hors de combat’ by sickness, wounds, detention, or any other cause, religion or faith, sex, birth or wealth, or any other similar criteria.*

*To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:*

*(a) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;*

*[...].”*

276. Article 4 § 2(a) of the Additional Protocol II relating to the Protection of Victims of Non-International Armed Conflicts of 8 June 1977 extends the protection to all persons affected by the armed conflict:

*“ (1) All persons who do not take a direct part or who have ceased to take part in hostilities, whether or not their liberty has been restricted, are entitled to respect for their person, honour and convictions and religious practices. They shall in all circumstances be treated humanely, without any adverse distinction. It is prohibited to order that there shall be no survivors.*

*(2) Without prejudice to the generality of the foregoing, the following acts against the persons referred to in paragraph 1 are and shall remain prohibited at any time and in any place whatsoever:*

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

*[...].”*

277. The general requirements for both the application of Common Article 3 and the specific offences charged under Common Article 3 were articulated, inter alia, by the Trial Chamber of the ICTY in the Kunarac Judgment as follows:<sup>321</sup>

*(i) The violation must constitute an infringement of a rule of international humanitarian law.*

*(ii) The rule must be customary in nature or, if it belongs to treaty law, the required conditions must be met.*

*(iii) The violation must be "serious", that is to say, it must constitute a breach of a rule protecting important values, and the breach must involve grave consequences for the victim.*

*(iv) The violation of the rule must entail, under customary or conventional law, the individual criminal responsibility of the person breaching the rule.*

*(v) There must be a close nexus between the violations and the armed conflict.*

*(vi) The violations must be committed against persons taking no active part in the hostilities.*

278. There can be no doubt whatsoever that murder, as charged in the present case, represents a serious offence.

279. The other prerequisites are also met as detailed previously in this judgement.

280. Therefore, the first condition – that the conduct constitutes a violation of international law effective at the time of the commission - is met.

281. The second and third conditions– the existence of an armed conflict and nexus – also exist, as elaborated in the part of the reasoning regarding the factual situation.

4. The perpetrator must order or commit the act in question.

282. Besides the *chapeau* elements described above, it must be established that the defendant ordered or committed the underlying criminal offence, in our case murder. The objective elements of Article 142 CC FRY read with the respective provisions of the Geneva Convention are considered fulfilled.

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<sup>321</sup> *Kunarac et al.*, Case No. T-96-23-T & IT-96-23/1-T, Trial Judgment, 22 February 2001.

283. In the case at hand, four victims are proven dead. Their death was caused by shooting, as part of the mop-up operation in which the Defendant participated. Regarding the other five who survived, the criminal offence of murder is qualified as attempted. Its completion was interrupted by the intervention of a third external element, the so-called “saviour”.
284. Commission includes co-perpetration and aiding and abetting, which are discussed in more detail below.
285. Article 22 of CC FRY defines co-perpetration as follows:<sup>322</sup> *“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.”*
286. The Commentary to the Criminal Code of FRY contains a detailed overview of the different theories of co-perpetration, as well as an elaboration on the so-called “ownership of deed” theory which is associated with the form of co-perpetration contained in Article 22. The most pertinent part of the commentary reads as follows:<sup>323</sup>

*“According to law, complicity is a jointly committed crime, i.e. one committed by several people through various roles or some other means. The accent is on the joint performance of the deed. Such joint performance of the deed is realised by joint participation in the very act or in some other way. “The other way” means that an accomplice may also be the person who is not (directly) participating in the performance of the act. Precisely on the basis of the idea of the ownership of the deed, these performances in different circumstances may be performing deeds.*

*It is a general assumption that complicity is a joint performance of a deed based on a joint decision: everyone is a carrier of the decision about the performance of the deed; everyone, in association with others, performs his deed; the very contribution is such that in the framework of a common decision and distribution of roles, represents a significant element (part) in the process of planning to commit a certain deed. Thus, the notion of complicity has its subjective and objective component.”*

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<sup>322</sup> The English translation uses the word “complicity,” which is misleading. The original title of the article is “saizvršilaštvo,” which literally means co-perpetration.

<sup>323</sup> Ljubiša Lazarević, Commentary of the Criminal Code of FRY 1995, 5<sup>th</sup> Edition; Savremena Administracija; Belgrade.



287. On 14 April 1999, **O.I.** was present at the critical place in a group together with other members of the Serbian forces. His appearance and behaviour exclude the possibility that he was a bystander.
288. He was armed, uniformed, guarding and securing a checkpoint which the victims passed by. Even if he was not the one issuing the order for the execution of the victims, he reminded the other soldier of the order right before the execution commenced.
289. As detailed above, the entire operation was common and coordinated amongst Serbian forces, with each individual having been assigned certain tasks. Every task was essential to the implementation of the plan. The Accused's conduct contributed substantially to the incriminated result. **O.I.**'s performance was functionally connected to the activities of others and complemented them in a decisive way. His actions constituted an essential segment in the process of committing the criminal act. Therefore, he participated as a co-perpetrator in the commission of the criminal offence.
290. The Panel points out that it is not necessary that all co-perpetrators be at trial or even known. This conclusion is consistent with jurisprudence. The Supreme Court of Kosovo states the following in the case *L.G. et al.* : *"It goes without saying that the lack of information on other co-perpetrators cannot lead to the result that a person ...will not be prosecuted and/or sentenced according to the law."*<sup>324</sup> A similar approach is followed by the Supreme Court of Kosovo in the case of *B.K.*<sup>325</sup>
291. It should be noted that war crimes against civilians is considered as a single criminal offence under Article 142 CC SFRY.
292. In this regard, the Kosovo Court of Appeals found in the case against *Z.K.*<sup>326</sup>

*"The Panel notes that albeit criminal offences directed against personal integrity will as a rule constitute individual criminal offences, the criminal offence of War Crime against Civilian Population and other criminal offences against humanity and International law are distinct in this regard. Due to the nature of these criminal offences, they will generally be directed against multiple victims. This is, amongst others, clear from the wording of the criminal norm itself (Article 142 CC SFRY, Article 153 CCRK). The criminal offence is*

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<sup>324</sup> Supreme Court Decision in *L.G. et al.*, case Ap. – Kz. No. 89/2010, 26 January 2011, p. 24, English version.

<sup>325</sup> Supreme Court Decision in *B.K.*, case Ap.- Kz. No. 153/2008, 12 January 2010, pp. 21 - 22, English version.

<sup>326</sup> Appeal Judgment dated 25 September 2013, para. 87.

*titled War Crime against Civilian Population and throughout the norm the plural is used, e.g. "civilian population subject to killings, torture, inhuman treatment...taking hostages, illegal arrests..."*.

293. Similarly, the Commentary to Article 142 CC FRY provides:<sup>327</sup>

*"The incriminated activities have been alternatively put in the law, so that the act can be performed by each of the activities. However, if one person performs several identical activities or several different activities incriminated in this Article, this will be only one criminal act of war crime against civilian population, since in this case, it ensues from the very legal description of the criminal act that this is a unique criminal act, regardless of the number of the performed individual activities. According to the verdict of the Supreme Court of Serbia Kz-2539/56, there is one criminal act of war crime against the civilian population, in spite of the perpetrator performing particular acts in different places, against different persons, in longer time periods and in a different manner."*

294. The Trial Panel now turns to evaluate whether the subjective elements (so-called *mens rea*) of the Accused, are established.

295. Pursuant to Article 11 CC FRY, a person is criminally liable if he or she is mentally competent and has been found guilty of the commission of a criminal offence. Pursuant to the same provision, a person is guilty of the commission of a criminal offence when he or she commits a criminal offence intentionally or negligently.

296. Firstly, there is no doubt as to the fact that the Accused was fully mentally competent when he committed the offence. Nothing in the case file suggests otherwise and no such challenge has been raised by the Defence.

297. Secondly, the accused, when committing the crime, acted with intent.

298. A criminal offence may be committed with direct or eventual intent. A person acts with direct intent when he or she is aware of his or her act and desires its commission. A person acts with eventual intent when he or she is aware that a prohibited consequence can occur as a result of her act or omission and he or she accepts its occurrence.

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<sup>327</sup> Ljubiša Lazarević, Commentary of the Criminal Code of FRY 1995, 5<sup>th</sup> Edition; Savremena Administracija; Belgrade.

299. The Trial Panel concluded that the Defendant acted with *animus necandi*. The intention to kill, being a volitional element buried in the person's conscience, can only be inferred from the evidence about the observed conduct of the Defendant. Probative elements susceptible of revealing the person's intention are, amongst others: his behaviour before, during and after the aggression, comprising what was said, threatening expressions, the assistance given to the victim and generally any other information that might result from the specifics of the case.
300. As detailed in the assessment of the factual situation, the evidence established that the armed forces of FRY and Serbia acted in concert and in realization of a common purpose: the removal of the Albanian population from Kosovo. It is without a doubt that they were fully aware of the existence of the conflict as well as of the fact that the targeted population was civilian. Comprehensive arguments were presented above in this judgement. It is accepted that some of the members of the Serbian forces did not desire that the Kosovo Albanians be killed. This is concluded from the fact that the "saviour" interrupted the execution.
301. However, both the group of "blues" who escorted the nine Kosovo Albanians from the execution line and those men in uniform present at the checkpoint wanted them killed. They detained them at gun point and deliberately shot four of them. The only reasonable inference open on the facts is that the perpetrators had the requisite intent to kill them. Therefore, they acted with direct intent. Their direct intent is established in regards to all nine Albanian. It was only by chance that only four of them were shot. The "saviour" appeared and stopped the execution. If it had not been for him, the "blues" would have continued their actions. In fact, even after the intervention of the "saviour", they tried to negotiate with him a way to shoot some more. They all acted without hesitation while escorting and executing the victims. No sign of surprise was displayed during or after the execution by the "blues" at the checkpoint, who were only few meters away from the execution. This is indicative of the fact that they were not acting irrationally when shooting the victims and that they were fully aware and desired the consequences of their acts.
302. When it comes to the Accused, he was amongst the forces present at the checkpoint. Even if it was not established that he gave the order for the execution of the victims, the fact that he reminded the other soldier of the order demonstrates beyond reasonable doubt that he

was aware of the plan. All the other considerations above refer also to the Defendant and are indicative of his intention to deprive the victims of their life. He was fully aware of the potential consequences of his actions and desired the incriminated result.

303. Finally, the Panel makes the following findings with respect to the responsibility of the Accused under the other forms of liability alleged in the Indictment. The Indictment alleges that the Accused, “in his capacity of a leader”, “incited the group of subordinates”. First of all, the Panel remarks that the two assumptions – that he was the leader and that he incited his subordinates – are mutually exclusive given the concrete factual elements. If the fact that **O.I.** was the leader would have been found proven, then the issuing of the instruction would have amounted to “ordering” and not “inciting”. **O.I.** would have been an author.
304. As to incitement, no direct evidence has been tendered to prove the allegation that the Accused incited the perpetrators to commit the criminal offence in question. In order to incite, a *nexus* between the act of incitement and the perpetration of the crime must be established. The Panel considered that the men in uniform who escorted and executed the victims had already been determined to commit the acts prior to the exchange of words with the Accused. They acted in a self-assured and determined way and they knew what they were doing. By his utterances, the Defendant did not practically convey any new information or instructions to them. Even so, they did not seek further assurance or clarification, but they proceeded with the implementation of the plan. Whereas, for incitement to exist, the “incitee” should not have had already made up his own mind to commit the offence. It should be the action of the “inciter” who should bring to light the criminal resolution of the executant. This is not the case. Also, it is an intrinsic feature of incitement that the “inciter” does not himself take part in the commission of the criminal offence he incites. The Defendant is a co-perpetrator, therefore he cannot be inciting others.
305. According to Article 360 Paragraph 2 CPC, *“The court shall not be bound by the motions of the state prosecutor regarding the legal classification of the act”*.
306. Earlier in this judgement the Panel made their factual findings regarding the event and the relevant conduct of the Accused and we qualified it as co-perpetration. Based on the above, the Trial Panel has found the accused criminally liable for committing the criminal offence of “War crime against the civilian population” criminalized under Article 142 CC FRY. The

accused committed the offence with indirect intent. The subsequent criminal codes also punish the criminal offence of “War crime against the civilian population”. Essentially, the relevant elements of the offence remain the same under all the criminal codes.<sup>328</sup> Moreover, any essential contribution to the commission of the criminal offence, such as the Defendant’s, is qualified as co-perpetration under any of the codes.

#### Sentencing:

307. The Panel is satisfied beyond a reasonable doubt, for the reasons given, of **O.I.**’s individual criminal responsibility for his participation as co-perpetrator in the charged criminal offence and will enter a conviction on this basis.
308. When imposing the punishment upon the accused convicted for a particular crime, the Court must bear in mind both the general purpose of the punishment – i.e. to suppress socially dangerous activities by deterring others from committing the same offences, and the specific purpose - i.e. to prevent the offender from re-offending. According to Article 34 of the CCK:<sup>329</sup> “The purposes of punishment are: 1) to prevent the perpetrator from committing criminal offences in the future and to rehabilitate the perpetrator; and 2) to deter other persons from committing criminal offences”. Two other sentencing objectives commonly referred to by criminological and penal experts are retribution and rehabilitation.
309. Accordingly, the Trial Panel must take all these objectives into account when determining the punishment.
310. Since the date of commission of the criminal offence to the present day, several criminal codes have succeeded. Therefore, the Panel has to consider the principle of preemptory applicability of the most favourable law or *lex mitior*.<sup>330</sup> The Trial Panel had to *in concreto* consider what law would be more favourable for the Defendant when calculating the sentence. As stated by the European Court of Human Rights (ECtHR), *lex mitior* is the one which is more favourable to the Defendant, taking into account his or her characteristic, the

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<sup>328</sup> See details in the sentencing part.

<sup>329</sup> Similar dispositions are contained in Article 33 CC FRY.

<sup>330</sup> Enshrined in Article 3 CCRK.

nature of the offence and the circumstances in which the offence was committed.<sup>331</sup>  
Therefore, the *lex mitior* has to be found *in concreto*.<sup>332</sup>

Calculation of punishment under the Criminal Code of FRY:

311. The CC FRY entered into force in 1993 and therefore was applicable on the date of the commission of the criminal offence.
312. The criminal offence of “War crime against the civilian population” is criminalized under Article 142 and carries a minimum punishment of five years of imprisonment and a maximum of 40 years. A separate category of punishment – of 20 years’ imprisonment – is provided in the alternative.
313. Concerning the general rule of punishment of imprisonment, Article 38 Paragraph (1) of the CC FRY states that “[t]he punishment of imprisonment may not be shorter than 15 days or longer than 15 years”.
314. Article 38 Paragraph (2) of the CC FRY provides that “[f]or the most serious criminal offences, imprisonment of 20 years can also be imposed”.
315. In the case at hand and given the limited contribution of the Accused to the commission of the criminal offence, the Panel would only consider the category of punishment of imprisonment between 5 and 15 years.
316. The applicable sentencing range is, therefore, from 5 to 15 years of imprisonment.
317. The Court shall determine the punishment for a criminal offence within the limits provided for by law for such a criminal offence, taking into consideration the purpose of the punishment, all mitigating and aggravating circumstances and, in particular, the degree of criminal liability, the motives for committing the act, the intensity of danger or injury to the protected value, the past conduct and personal circumstances of the perpetrator, his or her behaviour after committing the criminal offence and all the concrete circumstances in which the act was committed. The punishment shall be proportionate to the gravity of the offence and the conduct and circumstances of the offender.

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<sup>331</sup> *Scoppola v. Italy* (no. 2), no. 10249/03, para. 109, 17 September 2009; *Maktouf and Damjanovic v Bosnia and Herzegovina*, separate opinions, p. 43

<sup>332</sup> See above, *Maktouf and Damjanovic v Bosnia and Herzegovina*, p. 44.

318. As aggravating circumstances the Panel considered the following: the manner of committing the crime was particularly unsettling - the victims were extracted from their homes and under the very eyes of their families. Further, they were interrogated, held hostage and finally subjected to killings in the middle of the neighbourhood where they lived, in close proximity to their houses. Another aggravating factor is the fact that the number of the persons intended to be killed was as high as nine (even if in the end only four were murdered).
319. As mitigating circumstances, the Panel considered that the level of participation of the Accused in the criminal offence was reduced. The Panel is also mindful of the good character of the Defendant, proven by witnesses and documentary evidence.
320. Considering the above noted mitigating and aggravating circumstances, the Trial Panel would sentence the accused to nine years of imprisonment for the criminal act of "War crime against the civilian population" criminalized under Article 142 of the Criminal Code of the Federal Republic of Yugoslavia (CCFRY).

Calculation of punishment under the Criminal Code of SFRY:

321. Section 1 Article 1.1 of the UNMIK Regulation No. 1999/24 on the Law Applicable in Kosovo, entered into force on 12 December 1999 provides that:

*"The law applicable in Kosovo shall be:*

*(a) The regulations promulgated by the Special Representative of the Secretary-General and subsidiary instruments issued thereunder; and*

*(b) The law in force in Kosovo on 22 March 1989."*

322. Therefore, from December 1999 on, by the effect of the above UNMIK Regulation, the provisions of the Criminal Code of the Socialist Federal Republic of Yugoslavia (CCSFRY)<sup>333</sup> were "re-activated".
323. With regard to the criminal offence of "War crime against the civilian population", Article 142 of the CC SFRY foresees a punishment of not less than five years or death penalty. Article 38 CC SFRY states the following:

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<sup>333</sup> Adopted by the SFRY Assembly on September 28 1976 and which entered into force on July 1 1977.

*“(1) The punishment of imprisonment may not be shorter than 15 days or more than 15 years”.*

*“(2) The Court may impose a punishment of imprisonment for a term of 20 years for criminal offences eligible for death penalty.”*

324. In the case at hand and given the limited contribution of the Accused to the commission of the criminal offence, the Panel would only consider the category of punishment of imprisonment between 5 and 15 years.

325. On the basis of the same mitigating and aggravating circumstances, the Trial Panel would have, therefore, imposed against the Defendant a sentence of 9 years of imprisonment for the same criminal offence.

#### Calculation of punishment under the old provisional Criminal Code of Kosovo:

326. The CCK entered into force in 2004. With regard to the same criminal offence, Article 120 of the CCK also foresees a punishment of not less than five years or long-term imprisonment.

327. Article 45 Paragraph (1) of the CCK states that “The punishment of imprisonment may not be shorter than 15 days or more than 20 years”.

328. The Panel, as pointed out above, would only consider the punishment of imprisonment. The applicable sentencing range would therefore be from five to 20 years of imprisonment.

329. On the basis of the same mitigating and aggravating circumstances, the Trial Panel would have, therefore, imposed against the Defendant a sentence of 11 years’ imprisonment.

#### Calculation of punishment under the Criminal Code of the Republic of Kosovo:

330. The CCRK entered into force on 01 January 2013. With regard to the same criminal offence, Article 152 of the CCRK also foresees a punishment of not less than five years or long-term imprisonment.

331. Article 45 Paragraph (1) of the CCRK states that “The punishment of imprisonment may not be shorter than 30 days or more than 25 years”.



332. The Panel, as pointed out above, would only consider the punishment by imprisonment. The applicable sentencing range would therefore be from five to 25 years of imprisonment.
333. On the basis of the same mitigating and aggravating circumstances, the Trial Panel would have, therefore, imposed against the Defendant a sentence of 13 years.

#### Lex mitior and final calculation

334. The Trial Panel considered that the most favourable outcome for the Defendant would be *in concreto* reached by applying either the CC FRY or CC SFRY. Since both codes are equally favourable, the Panel will apply the one which was in force at the time of the commission of the criminal offence, namely the CC FRY.
335. The time spent in detention between 27 January 2014 and 18 September 2015 and the time spent in house detention from 18 September 2015 until the present day is to be credited to the duration of the punishment, pursuant to Article 83 paragraphs (1) and (4) of the CCK in conjunction with Article 365 paragraph (1. 5) CPC.

## **II. B. COUNT 2: EVENTS OF 3 FEBRUARY 2000 IN MITROVIĆE/A NORTH**

336. The Panel maintains their position that the “*ne bis in idem*” principle is not applicable in the present case.<sup>334</sup>

#### Preliminary remarks:

337. The charges in the Indictment concern several attacks executed on the population of Albanian ethnicity on 3 February 2000 in Mitrovica north.
338. Similarly to Count 1, the Indictment, in its enacting clause does not elaborate more on the factual situation. The alleged facts are described in the reasoning part of the Indictment and sometimes placed amidst the argumentation of the prosecutor. Furthermore, to add to

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<sup>334</sup> See details in the Rulings on “*ne bis in idem*” presented in the Procedural Background at paras. 35-46 above.

the confusion, in addition to the description of the events at trial, the Indictment describes with the same level of details and by making reference to the evidence, events which are not within the subject matter of the Indictment:

*“Two men forcefully entered the apartment number 12 of D.G. and expelled her along with her mother and 5 children. They were armed with pistols and hand grenades. They shouted ‘we will kill you, you must leave’. On the way out the members of her family were physically mistreated by the Serbian perpetrators. One of the Serbs put a gun into the face of her 21 year old daughter and said ‘to whom do you say to calm down’.”<sup>335</sup>*

339. However, none of the Defendants is charged with the aggression against D.G. and her family and the latter are not amongst the injured parties listed in the Indictment.

340. The Panel had to examine both the enacting clause and the reasoning as a whole in order to identify and assess the alleged facts relevant to the criminal offences alleged under Count 2.

341. The victims injured by the attacks subject to the Indictment came under attack in the following locations:

- Apartment of N.A.2, situated in Lola Ribara street, building S/3; the following victims were inside: N.A.2, N.A.1, R.A., S.A.2, U.A., Sh.A., V.A., A.A.2, G.Xh., N.(N.)Xh., E.Xh.
- Apartment of V.1 family, situated in Tanaska Rajića street No 4; the following victims were inside: N.V.2 and Sh.V.
- Apartment of C.1 family, situated in Lola Ribara street No 5; the victim R.C. was inside
- Apartment of S.2 family, situated in Lola Ribara street 17/6; the following victims were inside: N.S.1 and H.S.1
- Apartment of A.2 family, situated in Lola Ribara street No 5; the victim S.A.1 was inside
- Apartment of S.1 family, situated in Knjaza Miloša street 2; the victim M.S.1 was inside
- Apartments of B., R.1 and H. families, situated in Sutjeska street 8; the following victims were inside: S.B., H.R. and M.H.1 respectively

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<sup>335</sup> Indictment, p.33, English version.

- Apartments of R.2 and R.3 families, situated in Kralja Petra I street, building S/42; the following victims were inside: G.R. and B.R.1 respectively

342. The apartments which came under attack were situated on neighbouring streets in the northern part of Mitrovica.<sup>336</sup>

343. The charges against the Defendants **O.I.** and **D.D.** concern the attacks against all the above apartments, whereas the Defendants **N.V.1**, **I.V.** and **A.S.L.** are charged only in relation to the attack on the A.1 family's apartment.

## **Subchapter B1: Analysis regarding the Accused O.I. and D.D.**

### **II. B1. 1. Facts**

344. These two Defendants are charged with similar criminal offenses allegedly committed in co-perpetration. A large part of the evidence administered by the Prosecution against them is common. Therefore, their situation will be addressed jointly below.

345. The Indictment alleges the following:

“on 03/02/2000 at night time in Mitrovica North, both defendants acting in co-perpetration, upon a previously agreed common plan and in the capacity – **D.D.** of Mitrovica Police commander of the Ministry of Interior of the Federal Republic of Yugoslavia (MUP) and **O.I.** of a leader of the paramilitary Serbian group known as ‘Bridge Watchers’ - with the direct intent to compel ethnic Albanians by force to abandon their houses and leave the territory of Mitrovica North and with the eventual intent to murder or inflict bodily injury upon them, they incited/ordered the group of subordinate Police officers and members of the paramilitary Serbian group known as ‘Bridge Watchers’ to raid several buildings located on Knaza Miloša<sup>337</sup> street, Lola Ribara street, Tanaska Rajica street, Sutjeska street and Karl Petri street and to

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<sup>336</sup> For a better representation of the geography of the area, see sketch and report of the site visit conducted on 21.09.2015 drafted by Forensics Unit, Mitrovica Regional Police Directorate dated 25.09.2015.

<sup>337</sup> As per the corrected Indictment.

forcefully clear them of ethnic Albanians as a result of which several of them were murdered or seriously injured by explosive devices, handguns or knives, and in particular:

1. on 03/02/2000 at night time the groups of MUP officers and 'Bridge Watchers' accompanied by spontaneous groups of Serbs from Mitrovica North, entered the buildings occupied by families of Albanian ethnicity with the aim to expel them and acting with the eventual intent to kill, they murdered the following persons:

N.A.1

N.XH.

S.A.1

R.C.

M.S.1

S.B.

N.V.2

Sh.V.

B.R.1

N.S.1(S.)

2. on 03/02/2000 at night time the groups of MUP officers and 'Bridge Watchers' accompanied by spontaneous groups of Serbs from Mitrovica North, entered the buildings occupied by families of Albanian ethnicity with the aim to expel them and acting with the eventual intent to kill, took action towards the commission of the offence of a murder but the action was not completed and resulted in the infliction of grievous bodily injury upon the following persons:

R.A.

N.A.2

A.A.2

E.XH.

3. on 03 February 2000 at night time the groups of MUP officers and 'Bridge Watchers' accompanied by spontaneous groups of Serbs from Mitrovica North, entered the buildings occupied by families of Albanian ethnicity with the aim to expel them and acting with the eventual intent to kill, took action towards the commission of the offence of a murder against the following persons but the action was not completed:

S.A.2

U.A.

Sh.A.

V.A.I

G.XH.

G.R.

M.H.1

H.R.

H.S.1”

346. The Prosecution administered 38 witnesses on this Count.

347. The following witnesses were present in the apartment of the A.1 family during the critical events: G.Xh., R.A., S.A.2, Sh.A., V.A., A.A.2.

348. Witness M.M.2 was a neighbour of the A.1 family. He was visiting them shortly before the tragic events and his apartment came under attack on the same occasion.

349. P.A. was also a neighbour of the A.1 family and observed the attack on their apartment.

350. Witnesses Sh.C.2, A.V., E.D., P.A., L.A.2, B.S.2 (M.S.1's sister-in-law), E.S., Gj.S., G.R., M.Sh. and D.Sh. gave testimonies in relation to the attacks on the apartments of the C.1, S.1, R.2, V.1 and A.2 families, as well as in relation to the overall security situation on 3 February 2000.

351. Witnesses H.S.1 and I.R.2 gave testimonies in relation to the attacks on the apartments of the S.2 and R.3 families respectively.

352. Witnesses H.R., Sh.H., I.R.1, N.H., A.S.1 and M.H.1 testified in relation to the attacks on the apartments of the B., R.1 and H. families.

353. Witnesses X and Y as well as I.M.3 were out on the streets during the events.

354. H.B. is a human rights activist and in this capacity he collected statements from the victims.

355. B.R.2 was the mayor of Mitrovica. He was not in Mitrovica north on the critical evening and his testimony concerns mostly the general security and political situation at the time.

356. The rest of the witnesses' testimonies do not concern strictly the events on 3 February 2000, but rather the general context of the events or are meant to provide evidence on the Bridge Watchers' activities.
357. During the critical evening, protected witnesses X and Y were present outside in the proximity of the buildings that came under attack.
358. Each of the two Defendants administered eight witnesses on this Count, who mainly offered details about each of the Defendant's whereabouts and concrete activities that evening. The general activities of the Defendants at the time were also explored.
359. When assessing it, the evidence will be grouped in four main categories:
- (a) Evidence related to the events on 03 February 2000 in Mitrovica north
  - (b) Evidence related to the position of **O.I.** within the Bridge Watchers
  - (c) Evidence related to the position of **D.D.** within the MUP
  - (d) Evidence related to the common planning or coordination between **O.I.** and **D.D.**

(a) Evidence related to the events on 03 February 2000 in Mitrovica north

General Context of tensions

360. There is an abundance of evidence to the effect that on 03 February 2000 in Mitrovicë/a north, in the evening hours, an explosion occurred at the "Bel Ami" coffee shop, injuring a number of Serbs.<sup>338</sup> In addition, this aspect was not contested.

Events in the apartment of the A.1 family:

361. The apartment of the A.1 family was one of the apartments that came under attack on that evening. The apartment is situated at number 12, third floor on Lola Ribara street, building S/3. Inside there were members of the A.1 family: N.A.2, his wife S.A.2, their daughter R.A., their sons N.A.1 and U.A. Sh.A. (N.A.2's brother) was also there together with his family:

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<sup>338</sup> **O.I.**, Record of the main trial, 8 December 2015, para. 180; **D.D.**, Record of the main trial, 8 December 2015, para. 406; **N.V.1**, Record of the main trial, 9 December 2015, para. 424; **I.V.**, Record of the main trial, 10 December 2015, para.9; **A.S.L.**, Record of the main trial, 10 December 2015, para. 254

V.A., his wife and their son A.A.2. Their neighbours, the Xh. family were also there: G.Xh., his wife N.Xh. and their daughter E.Xh.

362. Out of these 11 occupants, the following have been heard as witnesses before the Court: G.Xh., R.A., S.A.2, Sh.A., V.A. and A.A.2.
363. U.A. was not proposed by the Prosecutor and E.Xh., even if initially on the Prosecution witness list, was later withdrawn.<sup>339</sup>
364. N.A.2 died in the meantime and therefore was unavailable to testify in court. His pre-trial statements were declared inadmissible, with one exception: his statement given on 27 January 2003 before the District Court Mitrovica is admissible, but only when it comes to Defendant **D.D.**
365. N.A.1 and N.Xh. died following the injuries suffered during the attack.
366. The testimonies administered before the Court are consistent in the following: during the critical evening, an angry crowd congregated in Lola Ribara street. A group of persons came into the corridor of the apartment building. They first went to the upper floor and tried to get into the apartment of M.M.2. They did not succeed as he had a metallic door. They returned to the door of the A.1 family's apartment. After N.A.2 refused to comply with their summonses to open the door, they started to attack them. Their apartment came under attack by grenades and gun shots for several hours. At some point, a group of a few Serbs entered the apartment, cut off their phones and left. They were rescued by international forces and transported to the south of Mitrovica. The wounded were taken to the Moroccan hospital. As a result of the injuries, N.A.1 and N.Xh. died shortly after in the hospital. R.A., N.A.2, A.A.2 and E.Xh. also suffered severe injuries.
367. Therefore, the above aspects are considered established beyond a reasonable doubt.
368. In the following part, the Panel will assess in more depth the evidence that was produced concerning the perpetrators of the attack and the alleged involvement in the attack of **O.I.** and **D.D.**
369. Particular attention is given to the testimonies of the spouses Sh.A. and V.A., as they provide the most extensive and at the same time the most incriminating accounts on this

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<sup>339</sup> Given their early age and the content of their pre-trial statements, the Court did not deem necessary to call them *ex-officio*.

aspect. This analysis might also touch upon aspects declared by the two witnesses in relation to the Defendants **N.V.1**, **I.V.**, and **A.S.L.**, since their testimonies were assessed as an overall product.

Sh.A.:

370. When it comes to Sh.A.'s account, the Panel makes the following considerations:

371. He testified during two days and, even from a first reading, his statement can only be regarded with mistrust and reservations.

372. From the very beginning, the process of his examination proved to be very strenuous.

373. The Panel's main concern pertaining to his credibility is that his account is riddled with controversies. There are numerous contradictions, both internal – between his various accounts - and external – between his statements and the rest of the body of evidence.

Internal discrepancies (between his various accounts):

374. The general tenor of one of the most relevant parts of the earlier interviews is in marked and rather fundamental contrast with the positive assertion he made in his oral evidence: before the Court, he maintained that he saw each one of the five Defendants throwing a grenade from the corridor and into their apartment, including **O.I.** With regard to **O.I.**, not only had the witness not mentioned his presence in the corridor of the building before, but he in fact excluded it. When he was previously asked about **O.I.**, the witness only mentioned that he noticed him outside the building. The only other aspect concerning **O.I.** mentioned by the witness in relation to that day is that **D.D.** told him and his brother **N.A.2** that he was acting upon **O.I.**'s orders. The fact that towards the end of his in-court statement the witness suddenly volunteered such relevant information like seeing **O.I.** throwing a grenade is regarded by the Panel as not credible. More importantly, his stance fundamentally contradicts his previous statements, where he said that he did not notice or could not notice anybody. To the question of the interviewer "*Did you see **O.I.** and that **D.D.** throw the hand grenades?*", the witness answered: "*I did not see it, but a neighbour opposite my brother **N.A.2**'s apartment was a witness and it was broadcast on Kosovo television some*



days after the 3rd of February 2000.”<sup>340</sup> He then, in reply to another question, reiterated the same: “I did not see who threw the hand grenades.”<sup>341</sup> In another pre-trial interview, he also had stated the following: “I saw that people threw grenades towards N.A.2’s apartment, but it was impossible to see who threw them, due to all smoke in the apartment.”<sup>342</sup> When confronted with his previous statements, he offers an explanation that in the Panel’s view underlines once more his lack of honesty:

*“D.L.: I will remind you of your statement, page 1218, ‘somebody threw a hand grenade in the N.A.2’s apartment but it was impossible to see who this was because of the smoke’.*

*Sh.A.: I was talking only about the first grenade.”*<sup>343</sup>

375. The witness tried to make us believe that his answer – that he did not see – referred only to the first grenade. However, he had clearly indicated in his previous statement also the reason why he could not see, namely because of the smoke. However, it was exactly the first one of the two grenades that produced the smoke. There could not have been any smoke before the first explosion. In fact, the evidence is unanimous that the first grenade was thrown at the door of the apartment. So it was the door that would have prevented him from noticing who threw it, not the smoke. Therefore, his explanation – that he could not see because of the smoke - could not have possibly referred to the first grenade and completely lacks credibility.

376. The witness stated:

*“Sh.A.: I don’t remember if I forgot to say that but I know that I didn’t see the first bomb, but the second bomb was thrown by his neighbour I.V. and his son N.V. and A.S.L.*

*N.V.3: I didn’t ask that, I am asking you, you said in your statement in \_\_\_\_\_ that you were not able to recognise anyone because of the smoke.*

*Sh.A.: I said that in relation to the first bomb.*

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<sup>340</sup> Witness interview of Sh.A. dated 20 February 2014, p. 1231, English version.

<sup>341</sup> Witness interview of Sh.A. dated 20 February 2014, p. 1232, English version.

<sup>342</sup> Witness interview of Sh.A. dated 19 February 2014, p. 1214, English version.

<sup>343</sup> Sh.A., Record of the main trial, 12 May 2015, paras. 569-570.

*N.V.3: You used plural when you were speaking about the bombs, you were not using singular but let's leave this aside.*<sup>344</sup>

377. The witness gives conflicting testimonies pertaining to aspects which are considered by the Panel to be essential, such as where, when and how he observed a defendant during the critical event.

378. Initially, he stated that he saw **D.D.** on the street, in front of the apartment building, prior to the initiation of the attacks. He even offered many details about the defendant's attire and general behaviour:

*"EULEX Prosecutor: In this crowd of people in front of the building where also **O.I.** was, did you also see the person you mentioned before, by the name **D.D.**?"*

*Sh.A.: Yes, I saw also **D.D.***

*EULEX Prosecutor: When you saw **D.D.** in this crowd of people in front of the building of N.A.2, how was he dressed and was he armed or not?"*

*Sh.A.: He was armed till his teeth.*

*EULEX Prosecutor: On that night, when you saw Mr **D.D.**, was he armed, did you see him being armed, from the balcony?"*

*Sh.A.: Certainly I saw him because I know him very well.*

*EULEX Prosecutor: When you saw him, from the balcony, what kind of weapon did he have on him and where did he hold his weapon?"*

*Sh.A.: How to say, he used to have a shorter automatic gun.*

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<sup>344</sup> Sh.A., Record of the main trial, 12 May 2015, paras. 148-151.

*EULEX Prosecutor: When you saw him from the balcony, did he have the shorter automatic gun on him, did you see that?*

*Sh.A.: For the moment, I cannot remember the name of the automatic gun but he also had a knife on him.*

*EULEX Prosecutor: Mr Sh.A., do not use the words "I always saw him" focus on what you saw at the given moment. So, when you saw from the balcony Mr **D.D.**, was he armed with this automatic short barrel weapon?*

*Sh.A.: Yes, certainly.*

*EULEX Prosecutor: Did you see **D.D.**, giving some kind of orders with his hands or talking to some people?*

*Sh.A.: **O.I.** called all of them and together with other people also in presence of **D.D.**, he gave order to all of them.*

*EULEX Prosecutor: So, you did not see **D.D.** giving orders to anybody in this group?*

*Sh.A.: **O.I.** called first **D.D.** and then **D.D.** called other people and thereafter they entered into the building.*

*EULEX Prosecutor: Did you see at any point **O.I.** giving orders to **D.D.** who then ordered to others to enter the building, did you see that?*

*Sh.A.: I saw that personally and everything is true.<sup>345</sup>*

379. However, at the end of his examination, when prompted by the Panel to clarify how many times he saw **D.D.** that day, the witness confirmed only the two other instances out of the three he had mentioned before- inside the building and outside the building when KFOR

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<sup>345</sup> Sh.A., Record of the main trial, 11 May 2015, paras. 202-219.

evacuated the victims- leaving out altogether the episode when **D.D.** supposedly was in front of the building and which he had described in such detail the previous day:

*“Presiding Judge: (...) When and how many times did you see **D.D.** that evening?”*

*Sh.A.: We saw him that night when he came and spoke to my brother and he mentioned that he came there upon the order of **O.I.***

*Presiding Judge: Was this the only instance?*

*Sh.A.: Yes, this was the only time and then again when we went outside we saw him when the American and Danish forces were there.”<sup>346</sup>*

380. In the end, in reply to further inquiry, he openly admitted that he had in fact not seen **D.D.** at all before the attacks that day:

*“Presiding Judge: Did you also see him in front of the building before the event started or not?”*

*Sh.A.: No, I didn’t see him on that day, but when US police and Danish KFOR came, I saw him.”<sup>347</sup>*

381. The Panel points out that this admission comes after the witness, during the course of the very same in-court examination, had given very specific details regarding a situation that he then denied.

382. The witness also gave conflicting testimony regarding whether the Defendant **D.D.** entered or not into the apartment of N.A.2. During his examination on 11 May 2015, the witness maintained that **D.D.** entered the apartment:

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<sup>346</sup> Sh.A., Record of the main trial, 12 May 2015, paras. 382-383.

<sup>347</sup> Sh.A., Record of the main trial, 12 May 2015, paras. 394-395.

*“EULEX Prosecutor: Mr Sh.A., one of the last lines you said concerned the moment when **D.D.** with some people entered the apartment of Mr N.A.2 Did you see him, yourself when he entered the apartment of N.A.2?*

*Sh.A.: we saw, and my brother saw as well one, when he came there and said: “I came to you upon the order of **O.I.**”<sup>348</sup>*

383. The witness even described **D.D.**'s actions while in the apartment:

*“EULEX Prosecutor: **D.D.** was in the apartment and had a brief conversation with N., then what happened?*

*Sh.A.: in that moment they took all the phones and took everything they could.*

*EULEX Prosecutor: and they left the apartment?*

*Sh.A.: Yes.*<sup>349</sup>

384. However, in cross-examination, the witness stated exactly the opposite, namely that **D.D.** did not enter the apartment, but remained in front of the door:

*“Presiding Judge: When he told you about **O.I.**, was he inside your apartment? I’m talking about Mr. **D.D.***

*Sh.A.: No, he was beside the front door and he was speaking with my brother.*

*Presiding Judge: Was he in the corridor of the building?*

*Sh.A.: Yes, he was in the corridor but my brother knew him very well. I know him very well but my brother knows him better.*<sup>350</sup>

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<sup>348</sup> Sh.A., Record of the main trial, 11 May 2015, paras. 302-303.

<sup>349</sup> Sh.A., Record of the main trial, 11 May 2015, paras. 330-333.

<sup>350</sup> Sh.A., Record of the main trial, 12 May 2015, paras. 386-389.

External discrepancies (between his statements and the rest of the body of evidence):

385. Several facts that he presents as certain are in obvious contradiction with the rest of the evidence. With regard to the Defendants, he repeatedly stated that on the critical day, they were wearing uniforms and were heavily armed:

*“EULEX Prosecutor: When you saw **D.D.** in this crowd of people in front of the building of N.A.2, how was he dressed and was he armed or not?”*

*Sh.A.: He was armed till his teeth.”<sup>351</sup>*

*“EULEX Prosecutor: when you saw **D.D.** during that day, was he armed in some way?”*

*Sh.A.: they were armed to teeth, same as **O.I.**”<sup>352</sup>*

386. Given the way the attack was carried out, it is obvious that the perpetrators must have been armed. What is unusual, though, is that the witness stated that everybody had their guns visible:

*“D.L.: Were they carrying these weapons in concealed manner or these weapons were conspicuous?”*

*Sh.A.: They were so brave that they carried the weapons in such conspicuous way as if they were in their own house.”<sup>353</sup>*

387. What is even more difficult to believe is what the witness stated with certainty, that all the Defendants, together with others in the crowd, were wearing full uniforms.<sup>354</sup>

388. For instance, when asked about **I.V.** and **N.V.1**, the witness gave the following account:

*“EULEX Prosecutor: So, you saw them both in the crowd, from the balcony?”*

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<sup>351</sup> Sh.A., Record of the main trial, 11 May 2015, paras. 204-205.

<sup>352</sup> Sh.A., Record of the main trial, 11 May 2015, paras. 98-99.

<sup>353</sup> Sh.A., Record of the main trial, 11 May 2015, paras. 594-595.

<sup>354</sup> We will herein touch upon aspects of this witness’ testimony which also concern the other three Defendants; it is logical that his credibility is assessed in relation to his statement regarded as a whole.

*Sh.A.: Correct.*

*EULEX Prosecutor: Did you see any arms on them, from the balcony?*

*Sh.A.: They were wearing military uniform with a lot of weapons.*

*EULEX Prosecutor: On that night when you saw them from the balcony, did you see them wearing military uniform?*

*Sh.A.: Absolutely yes.*<sup>355</sup>

389. Concerning **O.I.** he states the following:

*"Sh.A.: Yesterday, I was not able to recall exactly, but the uniform he wore was the new Serbian uniform at that time.*

*N.V.3: Could you please explain what this French uniform was?*

*Sh.A.: Yesterday I said that it resembles to the French uniform, and I have a picture here, but without a hat, and I can show to you and I am sure about that 100%.*

*N.V.3: Yesterday you were 100% sure about the French uniform.*

*Sh.A.: It is similar with the French one.*

*N.V.3: What does it look like except that it is green?*

*Sh.A.: The colour is green, dark green and also I can say something like brown and it is a large one.*

*N.V.3: On that night, on 3 February 2000, was he wearing this uniform or the coat?*

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<sup>355</sup> Sh.A., Record of the main trial, 11 May 2015, paras. 234-239.

*Sh.A.: On that night he was with uniform and everything else.*<sup>356</sup>

390. According to the witness, others Serbs were wearing uniforms and arms as well.<sup>357</sup>

391. In contrast, the rest of the witnesses are unanimous as to the fact that none of the Defendants was either uniformed or armed.

392. More importantly, the events in question occurred after June 1999 when the Kumanovo Agreement entered into force. Under the Agreement, the security of the region was entrusted to the international forces. No one else, apart from the international forces, was allowed to wear a uniform. Witness Y, \_\_\_\_\_, confirmed this.<sup>358</sup> Uniforms of the official forces of FRY had been handed in. Weapons could only be carried by authorised persons.

393. KFOR was policing this closely. A telling example established on the evidence is that, on one occasion, **D.D.** was apprehended and interrogated by KFOR as to whether he was authorised to carry his pistol.<sup>359</sup>

394. It strains credibility that, while under such close scrutiny, Serbian citizens, instead of trying to be inconspicuous when orchestrating an attack, would put on full military gear and blatantly draw the attention of international forces to themselves.

Discrepancies which are both internal and external:

395. The Panel also notes that in his statement before the Court, the witness repeatedly and categorically denied that he, his brother N.A.2 and G.Xh. used weapons to defend themselves from the attack. This comes into contradiction with both the statements of G.Xh.<sup>360</sup> and V.A.<sup>361</sup> This strengthens even more the conviction of the Panel that the witness is not sincere.

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<sup>356</sup> Sh.A., Record of the main trial, 12 May 2015, paras. 17-25.

<sup>357</sup> Sh.A., Record of the main trial, 12 May 2015, paras. 275-276.

<sup>358</sup> Witness Y, Record of the main trial, 28 July 2015, para. 206.

<sup>359</sup> R.Š., Record of the main trial, 27 October 2015, paras. 604-624; **D.D.**, Record of the main trial, 9 December 2015, paras. 189

<sup>360</sup> G.Xh., Record of the main trial, 23 April 2015, paras. 89-90.

<sup>361</sup> V.A., Record of the main trial, 20 May 2015, paras. 407-411.



396. Moreover, some of his accounts defy logic or they are manifestly deceitful. For instance, he states that he often saw the Defendants on the bridge – as part of the “Bridge Watchers” - during the time material to the Indictment. To add weight to his account, he explains that he was crossing the bridge every day to go to work – from the north of Mitrovica, where he lived, to the south, where he worked. When cross-examined, the witness conceded to the fact that his offices actually had to be relocated from south Mitrovica to the north immediately after June 1999, meaning more than six months prior to the events and at a time when the “Bridge Watchers” did not exist.
397. The witness also maintained that while they were attacked, he could observe one of the Defendants throwing a grenade from two floors above. This statement strains credibility.
398. It is not factually reasonable to accept that a grenade would be launched and get into an apartment situated two floors below. What defies logic even more is that the witness, who was inside the apartment under attack, could have noticed what was happening two floors above him:

*“Sh.A.: I will tell you about it now. Later on, from the second floor above my brother, two hand grenades were thrown and then the sofa started burning and N.A.1 was wounded.*

*EULEX Prosecutor: did you, by any chance see who was throwing these two hand grenades?*

*Sh.A.: I recall, I think it was N.V.1 and he was bald, and after that N.A.1 and R.A. were wounded.*

*EULEX Prosecutor: what makes you think it was N.V.1 who threw these hand grenades?*

*Sh.A.: because I know him pretty well and they shot from the other side of the apartments with the sniper and they hit my brother’s son N.A.1*

*EULEX Prosecutor: did you actually see N.V.1 throwing these hand grenades or you just think it was him?*

*Sh.A.: No one else besides him could have thrown them because he was living there.*

*EULEX Prosecutor: did you, with your own eyes see N.V.1 throwing these hand grenades?*

*Sh.A.: with my own eyes I can guarantee that he threw them, because no one else besides him could have thrown them.”<sup>362</sup>*

399. When prompted to clarify, he was not able to add any credit to his account:

*“N.V.3: That is a little bit strange to me. How could the bomb from the 2nd floor fall in the middle of the room?”*

*Sh.A.: That I don’t know myself because at that time we were fighting for our lives.*

*N.V.3: Yesterday you said that you had seen that bomb falling.*

*Sh.A.: I said I saw when it was thrown but your question was why it was in the middle.*

*N.V.3: My question is, how is it possible that the bomb thrown from the 2nd floor ends up in the middle of the room of the 3rd floor?*

*Sh.A.: Most probably he was a specialist who knew how to do it.”<sup>363</sup>*

400. The witness obstructed his interrogation by falling into narration not related to the questions. Another alarming fact is that often, when asked about a certain specific aspect, he would offer an answer that was general or even worse, concerned a totally different occasion. The way he built up the narrative made it look like the answer he offered was the answer to the question asked. Below is only an example but it is illustrative of this pattern in building up the answers. He was doing this to such an extent, that even the Prosecutor alerted himself to it:

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<sup>362</sup> Sh.A., Record of the main trial, 11 May 2015, paras. 370-378 (Emphasis added).

<sup>363</sup> Sh.A., Record of the main trial, 12 May 2015, paras. 139-144.

*“EULEX Prosecutor: Mr Sh.A., do not use the words “I always saw him” focus on what you saw at the given moment. So, when you saw from the balcony Mr D.D. (...)?”<sup>364</sup>*

401. He did not discontinue this practice even after being repeatedly warned by the Presiding Judge. By employing this evasive technique, his answers could have easily been misleading and elicited incorrect inferences, by assuming that the answer given referred to the question asked. In fact, had certain aspects not been tested in cross-examination, the Panel would have been left with an inaccurate impression about certain absolutely relevant aspects.<sup>365</sup>
402. A further concern, in the view of the Panel, is the great length to which Sh.A. went in the course of his evidence to blur the line between what he saw and what he thought. It looks that for this witness there is no demarcation line between what he witnessed, what his brother N.A.2 or his wife V.A. witnessed or what, in his own assessment, represented a logical conclusion.
403. In the beginning of his examination, the witness stated that it was his brother N.A.2 who told him that he had noticed **A.S.L.** and **I.V.** throwing grenades:

*“EULEX Prosecutor: Mr Sh.A., could you tell the court when N.A.2 told you that those who threw the hand grenade were **S.L.** and **I.V.** Did he tell you that night or sometime later?(...) how do you know that your brother saw **S.L.** and **I.V.** throwing these hand grenades?”*

*Sh.A.: he could have seen it as he was his first door neighbours. My brother was positioned on the right side and V.2 family was positioned on the left side.*

*Presiding Judge: did your brother tell you that he saw **I.V.** and **S.L.** throwing the hand grenades?*

*Sh.A.: 100% and even he shouted out loud and said “Even you **S.L.** are throwing the hand grenades”.*

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<sup>364</sup> Sh.A., Record of the main trial, 11 May 2015, para. 212.

<sup>365</sup> See the previous example when he retracts his statement that he had seen **D.D.** in front of the building that day prior to the events.

*EULEX Prosecutor: when did he tell you that these two persons were throwing the hand grenades, was it that night or later?*

*Sh.A.: that night.*<sup>366</sup>

404. Gradually, in the course of his examination, the witness put forward a difference stance, maintaining that he saw **A.S.L.** himself:

*“Presiding Judge: Did you see **A.S.L.** throwing any grenade in the apartment?”*

*Sh.A.: My brother saw him because he said ‘you **S.L.** are also throwing’.*

*Presiding Judge: Does this mean that you personally didn’t see him?*

*Sh.A.: I also saw him because I know him very well.*<sup>367</sup>

405. There are numerous instances of similar answers in his testimony. Often, when prompted to clarify his initial ambiguous answers, the witness, over only a few paragraphs, adjusts his initial account and elevates it from a less certain fact to a 100% certain fact. He also offers as an explanation only his interpretation unsupported by facts. Here is an example:

*“Presiding Judge: Let us move to Mr. **D.D.** Did you see **D.D.** throwing any grenade in the apartment?”*

*Sh.A.: **D.D.** came to our door when he told my brother that **O.I.** was asking to see him and I can say that as soon as we saw him and what he said, we knew that it was them who did this to us. And if it was not them, then who else could have done this to us, trying to kill us all?*

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<sup>366</sup> Sh.A., Record of the main trial, 11 May 2015, paras. 359-366 (Emphasis added).

<sup>367</sup> Sh.A., Record of the main trial, 12 May 2015, paras. 796-799.

*Presiding Judge: Mr. Sh.A., apart from this conversation, did you see him throwing a grenade or not? It is an easy question. Please concentrate and calm down. I want a yes or no answer.*

*Sh.A.: Yes, he is the one who threw together with all other paramilitaries.*

*Presiding Judge: Did you see **D.D.** throwing any grenade in the apartment? Yes or no?*

*Sh.A.: Yes 100% it was them who threw the grenade in cooperation with **O.I.** and all the rest.<sup>368</sup>*

406. Or:

*"EULEX Prosecutor: did you, by any chance see who was throwing these two hand grenades?"*

*Sh.A.: I recall, I think it was **N.V.1** and he was bald, and after that **N.A.1** and **R.A.** were wounded.*

*EULEX Prosecutor: what makes you think it was **N.V.1** who threw these hand grenades?*

*Sh.A.: because I know him pretty well and they shot from the other side of the apartments with the sniper and they hit my brother's son **N.A.1***

*EULEX Prosecutor: did you actually see **N.V.1** throwing these hand grenades or you just think it was him?*

*Sh.A.: No one else besides him could have thrown them because he was living there.*

*EULEX Prosecutor: did you, with your own eyes see **N.V.1** throwing these hand grenades?*

*Sh.A.: with my own eyes I can guarantee that he threw them, because no one else besides him could have thrown them.*

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<sup>368</sup> Sh.A., Record of the main trial, 12 May 2015, paras. 818-822 (Emphasis added).

*EULEX Prosecutor: I think it is your presumption but you got to tell the court if you saw **N.V.1** when he threw the hand grenades.*

*Sh.A.: I have seen it with my own eyes as the sofas were burning and I approached to the window glass.*

*EULEX Prosecutor: from what you are saying, it seems that you saw the hand grenade flying into the apartment, but have you seen the person throwing it?*

*Sh.A.: it is him 100%, he is bald, well-built and he used to stay all the time at the bridge.”<sup>369</sup>*

407. This concern is exacerbated by the fact that the witness presents his speculations as a 100% certain fact. In fact, he used this expression multiple times. It turns out, that answers which the witness endorsed 100% are evidently contradicted by reliable evidence. For instance, the witness presents that on the critical evening, he noticed a MUP officer as part of the rioting crowd. In cross examination, the Defence pointed out that the officer had in fact died previously and they submitted documentary evidence in support of this.<sup>370</sup> However, in direct examination the witness declared that he was certain of his observation. And he even seemed certain at the beginning of the cross-examination, until the Defence put to him that the police officer had died.

408. An excerpt from the examination of the witness reads:

*“**N.V.3:** (...)Tell me one thing. You said that from the terrace of N.A.2’s apartment you were able to recognise numerous police officers and you listed 15-20 names.*

*Sh.A.: I can tell you that I knew them all because I used to work there and so did my brother. If you ask me I can tell you even about 50 of them, not only 15-20.*

*Presiding Judge: What is the question?*

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<sup>369</sup> Sh.A., Record of the main trial, 11 May 2015, paras. 371-384 (Emphasis added).

<sup>370</sup> See Appendix to Human Rights Watch *Report on Civilian Victims of NATO Bombing during Operation Allied Force*, Court Binder VI, Main Trial, tab 5.

*N.V.3: I am testing his statement and I would like to know if he had seen certain persons (...)*

*N.V.3: M.A.?*

*Sh.A.: I know him as well.*

*N.V.3: Did you see him?*

*Sh.A.: I saw him as well.*

*N.V.3: M.M.A., what was he doing?*

*Sh.A.: He was there with all the Serbs in front of the apartment.*

*N.V.3: Where was M.A. exactly standing?*

*Sh.A.: In front of the building.*

*N.V.3: Was he near **O.I.**?*

*Sh.A.: He was not near **O.I.***

*N.V.3: Mr. Sh.A., M.A., whom you had seen in front of the building, he was killed on 2 May 1999, when the building of the secretariat of internal affairs in Mitrovica was bombed. Is it not a little bit strange that you saw him 10 months after he had been killed?*

*Sh.A.: I mixed it. I am talking about J. not A.*

*N.V.3: I also mentioned his nickname, M.”<sup>371</sup>*

409. During his statement he often volunteered – sometimes even very matter-of-factly - a lot of incriminatory details that he had not at all provided or suggested in his previous statements. He was not able to elaborate or provide any concrete facts in support of his accusations. But his incriminations are so complete that they come across as unreliable:

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<sup>371</sup> Sh.A., Record of the main trial, 12 May 2015, paras. 57-90 (Emphasis added).

410. For instance, he told how **D.D.** entered their apartment and said : *"I came to you upon the order of **O.I.**"*<sup>372</sup>

411. Then he could hear **O.I.** giving the following orders to the perpetrators:

*"EULEX Prosecutor: (...) Did you hear what **O.I.** said exactly to these people while inviting them to enter the building?"*

*Sh.A.: At that moment I heard telling them that the A.1 family, all of them, shall not stay alive because they know everything what happened before, during and after the war.*<sup>373</sup>

412. It defies logic that the perpetrators, during their implementation of the attack, would spell out the details out loud or explain them to the victims.

413. Additionally, he claimed that even if he was on the balcony on the third floor, he could hear the order given by **O.I.** very clearly:

*"EULEX Prosecutor: So you heard from the balcony Mr **O.I.** telling these people to enter the building?"*

*Sh.A.: 100%"*<sup>374</sup>

414. The witness made this claim even though, according to him, there were around 100 persons gathered<sup>375</sup> outside and there is extensive evidence to the fact that the crowd was noisy and shouting anti-Albanian slogans.<sup>376</sup>

415. Overall, the witness seemed pretty much prepared to agree with any proposition put to him by the Prosecutor.

416. At times, he even showed a defiant and rather confrontational attitude towards the Defendants:

*"Sh.A.: When they came all of them came wearing black uniforms.*

*D.L.: My question was what did these black uniforms look like?"*

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<sup>372</sup> Sh.A., Record of the main trial, 11 May 2015, paras. 371-384.

<sup>373</sup> Sh.A., Record of the main trial, 11 May 2015, paras. 198-199.

<sup>374</sup> Sh.A., Record of the main trial, 11 May 2015, paras. 180-181.

<sup>375</sup> Sh.A., Record of the main trial, 11 May 2015, para. 155.

<sup>376</sup> V.A., Record of the main trial, 13 May 2015, paras. 127-128; R.A., Record of the main trial, 24 April 2015, para. 31.



*Sh.A.: D.D. knows best about them.*

*D.L.: I asked you.*<sup>377</sup>

417. Or:

*"D.L.: Were you familiar that in the same time while it was shot in the door of N.A.2, that it was also shot in the door of I.V.?"*

*Sh.A.: No, I don't know that, you might better ask Mr. O.I. because he was the leader.*<sup>378</sup>

418. Or:

*"Judge Vitor Pardal: But you were not addressing these words to KFOR, were you?"*

*Sh.A.: To KFOR, to whom else. No one else was there.*

*Judge Vitor Pardal: All right. Thank you very much.*

*Sh.A.: Perhaps we should have addressed these words to O.I. or D.D.*

*Judge Vitor Pardal: That is enough. It is clear to me. Thank you!*<sup>379</sup>

419. The aspects pointed out above led the Panel to regard his testimony with much caution. The witness' desire to hold someone responsible for the attack may have resulted in the untruthful placement of blame on all of the Accused, by way of moulding his account to accord with the Prosecution case. His willingness to do so instils in the Panel a general distrust of the credibility of this witness. After his statement, the Panel is left with a feeling of confusion and mistrust. The Panel is left with the distinct impression that he indeed gave an untrue testimony. His overall account and behaviour indicated a lack of sincerity and for this reason his testimony is considered not credible. It may happen however that his testimony contains also certain facts that are accurate. The Panel has been unable to make such determinations and has no choice but to leave this evidence aside altogether.

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<sup>377</sup> Sh.A., Record of the main trial, 12 May 2015, paras. 586-589.

<sup>378</sup> Sh.A., Record of the main trial, 12 May 2015, paras. 689-690.

<sup>379</sup> Sh.A., Record of the main trial, 12 May 2015, paras. 789-783.

V.A.:

420. Overall, V.A.'s account seems tailored after her husband Sh.A.'s, both in terms of content and regarding the general tenor of her evidence.

421. Similarly to her husband, V.A. gave certain accounts which raise the Panel's concern regarding their credibility, as her testimony is contradicted by other reliable evidence. She mentioned that right before the attack, around 20:00 – 20:10,<sup>380</sup> she noticed the Defendant **D.D.** from the balcony. According to her, **D.D.** was in front of their apartment building together with a group of people. She repeatedly stated that **D.D.** and the group were uniformed and armed: *"I saw Mr. D.D. wearing the uniform and many others who were wearing uniforms and were armed"*.<sup>381</sup>

*"D.D. had the group who was open. They were not covered in any way. They acted in an open way, in uniforms and they were not frightened."*<sup>382</sup>

422. She further stated the following with regard to **D.D.**:

*"He was not static in one place. He was in motion; he moved around. It was not difficult to notice them because they were armed and all wearing all uniforms of so-called Frenkijevci, black in colour."*<sup>383</sup>

423. She also talked about some people in the crowd being dressed in "bridge watchers uniforms":

*"EULEX Prosecutor: How were these people around O.I. dressed?"*

*V.A.: They had uniforms, maybe of bridge watchers (...)"*<sup>384</sup>

*"V.A.: The group of D.D. together with D. they were full of weapons. D.D. I mean."*<sup>385</sup>

424. The two perpetrators who entered their apartment during the events were, according to V.A., also dressed in police uniforms.<sup>386</sup>

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<sup>380</sup> V.A., Record of the main trial, 13 May 2015, para. 55.

<sup>381</sup> V.A., Record of the main trial, 13 May 2015, para. 316.

<sup>382</sup> V.A., Record of the main trial, 13 May 2015, para. 371.

<sup>383</sup> V.A., Record of the main trial, 13 May 2015, para. 379.

<sup>384</sup> V.A., Record of the main trial, 13 May 2015, paras. 368-369.

<sup>385</sup> V.A., Record of the main trial, 13 May 2015, para. 363.

425. This statement comes into contradiction not only with the rest of the evidence assessed as reliable,<sup>387</sup> but it seems not credible if we consider the social realities at the time and the fact that after the Kumanovo Agreement of June 1999, only international forces were allowed to wear uniforms in the region. The same detailed considerations made on this point when assessing Sh.A.'s statement above are reiterated herein.
426. The witness also displays a certain tendency to jump to conclusions. During her examination, she repeatedly stated that one of the perpetrators who entered N.A.2's apartment that night was communicating via radio with the Defendant **D.D.** Only when prompted by the Panel to clarify, she explained her conclusion based on the fact that she overheard him saying "D.1"<sup>388</sup> However, D.1 is a frequently used Serbian first name and it is not reasonable to summarily accept, based on this, that the interlocutor was necessarily **D.D.** However, she only offered this detail at the end of her examination and only following the Panel's effort to clarify. Before that, she repeatedly presented as a certainty the fact that it was **D.D.** who was on the radio with the intruder:

*"EULEX Prosecutor: Did you see **D.D.** making some gestures when you saw him from the balcony?"*

*V.A.: I didn't have the occasion to see.*

*EULEX Prosecutor: Did you see him having any communicating device?"*

*V.A.: I have not seen any communicating device in his hand but when two police officers came to our apartment, they asked him through the radio whether to kill us or not."<sup>389</sup>*

*"EULEX Prosecutor: What did they say, if you remember, to **D.D.** through the radio or through the mobile phone?"*

*V.A.: When they communicated, he asked them what the situation is and they said "almost all of them are dead but what should we do with the rest, shall we kill them or not?"<sup>390</sup>*

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<sup>386</sup> V.A., Record of the main trial, 13 May 2015, para. 391 *et seq.*

<sup>387</sup> R.A., Record of the main trial, 24 April 2015, para. 189; S.A.2, Record of the main trial, 27 April 2015, paras. 127-128; G.Xh., Record of the main trial, 23 April 2015, paras. 154-157.

<sup>388</sup> V.A., Record of the main trial, 20 May 2015, para. 643 *et seq.*

<sup>389</sup> V.A., Record of the main trial, 13 May 2015, paras. 388-391.

427. There are also other things about which the witness initially displayed a high degree of certainty, which in the end proved to be doubtful, such as the uniform **D.D.** was wearing that day:

*"EULEX Prosecutor: Did **D.D.** also wear uniform?"*

*V.A.: Yes, I am 100% sure about this.*

*EULEX Prosecutor: Also black in colour like you described?"*

*V.A.: Yes."*<sup>391</sup>

428. In cross-examination, when confronted with a conflicting previous statement, she was no longer sure if the clothes that **D.D.** was wearing were civilian or a uniform:

*"M.B.: This is your sentence: 'I think that this time this was **D.D.** wearing civilian clothing with police bullet proof vest on the top with sunglasses and having moustaches."<sup>392</sup>*

*V.A.: Did I state what colours were the clothes?"*

*Presiding Judge: Mrs. V.A., please wait for the question.*

*M.B.: How is it possible that in one of your statement you said that he was wearing civilian clothing and bullet proof vest and in other statement he was wearing police uniform?"*

*Presiding Judge: Mrs. V.A. can you explain this please?"*

*V.A.: I said the civilian clothes but did not mention the colour of those clothes. So police uniform is black uniform so probably he had black uniform. The fact that he had bulletproof vest is sufficient, it is not important if he was wearing civilian or military uniform."<sup>393</sup>*

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<sup>390</sup> V.A., Record of the main trial, 13 May 2015, paras. 430-431.

<sup>391</sup> V.A., Record of the main trial, 13 May 2015, paras. 382-385 (Emphasis added).

<sup>392</sup> Statement of V.A. dated 31 January 2003, p. 1132, English version.

<sup>393</sup> V.A., Record of the main trial, 20 May 2015, paras. 245-250 (Emphasis added).

429. In her examination, she seemed driven by the same desire to incriminate and hold someone responsible for the attack that the Panel noticed with regard to her husband. For instance, she stated that the two persons who entered the apartment declared to them that **D.D.** had sent them, since he was their commander.<sup>394</sup> When, according to the witness, **D.D.** showed up at their door, he also gave them details about who organized the attack, naming **O.I.** as the responsible person.<sup>395</sup> Again, for the reasons detailed when assessing the statement of Sh.A., the Panel does not find credible that, having come to orchestrate an attack against them, each of the perpetrators would first take time to engage in a conversation with the victims, explaining to them who was behind all this.

430. Moreover, she sometimes presented accusations based on her own conviction and unsupported by facts:

*“EULEX Prosecutor: My question relates to two different groups because you said **O.I.** was in a group and **D.D.** was in a group. Are we talking about two different separate groups?”*

*V.A.: It’s not exactly how you understood. There were two groups, the acting group and the group that was giving orders.*

*EULEX Prosecutor: Which group was making orders and which group was acting and what made you think so?*

*V.A.: I have the impression that **O.I.**, as Serb leader, during the war and after the war gave orders up until last year.”<sup>396</sup>*

431. Or:

*“E.P.: But were those persons who assaulted you directly linked with these defendants, did you see them together?”*

*V.A.: The bridge watchers were in connection with their leader.*

*Presiding Judge: Were the persons who offended you physically together with the defendants in those occasions?*

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<sup>394</sup> V.A., Record of the main trial, 13 May 2015, para. 421.

<sup>395</sup> V.A., Record of the main trial, 13 May 2015, para. 476.

<sup>396</sup> V.A., Record of the main trial, 13 May 2015, paras. 372-375 (Emphasis added).

*V.A.: I did not see them being there in person, but they were associates".<sup>397</sup>*

432. Also, the Panel has noticed another aspect which raised distrust. According to her account, V.A. considers **O.I.** responsible for the attacks. However, in 2007-2008, V.A. turned to **O.I.** when she needed help to return to the region.<sup>398</sup> It is difficult to understand how someone would rely on and trust a person she blamed for the death and injury of her family members.
433. Taking into account the considerations discussed above, to determine where the truth lies in her inconsistent account is undoubtedly challenging. The Panel has not been persuaded that the statements of this witness can be safely relied upon as a basis for proof of a material fact. The individual components of her evidence have been rigorously scrutinised and the Panel is left with strong reservations about some aspects of her evidence. The Panel is not prepared to accept and act on her evidence alone regarding any material issue and has only given weight to those parts of her evidence which are confirmed in significant respects by other reliable evidence – such as the general description of the attack. The remainder of her testimony will be disregarded.
434. The Panel now turns to assess the remaining witnesses. Witness A.A.2 did not offer relevant details in his testimony, as he did not notice any of the perpetrators.<sup>399</sup> The witness stated that his uncle N.A.2 mentioned to him something related to the involvement of **O.I.** and **D.D.** in the event.<sup>400</sup> In the absence of N.A.2's testimony, the Panel does not place any weight on this second hand information. A.A.2's account cannot constitute a means to replace N.A.2's testimony.
435. G.Xh., R.A., and S.A.2 gave a detailed account of the attack. Their testimonies presented certain slight discrepancies – either internal or external – when it came to aspects such as the concrete execution or the timeframe of the attack or the position of the persons in the apartment at different times. These discrepancies do not concern important factual elements and are not unusual given the fact that the events to which they testified in court were extremely traumatic, involving matters of life and death. In evaluating the evidence

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<sup>397</sup> V.A., Record of the main trial, 20 May 2015, paras. 38-42.

<sup>398</sup> V.A., Record of the main trial, 20 May 2015, paras. 38-42.

<sup>399</sup> V.A., Record of the main trial, 15 June 2015, paras. 143-145.

<sup>400</sup> V.A., Record of the main trial, 15 June 2015, para. 150.

given by these witnesses, the Panel had to consider that any observation they made may have been influenced by stress and fear. The passage of time also takes its toll on the witnesses' ability to recollect.

436. However, their oral statements were consistent, in their most significant aspects with their own previous statements as well as with each other's. Their accounts were essentially similar when it comes to the dynamics of the attack, the wounding of the victims and the circumstances of their release. Even though their close family members suffered the most from the attack, they do not seem to assign blame lightly or to jump to unsupported conclusions. Their statements are balanced and supported by facts and logical explanations and remain constant throughout their examination.

437. In the view of the Panel, of further significance is the fact that witness G.Xh. admitted to the fact that all three of them – he, N.A.2 and Sh.A. - fought back to defend from the attack.<sup>401</sup> This admission adds even more credit to his account.

438. To conclude, having considered their demeanour and the manner in which they gave evidence as well as the overall tenor of their evidence, the Panel assessed that G.Xh., R.A., and S.A.2 are honest witnesses. The Panel has no doubt that they testified truthfully and considers their accounts as credible.

439. The three of them recounted how, when N.A.2 was summonsed to open the door, the persons behind the door told him that they were following “**D.D.**'s orders” and the latter asked N.A.2 to go downstairs. N.A.2 replied that **D.D.** should come up instead. Shortly after, the first bomb was thrown to the door.<sup>402</sup> The conversation was conducted through the closed door and none of them was able to recognize the voices. The Panel considers that it cannot be established beyond a reasonable doubt, solely based on this exchange of words with unknown persons, that it was indeed **D.D.** who sent them to N.A.2's apartment. **D.D.** and N.A.2 were colleagues within the MUP structures. It cannot be excluded that the persons at the door were using **D.D.**'s name in order to persuade N.A.2 to open the door or get out of the apartment.

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<sup>401</sup> G.Xh., Record of the main trial, 23 April 2015, para. 90.

<sup>402</sup> R.A., Record of the main trial, 24 April 2015, paras. 81-83; S.A.2, Record of the main trial, 27 April 2015, paras. 46-54; G.Xh., Record of the main trial, 23 April 2015, para. 50.

440. Such uncertainty further substantiated the fact that the Court could not find established that the Accused was indeed the one who sent those persons at N.A.2's door. This doubt had to be interpreted in favour of the Accused, based on the principle of *in dubio pro reo*.
441. On the basis of this principle, the burden of proof incorporated in the Prosecution's obligation to prove a defendant's guilt beyond a reasonable doubt means that it must be established and proven that there are no other reasonable alternatives to the one demonstrated by the Prosecutor. As explained by the European Court of Human Rights (ECtHR) in the case of *Barberà, Messegué and Jabardo v Spain*, in relation to the right to a fair trial, Article 6 of the European Convention on Human Rights (ECHR): "Paragraph 2 [of Article 6] embodies the principle of the presumption of innocence. It requires, inter alia, that when carrying out their duties, the members of a court should not start with the preconceived idea that the accused has committed the offence charged; the burden of proof is on the prosecution, and any doubt should benefit the accused."<sup>403</sup> Therefore, this principle is intrinsic to the right to be presumed innocent until proven guilty according to the law. Subsequently, based on the principle of *in dubio pro reo*, the Court, when evaluating the facts and the evidence, must find in favour of the accused in case of doubt.
442. None of them noticed either **O.I.** or **D.D.** in the course of the evening, during the attacks. G.Xh. stated clearly that he knew very well who the Defendants were and that he did not see **D.D.**<sup>404</sup> or **O.I.**<sup>405</sup> during the events. Also, he maintained that no one mentioned **O.I.**'s name.<sup>406</sup> R.A. did not know **O.I.**<sup>407</sup> or **D.D.**<sup>408</sup> at the time. Similarly, S.A.2 did not see **O.I.**<sup>409</sup> or **D.D.**<sup>410</sup> during the attack.
443. The Panel remarks that, by the Ruling of the Panel dated 27 April 2015,<sup>411</sup> the Statement of N.A.2 before the District Court Mitrovica dated 27.01.2003 was declared admissible in regards to the Defendant **D.D.** However, the decision to admit this earlier interview is not, of course, in any way determinative of the weight the Panel attaches to it. The fact that this

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<sup>403</sup> A 146 (1989); 11 EHRR 360 para 77 PC.

<sup>404</sup> G.Xh., Record of the main trial, 23 April 2015, para. 253.

<sup>405</sup> G.Xh., Record of the main trial, 23 April 2015, paras. 206-209.

<sup>406</sup> G.Xh., Record of the main trial, 23 April 2015, paras. 210-211.

<sup>407</sup> R.A., Record of the main trial, 24 April 2015, paras. 178-181.

<sup>408</sup> R.A., Record of the main trial, 24 April 2015, para. 86.

<sup>409</sup> S.A.2, Record of the main trial, 27 April 2015, paras. 200-201.

<sup>410</sup> S.A.2, Record of the main trial, 27 April 2015, paras. 186-187.

<sup>411</sup> See details in the Procedural Background at paragraphs 54-56 above.



statement was declared admissible does not change the fact that the Defendant did not have a possibility to cross-examine the witness since his lawyer did not present himself in session. According to Article 262 Paragraph 1 CPC, the court shall not find the accused guilty based solely, or to a decisive extent, on testimony or other evidence which could not be challenged by the defendant or defence counsel through questioning during some stage of the criminal proceedings. Furthermore, in that statement, N.A.2 maintained that it was **D.D.** who came to the door prior to the attacks and summonsed him to open. The witness stated that he recognized **D.D.**'s voice and then took a look at him through the peephole. This is contradicted by the rest of the reliable witnesses who, as detailed above, stated that in fact the persons at the door pretended to be sent by **D.D.** and according to them, **D.D.** was downstairs. Also, witness S.A.2 stated that N.A.2 did not have a chance to look through the peephole. An explosion occurred immediately after N.A.2 had the conversation through the closed door.<sup>412</sup> Therefore, the Panel does not assign any significant probative value to this statement.

444. Witness M.M.2 was a neighbour of the A.1 family and his apartment was situated two floors above, on the fifth floor. He visited the A.1 shortly before the tragic events. His apartment came under gun fire on the same occasion, right before the attack on the A.1 family's apartment. Given the fact that he had an armoured door, the perpetrators could not destroy the door or get into his apartment. He could not see who shot at his apartment, he only indicated that they spoke Serbian.<sup>413</sup> He did not see **O.I.**<sup>414</sup> or **D.D.**<sup>415</sup> that night. The witness also stated that he was told by N.A.2 the following day that one of the perpetrators was **D.D.** However, the Panel does not place any weight on this indirect evidence to establish the presence of the Defendant.

445. P.A. was at the time living across the street from the A.1 family and observed the attack on their apartment from her place. The witness stated that she noticed some silhouettes on the balcony of the A.1 family who appeared to be throwing a grenade inside. However, she could not recognize them nor give any other details regarding them.<sup>416</sup>

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<sup>412</sup> S.A.2, Record of the main trial, 27 April 2015, paras. 69-70.

<sup>413</sup> M.M.2, Record of the main trial, 14 July 2015, paras. 61-67.

<sup>414</sup> M.M.2, Record of the main trial, 14 July 2015, paras. 188-189.

<sup>415</sup> M.M.2, Record of the main trial, 14 July 2015, para. 174.

<sup>416</sup> P.A., Record of the main trial, 5 May 2015, paras. 213-214.

446. Taking into account all of these circumstances, the Panel cannot draw any positive conclusion regarding the perpetrators or regarding any involvement of the Defendants in the attack on the A.1 family's apartment.

Events in the apartment of the V.1 family:

447. Witness G.R. was a judge of the District Court in Mitrovica at the time and was on call on the critical night. In this capacity, he was called by UNMIK police to the home of the V.1 family, where he established the violent death of spouses Sh.V. and N.V.2.<sup>417</sup> There are no direct witnesses to the attack, therefore no connection to the Defendants can be established.

Events in the apartments of the C.1 and A.2 families:

448. The two families were living in opposite apartment buildings.

449. On the critical evening, witness Sh.C.2 stated that he was at home together with his wife R.C. and a Jordanian police officer who was their tenant. Their apartment came under fire and two of the shots hit R.C. who consequently died. A group of 6-8 Serbs then stormed into the apartment and the witness recognized one of them as being D.2 from S.<sup>418</sup>

450. Witness A.V. was living in the same building. He stated how, following the attacks on his apartment, he and his family took refuge at their neighbour I.B.'s home. He did not notice any of the Defendants<sup>419</sup> during the critical events. Neither did the witness E.D., who was also a neighbour.<sup>420</sup>

451. In the opposite building, witness L.A.2 was at home together with his father R. and his mother S.A.1. According to his account, their apartment came under gun fire and one of the shots hit his mother. She died the following day as a result of her injuries. He did not notice any of the perpetrators.<sup>421</sup>

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<sup>417</sup> G.R., Record of the main trial, 4 August 2015, para. 22 *et seq.*

<sup>418</sup> Sh.C.2, Record of the main trial, 22 April 2015, para. 57 *et seq.*

<sup>419</sup> A.V., Record of the main trial, 13 July 2015, paras. 103-106 and 111-114.

<sup>420</sup> E.D., Record of the main trial, 22 July 2015, para. 61 *et seq.*

<sup>421</sup> L.A.2, Record of the main trial, 10 September 2015, paras. 71-72.

452. Therefore, based on the evidence taken singularly and/or as a whole, no link can be established between the perpetrators of the attacks in the buildings and the Defendants.

Events in the apartment of the S.2 family:

453. Witness H.S.1 recounted how on the critical evening she was at home together with her husband N.S.1 and their children. They heard an explosion and then an angry crowd started to gather in the street. Soon they entered their building and they stormed into their apartment. The witness was asked regarding her ethnicity and she confirmed that she was Albanian. The perpetrators started to hit both her and her husband. She stated how her husband was dragged out of the apartment and shortly after he lost consciousness. Her husband died following the injuries. She was not able to offer any details relevant to the identification of the perpetrators.<sup>422</sup>

454. Therefore, based on the evidence as above detailed, the panel could not establish the involvement of the Defendants in the attack.

Events in the apartment of the S.1 family:

455. Gj.S. was in her apartment together with her husband M.S.1, their son E.S. and their neighbours - the spouses G.M. and N.M. That evening they could hear an explosion and soon after a crowd started to gather around their apartment building and they were shouting out insults to the ethnic Albanians. Shortly after, several people kicked down the door from the building and got into the corridor. The witnesses mentioned that several attackers then broke down their own door and entered the apartment. They beat up M.S.1, stabbed him and in the end put a grenade under his lying body. M.S.1 died shortly thereafter as a result of the injuries he suffered.<sup>423</sup>

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<sup>422</sup> H.S.1, Record of the main trial, 16 September 2015, paras. 98-100 and 121-122.

<sup>423</sup> Gj.S., Record of the main trial, 14 May 2015, paras. 33 *et seq.*; E.S., Record of the main trial, 9 May 2015, paras. 35 *et seq.*

456. The witnesses Gj.S. and E.S. stated that amongst the perpetrators (whom E.S. indicated as six) were S.Z. and S.Ž. E.S. believed that the six perpetrators were part of “Bridge Watchers”. He learnt this later on and based this information on the fact that the six had been seen on the bridge in Mitrovica.<sup>424</sup> His mother Gj.S. also mentioned that she noticed some of them on the bridge using communicating devices.<sup>425</sup> The Panel does not consider this explanation sufficient in order to establish that indeed the perpetrators belonged to the “Bridge Watchers”. None of the witnesses noticed either **O.I.** <sup>426</sup> or **D.D.** during the events, neither did they hear the perpetrators mentioning them in any way.<sup>427</sup>
457. B.S.2 was married to M.S.1’s brother. She was informed the following day about the tragic event that caused M.S.1’s death. She did not witness the attack.<sup>428</sup> Therefore, based on the evidence, no link can be established between the perpetrators and the Defendants.

Events in the apartments of the B., R.1 and H. families:

458. Witnesses H.R., Sh.H., I.R.1, N.H., A.S.1 and M.H.1 were all living in different apartments situated in the same building. They unanimously stated that, on that night, an angry crowd gathered around their building and started to chant and address insults to Albanians. They then kicked down the door of the building, entered the staircase of the building and attacked several of their apartments. H.R. recounted how the attackers broke down his door and he noticed how two youngsters threw a grenade into his apartment. According to the witness, after the attack, the Serbs withdrew and he went out on the staircase to check on his neighbours. He stated that he and his neighbours could then notice that another of their neighbours, S.B. had her door broken down. She was lying dead in her apartment and her body showed signs of violence.<sup>429</sup>
459. Soon after, he and some of the male neighbours reunited in the corridor and organized their defence: they built up a barricade made of sand bags and the ones who had guns

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<sup>424</sup> E.S., Record of the main trial, 8 May 2015, paras. 73-77.

<sup>425</sup> Gj.S., Record of the main trial, 14 May 2015, paras. 161-162.

<sup>426</sup> G.M., Record of the main trial, 17 September 2015, paras. 82-86.

<sup>427</sup> E.S., Record of the main trial, 8 May 2015, paras. 79-84.

<sup>428</sup> B.S.2, Record of the main trial, 7 May 2015, paras. 92 *et seq.*

<sup>429</sup> H.R., Record of the main trial, 2 July 2015, para. 105; A.S.1, Record of the main trial, 15 July 2015, para. 85

brought them. Several hours after the initial attack, the Serbs again attempted to climb up the stairs. The witnesses stated how they threatened the Serbs with retaliation and the latter finally withdrew. The Serbs at the bottom of the stairs also demanded the release of a Serb youngster who had been separated from their group and had been isolated on the upper floor. The two groups negotiated and the Albanians allowed the youngster to pass and leave.<sup>430</sup>

460. H.R. also stated that, while he was on the staircase, he could hear one of the perpetrators – whom the witness thought of as the leader - shout in pure Albanian: “we will kill all of you Albanians”. He could not notice him as it was dark.<sup>431</sup> Even if the evidence is unanimous as to the fact that the Defendant **O.I.** indeed speaks fluent Albanian, the above account cannot help us to establish that it was indeed the Defendant who uttered these words. The witness himself testified that there were a lot of Serbs speaking Albanian in Mitrovica north.<sup>432</sup>
461. H.R. stated that, approximately four hours after the first attack, after midnight, KFOR arrived to their rescue. Five or ten minutes later the witness noticed **O.I.** who came alone and was wearing civilian clothes. The witness overheard his neighbour, M.P., address **O.I.** with these words: “*why did you do this to us?*” and **O.I.** replied; “*I did not do this.*”<sup>433</sup> Furthermore, according to witness H.R., **O.I.** also said the following: “*who wants to cross to the other side of the Ibar river, I guarantee you that you will not lose a single hair.*”<sup>434</sup>
462. Sh.H. stated that a group of Serbs knocked at his door and summonsed him to leave the apartment. He and his family took refuge in the apartment of I.R.1 who lived opposite him. From over there, witness Sh.H. noticed a group of Serbs gathered in front of the door. Amongst them the witness saw **O.I.**, who was dressed in civilian clothes and he had a mobile radio device.<sup>435</sup> The witness stated that **O.I.** was communicating with the groups of his Albanian neighbours upstairs. He did not hear the content of the conversation, but he concluded that he was negotiating with them regarding the release of the Serbian youngster. Due to the fact that **O.I.** had the radio device in his possession, the witness

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<sup>430</sup> H.R., Record of the main trial, 2 July 2015, para. 153 and 241; A.S.2, Record of the main trial, 15 July 2015, para. 63-73

<sup>431</sup> H.R., Record of the main trial, 2 July 2015, para. 114 *et seq.*

<sup>432</sup> H.R., Record of the main trial, 2 July 2015, para. 119.

<sup>433</sup> H.R., Record of the main trial, 2 July 2015, para. 157.

<sup>434</sup> H.R., Record of the main trial, 2 July 2015, para. 163.

<sup>435</sup> Sh.H., Record of the main trial, 30 June 2015, para. 167 *et seq.*

inferred that he must have been the leader of the group.<sup>436</sup> According to the witness, he could also hear **O.I.** communicate via radio with B.R.2, the then mayor of Mitrovica. According to the witness, B.R.2 was asking **O.I.** to calm down the situation.<sup>437</sup>

463. Witness I.R.1 also stated that he looked through his peephole and he could see **O.I.** This happened right before KFOR arrived.<sup>438</sup> The witness also stated that earlier that evening he heard a voice in the corridor that he recognized as belonging to **O.I.** The voice was telling a certain C.2 to *"be careful because they may have weapons"*.<sup>439</sup> This occurred, according to the witness, approximately one hour and a half before he saw **O.I.** through the peephole.
464. Witness E.B. is I.R.1's brother-in-law and they were in the same apartment on the critical night. He stated that he heard **O.I.**'s voice in the corridor. According to the witness, **O.I.** was talking to the KFOR Military person and then the witness Sh.H. went out and talked to him.<sup>440</sup>
465. A.S.1 was one of the Albanians who set up the barricade and defended the staircase. During the offensive, he did not see **O.I.** nor did he hear anyone calling him by name or nickname.<sup>441</sup> He stated that **O.I.** showed up in the end together with a French KFOR commander and *"they offered a solution that they would provide an armoured vehicle in order to save"* them.<sup>442</sup>
466. N.H. was also living in the same apartment building. However, he was not at home when the attacks occurred so he did not provide any direct or relevant evidence.
467. Witness M.H.1<sup>443</sup> was in her family apartment together with her father G.2 when the attack took place. In her oral evidence, the witness disavowed in several material respects what she had previously stated in an interview. Namely, even though she declared in her pre-trial statement that she noticed the Defendant **O.I.** in front of the building, before the Court she stated that she no longer had any recollection of that.<sup>444</sup> When the witness testifies in

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<sup>436</sup> Sh.H., Record of the main trial, 30 June 2015, para. 170.

<sup>437</sup> Sh.H., Record of the main trial, 30 June 2015, para. 205 *et seq.*

<sup>438</sup> I.R.1, Record of the main trial, 9 July 2015, paras. 155 *et seq.* and 360.

<sup>439</sup> I.R.1, Record of the main trial, 9 July 2015, paras. 182 *et seq.* and 356 *et seq.*

<sup>440</sup> E.B., Record of the main trial, 21 July 2015, paras. 85-86.

<sup>441</sup> A.S.1, Record of the main trial, 15 July 2015, para. 106 *et seq.*

<sup>442</sup> A.S.1, Record of the main trial, 15 July 2015, para. 79

<sup>443</sup> M.H.1, Record of the main trial, 15 July 2015, paras. 263-264 and 312 *et seq.*

<sup>444</sup> M.H.1, Record of the main trial, 15 July 2015, paras. 263 *et seq.*

court, the use of his prior statements is strictly limited by the CPC. Namely, prior statements may only be used to refresh the witness's memory during direct examination and to challenge the credibility of the witness on cross-examination (Art. 123 CPC). In both cases, the content of the prior statement is only used to assist the party in achieving these goals and may not be admitted as direct evidence of facts. Therefore, no particular probative value may be attached to M.H.1's pre-trial statement.

468. Based on the testimonies of H.R., A.S.1 and I.R.1 the Panel establishes beyond reasonable doubt that **O.I.** came into their apartment building towards the end of the events, around the time when KFOR forces arrived. Even if I.R.1 only saw **O.I.** through the peephole, his testimony is corroborated by those of H.R. and A.S.1 who noticed the Defendant directly. Their accounts however cannot be conclusive of the fact that **O.I.** had any involvement in orchestrating the attack. On the contrary, it could even support the idea that **O.I.** was indeed trying to help and calm down the situation. His presence in the company of international security forces could indicate that they were acting with a common purpose and that is to stabilize the situation.

469. Even if it might be possible that the Defendant was present on the staircase, the Panel cannot, however, safely conclude, based on the voice recognition by I.R.1, that the voice that engaged in a conversation with a certain C.2 belonged to **O.I.** The assumption by the witness Sh.H. that **O.I.** was engaged in the negotiation with the group of Albanians from the upper floors is not supported by any concrete evidence, since the witness did not hear the content of the conversation. Furthermore, A.S.1 - who was at the barricade and therefore present at the negotiations - did not see or hear **O.I.** or any mentioning of his name. Therefore, his statement rather invalidated I.R.1's assumption. The Panel also has reservations with regard to the fact that witness Sh.H. was able to hear through a closed door the content of the radio communication in which **O.I.** engaged, and even more, to recognize the voice of the interlocutor, B.R.2. Therefore, not a lot of weight is placed on this account, which is anyway more indicative of the Defendant's endeavours to calm down the situation.

470. The Panel also concludes that the commanding role of **O.I.** cannot be established based on the fact that he owned a radio communicating device.

471. None of the above witnesses testified about the presence of **D.D.**

472. To sum up the above evidence, the Panel considers that it cannot be established beyond a reasonable doubt that either **O.I.** or **D.D.** were in any way involved in the attack.

Events in the apartments of the R.2 and R.3 families:

473. G.R. was in the apartment of his neighbour R.S. when they came under attack. Both his apartment, situated on the third floor, and S.1's apartment, situated on the 7th floor, came under fire.<sup>445</sup> Witnesses M.Sh. and D.Sh. corroborated his account.<sup>446</sup> However, in his statement, the witnesses did not offer any details regarding the perpetrators of the attacks.

474. Witness I.R.2 stated that at the time his brother was living in a family apartment in Kralja Petra street, North Mitrovica and, while in the apartment, he was shot by a bullet. However, the witness had not even a remote knowledge about the events, since at the time he was living in Munich as a refugee.<sup>447</sup>

475. Therefore, based on the evidence, no link can be established between these attacks and the Defendants.

Presence and behaviour of the Defendants **O.I.** and **D.D.** on the streets:

476. Witness P.A. noticed how the family of D.G. and an old lady were subjected to violence by the crowd in the streets. After this, she noticed the Defendant **O.I.** who, for approximately 15-20 minutes, walked around followed by a crowd of people, amongst whom was a person who seemed to be recording the events.<sup>448</sup> She did not notice any specific gestures that the Defendant would have made to the people around him. These observations of the witness confirm that **O.I.** was present on the street that night. However, they do not offer any indications that he was more than a by-stander. Even more, the fact that the Defendant was

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<sup>445</sup> G.R., Record of the main trial, 4 August 2015, paras. 64 *et seq.*

<sup>446</sup> M.Sh., Record of the main trial, 15 September 2015, paras. 58 *et seq.*; D.Sh., Record of the main trial, 15 September 2015, paras. 213 *et seq.*

<sup>447</sup> I.R.2, Record of the main trial, 10 September 2015, paras. 163 *et seq.*

<sup>448</sup> P.A., Record of the main trial, 5 May 2015, paras. 87-117.



followed by a person who was recording, supports the version put forward by the Defence, namely that he was in the company of journalists that night.

477. Witness Y and I.M.3 noticed that **O.I.** was present in the area of the events. Witness Y saw **O.I.** walking around the intersection between Ivo Lola Ribar and Kralja Petra streets. Several unidentified people approached him and **O.I.** communicated with them and, according to the witness, he was gesticulating.<sup>449</sup> The testimony of witness Y did not offer any incriminating facts against **O.I.**
478. In fact, in his statement, **O.I.** confirmed that on the critical night he was present on the streets in the proximity of the events. According to him, he was in his apartment situated in Kralja Petra street, when he learnt about the explosion in the Bel Ami café. He immediately rushed to the hospital and made sure his son was not amongst the injured. After one to two hours, he returned home and afterwards went out in the streets in front of his apartment. According to the Defendant, around 1000-2000 persons were gathered in the street and the situation was chaotic.<sup>450</sup> According to the evidence, **O.I.** talked to several journalists and also to panicked citizens, whom he tried to calm down.<sup>451</sup>
479. However, witness I.M.3 offered an account which contradicted the position of the Defence. He stated that on the critical evening, he was trying to find his way through the revolted crowd and return home to his apartment situated near the coffee shop Vožd. He then heard **O.I.** addressing a group of people and telling them in Serbian “throw the bomb through the window”. According to the witness, he noticed the Defendant only after he heard his familiar voice. He could then see that **O.I.** was gesticulating. The witness stated that he rushed home and did not notice what happened afterwards.<sup>452</sup>
480. The Panel has significant reservations towards I.M.3’s testimony. Without doubting his honesty, the Panel remarks that his testimony has reduced value. The witness did not have a visual on the Defendant when the latter uttered the words, but heard the words first - coming from someone who sounded familiar - and only then noticed the Defendant. Moreover, when asked if the KFOR vehicles nearby had their engines on or off, the witness

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<sup>449</sup> Z.Đ., Record of the main trial, 14 October 2015, para. 256 *et seq.*; N.S.2, Record of the main trial, 14 October 2015, paras. 43 *et seq.* and 67 *et seq.*

<sup>450</sup> **O.I.**, Record of the main trial, 4 December 2015, paras. 180 – 207.

<sup>451</sup> Witness Y, Record of the main trial, 28 July 2015, para. 613 *et seq.*

<sup>452</sup> I.M.3, Record of the main trial, 29 June 2015, para. 15 *et seq.*

replied: *“At that moment I couldn’t hear from the noise”*.<sup>453</sup> This, in the view of the Panel, raises doubts as to whether the witness was able to catch exactly what was said in that noisy and confusing environment. More importantly, there is no other evidence to corroborate his statement. The Panel cannot safely rely exclusively on his statement to establish that the Defendant uttered the above mentioned words.

481. It is also very significant that the witness did not offer any information regarding the outcome of the alleged request coming from **O.I.** There is no information if the group who, according to the witness, separated and went away from **O.I.**, indeed threw any bombs. Therefore, it cannot be established that the actions of that group had in any way caused the consequences which are subject matter of the Indictment.

482. Therefore, based on the evidence above, no link can be established between the behaviour displayed by the Defendant on the streets and the attacks subject to the Indictment.

483. When it comes to the Defendant **D.D.**, his presence on the streets on the critical night is established based on the testimonies of witnesses X and Y.

484. In his defence, **D.D.** put forward an alibi and made efforts to prove that he was not anywhere around the streets where the critical events occurred. **D.D.** described his activities that evening as follows: around 19:15 he went to Srpska Kafana (Biševac) to have a coffee. Once there, the owner of the coffee shop C.B. and the waiter told him that two Norwegian KFOR intelligence officers were looking for a local politician, Lj.M. Following their request, **D.D.** and his friend R.Š., who had arrived in the meantime, joined the officers in their vehicle and went to motel “Izvor” in Grabovac. Once there, he encountered Lj.M. who was having a meeting with his party members. He told them to return to Mitrovica and wait for him in Srpska Kafana, where he joined them later on. The five of them- **D.D.**, Lj.M., R.Š. and the two Norwegian KFOR officers - one male and one female – spent the whole evening there, discussing the general political and security situation in the area and ways to support the Serbian populations in the enclaves.

485. At some point they heard an explosion. Consequently, Lj.M. contacted his wife on the phone and found out that a bomb had exploded in the Bel Ami café. **D.D.** and R.Š. left the restaurant and confirmed the information with a passer-by. They returned shortly after to

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<sup>453</sup> I.M.3, Record of the main trial, 29 June 2015, para. 253 *et seq.*

Srpska Kafana. The two Norwegian officers suggested ending the meeting but Lj.M. reassured them that there was no need. They continued the meeting up until 22:00, when the officers drove to Skopje, where they were based. Shortly after, at 22:15, **D.D.**, Lj.M. and R.Š. left Srpska Kafana too. **D.D.** and R.Š. split from Lj.M. in the Šumadija Square – where a big crowd was gathered- and went to an apartment situated in Sutjeska street used by the Defendant. After a while, around 23:20, the two of them went together to the apartment of witness D.M.3 where V.R., a friend of the Defendant, was. The two ladies were journalists. The apartment of D.M.3 was located behind the health centre in Mitrovica. All four of them spent the time together and in this meantime, **D.D.** left the apartment briefly, to return to Srpska Kafana and retrieve a lighter. He returned shortly after and remained at Ms. D.M.3's place until 1:30 a.m. when he and V.R. left and went to the apartment on Sutjeska Street.<sup>454</sup>

486. The Defence sought to prove the above by adducing a number of similar statements. Witnesses V.V., Lj.M., R.Š. and D.M.3 confirmed the Defendant's account.<sup>455</sup> However, the level of detail they offered and the striking similarity of their statements invalidate their testimonies. After more than 15 years from the events, the witnesses indicated, without variation, the same sequence of events, down to the details which were in no way essential, such as a phone call that Lj.M. took. They recalled perfectly even the slightest details of the meeting- such as who drank orange juice and who had coffee, what **D.D.**'s lighter looked like, or who picked up the bill. Not only did their accounts seem perfectly fine-tuned, but during their examination, the witnesses did not offer this information in response to questions, but they volunteered the details themselves. It seemed as if they intended to go through a check list of details and mention them to add credit to their accounts. Instead, the Panel formed their conviction that, in fact, the witnesses coordinated their accounts and therefore did not attach any significant value to them.

487. The Norwegian officers – about whom the Defendant **D.D.** offered certain details which could have contributed to their identification – were, according to the response by the

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<sup>454</sup> **D.D.**, Record of the main trial, 8 December 2015, para. 402 *et seq.*

<sup>455</sup> V.V., Record of the main trial, 17 November 2015, para. 31 *et seq.*; Lj.M., Record of the main trial, 20 October 2015, para. 229 *et seq.* and Record of the main trial, 21 October 2015, para. 18 *et seq.*; R.Š., Record of the main trial, 27 October 2015, para. 16 *et seq.*; D.M.3, Record of the main trial, 24 November 2015, para. 355 *et seq.*;

Norwegian authorities unable to testify.<sup>456</sup> Therefore, they were not in a position to confirm or deny the above.

488. Another concern identified by the Panel is that the version put forward by the Defendant defies logic. The KFOR officers were alarmed by the explosion, but gave in to the insistences of Lj.M. and agreed to stay on. This is not a usual response from trained intelligence officers. They were not based in Mitrovica but in Skopje and not familiar with any of the participants in the meeting. The discussion they engaged in with the Defendant and the others was about making contact and concerned, according to the evidence, general issues such as how they could help the Serbian population. The importance of the talks would not in any case justify the fact that they ignored a security incident to such an extent that they did not even collect more information about what had happened. The Panel has serious reservations to accept such an explanation.
489. Moreover, the Defendant was the chief of the Police station in Mitrovica. Even if MUP could not operate after June 1999,<sup>457</sup> it is difficult to believe that the chief of police would not endeavour to keep himself up to date with such a significant deterioration of the security situation and would chose, instead, to avoid at any cost the place of the incident.
490. To conclude, the alibi presented by **D.D.** is unconvincing and it is not able to raise any serious and relevant doubt on the facts it bears upon. The overall evidence neither establishes nor precludes that **D.D.** was in the meeting that evening. Whereas the possibility of the meeting cannot be excluded, the Panel rejects the proposition of the Defence that **D.D.** spent his whole evening attending it.
491. There is concrete evidence to the contrary.
492. Witness X testified that on the critical evening, right after the explosion in “Bel Ami” café he went out to find out what had happened and headed towards Ivo Lola Ribar street. There were many people on the street. It was around 19:00 p.m. when he noticed **D.D.** approaching. He was followed by several MUP members. He stopped on Ivo Lola Ribar street, surrounded by the MUP members. Soon several members of “Bridge Watchers”

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<sup>456</sup> Embassy Letter dated 21 September 2015, reference DBJN/2013-2249, Court Binder XI, Main Trial, tab 3.

<sup>457</sup> See details in the assessment of MUP activities at para. 529 below.

joined them, as well as regular citizens.<sup>458</sup> A person was telling **D.D.** details about the explosion. **D.D.** addressed the surrounding group with the following words: *“Such thing should never happen anymore, and this part should be cleansed of Albanians.”*<sup>459</sup> Furthermore, he told one person from the group: *“You know what your job is”*.<sup>460</sup> Afterwards, the people surrounding **D.D.** separated into more groups and left and then, according to the witness “started attacking the apartments inhabited by Albanians”.<sup>461</sup> The witness noticed how a group led by a certain Š. entered the first entrance of building 27 on Ivo Lola Ribar street<sup>462</sup> and could hear some shots shortly after. The witness did not see what happened inside the building.<sup>463</sup> Witness X headed home immediately after and on the way home he could hear an explosion supposedly coming from the apartment building above the Narcis flower shop.<sup>464</sup> According to the witness, Š. was a member of “Bridge Watchers”.<sup>465</sup>

493. At the time, Witness Y was a \_\_\_\_\_. On the critical night, around 20:00, S.K.2, who was also a \_\_\_\_\_, came to pick him up from his home. He told him that there had been an explosion in town so they should go see. Once they arrived in the city centre, the witness noticed that **D.D.** was also there, together with R.Š. (also a \_\_\_\_\_ and a close friend of **D.D.**) and others. At a certain point, the witness heard a person saying *“There is one more Albanian family in this building”*<sup>466</sup> while pointing to a small building to the left of the skyscraper situated at the intersection of Kralj Petra Street and Sutjeska Street.<sup>467</sup> According to Witness Y, **D.D.** turned to R.Š. and told him *“go and get this done”*.<sup>468</sup> Witness Y then saw S.K.2, R.Š. and M.L. entering that building and could hear a baby crying shortly after. He could not hear any shots or explosions.<sup>469</sup> Afterwards, he could also notice how

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<sup>458</sup> Witness X, Record of the main trial, 6 July 2015, para. 360, and Record of the main trial, 7 July 2015, para. 237.

<sup>459</sup> Witness X, Record of the main trial, 6 July 2015, para. 360.

<sup>460</sup> Witness X, Record of the main trial, 6 July 2015, para. 525.

<sup>461</sup> Witness X, Record of the main trial, 6 July 2015, para. 538.

<sup>462</sup> Witness X, Record of the main trial, 8 July 2015, para. 100.

<sup>463</sup> Witness X, Record of the main trial, 8 July 2015, para. 114.

<sup>464</sup> Witness X, Record of the main trial, 6 July 2015, para. 546.

<sup>465</sup> Witness X, Record of the main trial, 8 July 2015, paras. 141-142.

<sup>466</sup> Witness Y, Record of the main trial, 28 July 2015, para. 581

<sup>467</sup> Witness Y, Record of the main trial, 28 July 2015, para. 581.

<sup>468</sup> Witness Y, Record of the main trial, 28 July 2015, para. 587.

<sup>469</sup> Witness Y, Record of the main trial, 30 July 2015, para. 504.

**D.D.** and R.Š. left towards Ivo Lola Ribar street.<sup>470</sup> The witness stated that he spent approximately half an hour in the company of **D.D.** on the street.<sup>471</sup> According to the witness, M.L. was a member of “Bridge Watchers”.<sup>472</sup>

494. S.K.2 and R.Š. were also heard as witnesses at the proposal of the Defence. R.Š. fully endorsed the account presented by **D.D.** in his statement. He described the same overall activities, including the meeting with the Norwegian officers and he stated that the two of them were together the whole time. Witness S.K.2 stated that he was not in town at all that evening. He was not even aware of the explosion and he remained all the time at his place, situated in Brdjani area, approximately 2 km from the city centre of Mitrovica.<sup>473</sup>

495. For the reasons presented above in this judgement,<sup>474</sup> the Panel has serious reservations regarding the testimony of R.Š. Evidence shows that he was also a MUP member and a close friend of **D.D.** It appeared that overriding loyalties had a bearing upon the willingness of these witnesses to speak the truth in court about certain issues. It is also possible that the witnesses – both subordinates of **D.D.** at the time - adjusted their account so as to distance themselves from the events. Additionally, S.K.2 clearly declared that MUP members in Mitrovica north had absolutely no obligation in return for their salaries. When specifically asked if they had at least to keep residing in Mitrovica north, he denied this. His stance is contradicted by other evidence, including **D.D.**’s statement: MUP members had to maintain their presence in Mitrovica north.<sup>475</sup> This is an additional reason why the Panel regards S.K.2’s testimony with mistrust.

496. The Defence raised concerns about Witness Y’s objectivity, since his career \_\_\_\_ was terminated following certain disciplinary proceedings, at the time when **D.D.** was head of the secretariat of internal affairs.<sup>476</sup> However, the witness seemed very straightforward about it. He openly admitted that he encountered certain issues at work, some of them related to\_\_\_\_\_. There is no proof that the witness assigns any blame to **D.D.** or holds a

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<sup>470</sup> Witness Y, Record of the main trial, 28 July 2015, para. 590 *et seq.*

<sup>471</sup> Witness Y, Record of the main trial, 30 July 2015, paras. 303-309.

<sup>472</sup> Witness Y, Record of the main trial, 30 July 2015, para. 219.

<sup>473</sup> S.K.2, Record of the main trial, 28 October 2015, para. 124 *et seq.*

<sup>474</sup> See the assessment of **D.D.**’s alibi at paragraphs 484-490 above.

<sup>475</sup> **D.D.**, Record of the main trial, 9 December 2015, paras. 95-100.

<sup>476</sup> Witness Y, Record of the main trial, 30 July 2015, para. 369 *et seq.*

grudge against him. His account came across as balanced, the witness supported his answers with examples. He did not seem to assign blame lightly and had he wanted to frame **D.D.** he could have fabricated a more incriminating account. The Panel assesses his testimony as credible.

497. His statement is corroborated by Witness X.

498. Therefore, based on the statements of both Witnesses X and Y, the Panel establishes that **D.D.** was present in the area of Sutjeska and Ivo Lola Ribar streets on the evening of 3 February 2000.

499. Regarding **D.D.**'s concrete behaviour, the Panel makes the following remarks:

500. The words that Witness Y stated he heard **D.D.** say - "go and get this *done*" -are not unequivocal, given the fact that their content is not necessarily conclusive of only one meaning. Moreover, the witness did not specifically observe any outcome.

501. The utterances attributed to **D.D.** by Witness X are much more complete. However, this witness was granted total anonymity, therefore his testimony has to be assessed taking into consideration the provision of Article 262 Paragraph 3 CPC, which states, "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." Furthermore, the Panel remarks that there is no evidence adduced concerning what the people who allegedly left **D.D.** actually did as soon as they parted from him. Even admitting that they entered the two buildings indicated by both Witnesses X and Y, it cannot be established that they indeed attacked any of the apartments subject to the Indictment.

502. The Panel also points out the following aspect stated by Witness Y: "*From the surrounding buildings there was a lot of shouting which led me to believe that evictions were going on, but I did not see that.*"<sup>477</sup> The fact that the attacks were already ongoing before Witness Y encountered **D.D.** and observed his behaviour throws even more doubt on **D.D.**'s involvement in the attack since there is no evidence about his conduct prior to this. The Indictment charged **D.D.** with "incitement". For incitement to exist, the "incitee" should not have had already made up his own mind to commit the offence. It should be the action of the "inciter" that brings to light the criminal resolution of the executant.

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<sup>477</sup> Witness Y, Record of the main trial, 30 July 2015, para. 369 *et seq.*

503. The Panel cannot safely rely on the limited evidence presented above to establish beyond reasonable doubt that **D.D.** encouraged any person to conduct the attacks subject to the Indictment.
504. In the end, the Panel mentions that the witness H.B., a human right activist, submitted several recorded statements and photographs of victims and testified on the margins of those. Several accusations by the Defence regarding his credibility were levelled against the witness in the course of the trial. The Panel does not assign a lot of weight to these accusations as they are based on press articles and reports not supported by evidence. However, the Panel regards the evidence of this witness with utmost caution. His testimony is based on information “gained” by him from persons he interviewed and therefore does not represent a primary evidentiary source and it cannot add any substantial and definitive value to the factual findings.
505. To conclude, the evidence is found insufficient to prove beyond a reasonable doubt any involvement of either of the Defendants, **O.I.** or **D.D.** in the attacks. The evidence was also insufficient to prove the identity of perpetrators or to assign them to a certain category other than “Serbs”.

(b) Evidence related to the position of **O.I.** within the Bridge Watchers

506. The evidence regarding the “Bridge Watchers” group is too scarce and contradictory for a definitive finding to be made.
507. There is limited evidence to help us establish who exactly the Bridge Watchers were.
508. The wide range of variations between difference accounts accentuated the uncertainty surrounding the Bridge Watchers. There are testimonies that denied even the existence of Bridge Watchers,<sup>478</sup> while others stated that all the citizens in Mitrovica north were Bridge Watchers.<sup>479</sup>
509. According to some evidence, Bridge Watchers were composed of people of Serbian ethnicity, some of whom had been displaced from Mitrovica south or Serbian enclaves in

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<sup>478</sup> N.K., Record of the main trial, 13 October 2015, paras. 36-37.

<sup>479</sup> N.S.2, Record of the main trial, 14 October 2015, paras. 108-110 and 157.



Kosovo, some of them from Montenegro.<sup>480</sup> Their main task was to guard the main bridge in Mitrovica and prevent the ethnic Albanian population from the south to cross to the north of Mitrovica. Their attire was civilian and they deployed tactics such as stopping civilians on the bridge and attacking Albanians who lived in the north. They were organised in sub-groups. Some of them were armed and had radio communicating devices. Their “office” was in the Dolce Vita coffee shop. Some witnesses also mentioned the affiliation of the Bridge Watchers with the political organisation Serbian National Council.<sup>481</sup> Yet, it is not entirely clear whether they only shared the ideology or in which way they were connected.

510. Witness Y, who was \_\_\_\_\_, mentioned that they had a certain degree of organisation, that they were paid and they belonged to the structures of the Serbian Ministry of Interior.<sup>482</sup> However, in the end of his testimony, he made a statement which shed doubt on how organised the Bridge Watchers were in fact: *“At that time I didn’t know a lot of bridge-watchers personally. First of all, I couldn’t say about the command over these people. There were a lot of teenagers and alcoholics. I couldn’t speak about any command over such people. They were not such a serious group.”*<sup>483</sup>
511. This evidence points to the fact that the Bridge Watchers were in fact lacking a firm organisation model and some actions were carried out by rogue elements of society. There is similar additional evidence.<sup>484</sup>
512. Other evidence points to the fact that “Bridge Watchers” was simply a name used by the international community to designate the people who were defending the bridge, who in fact were regular citizens.<sup>485</sup>
513. Based on the foregoing, it is not altogether clear from the evidence if Bridge Watchers indeed had a clear structure and organization and if yes, what they were.
514. With regard to the role of **O.I.**, Witness Y mentioned that he was *“managing the bridge watchers from highest positions”* and presented this as *“widely known information.”*<sup>486</sup> The witness offered two concrete instances which made him believe that **O.I.** was the leader:

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<sup>480</sup> Witness Y, Record of the main trial, 30 July 2015, para. 88 *et seq.*

<sup>481</sup> Witness Y, Record of the main trial, 28 July 2015, para. 340

<sup>482</sup> Witness Y, Record of the main trial, 28 July 2015, para. 390 *et seq.*

<sup>483</sup> Witness Y, Record of the main trial, 28 July 2015, para. 563.

<sup>484</sup> N.S.2, Record of the main trial, 14 October 2015, para. 112; Z.Đ., Record of the main trial, 14 October 2015, para. 387 and 470.

<sup>485</sup> O.M., Record of the main trial, 15 October 2015, para. 386

515. In November 1999, the witness and his \_\_\_\_\_ colleagues received information that some Albanians wanted to cross the bridge to the north. Consequently, the witness and his group ran towards the bridge. At that moment the witness noticed **O.I.** rushing out of the building of SNS. According to the witness, he was holding a handgun.<sup>487</sup> Given the fact that the witness was not aware of any further developments, the Panel cannot establish if **O.I.**'s presence was in any way linked to any event on the bridge. Furthermore, this is in no way indicative of any leadership of his over the Bridge Watchers.
516. The second incident presented by Witness Y occurred in January 2000. According to the witness, a certain M.R., who was a Bridge Watcher, had been involved in a fight in Kralj Petra street. In retaliation, **O.I.** appeared 15-20 minutes later, followed by 15-20 Bridge Watchers, some walking in front, some in parallel with the Accused. **O.I.** had a hand held radio and he and his group broke the windows of the shops along the street.<sup>488</sup> In regards to the above, the Panel exercised caution in establishing, solely based on witness Y's evidence, that those accompanying **O.I.** were indeed members of the Bridge Watchers. Besides, there were no indications as to what caused the incident and if it had any connection to the Accused's alleged capacity as a Bridge Watcher or whether it was mere personal revenge. Furthermore, **O.I.**'s position in the group and the fact that he had a radio cannot be determinative of his capacity as leader of the Bridge Watchers. Additionally, even if admitting that the persons accompanying **O.I.** were indeed Bridge Watchers, there is no evidence as to how representative their group was in relation to the entire Bridge Watchers entity.
517. In addition, Witness Y also stated that he often saw **O.I.** in the coffee shop Dolce Vita in the company of Bridge Watchers.<sup>489</sup> Again, the Panel considers that this aspect cannot be determinative of **O.I.**'s position as the leader of Bridge Watchers or of his affiliation with the group whatsoever. This especially since the witness later specified that Dolce Vita was at the time the only coffee shop in the bridge area and that he "*was seeing Mr. O.I. in the café bar mostly with people of high intellectual level.*"<sup>490</sup>

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<sup>486</sup> Witness Y, Record of the main trial, 28 July 2015, para. 330.

<sup>487</sup> Witness Y, Record of the main trial, 28 July 2015, para. 362.

<sup>488</sup> Witness Y, Record of the main trial, 28 July 2015, para. 442.

<sup>489</sup> Witness Y, Record of the main trial, 28 July 2015, paras. 359-360.

<sup>490</sup> Witness Y, Record of the main trial, 30 July 2015, para. 24 *et seq.*

518. When it comes to Witness X, it became clear to the Panel that his evidence as to **O.I.**'s role of "command" was based largely on no more than hearsay and rumours and that he did not have reliable knowledge of the structure of the Bridge Watchers and the role of **O.I.** within it at the time. He heard the information from friends and had no personal knowledge.<sup>491</sup>
519. Several other witnesses mentioned that they heard that Bridge Watchers were led by **O.I.** This, however, was again by way of rumour. For instance, witness B.P. mentioned that **O.I.** was the leader of the National Assembly<sup>492</sup> and that he was the leader of the Bridge Watchers. The witness declared that he had never seen **O.I.** at the bridge. When questioned about the source of his knowledge, he referred to the information as a "public secret."<sup>493</sup> The Panel places little weight on such unsubstantiated hearsay reports.
520. Even if the Panel would admit that the Bridge Watchers were somehow connected to the Serbian National Council, evidence shows that the Accused was not its leader. He was only a member of the Board and he was eventually excluded from the Council.<sup>494</sup>
521. The witness F.H. was initially proposed by the Prosecution in relation to Count 1 but his examination touched upon aspects regarding both counts.
522. The witness stated that during 1999-2000, he saw the Accused **O.I.** wearing different types of uniform.<sup>495</sup> In his statement the witness is not very coherent and sometimes when asked about a specific time he gave more general answers or referred to a different period.<sup>496</sup> It appears that the witness claimed that before the NATO bombing **O.I.** was wearing a military green uniform with patchwork<sup>497</sup> and after that a blue paramilitary uniform with Serbian insignia.<sup>498</sup> Later on in his statement, he partially retracted his initial stance and mentioned that **O.I.** was wearing a track suit and a blue jacket with Serbian insignia.<sup>499</sup> During his examination, the witness slightly modified his statement regarding the insignia as well. Although he initially indicated it represented the Serbian insignia, when asked

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<sup>491</sup> Witness X, Record of the main trial, 6 July 2015, para. 145 *et seq.*

<sup>492</sup> Serbian National Council.

<sup>493</sup> B.P., Record of the main trial, 11 September 2015, paras. 205-211.

<sup>494</sup> **O.I.**, Record of the main trial, 4 December 2015, paras. 122 and 143; N.K., Record of the main trial, 8 October 2015, paras. 474-477.

<sup>495</sup> F.H., Record of the main trial, 26 February 2015, para. 83.

<sup>496</sup> F.H., Record of the main trial, 26 February 2015, paras. 116-125.

<sup>497</sup> F.H., Record of the main trial, 26 February 2015, paras. 96 and 85.

<sup>498</sup> F.H., Record of the main trial, 26 February 2015, paras. 83-91.

<sup>499</sup> F.H., Record of the main trial, 26 February 2015, paras. 105 and 207-209.

about the details later on, he could not offer any and explained that no one dared to approach **O.I.**'s group. He stated that **O.I.** was leading a group of 500 people. They were armed and wearing the same uniforms.<sup>500</sup> It is again unclear during which period the witness claimed to have seen **O.I.** and the group. Initially he stated that this happened in both 1999-2000.<sup>501</sup> Later on in his statement he denied seeing him in 1999.<sup>502</sup> This left the Panel with a feeling of confusion and doubt regarding the accuracy of his observations.

523. In his statement, the witness linked the activity of **O.I.** and the group of 500 people to the blockade of the bridge in Mitrovica. What is concerning is the fact that he indicated that this happened in the presence of French KFOR. Even more, according to the witness the French KFOR not only had noticed the group in uniforms but closely cooperated with them.<sup>503</sup> It strains credibility that the international forces which were deployed to the region to restore order and promote inter-ethnic cooperation would take sides and actively hamper the free circulation on the bridge. Therefore, the Panel cannot regard his testimony as reliable.

524. Other witness testimonies point to the fact that **O.I.** had at times intervened with the Bridge Watchers during certain conflicts.<sup>504</sup> The evidence shows that those interventions of the Accused were in favour of ethnic Albanians. It seems that he took action to calm things down, he in fact curbed the actions of the Bridge Watchers. This certainly proves that the Accused enjoyed a certain authority. However, this does not necessarily imply that he was exercising his authority as the leader of the Bridge Watchers. This could simply be a reflection of the fact that he was a well-known and respected person in the Serbian community, as the evidence abundantly showed. It remains unclear from these accounts, whether in doing so, **O.I.** was exercising disciplinary powers over the Bridge Watchers, as submitted by the Prosecution, or whether he simply took advantage of his social position and intervened, when asked to, in order to resolve a difficult personal situation.

525. While an inference of involvement of the Defendant in the Bridge Watchers' activity could be drawn from these facts, in the view of the Panel, other inferences which are not

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<sup>500</sup> F.H., Record of the main trial, 26 February 2015, paras. 100, 108, 114-115.

<sup>501</sup> F.H., Record of the main trial, 26 February 2015, paras. 73 and 85-87.

<sup>502</sup> F.H., Record of the main trial, 26 February 2015, paras. 148-149.

<sup>503</sup> F.H., Record of the main trial, 26 February 2015, paras. 203-217.

<sup>504</sup> F.J., Record of the main trial, 23 July 2015, para. 24 *et seq.*; G.M., Record of the main trial, 17 September 2015, para. 97 *et seq.*

consistent with this conclusion are also open. It necessarily follows, having regard to the burden of proof, that it has not been proven beyond a reasonable doubt by the Prosecution that **O.I.** was the leader of Bridge Watchers.

526. Several KFOR and UNMIK reports and memoranda portraying **O.I.** as leader or commander of paramilitary/police formations were submitted as documentary evidence. The Panel found that there is no indication as to their sources, nor have these been in any way corroborated in court. Similar considerations are put forward regarding the several press articles adduced as evidence. Also, the Prosecution submitted a recording made by a Japanese TV station which shows **O.I.** on the bridge. No clear conclusion can be drawn regarding his concrete activities or as a matter of fact regarding the period when the recording was made. Therefore, no evidentiary value is attached to these documents and recording. The nature of this evidence is such that the Panel cannot make any positive finding pertaining to the position, if any, of **O.I.** within the Bridge Watchers.
527. In the end, the Panel makes a few considerations regarding the allegations in the Indictment that **O.I.** *“had a Serb nationalistic and anti-Albanian attitude, which he has kept till today. He also gained respect amongst his fellow Serbs by being critical about actions taken by the international community in Kosovo.”*<sup>505</sup> The Panel considers that these allegations are not supported by the evidence. On the contrary, there is significant evidence pointing to the fact that in 2000 the Accused closely cooperated with the international community and declared himself in favour of inclusion of the Albanian population.<sup>506</sup>
528. However, his political orientation could only be indicative. This, of course, would not exclude that covertly he could have engaged in a different kind of behaviour. However, in the opinion of the Panel, the evidence falls short of establishing the leadership of **O.I.** over the Bridge Watchers to the required degree, which is beyond reasonable doubt.

### (c) Evidence related to the position of **D.D.** within the MUP

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<sup>505</sup> Indictment, p.15, English version.

<sup>506</sup> B.R.2, Record of the main trial, 25 March 2015, para. 96 *et seq.* and 150 *et seq.*; N.K., Record of the main trial, 8 October 2015, paras. 477-479, 485; N.K., Record of the main trial, 13 October 2015, paras. 121-125; *see also* UNMIK Memorandum of Agreement submitted to the Court on 15 October 2015, Court Binder IX, Main Trial, tab 3.

529. The evidence shows that **D.D.** had a command position within MUP in Mitrovica at the time of the attacks. The most relevant testimony is that of Witness Y, who was\_\_\_\_\_. R.Š. and S.K.2, who were also\_\_\_\_\_, confirmed this.<sup>507</sup> The Accused also acknowledged the fact and presented a diagram which he had drawn roughly depicting the organization of MUP in the Mitrovica region.<sup>508</sup> He indicated that in June 1999, when the Serbian police forces were officially obligated to cease their duties, he was appointed the liaison officer with KFOR. Later that year, he became the commander of the police station of Mitrovica.<sup>509</sup> In practical terms, he was the one who had the authority over the Mitrovica police station. He was, in turn, subordinated to the officers in the Secretariat of the Ministry of Interior.<sup>510</sup>
530. While it is not apparent from the evidence before the Court that there was any obligation of reporting to the Serbian Ministry of Interior, it is however established that the MUP organisational structures were maintained in Mitrovica north. **D.D.** was even promoted. The explanation offered by witness R.Š. that **D.D.**'s promotion was only made in consideration of his financial needs, strains credibility.<sup>511</sup> The MUP employees had to maintain their presence in Mitrovica north.
531. The Panel regards this aspect as providing clear evidence that, even if not overtly functional, the MUP structure and chain of command were maintained after June 1999. **D.D.** enjoyed a certain authority over his subordinates and liaised with his superiors. Covertly, they were organised in groups and organised patrolling missions, with their main task being to defend the main bridge.
532. While the above evidence does indeed support the finding that the Accused was in charge of MUP in Mitrovica, the further implication which the Prosecution wishes to make, that he organised the operation, appears to be beyond the scope of the evidence, as detailed above in the judgement. Approached in the most favourable light, the evidence could at the most prove that MUP was involved in certain patrolling missions in north Mitrovica. There is no decisive proof that on 3 February 2000 MUP members had any orders to act against

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<sup>507</sup> R.Š., Record of the main trial, 27 October 2015, para.12; S.K.2, Record of the main trial, 28 October 2015, para. 73

<sup>508</sup> **D.D.**, Record of the main trial, 8 December 2015, para. 372 *et seq.*;

<sup>509</sup> **D.D.**, Record of the main trial, 8 December 2015, para. 382 *et seq.*; Witness Y, Record of the main trial, 30 July 2015, para. 434.

<sup>510</sup> Witness Y, Record of the main trial, 30 July 2015, para. 432 *et seq.*

<sup>511</sup> R.Š., Record of the main trial, 27 October 2015, para. 12.

Albanians (or that they in fact so acted), which contradicts any inference that the Accused would have, as their commander, in any way determined their actions. There is no proof that the ambit of his responsibility extended beyond that.

(d) Evidence related to the common planning or coordination of the attacks between O.I. and D.D.

533. A corollary allegation by the Prosecution is that the attacks on 3 February 2000 were orchestrated by MUP and the Bridge Watchers in coordination.
534. From the outset the Panel remarks that there is no solid evidence that the attacks were planned. Witness G.R. stated that, the following day after the attack, he noticed that there were Serbian names on the doors of the apartments in his building that used to be inhabited by Albanians. The witness understood this as a way in which the Serbs declared that they appropriated the apartments.<sup>512</sup> However, there is no concrete evidence in which circumstances this happened or even if this preceded the attack or not.
535. Invariably, all the witnesses stated that the crowd started gathering in the streets immediately after the explosion in the “Bel Ami” coffee shop. Several Serbian youngsters were severely wounded in the explosion and it is the obvious and reasonable conclusion that this is what triggered the immediate retaliatory reaction of the Serbs against Albanians. It is uncontested, publicly and notoriously known, that in the year 2000 the interethnic situation in Mitrovica north was tense. Against this background, the logical inference was that the Serbs would assign blame to Albanians for the attack against a place usually frequented by Serbs. Indeed, the preponderance of the evidence favours the view that the attacks were spontaneous.
536. The Indictment also refers to indications that the plan behind the attacks was *“to eliminate all the Albanians working for the State Security as they had special knowledge about the war.”*<sup>513</sup> M.S.1 was a retired employee of the State Security. N.A.2 also worked for state security. However, it remains undemonstrated and unsubstantiated whether there is a link between the job as state security officer and being targeted. As far as the evidence shows,

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<sup>512</sup> G.R., Record of the main trial, 4 August 2015, paras. 67-69.

<sup>513</sup> Indictment, pp.24 and 27, English version.

we cannot establish that the victims were singled out due to their perceived prior association with the Serbian authorities. M.S.1 and N.A.2 are only two out of the 23 victims listed in the Indictment. Some of the victims – such as R.C. or S.B. were even elderly ladies who could hardly represent a threat to the state security. Moreover, after N.A.2 was hurt, the perpetrators entered his apartment. That gave them the opportunity to kill him if this is what they wanted. However, they only asked him to leave.

537. Therefore, the Panel considers that this theory is unsubstantiated.

538. Furthermore, the Panel turns to evaluate the statement of Witness Y concerning this aspect. He was a \_\_\_\_\_ at the time. However, he had no prior information of the attack. It results from his evidence that both he and his colleague S.K.2 who came to pick him up were taken by surprise by the explosion and that is why they went to the city centre. The witness had not received any prior instruction. According to the witness, S.K.2 did not mention that they had received any orders.<sup>514</sup> And even on the spot, he did not receive any orders from **D.D.** In fact, the witness stated that he did not feel at all compelled to go with S.K.2 and that if the latter had not come to pick him up from his home, he might not even have gone out.<sup>515</sup> There is no reasonable justification why **D.D.** would conceal the orders from the witness. According to Witness Y, **D.D.** trusted him and they were on really good terms.<sup>516</sup> This testimony sheds even more doubt on the fact that MUP had a plan for the attacks.

539. The Panel also remarks that Witness Y mentioned that the general activities performed by \_\_\_\_\_ were confined to defending the bridge.<sup>517</sup> He never received assignment involving actions against the ethnic Albanians living in the north. This contradicts once more the idea that the attacks were planned by MUP.

540. Furthermore, there is no concrete or clear evidence that **O.I.** and **D.D.**, as individuals, had any kind of cooperation.

541. Witness Y stated that at after June 1999 the police headquarters were handed over to the international force. After a period when they did not have offices, at the beginning of October 1999, **D.D.** convened a meeting and informed the MUP members that they could

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<sup>514</sup> Witness Y, Record of the main trial, 28 July 2015, para. 562.

<sup>515</sup> Witness Y, Record of the main trial, 30 July 2015, para. 562.

<sup>516</sup> Witness Y, Record of the main trial, 30 July 2015, para. 653.

<sup>517</sup> Witness Y, Record of the main trial, 28 July 2015, para. 182.



use the building of the Serbian National Council for their needs.<sup>518</sup> The meeting took place in the premises of the Serbian National Council in a room which communicated with another smaller room – and **O.I.** was present there. However, based on this information the Panel cannot draw any certain inferences concerning the existence or potential nature of the collaboration between the two. Moreover, the witness mentioned a certain rift in the relations between **D.D.** and **O.I.** which took place in December 1999, thus months prior to the critical events.<sup>519</sup> Again, the evidence relied upon by the Prosecution to prove the cooperation between the two Accused is circumstantial at best therefore not sufficient to prove the purported allegations.

542. The evidence concerning the cooperation between the Bridge Watchers and MUP is also insufficient. When questioned about this aspect, Witness X mentioned: *“So, well they cooperated together in order to defend the bridge, meaning that they acted side by side.”*<sup>520</sup> But, according to the witness, regular citizens of Mitrovica also participated in the event.<sup>521</sup> This could be more conclusive of the fact that MUP and the Bridge Watchers simply took action side by side, along with regular citizens to achieve a common purpose: preventing the Albanian population to cross the bridge.

### To conclude

543. Based on the evidence assessed above it was established beyond a reasonable doubt:
- I. That on 03 February 2000 in Mitrovica north, in the evening hours, an explosion occurred at the “Bel Ami” coffee shop, injuring a number of Serbs.
  - II. That in retaliation, sometime later, at night time, spontaneous groups of Serbs entered the buildings situated in Knjaz Miloš street, Lola Ribara street, Tanaska Rajića street, Sutjeska street and Kralja Petra street inhabited by families of Albanian ethnicity, with the aim to expel them. They attacked them, murdered and injured several victims as specified in the Indictment.

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<sup>518</sup> Witness Y, Record of the main trial, 28 July 2015, para. 109 *et seq.*

<sup>519</sup> Witness Y, Record of the main trial, 30 July 2015, para 638 *et seq.*

<sup>520</sup> Witness X, Record of the main trial, 6 July 2015, para. 283 *et seq.*

<sup>521</sup> Witness X, Record of the main trial, 6 July 2015, paras. 268-269; Record of the main trial, 7 July 2015, para. 237.

III. That the Defendant **D.D.** had the capacity of Mitrovica Police station commander of the Ministry of Interior of the Federal Republic of Yugoslavia (MUP).

544. Based on the evidence assessed above, the following could not be established beyond reasonable doubt:

IV. That the Defendant **O.I.** had the capacity of a leader of a paramilitary Serbian group known as “Bridge Watchers”.

V. That on 3 February 2000, Defendant **O.I.** acted in co-perpetration with **D.D.**, upon a previously agreed common plan; nor that with the intent to compel ethnic Albanians to abandon their houses and leave the territory of Mitrovica north he incited/ordered the group of police or “Bridge Watchers” to raid several buildings located on the above mentioned streets and to forcefully clear them of ethnic Albanians.

VI. That on that occasion groups of Police officers of the Ministry of Interior of the Federal Republic of Yugoslavia (MUP) or “Bridge Watchers” were part of the spontaneous group of Serbs who entered the above mentioned buildings.

## **II. B1. 2. Law**

545. The above established events occurred on February 2000, when the applicable law was the Criminal Law of the Socialist Autonomous Province of Kosovo (CLSAPK).

546. The Defendants are charged with three counts of “incitement to aggravated murder”, either in completed or attempted form.

547. According to Art. 30 (2), CLSAPK:

*2) The term of imprisonment of at least ten years or death penalty shall be pronounced against:*

*1) Whoever takes another person’s life in a brutal or cruel manner;*

*2) Whoever takes another person’s life and in doing so intentionally endangers the life of one or more persons;*

3) *Whoever takes another person's life for his own benefit, to commit or to hide other criminal acts, for ruthless revenge or other basic motives;*

4) *Whoever takes another person's life for vendetta;*

5) *Whoever takes another person's life with ruthless behaviour;*

6) *Whoever takes the life of an official person or military officer during the performance of his duty, or law enforcement, arresting an offender of a criminal act or guarding an arrested person or a person who takes another person's life during the performance of the tasks and duties which he carries out under the law or other provisions to when he is defending society.*

548. As a remark to the Indictment, the incitement cannot be accomplished in relation to an attempted form of an offence. If the facts are proven, the inciter needs to be held liable for incitement to the completed criminal offence, even if the actions of the incitee are interrupted and only reach an attempted form.

549. In addition, the legal qualification in the Indictment, that of "incitement to" a criminal offence conflicts with one of the main contentions of the Prosecution, namely that **D.D.** and **O.I.** acted as leaders. If such circumstance would have been established, they, based on their authority, would have "ordered" the actions, not "incited" to them. However, since the Prosecution's case was not proven, further discussions on the matter are redundant.

550. As considered above, the Trial Panel could not establish as proven beyond a reasonable doubt the facts giving rise to these charges against the two Accused.

551. The *actus reus* in criminal law consists of all elements of a crime other than the state of mind of the Defendant.

552. The *actus reus* of the criminal offenses the Defendants are charged with under the three counts in the Indictment could not be established. The *actus reus* is, therefore, not met under the legal standard and both Defendants cannot be considered criminally liable.

553. Since the objective elements of the criminal offences in the law in force at the time the acts were committed were not found, it is superfluous to analyse what the constitutive elements of such offences are under the subsequent criminal codes, since "[t]he law in effect at the time a criminal offence was committed shall be applied to the perpetrator" (Article 2(2) of the CCK).

554. Therefore, the Defendant **O.I.** is found not guilty and acquitted, according to Article 364 paragraph 1 subparagraph 1.3 CPC.

555. Similarly, the Defendant **D.D.** is also found not guilty and acquitted, according to Article 364 paragraph 1 subparagraph 1.3 CPC.

## **Subchapter B2: Analysis regarding the Accused N.V.1, I.V. and A.S.L.**

### **II. B. 2.1. Facts**

556. The Panel reiterates that the Defendants **N.V.1, I.V. and A.S.L.** are charged only in relation to the attack on the A.1 family's apartment. Moreover, they are charged for committing the criminal offenses in co-perpetration. A large part of the evidence administered by the Prosecution against them, as well as the evidence adduced by the Defendants **N.V.1 and I.V.** is common. Therefore, their situation will be addressed jointly below. The Indictment alleges the following:

“on 03/02/2000 at night time in Mitrovica North, acting in co-perpetration upon a previously agreed common plan and in the capacity of members of the paramilitary Serbian group known as ‘Bridge Watchers’ which was under the command of **O.I.**, with the direct intent to kill, launched an attack with the use of explosive devices on the flat located at Lola Ribara Street No 3 occupied by the A.1 and XH. families as a result of which several of their members were murdered or seriously injured, and in particular:

1. on 03/02/2000 at night time the defendants murdered the following persons:
  - a. N.A.1
  - b. N.XH.
2. on 03/02/2000 at night time the defendants took action towards the commission of the offence of a murder but the action was not completed and resulted in the infliction of grievous bodily injury upon the following persons:
  - e. R.A.
  - f. N.A.2
  - g. A.A.2

h. E.XH.

3. on 03/02/2000 at night time the defendants took action towards the commission of the offence of a murder against the following persons but the action was not completed:

f. S.A.2

g. U.A.

h. She.A.

i. V.A.

e. G.XH.”<sup>522</sup>

557. The main Prosecution witnesses heard in relation to these three Defendants are the occupants of the A.1 family’s apartment, namely: G.Xh., R.A., S.A.2, Sh.A., V.A., A.A.2

558. Defendant **A.S.L.** chose not to administer any evidence in the form of witness testimony.

559. Defendants **N.V.1** and **I.V.** called the same seven witnesses.

560. All three Defendants testified before the Panel and specifically refuted the contention that they were in the corridor during the attacks.

561. For the considerations presented in detail above in this judgement, the statement of Sh.A. is not deemed reliable and that of V.A. may only be used to establish facts corroborated by other reliable evidence.<sup>523</sup>

562. Witnesses G.Xh., R.A., S.A.2 and A.A.2 did not offer any details which can link the three Defendants to the attacks. Witness R.A. stated that she noticed **N.V.1** in the crowd gathered in front of the building before the commencement of the attacks. The crowd was chanting “*Kill Albanians*”, but **N.V.1** was not chanting along.<sup>524</sup> This evidence cannot be conclusive of any relevant facts.

563. Witness S.A.2 – N.A.2’s wife – confirmed that they had very good neighbourly relations with the Defendants.<sup>525</sup>

564. None of the witnesses deemed reliable noticed any of the three Defendants that night.

565. All three Defendants were neighbours of N.A.2. They were all living on the third floor in the same apartment building. **I.V.** and **N.V.1** are father and son and they lived in the same

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<sup>522</sup> Indictment, pp. 6-7, English version.

<sup>523</sup> See paras. 370-433 above.

<sup>524</sup> R.A., Record of the main trial, 24 April 2015, para. 42 *et seq.*

<sup>525</sup> S.A.2, Record of the main trial, 27 April 2015, para. 238 *et seq.*

apartment. Their apartment was separated only by a wall from N.A.2's apartment. Witness N.V.4 is N.V.1's sister and I.V.'s daughter respectively. Witness R.V. is N.V.1's mother and I.V.'s wife respectively. They both testified that, on the critical evening, they were home together with I.V. when they learnt about the explosion in the Bel Ami coffee shop. They realized that N.V.1, who was out and frequently went to that coffee shop, could have been harmed in the explosion. Both R.V. and N.V.4 stayed home.<sup>526</sup>

566. After leaving the apartment, I.V. went out to look for his son. He found him in the vicinity of the coffee shop. He had not been caught in the explosion and he had helped with the wounded. They headed home together, but in the meantime the crowds started to gather in the streets. They could not get into their staircase as unknown persons were blocking the access. They spent a couple of hours in front of the building until the international forces arrived and granted access. When they arrived in the apartment, UNMIK police was already there.<sup>527</sup>
567. While in the apartment, R.V. and N.V.4. came under gun fire. The shots came from the direction of the front door and one nearly hit N.V.4. They took refuge on the balcony until UNMIK police arrived.<sup>528</sup>
568. Witnesses M.T. and B.G. confirmed that the next day they saw traces of bullets and shrapnel that had damaged the V.2's apartment.<sup>529</sup>
569. In the Panel's view, it defies logic that someone would participate in a grenade offensive against the next door apartment, endangering his own family who was in close proximity of the attack.
570. Defendant A.S.L. also came to learn about the explosion and spent his evening at the hospital where he donated blood.<sup>530</sup> In support of his statement, he produced a certificate of

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<sup>526</sup> I.V., Record of the main trial, 10 December 2015, para. 9; N.V.1, Record of the main trial, 9 December 2015, para. 424 *et seq.*; R.V., Record of the main trial, 24 November 2015, para. 24 *et seq.*; N.V.4, Record of the main trial, 23 November 2015, para. 20 *et seq.*

<sup>527</sup> I.V., Record of the main trial, 10 December 2015, para. 9; N.V.1, Record of the main trial, 9 December 2015, para. 427; R.V., Record of the main trial, 24 November 2015, para. 64 and 77-78; N.V.4, Record of the main trial, 23 November 2015, para. 26 *et seq.* and 78.

<sup>528</sup> R.V., Record of the main trial, 24 November 2015, para. 56-64; N.V.4, Record of the main trial, 23 November 2015, para. 20-26

<sup>529</sup> M.T. Record of the main trial, 10 November 2015, para. 46 and B.G., Record of the main trial, 23 November 2015, para. 212

<sup>530</sup> A.S.L., Record of the main trial 10 December, para. 254-255

blood donor.<sup>531</sup> Upon his return home, he noticed traces of the attack in the staircase. His own door was off the hinges.<sup>532</sup>

571. The Defendants' decision to testify or to administer evidence has not created any burden on them to prove their innocence. Rather, the Trial Panel had to determine whether, notwithstanding the evidence of the Accused, the Prosecution's evidence is sufficiently strong to meet the required standard for a conviction.<sup>533</sup> This requirement has not been met when it comes to establishing the involvement of the Defendants in the attacks.

572. Furthermore, no reliable evidence was presented that connected any of the Defendants to the activities of the Bridge Watchers.

573. Based on the evidence assessed above it could not be established beyond reasonable doubt:

- I. That **N.V.1, I.V.,** or **A.S.L.** had the capacity of member of the paramilitary Serbian group known as "Bridge Watchers"
- II. That on that occasion, **N.V.1, I.V.** and **A.S.L.** acted in co-perpetration upon a previously agreed common plan and launched an attack with the use of explosive devices on the above mentioned flat.

## **II. B. 2.2. Law**

574. The above established events occurred in February 2000, when the applicable law was the Criminal Law of the Socialist Autonomous Province of Kosovo (CLSAPK).

575. The three Defendants are charged with three counts of "aggravated murder" and "attempted aggravated murder".

576. According to Art. 30 (2), CLSAPK:

*2) The term of imprisonment of at least ten years or death penalty shall be pronounced against:*

*1) Whoever takes another person's life in a brutal or cruel manner;*

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<sup>531</sup> See Court Binder X, Main Trial, tab 5.

<sup>532</sup> **A.S.L.**, Record of the main trial 10 December, para. 255

<sup>533</sup> *Prosecutor v. Vasiljević*, Trial Judgement, para 13.

- 2) *Whoever takes another person's life and in doing so intentionally endangers the life of one or more persons;*
- 3) *Whoever takes another person's life for his own benefit, to commit or to hide other criminal acts, for ruthless revenge or other basic motives;*
- 4) *Whoever takes another person's life for vendetta;*
- 5) *Whoever takes another person's life with ruthless behaviour;*
- 6) *Whoever takes the life of an official person or military officer during the performance of his duty, or law enforcement, arresting an offender of a criminal act or guarding an arrested person or a person who takes another person's life during the performance of the tasks and duties which he carries out under the law or other provisions to when he is defending society.*

577. As considered above, the Trial Panel could not establish as proven beyond a reasonable doubt the facts giving rise to these charges against the three Accused. It has not been established by the Prosecution that any of the Defendants are criminally liable for any of the offences charged in the Indictment.

578. Since the objective elements of the criminal offences in the law in force at the time the acts were committed were not found, it is superfluous to analyse what the constitutive elements of such offences are under the subsequent criminal codes, since “[t]he law in effect at the time a criminal offence was committed shall be applied to the perpetrator” (Article 2(2) of the CCK).

579. Therefore, the Defendant **N.V.1** is found not guilty and acquitted, according to Article 364 paragraph 1 subparagraph 1.3 CPC.

580. Similarly, the Defendant **I.V.** is also found not guilty and acquitted, according to Article 364 paragraph 1 subparagraph 1.3 CPC.

581. And the Defendant **A.S.L.** is also found not guilty and acquitted, according to Article 364 paragraph 1 subparagraph 1.3 CPC.



### **III. CALCULATION OF DETENTION**

582. For defendant **O.I.**, with a view to his conviction for Count 1, the time spent in detention between 27 January 2014 and 18 September 2015 and the time spent in house detention from 18 September 2015 until the present day is to be credited to the duration of the punishment, pursuant to Article 83 paragraphs (1) and (4) of the CCK in conjunction with Article 365 paragraph (1. 5) CPC.

### **IV. COSTS OF PROCEEDINGS**

583. According to Articles 450-457 CPC and Article 365 paragraph 1.6 CPC the accused **O.I.** shall reimburse 750 (seven hundred and fifty) Euro as part of the costs of criminal proceedings while any remaining cost of the criminal proceedings shall be paid from the budgetary resources.

### **V. PROPERTY CLAIMS**

584. According to Article 365 paragraph 1.6 CPC, the Injured Parties : Xh.S., Sh.K.1, K.A., as well as R.A., S.A.2, E.Xh., G.Xh., Gj.S., Sh.C.2, L.A.2, H.S.1, H.R., M.H.1 and U.A. are instructed that they may pursue their property claim in civil litigation pursuant to article 463 Paragraph (1) CPC.

585. The Panel will not address the property claim by M.Ll. since he does not have the capacity of injured party in this case.

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**Roxana Comsa**

**EULEX Presiding Judge**

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**Nuno de Madureira**

**Panel Member**

**EULEX Judge**

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**Vitor Pardal**

**Panel Member**

**EULEX Judge**

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**Asja Zujo**

**Recording officer**

*Authorised persons have the right to file an appeal against this judgment within 15 days of the day the copy of the judgment has been served (Article 380 Paragraph (1) CPC).*

Drafted in English original version.