

District Court of Prizren

C. No. 45/2002

IN THE NAME OF THE PEOPLE

The District Court of Prizren in a panel composed of International Judge Georg Plüür as presiding judge and International Judge Raymond Levy and Judge Genc Nixha as members of the panel, assisted by the recording clerks Ms. Eileen Byrne and Ms. Maria Lenie Velasquez, deciding in the penal case against the accused Sasa Grkovic, of father Mihajlo and mother Miroslava Millenkovic, born on 15 June 1971 in Prizren, permanent residence Rahovec, Ustanicka Str., 28, of Serb nationality, single, hotelier of occupation, of medium economic status, no criminal record, in detention since 2 June 2001, and accused of the criminal acts of War Crimes against the Civilian Population as per Article 142 in combination with Article 22 of the Criminal Code of the Socialist Federal Republic of Yugoslavia ("CCY"), according to the indictment of the International Public Prosecutor of Prizren, No. PP No. 132/2001, dated 19 February 2002, and later amended at the main trial on 2 September 2002, after having held the main hearing in public on 29 and 31 July and 2, 5, 7, 9, 12, 14, 16, 19, 22, and 23 August and 2 and 4 September 2002, all in presence of the accused, his defense attorneys, Miodrag Brkljac, Zivojin Jkanovic, Milorad Panjevic and the International Public Prosecutor, Christopher Maxwell, and all in the District Court of Prizren except for the hearing on 21 August 2002, which was held in the District Court of Belgrade, in a public session in the presence of the International Public Prosecutor of Pristina Christopher Maxwell and of defense counsel for the accused, Miodrag Brkljac, and which was read into the record of the main trial on 22 August 2002, pronounced in public on 04 September 2002 the following:

VERDICT

The accused Sasa Grkovic, of father Mihajlo and mother Miroslava Millenkovic, born on 15 June 1971 in Prizren, permanent residence Rahovec, Ustanicka Str., 28, of Serb nationality, single, hotelier of occupation, of medium economic status, no criminal record, in detention since 02 June 2001, charged with War Crimes against the Civilian Population as per Article 142 and in combination with Art. 22 of the CCY applicable with UNMIK Regulations 1999/24 and 2000/59

IS FOUND NOT GUILTY

Because of a lack of evidence in accordance with Article 350, Paragraph 3 of the LCP.

Therefore, the accused, Sasa Grkovic, is

ACQUITTED

Of the charges from the Bill of Indictment , PP No. 132/2001, dated 19 February 2002, that he during the armed conflict in the Prizren region during the March 1999, and during the war in Kosovo from 24 March 1999 to 12 June 1999 in the territory of the Prizren region and in the villages of Mamusa, Mala Krusa, Celine, Nogavac, and Bella Cerke violated international law for the following acts: (1) on March 27, 1999 in the village of Mamusa, the accused, while in

an armed group of sixteen uniformed Serb personnel intentionally murdered four Kosovar Albanians: Ramadan SADIKU, Shaban SADIKU, Sulejman SADIKU, and Muharrem SADIKU; (2) on 25 March 1999, the accused, Sasa Grkovic, while a member of an armed group of uniformed Serb personnel in the vicinity of Bella Cerke did participate in the wanton destruction of houses and property, the forcible eviction of villagers, and he took part in a massacre of 33-38 unarmed civilians at Ura e Ballaje bridge as well as 13 other civilians by shooting them with automatic weapons, including Nesim Popaj, Agon Popaj and Shendet Popaj; (3) on the 26th of March 1999, the accused, Sasa Grkovic was a member of an armed group of uniformed Serb personnel which rounded up and took hostage over 100 unarmed Kosovar Albanian citizens in the village of Mala Krusa and lined them up against a wall and shot inhumanly and indiscriminately at them which resulted in a considerable number of deaths; (4) on 28 March 1999, the accused, Sasa Grkovic, wearing a camouflage uniform and bearing an automatic rifle, was in a large group of uniformed Serb personnel who willfully destroyed identity documents and robbed villagers of Celine and Nogavac of money and other valuables at gunpoint and (5) on 26 March 1999 the accused, Sasa Grkovic, participated as a member of an armed uniformed group of Serb personnel in a massacre of Kosovar Albanian civilians in the village of Celine.

Detention is terminated according to Article 353 Paragraph 3 of the LCP.

According to Article 108, Paragraph 3 of the LCP, the injured parties are instructed that they may pursue their property claims in a civil lawsuit.

Based on Article 99, Paragraph 1 and in connection with Article 95, Paragraph 2, items 1-5 of the LCP, the costs of the criminal proceedings, including the necessary expenses of the accused and necessary expenses and remuneration of the defense counsels, have to be paid from the court's budget.

REASONING

I. INTRODUCTION

A. The Indictment

On 19 February 2002, the International Public Prosecutor for Prizren filed an indictment, PP. No. 132/2001, naming Sasa Grkovic as the accused. The indictment alleged that Sasa Grkovic committed criminal acts constituting war crimes against the civilian population under Article 142 of the Criminal Code of Yugoslavia (CCY). The indictment was amended during the course of the closing arguments by the Public Prosecutor. Article 142 of the CCY is the applicable law in this the criminal proceeding, as per UNMIK Regulation 1999/24, "On the Law Applicable in Kosovo," and amended by UNMIK Regulation 2000/59. According to the indictment, the acts committed by Sasa Grkovic took place in various villages in the region of Prizren and constituted war crimes.

1. Charges Against Grkovic

The indictment charged Grkovic with a single count of war crimes on the basis of the following acts:

- First, the indictment – after being amended - alleges that on March 25, 1999, in the village of Bella Cerke, Grkovic participated in the destruction of houses and property, the eviction of villagers and the massacre of thirty three to thirty eight civilians, as well as thirteen others, by shooting them with automatic weapons.
- Second, the indictment alleges that on March 26, 1999, in the village of Mala Krusa, Grkovic was a member of an armed group of uniformed Serb personnel which rounded up over one hundred civilians and shot indiscriminately at them, causing a considerable number of deaths.
- Third, the indictment, after being amended, alleges that on March 28, 1999, in the villages of Celine and Nogavac, Grkovic was among a group of uniformed Serb personnel that destroyed identity documents and robbed villagers of Celine and Nogavac of money and other valuables at gunpoint.
- Fourth, the indictment alleges that on March 27, 1999, in the village of Mamusa, Grkovic, while in an armed group of 16 uniformed Serb personnel, intentionally murdered four civilians.
- Finally, the indictment, after being amended, alleges that on March 26, 1999, in the village of Celine, Grkovic, as a member of a group of uniformed Serb personnel, participated in a massacre of civilians.

2. Detention of Grkovic

Pursuant to the order of a local Investigating Judge, Sasa Grkovic was arrested on 2 June 2001 and has been detained from the date of his arrest until the present.

B. Competence of the Court

1. Competence of the Prizren District Court

The Prizren District Court is the competent judicial body to hear this criminal proceeding.

Under the Yugoslav Law on Criminal Procedure, Article 22, subject matter jurisdiction for criminal cases is determined by the law of the relevant republic or autonomous province. The Kosovo Law on Regular Courts (“LRC”), Article 29, states that District Courts are competent to hear criminal cases involving charges for which the law allows the imposition of a penal sentence of five years or more. Pursuant to Article 26 (1) of the LCP, territorial jurisdiction is proper with the court in the district where a crime is alleged to have been committed.

As set forth above, the charge of War Crimes Against Civilian Population pursuant to CCY 142 allows for the imposition of a minimum sentence of five years of imprisonment. In addition, the indictment in this case alleges that the accused committed war crimes in the villages of Bella Cerke, Mamusa, Mala Krusa, Celine and Nogavac, all of which are located in the Prizren region.

2. Panel Composition

Pursuant to UNMIK Regulation 2000/64, "On Assignment of International Judges/Prosecutors and/or Change of Venue," the Special Representative of the Secretary-General ("SRSG") may order the assignment of international judges and/or an international prosecutor to a criminal proceeding. On 26 July 2002, the Department of Justice (DOJ), acting pursuant to the decision of the SRSG pursuant to UNMIK Regulation 2000/64, designated Judge Georg Plüür, an international judge in the Prizren District Court, as the presiding judge for this matter and Judge Raymond Levy, an international judge in the Gjlane District Court, as a member of the panel. The third judge in the trial panel, Judge Genc Nixha, was designated on 15 July 2002 by the President of the Prizren District Court.

None of the parties objected to this panel composition.

C. The Main Trial Session

The trial was open to the public. At the request of defense counsel, a session was held on 21 August 2002 in the Belgrade District Court. Defense counsel requested a session in Belgrade to hear the testimony of several witnesses who no longer live in Kosovo and refused to testify in Prizren. The court recognized that the accused would have suffered prejudice had he not been able to present witnesses to offer relevant testimony. Accordingly, the court decided to hear testimony of the proposed witnesses in Belgrade, thereby eliminating any security concerns that might have prevented the witnesses from testifying.

In accordance with Article 7 and 8 of the LCP, international interpreters translated court proceedings and all court documents relevant to the trial into Serbian and Albanian, as necessary.

II. THE APPLICABLE LAW

The indictment charged the accused with War Crimes against the Civilian Population under Article 142 of the CCY. This article prohibits ordering or executing various acts against the civilian population during war or armed conflict, if ordering or executing such acts violates international law. Article 142 CCY refers to a range of proscribed acts, including killings, violation of bodily integrity, dislocation or displacement, application of measures of intimidation and terror; forcible labor; property confiscation; and pillage.

III. EVALUATION OF THE CHARGE AGAINST GRKOVIC

Pursuant to Article 142 of the CCY, in order to find Sasa Grkovic guilty of War Crimes Against Civilian Population, the following elements had to be proven: 1) the existence of a war, armed conflict or occupation; 2) the victims of the acts proscribed by the statute are civilians; 3) the defendant ordered the commission of, or performed, said act or acts; and 4) the commission of said act or acts are proscribed by Article 142 of the CCY and are in violation of international law effective at the time of the war or armed conflict.

In addition to ordering the commission of or performing said acts, the accused may be found guilty of War Crimes Against the Civilian Population if he participated in the criminal acts or in any way becomes associated as an accomplice, pursuant to Article 22 of the CCY. This only briefly addresses the first, second and fourth elements, as there are not disputed.

A. The Existence of Armed Conflict

War Crimes against the Civilian Population may only be performed during war, armed conflict or occupation. While war is defined, according to the standard commentary, as armed conflict between states, armed conflict implies an armed conflict between political, national or other forces within the framework of the same state.

It is undisputed that an internal armed conflict existed in Kosovo and the Prizren region between Serbian forces (including the FRY military, Serb police units and Serb paramilitary groups) and the Kosovo Liberation Army (“KLA”) during the relevant time period, March 1999. Certainly, defense counsel never contested the issue of armed conflict. As such, armed conflict existed as required by Article 142 of the CCY, at all relevant times to this case.

B. Victims of the Acts at Issue are Civilians

The Court finds there is no dispute that the victims of the acts relevant to this case were civilians. Civilian population is not actually defined under Article 142 of the CCY, but is defined in the Geneva Convention IV and the Protocols Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (1977) (“Protocols”). These instruments are among the international laws referenced by Article 142 of the CCY and to which FRY is a party. The Geneva Convention IV defines a civilian as one who is taking no active part in the hostilities. The commentary to the Protocols clarifies that civilians are those who are not members of the armed forces or other legitimate combatants.

The victims of these atrocities were taking no part in any hostilities and they cannot be characterized as anything but civilians, even if members of the KLA were in or around the relevant villages at the time of the alleged war crimes. Indeed, defense counsel never argued to the contrary. As such, the Court finds it indisputable that the victims of the relevant alleged acts were civilians.

C. Ordering, Perpetrating or Complicity in the Proscribed Acts.

The indictment charges Grkovic with war crimes based on several acts, as set forth in more detail below. Each of the charges alleges that Grkovic either perpetrated the war crimes or that he was a member of the Serb forces that perpetrated the war crimes. It is this element that is contested in this case.

Pursuant to the Commentary on Article 142 of the CCY, the manner of performing a war crime includes those persons ordering the illegal activities, as well as those implementing the orders. Persons may also, however, be found guilty of war crimes against the civilian population through complicity under Article 22 of the CCY, which provides that “If several people participate in a criminal act or in any way become associated as accomplices, each of them will be punished according to the prescribed punishment.” Moreover, Article 142 requires that those ordering or implementing the illegal activities be members of a military, political or administrative organization taking part in the conflict.

Thus, analysis of this element requires this Court to determine first whether the accused, Sasa Grkovic, perpetrated or was complicit in the charges alleged. It is undisputed

that the accused was a member of the territorial defense as of 25 March 1999. More specifically, the issue is not whether the illegal activities alleged actually occurred, but whether the accused himself perpetrated or was complicit in the war crimes alleged. Serious consideration is given by this Court as to Grkovic's involvement, readily cognizant that the test for "proof beyond a reasonable doubt" is that the proof must be such as to exclude not every hypothesis or possibility of innocence, but every fair or rational hypothesis which may be derived from the evidence, except that of guilt.

As set forth in great detail below, this Court has considered all the admissible evidence submitted by the parties, including the testimony of the accused, eyewitness testimony (including an evaluation of the investigation process in terms of its impact upon the reliability of subsequent eyewitness identifications), alibi witness testimony, and the admissible documentary evidence, as well as a crime-scene visit, and the arguments of the International Public Prosecutor and Defense Counsel. Based upon all the evidence submitted, this Court concludes that it cannot find the accused guilty beyond a reasonable doubt of War Crimes Against the Civilian Population.

1. Eyewitness Identification Process

Before evaluating the evidence submitted for each of the specific allegations contained in the indictment, due consideration must first be given to the accuracy and fairness of the entire eyewitness investigation process, as it is a critical factor in evaluating the reliability of the eyewitness testimony. As discussed in detail below, this Court finds that the identification process was seriously flawed in and of itself, calling into question the reliability of even the first identifications. Moreover, the subsequent identifications are also found to be inherently unreliable as they are at that point not an independent identification. As such, the Court cannot give great weight to the identification evidence.

This Court would like to make it clear at the outset that while it is recognized that the KFOR and UNMIK police reports are not admissible as evidence in the Court file as such, the testimony elicited through the process of using such reports for confrontation purposes is admissible evidence. Moreover, in order to evaluate the credibility of subsequent identifications by the eyewitnesses, it is critical for this Court to first evaluate the initial identification procedures followed by KFOR and UNMIK police.

As the eyewitness testimony bears out, initial eyewitness statements were taken by KFOR in 1999 after the war. Later, UNMIK police took additional statements in 2000 and finally the Investigating Judge undertook his own investigation, including an in person line-up in August of 2001.

a. KFOR and UNMIK Police Photo Identification Process

A review of the Court file indicates that KFOR investigators visited several potential witnesses after the war to take their statements and to have them review photographs to see if they could identify any of the perpetrators or members of the forces involved in the war crimes.

The most serious problem noted by the Court with respect to these statements is the serious lack of detail and accuracy in the KFOR reports. The reports are for the most part superficial and in many instances non-existent. Many of the witnesses testified to having been visited by KFOR investigators to look at photos on multiple occasions, yet most often there is only one report in the Court file. Without reports for the other visits, this Court can

only guess at what was said to the witnesses, if any instructions were given to the witness, if the witness was told that the photos shown may not contain one of the suspects, how many photos were displayed and of which suspects, and whether the photos were suggestively displayed, just to name a few of the factors to be considered in evaluating the accuracy and fairness of a photo array. Where reports did make it to the file, they were woefully lacking in details and, as it turned out, many of the details were disclaimed at trial by the witnesses, thereby calling into question the accuracy of the information reported. Notably, not one of the KFOR reports documented what photos were shown to the witnesses and/or attached the photos of the suspects identified.

The second problem associated with these photo identifications is the simple fact that in many cases, witnesses were shown photos on several occasions, rather than once. The implication of such a process is that the investigators kept returning to the witness until the witness identified those suspects that KFOR was investigating. Subsequent witness statements attest to this problem. For example Sadiku Zarrife, stated "Police showed me the photos and I had the impression that I had identified the suspect." Once the witness has identified someone that s/he believes is the suspect, s/he will continue to try to identify that person, thereby undermining the reliability of any subsequent line-ups including in person line-ups. This problem is evidenced by the statement of Nervhivane Rexhepi who asserted "police showed many photos to me and I identified one as the suspect. Today I intend to identify the same person."

The lack of an accurate and fair identification process by KFOR was even noted by an UNMIK police officer who worked on the investigation. Mr. John Eisler stated that upon a review of the interviews conducted by KFOR, he had serious misgivings about the quality of the work. Mr. Eisler stated that, for example, there was no continuity in the investigators that followed up with witnesses. In addition, he noted that an investigator can intentionally or unintentionally inject a desired response by asking leading question and he concluded that is exactly what happened in at least one instance, an interview with Mr. Zhuniqi.

The subsequent police investigations suffer from similar inadequacies as with the KFOR investigations cited above. Additionally, this Court would note that these additional police investigations only compound the reliability issues associated with serial photo arrays already discussed above.

Accordingly, not only does this Court find it difficult to rely upon the accuracy of the reporting, but this Court has serious misgivings about the reliability of the identifications made during the process and about subsequent identifications given by the witnesses because of the inherent suggestive nature of making witnesses undergo several photo arrays with virtually no controls in place.

b. Court Investigation – In Person Line-up

After the accused was arrested and detained and as part of the court investigation, an in person line-up was organized at Camp Phoenix on 20 August 2001. In addition to the accused, six German soldiers were chosen to participate in the line-up. All persons chosen had dark hair, they were according to the documentary approximately 185-195 cm, tall, slender and were between the ages of 25 and 35. They were all dressed similarly and they changed numbers each time they were viewed by one of the witnesses. Despite these controls, the Court finds that several additional measures were not taken to ensure a fair and reliable identification.

First, there is nothing in evidence to indicate what if any instructions were given to the witnesses. Among other things, it is important to instruct witnesses that the suspect may not be one of those participating in the line-up. By doing this, one avoids the likelihood that a witness will simply pick out the person that they think is likely to be the suspect. It is equally important to make sure, that the witnesses give a detailed description of the person that they witnessed commit the crime prior to making any identifications. Doing this, helps ensure that the witness is not just picking the most likely culprit. Moreover, there is no indication that anything more than superficial questioning of the witnesses took place in connection with the witness identifications to determine the certainty and reliability of the witness' identification.

Second, as touched upon above, by the time the in-person line-up was done, the witnesses had already been through several interrogations and identified various suspects. This fact alone diminishes the reliability of an identification at this stage in the process.

Additionally, although the persons chosen to participate in the line-up were described and having dark hair, 185-195 cm in height, slender, and between the ages of 25 and 35, they did not closely resemble the accused. One witness monitored the in person line-up as a Legal Systems Monitor from the Organization for Security and Cooperation in Europe. Ms. Carmela Buehler testified at trial that although she was not informed who the accused was, she was able to identify him easily from the line-up. According to Ms. Buehler, the accused was the only Slavic looking of the persons in the line-up and looked thinner and more pale than the rest. A review of the pictures of the line-up, which were notably missing from the file until shortly before trial, supports Ms. Buehler's conclusion strongly.

In short, this Court finds that the accumulation of photo arrays followed by an in-person line-up contribute to the unreliability of the in-person line-up. Taken together with the fact that the Court is provided with a lack of records as to instructions given by the Investigating Judge, the superficial questioning of the witnesses concerning their identification, and the suggestiveness of using all German soldiers to participate in the line-up, this Court finds that the in person line-up is inherently suggestive and as such accords these identifications little weight in determining whether the accused participated in the war crimes as charged. With this in mind, the Court examines the evidence presented with respect to each of the five charges against the accused for War Crimes Against Civilian Population.

2. Testimony of Grkovic

At trial, the accused, Sasa Grkovic, denied all the charges against him stating that he had nothing to do with it. The accused explained that he was mobilized on 25 March 1999 through 12 June 1999, which was proved by his military booklet. Pursuant to a summons, he reported to the reservoir in upper Orahovac on the 25th of March as part of the territorial defense forces. He was previously assigned a gun and a uniform. The uniform was a uni-color olive SMB uniform. Grkovic testified that he was assigned to the 4th of July Building in upper Orahovac as a security guard and that he stayed there for the first ten days of the conflict. He testified that he spent his entire time from 24 March to 28 March 1999 between the 4th of July building and his coffee bar, which was located only 40 meters away. Grkovic unbelievably testified at trial that he was not even unaware of any massacres occurring in the surrounding villages during the war until such time as he was detained in connection with the charges against him.

The accused also testified that there are other Sasa Grkovic's that lived in the area and for whom he could possibly have been mistaken. One Sasa Grkovic was also a member of the territorial defense and his father's name is Panta. This Sasa is one year younger than the

accused and he believes that this Sasa physically resembles him. He also testified that there is another Sasa Grkovic, whose father's name is Bogoljub, and he was a member of the Serb special police unit.

The report of the house search done on 1 October 2001, which was read into evidence, found no evidence of the accused's military uniforms or weapons or any other indicia of his involvement in the military or in the conflict in March 1999.

Even if this Court discounts the testimony and evidence submitted by the accused in his defense in its entirety, this Court still could not find the accused guilty beyond a reasonable doubt of War Crimes Against Civilian Population. Nevertheless, this Court considered the testimonial and documentary evidence submitted by the accused in his defense and takes this opportunity to highlight its skepticism toward the evidence. First, given that the accused had been issued a weapon and uniform over a year prior to the criminal acts alleged in the indictment, it is certainly possible that the accused had an opportunity to participate in the acts alleged even as early as on the 25th of March. Second, this Court finds it odd that the accused chose not to retain any indicia of his military service. Third, even though there are other Sasa Grkovic's in the area, the evidence shows that none resemble the accused. Finally, this Court finds it inconceivable that the accused, or for that matter anyone living in the Prizren region of Kosovo, could remain for over two years completely unaware of the massacres waged against the civilian population during the war, particularly in light of the war crimes trials that have preceded this.

Despite the Court's skepticism toward the testimony and evidence submitted by the accused, the prosecutorial evidence submitted simply does not prove beyond a reasonable doubt that it was the accused, Sasa Grkovic, that perpetrated or was complicit in the criminal acts alleged.

3. Alleged Acts of the Accused in Mamusa on March 27, 1999.

The indictment specifically alleges that on March 27, 1999, the accused, while in an armed group of sixteen uniformed Serb personnel intentionally murdered four Kosovar Albanians: Ramadan SADIKU, Shaban SADIKU, Sulejman SADIKU, and Muharrem SADIKU. The indictment offers no details regarding Grkovic's alleged participation in these acts.

The only witness to testify in relation to the allegations against the accused in Mamusa, was, Zarrife Sadiku. This Court notes that it is perfectly reasonable for the Court to rely upon the testimony of a single witness on a material fact without need for corroboration.

Mrs. Sadiku is an elderly woman of about 63 years, with a heart condition. She testified at trial with the assistance of medical professionals to monitor her well-being. Mrs. Sadiku testified in relative detail about the atrocities committed in her village of Mamusa on March 27, 1999. Four of her family members were killed that day by Serb forces, including three of her sons and the son of her brother in law. Mrs. Sadiku testified that there were approximately 16 Serb police that were in the courtyard where her sons were murdered. She also testified that the uniforms worn by the Serb forces were all different and that some were wearing paint on their faces. Mrs. Sadiku did not actually see the shootings, but could hear the bursts of shots a few minutes after leaving the courtyard and moving on, as order to do by the Serb police.

Mrs. Sadiku stated that she was approximately four meters away from one policeman who went to her son first and that she looked at him attentively to see what he was doing to her son. She stated that he was wearing a camouflage uniform. It is this policeman that Mrs. Sadiku previously identified as the accused, but notably failed to identify in court at the main trial.

There is no dispute that Mrs. Sadiku's family members were murdered by Serb forces. The only question lies in whether Mrs. Sadiku's identification of the accused is reliable evidence such that this Court can find "beyond a reasonable doubt" that the accused is guilty of War Crimes Against Civilian Population for these murders.

a. Identification of the Accused

Mrs. Sadiku's eyewitness testimony is inconsistent and unreliable. Mrs. Sadiku testified that she had been shown binders containing photos of about 250 persons for identification purposes on at least two or three previous occasions and that she had identified the accused, Sasa Grkovic, as having been with the Serb forces that killed her sons. Unfortunately, there are no such KFOR reports to confirm that. The Court points out that certain KFOR notes confirm at least one statement was taken of Mrs. Sadiku and that she identified the accused. However, no evidence was submitted as to the controls associated with the photo identification process, for example what photos were shown to Mrs. Sadiku, when the photos were shown to her, what was said to her and what her reply was, or any kind of independent description of the perpetrator given by the witness.

The evidence submitted does show that Mrs. Sadiku viewed an in person line-up on 20 August 2001 at Camp Phoenix and described the suspect as tall and skinny and then identified the accused, Sasa Grkovic. The minutes of the interrogation taken of Mrs. Sadiku on that day do not indicate exactly what she was told prior to viewing the in person line-up.

A year later, during the main trial, Mrs. Sadiku was asked to identify the man that she saw in Mamusa on 27 March 1999. However, she could not identify anyone and described the perpetrator as being dark skinned and not a big one, just a normal one – a description clearly contrasting the accused.

Taken together, the investigation process and the consequent identification of the accused by Mrs. Sadiku are inherently unreliable. First, there is no indication as to how the photo arrays were displayed to Mrs. Sadiku and what was said to her or even when it was done. There is a short notation of only one statement taken. There is no report of that statement, let alone a report of the subsequent photo arrays given to the witness. It cannot be proved whether the photo arrays were displayed in a fair and not suggestive manner. More importantly, the fact that the witness was asked to review photos on two or three separate occasions would indicate to the court that the photo arrays were suggestive.

Second, although the witness did identify the accused in the in person line-up, there are several problems associated with the fairness and accuracy of the line-up, as discussed above. In particular, from Mrs. Sadiku's statement on 20 August 2001, it appears that she simply identified the man that she previously identified in the photos. Her statement that "police showed me the photos and I had the impression that I had identified the suspect", implies that she believed from the police that she correctly identified their suspect, rather than simply identifying the man that she saw at the massacre in Mamusa. In addition, there is no indication of what, if any, instructions were given by the interrogating judge in order to ensure a fair and accurate identification. The fact that the witness testified at trial that the

Investigating Judge only told her to look at the line-up and to point the one out who she believed did it strongly suggests that she was not instructed that the suspect may not be in the line-up. If the witness was not instructed, it is entirely likely that she determined that the suspect was indeed one out of the six in the line-up and that she chose the most probable one, or, even more likely, the one she had recognized in previous photos. Additionally, composition of the line-up was suggestive. The persons included in the line-up were German military soldiers, most of whom appeared heavier and healthier looking than the accused, who had been in detention by that time for almost three months. When done in this manner, it is easy to choose the most likely suspect, rather than the actual person that she saw with the Serb forces in Mamusa.

Third, when instructed by the Court at trial to look around the courtroom to see if she could identify the accused, she could not identify him. Notably, the Court also instructed her that the man she saw at the massacre in Mamusa may not even be in the courtroom.

Although Mrs. Sadiku stated that she had a good look at the man with her son, it is clear that her identification of the accused is not reliable under the circumstances outlined above. The Court would note the difficulties associated with identifying one man out of sixteen that she saw in Mamusa, many of whom had their faces painted, and who were verbally and physically assaulting her family. Indeed, Mrs. Sadiku testified that her husband, who was also present at the time and directly spoke with the Serb personnel, never identified the accused.

Taken as a whole, there is a serious lack of reliable identification evidence for this charge. Thus, the court is unable to find beyond a reasonable doubt that Grkovic is guilty of having participated in the acts alleged to have occurred in Mamusa.

4. Alleged Acts in Bella Cerke on March 25, 1999.

The indictment states that on 25 March 1999, the accused, Sasa Grkovic, while a member of an armed group of uniformed Serb personnel in the vicinity of Bella Cerke did participate in the wanton destruction of houses and property, the forcible eviction of villagers, and he took part in a massacre of sixty five unarmed civilians at Ura e Ballaje bridge by shooting them with automatic weapons, including Nesim Popaj, Agon Popaj and Shendet Popaj.

Several witnesses testified in relation to this charge against the accused, including Fidaije Popaj, Sabri Popaj, Zejnel Popaj, Isuf Zhuniqi, Dashnor Popaj, and Shykri Gashi. As to the specific events of this tragedy, all of the witnesses tend to be fairly consistent and there is no question that the events occurred. Specifically, the witnesses described the early morning arrival of Serb forces that burned the houses in the village and took their valuables, as well as two main events comprising this massacre of civilians.

a. The Massacre of the Spahiu and Zhuniqi Families

The first was the murder of two families some distance from the bridge. In that massacre, thirteen members of the Gjemel Spahiu and Clirim Zhuniqi families were murdered at the hands of Serb forces. **Isuf Zhuniqi** testified that he heard the burst of shooting in connection with the murder of these families, but he did not see it. **Sabri Popaj** initially testified that he was approximately 80 meters away when the Serb police killed the Spahiu and Zhuniqi families and later testified the crime scene that it was approximately 150 meters.

At trial, Sabri Popaj added that he had binoculars with him that day and he saw that it was the accused that killed the Spahiu and Zuniqi families.

b. The Massacre at Ura e Bellaje Bridge.

Sabri Popaj testified that it was the same group of Serb police who then went to the railroad tracks and killed the group of Albanian men at Ura e Bellaje bridge. However, Sabri Popaj concedes that he did not actually see the massacre.

Isuf Zhuniqi, one of the few survivors at the massacre at Ura e Bellaje bridge, testified at trial that there were about 15 Serb police, dressed in camouflage uniforms, that rounded up the men and women and separated the men apart. The women were told to go to Xerxe. The men were ordered to take off their clothes. The Serb forces took their money, searched them and beat them. He stated at trial that one man, Nenad Matic, hit the son of his uncle on the head with his boots, breaking his skull. Mr. Zhuniqi also testified that Nenad Matic took his son from him and threw him on the railroad tracks. Ultimately, there were two groups of men from opposite sides of the river that were joined together. Mr. Zhuniqi testified that one of the Serb police was the accused and he took the son of Sabri Popaj (Agon Popaj) from the arms of his mother (Fidaije Popaj) and shot and killed both Shendet Popaj and his uncle, Nesim Popaj. Shortly after this, all the men were ordered to the river and the Serb police shot them all in the back as they walked toward the river. Those villagers that were visibly alive were then shot again at close range. Isuf Zhuniqi was one of eight or nine that survived. In his instance, he was hidden under several corpses near a rock and managed to live despite being shot in the shoulder. The massacres Mr. Zhuniqi described are not in question. Unfortunately, Mr. Zhuniqi's trial testimony is called into question with respect to his identifications, as he has identified several different people that he believes killed Nesim and Shendet Popaj and the same is true for his identification of the person who killed the son of his uncle, as detailed below.

Fidaije Popaj testified that although she did not actually see the massacre, she saw the events leading up to the massacre. She also described how her son, Agon Popaj, was taken from her and alleged that the man that took her son away was the accused, Sasa Grkovic.

Similar testimony came from another survivor, **Zejnel Popaj**, who also survived the massacre. However, Zejnel testified that there were two people that killed Nesim and Shendet Popaj. He also testified that there were a few Serb police that took Agon Popaj from his mother, Fidaije Popaj. He thought the man that took Agon away was tall, but he was not sure if he could recognize the man.

The above testimony regarding the massacre is also confirmed by two younger villagers, **Dashnor Popaj** and Shykri Gashi, who were able to hide from the Serb forces. Dashnor Popaj was able to hide behind the bridge at about ten meters away before the shooting started and watch the events unfold. He described Nesim and Shendet being shot, but does not recall if it was one or two police that shot at them. He stated, however, that he was able to get a very good look at the Serb forces, which were wearing camouflage uniforms, and the accused was not among them.

Similarly **Shykri Gashi** gave detailed testimony regarding the events. He confirmed the testimony of the other witnesses as to the events. Mr. Gashi was separated into the group of men and described the Serb police as wearing camouflage uniforms and some wore paint on their faces. He witnessed the shooting of Nesim and Shendet Popaj and testified that they were killed by two different police. Mr. Gashi described the man who shot Nesim as being fat

and very clumsy. The man who shot Shendet was young and had a painted face. He stated that he was the last person as they started to shoot and he was able to jump into the creek and move to the other side of the bridge without being seen. Mr. Gashi was unable to either identify the accused from the Criminal Conduct Investigation Unit photo binders ("CCIU binders," compiled shortly after the war and containing 330 photos, including one of the accused) or in the courtroom.

c. Identification of the accused

This Court is confronted with a lot of conflicting testimony about whether the accused was even at the massacre, in addition to the conflicting testimonies as to who killed Nesim and Shendet Popaj. The Court must view this testimony as a whole in order to determine whether it can find beyond a reasonable doubt that the accused was guilty of war crimes.

Isuf Zhuniqi appears to be the witness relied upon most heavily by the International Public Prosecutor, despite the numerous inconsistencies in his testimony and a clear inability to provide the Court with an objective and candid testimony of the massacres and of those persons that he recalled being involved. Such heavy reliance upon the incredibly inconsistent testimony of one witness is misplaced.

Isuf Zhuniqi testified at trial that he had been interrogated many times, including by journalists and by the ICTY, and identified the accused as having killed Nesim and Shendet Popaj. Mr. Zhuniqi was confronted with the KFOR statement of 17 September 1999, where it is unclear whether he identified Sasa Grkovic or Novica Tome Krstic as the alleged perpetrator. In the 27 September 1999 KFOR statement, Mr. Zhuniqi said that Krstic and Grkovic were present during the shooting, but he did not see them shoot anyone. At trial, Mr. Zhuniqi was also confronted with his conflicting statements made only one month later. While the witness could not remember to have told investigators on 28 October 1999 that it was Danilo Bozidar who killed Shendet and Nesim Popaj, he admitted that he might have told them on 1 November 1999 that it was commander Miodrag Andrea Djinic who killed Shendet and Nesim Popaj.

Mr. Zhuniqi was also confronted with his statements to the UNMIK police. On 1 March 2000, he was given the opportunity to review the CCIU binders, which this Court confirmed were the same binders produced in Court, and he did not identify the policeman that killed Nesim and Shendet Popaj. Moreover, he never identified Sasa Grkovic as having even been at the massacre. To add to the confusing identification testimony, in June 2001, UNMIK police investigator John Eisler reported that he showed Mr. Zhuniqi a photo array of six photos that included one of Sasa Grkovic and he was unable to identify him. Subsequently, during the in person line-up on 20 August 2001, Mr. Zhuniqi stated that he told the Investigating Judge that police had shown him photos and that he identified Sasa Grkovic from a black and white photo as having been at Ura e Ballaje bridge. Mr. Zhuniqi went on to identify Sasa Grkovic at the in person line-up as the person who took his son from him and threw him on the railroad tracks. Mr. Zhuniqi testified that after he left the in person line-up he lost consciousness and although he knows he spoke to someone he does not know what he said. He was hospitalized for ten days and explained that his condition was brought on by the strain of what he had undergone and having to confront his past trauma at the in person line-up. Most recently in June 2002, while giving testimony before the ICTY, Mr. Zhuniqi told the Court that it was a regular policeman that killed Nesim and Shendet Popaj. Finally, at trial, the Court displayed to Mr. Zhuniqi the two original binders of CCIU photos and he stated that he did not recall ever having been shown these photos before, even though it is

clear that Mr. Zhuniqui was at the very least shown these photos on 1 March 2000 by the UNMIK police.

In addition to the confusion about who killed Shendet and Nesim Popaj, Mr. Zhuniqui's testimony has been equally confused about who took his son from him and threw him on the railroad tracks. In his statement given to the Investigating Judge on 20 August 2001, he stated that he was absolutely sure that it was the accused that took his son from him and threw him on the railroad tracks. Quite to the contrary, at trial he testified that it was Nenad Matic that took his son from him and threw him on the railroad tracks.

Given his incredibly confusing testimony, it is inconceivable that this Court could place any reliance upon the testimony of Isuf Zhuniqui as to whether the accused was even at the massacre, let alone the person that shot Nesim and Popaj. There is absolutely no evidence before this Court to demonstrate what, if any, controls were placed upon the photo line-ups displayed to Mr. Zhuniqui to ensure that the identifications were fair, independent, and even accurately reported. No photos were attached to the reports to indicate what was shown to the witness or what photos were selected. Moreover, with so many different photo identifications shown to Mr. Zhuniqui at so many different times and by so many different military, police and international investigators, it is impossible to say that any of these identifications can be considered "independent." That is not to say that this Court does not recognize the possibility that Mr. Zhuniqui may think that the accused was at the massacre. Indeed, given the trauma Mr. Zhuniqui underwent and the serious effects that it has had on his health, to the point that he cannot remember what he said at the in person line-up and had to be subsequently hospitalized, it is no surprise that Mr. Zhuniqui's identification testimony is impossibly confused. This fact, however, only contributes to the inherent unreliability of his identification of the accused. Certainly, under these circumstances, these identifications cannot be given much weight by this Court.

Zejnal Popaj testified that he previously identified 16 persons as having been there at the massacre, except for one. None included the accused, Sasa Grkovic. During the first session of his testimony, Mr. Popaj was asked to look around the courtroom to see if he could find anyone that was at the massacre and he was unable to find anyone. Notably, during the courtroom identification procedure, Mr. Popaj pointed to the accused's father, Mijailo Grkovic, and stated that he knows that it was his son who committed the crime at Ura e Bellaje bridge. He was, however, unable to point out the accused in the courtroom, even though he was sitting next to his defense counsel. The Court cannot help but infer from this incident that Mr. Popaj's identification is based upon nothing more than having heard that the accused participated in the crimes. Though Mr. Popaj claimed that he could not see well without his glasses, he clarified that he only needed glasses for seeing close. At the second session of his trial testimony, Zejnel Popaj, reviewed the CCIU binders with the use of his glasses. He stated that he recalled seeing the binders before. Despite the fact that he had never before identified the accused, Mr. Popaj on that day identified the photo of the accused, as having been at the massacre. The Court cannot find this identification reliable in any way, as it was clearly the result of having ultimately determined through the course of the proceedings the identity of the accused.

Although **Sabri Popaj** testified at trial that he saw the accused kill the Spahiu and Zhuniqui families, it is difficult to place great weight upon this statement for several reasons. First of all, Sabri Popaj gave several statements prior to his testimony at trial and had never before stated that he was carrying binoculars. He did, however, testify before the ICTY that he had carried binoculars on the day of the massacre. Nevertheless, even if the Court is to believe that he was carrying binoculars, Sabri Popaj testified at the crime scene that the

distance from which he stood and viewed the massacre of the Spahiu and Zhuniqi families was approximately 150 meters away. It was demonstrated at the crime scene, that even with binoculars a person cannot be seen with any detail from such a distance.

Fidaije Popaj's in Court testimony is riddled with statements confirming her inability to get a good look at the Serb police that surrounded and massacred the villagers at Ura e Bellaje. When asked how many people were surrounding the village, she stated that she did not know because "No one would dare to see their faces." When asked about the types of uniforms worn by the Serb forces, she stated she was too scared to notice. All of this indicates an inability to have really been able to look at the perpetrators and to be able to later identify them. Still, Mrs. Popaj testified at trial that she had previously identified Grkovic as being the one who took her son away and when asked how many photos were shown to her, she stated only one. At the in person line-up, Mrs. Popaj was certain of her choice as the one who took her son from her. However, she did not identify the accused. Once again, it is clear to this Court that the identification of the accused by this witness is simply unreliable not only because it does not appear that she had a good look at the person who took her son because she was too afraid, but also because of the clearly suggestive nature of the KFOR photo identification process and that fact that she could not later identify the accused.

The most compelling and credible testimony comes from both **Dashnor Popaj** and **Shykri Gashi**, who were both about 15 years old at the time and were able to hide and view the massacre. Dashnor Popaj was able to view the massacre from a distance of no more than twenty meters. At the crime scene investigation, it was shown beyond any doubt that his view from where he hid behind the bridge was completely unobstructed. At trial he testified that he could see the faces of the officers, when the men were separated from the women. He was shown the CCIU photo binders and recognized some of the photos, but did not recognize the accused in the photos. When specifically asked to look at the accused and to tell the court if he was there at the massacre or if he was one of those that were burning the houses, he emphatically stated that the accused was not there.

The Court would note that Zejnel Popaj tried to disqualify Dashnor Popaj's testimony by saying that he was afraid and/or was not even at the crime scene. The Court is convinced that Dashnor Popaj was indeed present during the massacre and is a very impartial and fully trustful witness. As evidence of this, Dashnor Popaj's testimony at the crime scene confirmed each of the details stated in the main trial session. Moreover, there is no reason to believe that Dashnor Popaj, the key witness against Jovanovic, should be afraid of the accused.

One point brought up by the International Public Prosecutor in connection with the veracity of this witness must be addressed. The International Public Prosecutor argued that Dashnor Popaj's testimony was not credible because he stated that the Serbian police were shooting towards him from the silos while he was at Ura e Bellaje. The International Public Prosecutor's interpretation of his testimony is simply incorrect. Dashnor Popaj's testimony to the Court was clearly pointing out from which direction the shooting came. The Court would note that several witnesses testified that they were being shot at from the direction of the silos and would refer specifically to the testimony of Isuf Zhuniqi and Sabri Popaj.

Accordingly, this Court dismisses Zejnel Popaj's unfounded accusations about Dashnor and the Public Prosecutor's argument that Dashnor Popaj's testimony contained significant inconsistencies. Instead, Dashnor Popaj's testimony is accorded great weight because of his ability to view the events before and during the massacre and because it was evident from his testimony both at the trial and at the crime scene that he was very objective, impartial and detailed in his accounting of the events.

Shykri Gashi's testimony was equally convincing. Most important in his testimony is the fact that he was one of the men separated from the women and who was shot at during the massacre. He was able to hide during the shooting process, as he was the last one in the row. His testimony readily pointed out that it was difficult to see the faces of the Serb forces because many of them had painted faces and also because the men were ordered to keep their heads down. Mr. Gashi's testimony demonstrates how difficult it would have been as one of the men who were shot at to get a truly good look at the Serb forces responsible. He himself could not identify the accused as having been at the massacre. Shykri Gashi also gave a description of the men that killed Nesim and Shendet Popaj that was completely contrary to that given by Mr. Zhuniqi and which in no manner describes the accused. He stated that the man who shot Nesim was fat and clumsy and the man who shot Shendet was young and had a painted face.

The International Public Prosecutor argues unpersuasively that the testimony of Mr. Gashi is not credible because he stated that, "[t]hey [the Serb police] would go into the creek and shoot at us." The International Public Prosecutor took this statement out of context to draw the incorrect conclusion that somehow this meant that the villagers were shot at from the front and not from behind, as Mr. Gashi explained at the crime scene. Given Mr. Gashi's first statement that "I was the last person in the line and they started shooting at us right away," the Court cannot see any logical connection between those statements and whether they were shot from the front or the back. As such, this Court dismisses the International Public Prosecutor's assertion that this statement is inconsistent in any respect with his other testimony. Again, as with Dashnor Popaj, this Court was struck but how objective and candid this witness was in giving his testimony and, therefore, found it very convincing.

This Court is required to look at all the evidence before it and to evaluate the relative credibility of the eyewitness testimonies in terms of an ability to view the perpetrators of the massacres and in terms of an ability to recall the events and the persons involved with objectivity and candor. It is the opinion of this Court that the testimony of both Dashnor Popaj and Shykri Gashi are the most convincing testimonies. The identification testimonies of Isuf Zhuniqi, Sabri Popaj, Fidaije Popaj and Zejnel Popaj are so fraught with inconsistencies and based upon such minimal ability to view the events clearly as to make their testimony inherently unreliable. This unreliability is only compounded by the lack of any controls associated with the KFOR investigations.

While this Court is constantly reminded of the horrible atrocities that occurred in Bella Cerke, it is the responsibility of this Court not to add to the injustices done by permitting a conviction of a man based upon the inherently unreliable identification testimony and tainted identification evidence, when weighed with the very credible and objective testimony of Dashnor Popaj and Shykri Gashi. Accordingly, this Court cannot find that the accused is guilty beyond a reasonable doubt of War Crimes Against Civilian Population in relation to the criminal acts committed in Bella Cerke.

5. Alleged Acts in Mala Krusa on March 26, 1999

The indictment states that on 26 March 1999, the accused, Sasa Grkovic was a member of an armed group of uniformed Serb personnel which rounded up and took hostage over 100 unarmed Kosovar Albanian citizens in the village of Mala Krusa and lined them up against a wall and shot inhumanly and indiscriminately at them which resulted in a considerable number of deaths. Again, there are no other details given in the indictment as to the acts perpetrated or the accused's involvement.

Yet again, there is only one witness to support the allegations of this claim against the accused. In this case, it is **Selajdin Shterbani**. During trial, Mr. Shterbani explained that in Mala Krusa, on 26 March 1999, he only recalls that houses were burning in the morning and that he only saw two young men with their hands up against a wall as ordered by Jovanovic. He never saw 100 villagers lined up against a wall. Although he did hear shots as he was leaving the village. In fact, he stated that he left the village at 9:30 a.m. on 26 March 1999 and went to Albania, not to return until 3 July 1999.

Mr. Shterbani's trial testimony is confirmed by his statement of 20 August 2001, given in relation to the in person line-up. Mr. Shterbani stated therein that he did not know the accused, Sasa Grkovic, and that he had never seen him before. He could, therefore, not identify him in the line-up. Moreover, Mr. Shterbani unequivocally stated that he never saw anyone commit any massacres. Mr. Shterbani's testimony is also consistent with his trial testimony given in the Jovanovic/Kolasinac trial on 23 May 2001. In that case, he also stated that he was informed by five survivors of the massacre that 108 people were murdered in Mala Krusa that day.

Although Mr. Shterbani's trial testimony and statement before the Investigating Judge are quite consistent, it runs directly contrary to a statement given to KFOR on 27 September 1999. Accordingly, the Court properly confronted the witness with this statement. Among other things, the statement as reported by KFOR indicated that the witness saw Jovanovic order over 100 villagers to line-up against a wall, where the witness saw Jovanovic shoot at the people against the wall. The statement went on to indicate that the witness saw Jovanovic order 13 people into a house and then set the house on fire, burning them all alive. The statement also indicated that the witness identified, the accused, Sasa Grkovic, as having been present during the shooting, but that he did not see him actually shoot. When confronted with this statement, the witness declared vehemently that the statement was entirely incorrect. That he did not say that he saw people burned alive in their houses and that he never saw 100 people lined up against a wall. Given the witness' vehement denial of this previous statement, and without testimony from the KFOR investigators, the Court can only conclude that the KFOR investigation was sorely lacking in accuracy. Rather, the Court is compelled to accept both the trial testimony of the witness as well as his previous statement before the Investigating Judge.

Once again, it is not disputed that a massacre occurred in Mala Krusa. The events are well documented. However, there is no evidence to indicate that the accused, Sasa Grkovic, was ever present during this massacre. Even the International Public Prosecutor acknowledges the lack of evidence. With no evidence beyond that described above, the Court is compelled to conclude that there is insufficient evidence to find the accused guilty of War Crimes Against Civilians on 26 March 1999 in the village of Mamusa.

6. Alleged Acts to Villagers of Celine and Nogavac on March 26, 1999 and the Alleged Acts in Celine on March 28, 1999.

The indictment alleges that on 26 March 1999 the accused, Sasa Grkovic, participated as a member of an armed uniformed group of Serb personnel in a massacre of Kosovar Albanian civilians in the village of Celine.

As a separate claim, the indictment states that on 28 March 1999, the accused, Sasa Grkovic, wearing a camouflage uniform and bearing an automatic rifle, was in a large group of uniformed Serb personnel who willfully destroyed identity documents and robbed villagers

of Celine and Nogavac of money and other valuables at gunpoint. Once again, the indictment provides no details of the alleged acts, or the alleged acts of the accused.

The witnesses summoned to testify regarding the claims for Celine on March 26th and March 28th include Nervivane Rexhepi, Ramadan Dina, Nuredin Rexhepi, and Hamez Gashi. Nervivane Rexhepi, Ramadan Dina, and Nuredin Rexhepi testified regarding the events witnesses in Celine, while Hamez Gashi was summoned to testify regarding the events taking place in Nogavac.

a. Nogavac

With respect to the alleged activities taking place in Nogavac, **Hamez Gashi** previously made a statement before KFOR, which is not in evidence. Gashi, who could not be summoned and located, also was one of the witnesses for interrogation at the in-person line-up, but since the interrogation was not signed by the Investigating Judge, the minutes are inadmissible as evidence. As a result, there is no admissible evidence that would even elaborate upon the details of the alleged robberies in Nogavac. This Court would, however, note that the in person line-up documentation is in evidence and it indicates that Mr. Gashi was unable to identify the accused at the in person line-up. Without any testimony regarding the alleged robberies occurring in Nogavac and without any positive identification of the accused in relation to such alleged robberies, this Court cannot find that the accused is guilty beyond a reasonable doubt of war crimes against the civilian population in the village of Nogavac.

b. Celine

26 March 1999. With respect to the activities taking place on the 26 March 1999, **Nervhivane Rexhepi** testified at trial that at dawn on that day, Mrs. Rexhepi and her family were hiding in a basement and were ordered out by the Serb forces. Thirteen men, including her young son of 13 years, were separated from the women and taken to the courtyard. The women were ordered to leave. As Mrs. Rexhepi walked away, she saw two or three police hitting the men and then she heard the gun shots in bursts. One of the men to survive the massacre was Nuredin Rexhepi. Mrs. Rexhepi gave very confusing testimony about the uniforms of the Serb forces, until eventually asserting that they all wore camouflage uniforms.

Mr. Dina testified at length regarding the events leading up to the robberies on March 28th, but as it turned out, he never saw any of the massacres. He only heard reports of such massacres from others. At trial, Mr. Dina was confronted with the fact that in his previous statements on 1 November 1999 to KFOR and 23 May 2000 to UNMIK police, he did not mention any of the events leading up to March 28th. He vehemently denied the accuracy of those reports and stated that he had mentioned all the events that happened between March 25th and March 28th 1999. Such discrepancies again call into question the accuracy of these statements.

Nuredin Rexhepi was also called to testify regarding the massacre on March 26 in Celine, but he ended up providing a very confusing statement about the acts of a man named Sasa in Mala Krusa and never spoke of any massacre in Celine.

28 March 1999. With respect to the robberies occurring on the 28th of March, **Mrs. Rexhepi** testified at trial that many of the villagers gathered in the mountains near Celine and were surrounded and taken to a small field where the men and women were separated and the Serb forces took their money. The men were ordered to lie on the ground and the women

were ordered to move on. She continued to testify regarding their forced journey toward the border during which time she and the other villagers were robbed of all their money and valuables, as well as their identification documents. In all, the Serb forces stole over 2000 DM from Mrs. Rexhepi.

Ramadan Dina testified at trial that at some point the Serb forces separated the men from the women and took all their money. He offered no additional testimony with respect to this claim.

Despite the fact that some of the testimony regarding the events that took place in Celine is confusing, none of the parties dispute that these events occurred. The question remains whether the accused has been properly identified at all or that such identification is reliable and this Court has serious doubts about the accuracy and reliability of the identification process.

c. Identification of the Accused.

At trial, **Mrs. Rexhepi** was given an opportunity to review the CCIU binders. Mrs. Rexhepi testified that she was previously shown pictures by KFOR on two to three occasions and estimated that she was shown about 30 to 50 photos. She remembers seeing some of the photos at least once. In fact, on 19 May 2000, the witness confirmed to have given a statement to the UNMIK police and did not identify Sasa Grkovic. The Court could confirm from her statement that the UNMIK had indeed shown her the CCIU binders that were before her again in Court. While she identified several other men as having been present on either the 26th or the 28th of March, she was completely unable to replicate with any consistency what she had previously stated to UNMIK police about the persons she previously identified.

At trial, she also identified the accused from the CCIU binders as having taken part in the massacre on March 26th. Specifically, she stated that she thought he took part in the shooting in the courtyard, covered the corpses with grass, poured gas on them and set them on fire. The only problem with this identification is that it runs completely contrary to her testimony that she was not there when the men were shot in the courtyard. She later admitted that she did not see the massacre with her own eyes, but was told about it later when she went to the mountains by, among others, Nuredin Rexhepi and her husband. As discussed below, Nuredin Rexhepi was unable to identify Sasa Grkovic at all.

Moreover, in her initial trial testimony, she never stated that the accused was one of the Serb forces that took part in the robberies on 28 March 1999. Contrary to this testimony, Mrs. Rexhepi, on 25 September 1999 gave a statement to KFOR and identified Sasa Grkovic as having been one of the Serb policemen that robbed her and the villagers on the 28th of March. When confronted with this discrepancy, Mrs. Rexhepi had no explanation except to say that she did not know their names and just looked at the pictures. Unfortunately, this does not explain the discrepancy. In this circumstance, the Court may assume that the KFOR report is again inaccurate because it does not include the photos of those persons identified by Mrs. Rexhepi or that the witness is simply confused. In either case, this discrepancy strongly suggests the lack of a reliable identification process.

The witness also took part in the in person line-up at Camp Phoenix on 20 August 2001. Prior to viewing the line-up, she was asked to give a detailed description of the suspect and as she recalled at trial, she described him as tall, with deep-set eyes, thin in the face and with black hair. Tellingly, she stated in her interrogation at the line-up that, "police showed many photos to me and I identified one as the suspect. Today I intend to identify the same

person.” At the line-up, she identified the accused. As the Court previously noted, it has serious concerns about the fairness of the in person line-up for several reasons. Most relevant in this instance is that it appears that the witness had been shown photos on at least two or three separate occasions and the results of those photo arrays are either not contained in the Court files or the results are not properly reported with copies of the photos shown to the witness attached to the report. It is likely in such circumstances that the identification process was unreliable from the start and that the witness, upon believing that she had identified the correct suspect, continued to identify the man in the picture as the correct suspect, rather than the man that she saw on 28 March 1999 committing the robberies. In addition, there exists absolutely nothing in the interrogation to indicate exactly what it is that she identified Sasa Grkovic as having done; specifically whether he took part in the robberies or in the courtyard massacre. In short, under these circumstances, it does not appear to this Court that Mrs. Rexhepi’s identification of the accused at the in person line-up is reliable evidence to support the allegations of the claim against the accused for the robberies of the villagers of Celine.

Mr. Dina’s trial testimony identifying the accused is similarly suspect. At one point in his testimony he stated that he did not recall if the accused was one of the Serb forces in the village. Later he stated that he had seen the accused on the first day in the upper part of the village and that he was insulting, beating and robbing people. However, his next statement to the Court was that it was impossible to see because his hands were tied behind his neck. Again, Mr. Dina reiterated that although he believes that the accused did all the things the other people did, he did not see it because he never got that close. In fact, Mr. Dina’s testimony is replete with such accusations followed by statements that he could not really get close enough to see the accused doing anything, making it clear to this Court that Mr. Dina really did not have a good opportunity to see the Serb forces responsible for the robberies and the courtyard massacre.

Mr. Dina also took part in the in person line-up on 20 August 2001. At the line-up the judge asked him if he could identify the suspect and he said yes. Mr. Dina does not recall if he was instructed that the suspect may not be a part of the line-up. Ultimately, Mr. Dina identified the accused as the “person who took part in the killing which took place in Celine.” For the same reasons noted above in relation to Mrs. Rexhepi, the accuracy and fairness of the in person line-up is suspect. First, Mr. Dina was shown photos on several occasions as reflected in the file. The KFOR notes alone indicate that they showed Mr. Dina photo arrays on three separate occasions and the UNMIK police repeated the process at least once. Again, the KFOR investigations are not reflected in any reports, just scant notes. No indication is made as to what photos were shown to the witness, what instructions were given, and no photos are provided. Under such conditions it is highly likely that the witness only identified at the line-up the person that he had previously identified from the photos. Moreover, it is likely that without an instruction that the suspect may not be in the line-up, that Mr. Dina simply chose the most probable suspect. Finally, this statement does not even indicate that the accused was being identified for alleged robberies. For all these reasons, the Court finds that the in person line-up does not support a claim against the accused for the alleged robberies.

The Court would note that the confusion surrounding the identification of the accused for the alleged robberies is only compounded when considering the fact that the KFOR notes in the file from 1 November 1999 indicate that Mr. Dina identified the accused as having been one of the Serbs present in the village of Celine on 28 March when the villagers were rounded up, searched and robbed of their money. In contrast, the UNMIK report, dated 23 May 2000, indicates that although Mr. Dina was shown the CCIU binder of photos, containing a photo of

the accused, he never identified the accused as having been involved in the events on 28 March or earlier for that matter.

Nuredin Rexhepi also testified at trial. Although called to testify regarding the courtyard massacre, he never mentioned the events of March 26th in Celine. The Court asked Mr. Rexhepi to look through the CCIU Binders to identify any persons that took part in the courtyard massacre. Mr. Rexhepi did not identify one person. When asked to look around the courtroom to see if he could identify anyone that may have taken part in the massacre, he pointed to one of the accused's alibi witness, Mr. Vitosevic. Mr. Vitosevic was the only person of Serbian origin in the courtroom besides the accused, who at this time was wearing a Romanian UNMIK police jacket. This incident implies to the Court that this witness simply looked for those persons that appeared to be of Serbian descent, and raises serious concern that this incident is not unique, but similarly true for other identifications.

Given the highly contradictory identifications given by these witnesses and the inherently unreliable identification process outlined at length above, the Court cannot find that the accused is guilty beyond a reasonable doubt of War Crimes Against Civilian Population for of the claimed robberies on 28 March 1999 or the courtyard massacre on 26 March 1999.

7. The "Alibi" Witnesses.

Given the lack of evidence presented to this Court for the prosecution of the accused, this Court need not rely heavily upon the testimony of the alibi witnesses. Nevertheless, the Court would point out that there were several alibi witnesses that were called to testify and the Court takes this opportunity to address certain points.

First, the Court would like to make it clear that it was confronted with the testimony of several witnesses that vigorously claimed to know where the accused was at specific times and dates. This Court looks upon such testimonial evidence skeptically.

Second, the Court was also presented with testimony regarding other Sasa Grkovic's in the area. However, the Court deems it unnecessary to review the consistency or credibility of this evidence since there has been no reliable evidence presented to positively identify the accused as having been involved in the war crimes charged between 25 March 1999 and 28 March 1999.

Third, the identification of uniforms worn by the Serb is inconsistent with the testimony of the prosecution's evidence. The alibi witnesses consistently testified that they were granted uni-color olive-grey SMB uniforms and that only some of the commanders were given blue camouflage uniforms. Many confirmed that the accused was also given an SMB uniform of olive grey color. To the contrary, most of the witnesses testified confusingly about the uniforms worn and most often pointed to a camouflage type uniform, but with differing patterns and colors. The International Public Prosecutor refers to the testimony given by Adnan Mushla, who testified before the Investigating Judge that he knew the accused and the accused wore a camouflage uniform during the war. Mr. Mushla's testimony was read into evidence. The International Public Prosecutor points to this testimony as confirming the testimony of the prosecution's witnesses.

The Court recognizes the immense confusion concerning the types of uniforms worn by the Serb forces and that the evidence demonstrated that different types of uniforms were worn during the war. As such, in order to try to obtain the most accurate testimony regarding the uniforms, this Court presented a binder containing photos of various uniforms for the

witnesses to choose from. Still the testimony in this regard was very confused. Thus, this Court looks skeptically at any statement without further interrogation with photographic representations, which was not done by the Investigating Judge in the case of Adnan Mushla.

Regardless of the inconsistencies relating to uniforms, this Court chose not take any of the testimonial inconsistencies relating to uniforms into account in making its determination regarding the reliability of the identification process. Given the confusion in this regard, the Court deemed it necessary to give the prosecution witnesses the benefit of the doubt concerning the colors and patterns of the uniforms. Still, the Court comes to the same conclusion that it cannot find the accused guilty beyond a reasonable doubt of the war crimes charged.

D. Element Four: Do the Acts Violate Rules of International Law?

Given the findings of this Court, specifically finding insufficient evidence to prove that the accused participated or was even present during the war crimes against the civilian population, as discussed above, there is not need to address whether the alleged crimes violated rules of international law.

IV. DETENTION

As the accused was acquitted from the charges, his detention had to be terminates according to Article 353, Paragraph 3 of the LCP.

V. COSTS OF CRIMINAL PROCEEDINGS

Based on Article 99, Paragraph 1 and in connection with Article 95, Paragraph 2, items 1-5 of the LCP, the costs of the criminal proceedings, including the necessary expenses of the accused and necessary expenses and remuneration of the defense counsel, have to be paid from the Court's budget.

VI. COMPENSATION OF INJURED PARTIES

Pursuant to Article 108(3) of the LCP, all injured parties are instructed that they may take civil action to pursue their property claims against the accused.

LEGAL REMEDIES

Under Article 359 of the LCP, an appeal may be filed against this verdict within fifteen days from the date when a copy of the verdict is delivered.

Original verdict prepared in English, an authorized language.

**District Court of Prizren
04 September 2002
C. No. 45/2002**

Recording Clerk
Maria Lenie Velasquez

Presiding Judge
Georg Plüür