DISTRICT COURT OF PRIZREN
C. Nr. 226/2001
31 January 2003

IN THE NAME OF THE PEOPLE

The District Court of Prizren in a panel composed of International Judge Hajnalka Karpati, as Presiding Judge, International Judge Dr. Dierk Helmken, and Judge Genc Nixha, as panel members, assisted by the recording clerk, Maria Lenie A. Velasquez, deciding in the criminal case against the accused, **Andjelko Kolasinac**, accused of the following criminal acts, according to the Second Amended Indictment CC. Nr. 83/99, filed by the International Public Prosecutor of Prizren on 16 January 2003:

(1) War Crime Against Civilian Population, as per Article 142, Paragraph 1, of the Criminal Code of Yugoslavia ("CCY") and in connection with Articles 22 and 24 of the CCY, made applicable law in Kosovo under United Nations Interim Administration Mission in Kosovo ("UNMIK") Regulation 1999/24, as amended by UNMIK Regulation 2000/59, based upon allegations of: (a) displacement or forced de-patriation, (b) illegal detention; (c) the application of measures of intimidation and terror; (d) collective punishment; (e) forcing forced labour; (f) the confiscation of property; (g) looting of the property of the population; and (h) the illegal and self-willing destroying and taking possession of property in great scale, which is not justified by military needs;

(2) Aiding a Perpetrator After He Has Committed The Criminal Act, as per Article 174, Paragraphs 1 and 2 of the Criminal Code of Kosovo (CCK) in connection with Article 142, Paragraph 1, of the CCY and Articles 22 and 24 of the CCY, applicable law in Kosovo under UNMIK Regulation 1999/24, as amended by UNMIK Regulation 2000/59, based upon allegations of concealing the traces of forced deportation through the destruction of the property of the deported victims;

(3) Aiding a Perpetrator After He Has Committed a Criminal Act, as per Article 174, Paragraphs 1 and 3, of the CCK, in connection with Article 30, Paragraphs 2(1), 2(3), and 2(5) of the CCK and Articles 22 and 24 of the CCY, applicable law in Kosovo under UNMIK Regulation 1999/24, as amended by UNMIK Regulation 2000/59, based upon allegations of aiding and assisting in the concealment of murders through the preparation of mass graves;

After having held the main trial hearing in public on 1, 3, 9, 10, 14, 15, 29, and 30 October, 1, 6, 7, 11, 13, 15, 19, 26 27 and 29 November, 3, 4, 6, 10, 12 December 2002, and 10, 14, 16, 29, and 31 January 2003, all in presence of the accused, his defense attorneys, Miodrag Brkljac, Zivojin Jokanovic, and Nikola Radosavovic, and the International Public Prosecutor, Thomas Hickman, and all in the District Court of Prizren, except for the hearing on 21 and 22 November 2002, which was held in the District Court of Belgrade in a public session in the presence of the International Public Prosecutor, defense counsel, Miodrag Brkljac, and except for a portion of the hearing on 7 November 2002, which was closed to the public due to the confidential and sensitive nature of the information presented to the Court, and

After the District Court panel's deliberation and voting on 31 January 2003, the Presiding Judge, on 3 February 2003, in public and in the presence of the panel members, the accused, his defense counsel, Nikola Radosavovic, and the International Public Prosecutor, Thomas Hickman, pronounced the following:

V E R D I C T

The accused, **Andjelko Kolasinac**, father Dobrivoje and mother Natalija Mihajlovic, born on January 11, 1951 in Rahovec/Orahovac (hereinafter Rahovec), last permanent residence Rahovec/Orahovac, Str. Nemanjina No. 13, of Serb nationality, married, father of four children, completed the Law Faculty of Pristina, lawyer of occupation, of medium economic status, no criminal record, in detention since August 20, 1999:

IS

FOUND GUILTY

BECAUSE, based upon the testimony of the accused and witnesses given at main trial, all of the evidence submitted and accepted at the main trial, as well as the arguments of the defense counsel, arguments of the International Public Prosecutor and the comments of the accused given at the main trial, this Court finds that:

During April/May 1999, the accused acted in complicity with other Serb officials in organizing the registration of the population for use in connection with the forced displacement and deportation of Kosovar Albanians in Rahovec. The first registration required the name of the head of the household and the number of persons in the household purportedly for use in connection with humanitarian aid. The second registration, however, was organized only a few weeks later at the request of the military and required information as to ethnicity, age and gender. Such information was clearly intended for use in connection with the forced displacement and deportation of the Kosovar Albanians in Rahovec;

During April/May 1999, the accused acted in complicity with other Serb officials in organizing an estimated one hundred Kosovar Albanians from the Rahovec municipality to be utilized as forced labour in connection with the "cleaning" of the roads in Malishevë, which were covered with the forcefully abandoned property of thousands of Kosovar Albanians that had been forcefully displaced and deported by the military. In addition, during May 1999, the accused acted in complicity with other Serb officials in organizing hundreds of Kosovar Albanians from the Rahovec municipality to be utilized as forced labour in connection with the pruning of the vineyards in the Rahovec area. Such forced labor was organized by the accused in complicity with other Serb officials through the use of intimidation, without voluntary agreement, and without remuneration.

Moreover, during the "cleaning" of the roads in Malishevë/Mališevo (hereinafter Malishevë) municipality in April/May 1999, as organized by the accused, the accused, as Commander of the Headquarters of the Civil Defense, failed to prevent the looting, pillaging, and destruction of the forcefully abandoned property of the thousands of Kosovar Albanians that had been forcefully displaced and deported by the military.

Accordingly, in committing these criminal acts, the accused is criminally liable for War Crime Against the Civilian Population pursuant to Article 142, Paragraph 1, of the CCY in relation to: (a) the displacement or forced de-patriation through

registration, in connection with Article 22 of the CCY; (e) forced labour, in connection with Article 22 of the CCY; (g) the pillaging and looting of the property of the population, including (h) the illegal and self-willing destroying and taking possession of property in great scale, under the doctrine of command responsibility;

The accused, Andjelko Kolasinac:

IS

FOUND NOT GUILTY

In connection with the allegations contained in the Second Amended Bill of Indictment of concealing the traces of forced deportation through the destruction of the property of the deported victims, based upon the legal principle of absorption. **Therefore, the accused is acquitted of the criminal charge of Aiding a Perpetrator After He Has Committed The Criminal Act, as per Article 174, Paragraphs 1 and 2 of the Criminal Code of Kosovo (CCK) in connection with Article 142, Paragraph 1, of the CCY and Articles 22 and 24 of the CCY**; and

The accused, Andjelko Kolasinac:

IS

FOUND NOT GUILTY

In connection with the allegations contained in the Second Amended Bill of Indictment of aiding and assisting in the concealment of murders through the preparation of mass graves, because of lack of evidence. **Therefore, the accused is acquitted of the criminal charge of Aiding a Perpetrator After He Has Committed a Criminal Act, as per Article 174, Paragraphs 1 and 3, of the CCK, in connection with Article 30, Paragraphs 2(1), 2(3), and 2(5) of the CCK and Articles 22 and 24 of the CCY.**

THEREFORE, the accused, ANDJELKO KOLASINAC is

SENTENCED

To eight (8) years of imprisonment, in which sentence the time spent in custody since 20 August 1999 is to be included, pursuant to Article 351, Paragraph 6 of the Law on Criminal Procedure (LCP).

The detention of the accused Kolasinac shall continue until this verdict becomes final, pursuant to Article 353, Paragraphs 6 and 7, in connection with Paragraph 1 of the LCP.

The accused is obliged to pay 1000 Euro as a judicial lump-sum within 15 days after this verdict becomes final and is freed from the expenses of penal procedures due to his economic situation according to Articles 95, Paragraph 2(6); 96, Paragraph 1; and 98, Paragraph 4, of LCP.

R E A S O N I N G

I. INTRODUCTION

A. PROCEDURAL BACKGROUND

1. Original Indictment and First Main Trial

On 7 August 2000, the local public prosecutor for Prizren filed an indictment, CC. No. 83/1999, which named Andjelko Kolasinac, Cedomir Jovanovic and six others as defendants. The indictment alleged that each defendant had committed the criminal act of war crime against the civilian population. The indictment made these charges with reference to Article 142 of the CCY. This article is applicable to the criminal proceeding under UNMIK Regulation 1999/24, "On the Law Applicable in Kosovo," as amended by UNMIK Regulation 2000/59. According to the indictment, the acts committed by the eight defendants that constituted war crimes occurred in the municipality of Rahovec.

On 2 September 2000, the six indicted defendants, other than Jovanovic and Kolasinac, escaped from the detention center in which they were held. Consistent with Regulation 2001/1, the public prosecutor proposed to sever the cases of Kolasinac and Jovanovic from those of the escaped defendants. On 01 May 2001, the Police Investigation Section in Rahovec reported that the six escapees were still at large. Consequently the trial panel decided to try only Kolasinac and Jovanovic for the crimes alleged in the Indictment.

The Indictment charged Kolasinac with a single count of war crimes as per Article 142 of the Criminal Code of the Socialist Federal Republic of Yugoslavia (CCY) on the basis of the following acts: Participating in killings; requesting additional police for Rahovec in his capacity as municipal assembly president; failing to prevent the commission of war crimes; inviting Kosovar Albanians to return to Rahovec under conditions he knew to be dangerous; registering citizens in order to expel them; taking part in expulsions; organizing forced labor efforts; creating a civilian protection headquarters for the purpose of covering the traces of criminal activity; confiscating property; and maltreatment, including beating citizens.

During May and June 2001, the case was tried before International Judge Ingo Risch, as the presiding judge, and international judges Daniel Gruia and Lis Sejr as members of the District Court panel. On 14 June 2001, the District Court pronounced its verdict finding Kolasinac guilty of Aiding a Perpetrator After He Has Committed the Criminal act, as per Article 174, paragraphs 1 and 3 of the Criminal Code of Kosovo ("CCK"), by organizing the concealment of the traces of the war crime of expulsion of Kosovar Albanian citizens by organizing destruction and disposal of remains of their properties and personal belongings in Malishevë during April and May, 1999. The District Court panel sentenced Kolasinac to five (5) years of imprisonment, which was to include the period of custody since August 20, 1999.

On 1 August 2001, the International Public Prosecutor filed an appeal against the verdict of the District Court. On 14 and 16 August 2001, defense counsel Vujin B. Milan and Zivojin Jokanovic respectively, also filed appeals against the verdict of the District Court.

On 2 November 2001, the Supreme Court of Kosovo overruled the verdict of the District Court of Prizren and remanded the case for re-trial. The Supreme Court decision also suggested that the first instance court assess: (1) the testimonies regarding forced labour under Article 142 of the CCY and "evaluate in particular the existence of coercion, the link with war effort of the parties in conflict and the duration of the work in question in order to determine

if it lasted long enough to be qualified forced labor as an element of war crime"; (2) "the testimonies regarding the looting and destruction of properties, under Article 142 of the CCY, evaluating in particular the role of the accused Kolasinac regarding orders given by him and or received from other police or military authorities"; and (3) "the consequences of the two registration drives regarding their possible connection to criminal acts considered as elements of war crime under Article 142 of the CCY".

2. The Amended Indictment.

a. Charges Against Kolasinac

On 1 October 2002, at the first day of the re-trial, the International Public Prosecutor filed the Amended Bill of Indictment. On 15 January 2003, in advance of closing arguments, the International Public Prosecutor filed the Second Amended Bill of Indictment alleging that Kolasinac is guilty of:

(1) ordering and committing war crimes against the civilian population pursuant to Article 142 (1) of the CCY, as well as aiding and complicity in the commission of war crimes against the civilian population pursuant to Articles 22 and 24 of the CCY in connection with Article 142 of the CCY;

(2) Aiding a Perpetrator After He Has Committed the Criminal Act by concealing the crime of deportation in violation of Article 174(1) and (2) of the CCK in connection with the violation of Articles 142(1), 22 and 24 of the CCY; and

(3) Aiding a Perpetrator After He Has Committed the Criminal Act by concealing the crime of murder in violation of Article 174(1) and (3) of the CCK in connection with the violation of Article 30(2)(1,3,5) of the CCK.

Specifically, the International Prosecutor alleges that Kolasinac is guilty of:

(1) ordering and committing, aiding, *assisting and complicity* in the crime of violating the regulations of international law including Geneva Red Cross Convention IV, On Protection of Civilian Persons in Time of War, particularly but not limited to Common Article 3 as well as Additional Protocol 2 Relating To The Protection Of Victims Of Non-International Armed Conflicts during war and armed conflict against the civilian population causing: (a) displacement or forced de-patriation, (b) illegal detention; (c) the application of measures of intimidation and terror; (d) collective punishment; (e) forcing forced labour; (f) the confiscation of property; (g) the pillaging and looting of the property of the population; and (h) the illegal and self-willing destroying and taking possession of property in great scale, which is not justified by military needs, thus committing **War Crimes Against the Civilian Population, a violation of *Articles 22 and 24 of the Criminal Code of Yugoslavia and* Article 142 (1) of the Criminal Code of Yugoslavia and punishable by at least five (5) years of imprisonment or twenty (20) years of imprisonment.**

(2) Kolasinac is also guilty of aiding *and assisting and complicity in regard to* the offenders who committed the crime of deportation by concealing the traces and things, evidence, of the crime of deportation through destruction of the property of the deported victims, a violation by the offenders of Article 142 of the Criminal Code of Yugoslavia and thus these acts on the part of Kolasinac are a **violation of**

***Article*s *22 and 24 of the Criminal Code of Yugoslavia punishable by a sentence of at least five (5) years of imprisonment or twenty (20) years of imprisonment and* Article 174 (1) and (2) of the Criminal Code of Kosovo **punishable by a sentence of up to three (3) years of imprisonment**.

(3) Kolasinac is guilty of aiding and assisting the offenders who committed the crime of murder by assisting them in concealing the traces and things, the bodies of the victims, evidence, of the crime of murder, in a mass grave---and specifically aiding the Serb authorities in murder carried out in a brutal manner in violation of Article 30 (2) (1) and murder for base motives, specifically because of the victim's ethnic group in violation of Article 30 (2) (3) and murder committed in a ruthless manner of many persons in violation of Article 30 (2) (5), of the Criminal Code of Kosovo, --- murders of the sort for which was prescribed at the time of the crimes the death penalty, ---thus the magnitude of the crimes Kolasinac assisted in concealing the traces of is such is that he is in **violation of Articles *22 and 24 of the Criminal Code of Yugoslavia punishable by a sentence of at least ten (10) years and* 174 (1) and (3) of the Criminal Code of Kosovo punishable by a sentence of up to ten (10) years imprisonment**.

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 Crime Against Civilian Population pursuant to Article 142 of the CCY allows for the imposition of a minimum sentence of five years of imprisonment. In addition, the indictment in this case alleges that the accused, Andjelko Kolasinac, committed war crimes in the municipalities of Rahovec and Malishevë. Thus, the Prizren District Court is the competent judicial body to hear this criminal proceeding.

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 27 September 2002, the Department of Justice (DOJ), acting pursuant to the decision of the SRSG pursuant to UNMIK Regulation 2000/64, designated Judge Hajnalka Karpati, an international judge in the Prizren District Court, as the presiding judge for this matter and Judge Dierk Helmken, an international judge in the Prizren District Court, as a member of the panel. The third judge in the trial panel, Judge Genc Nixha, was designated on 30 September 2002 by the President of the Prizren District Court, pursuant to decision I. Agj.nr.8/2002 – 18.

None of the parties objected to the panel composition.

3. The Main Session

The main trial was open to the public, with sessions held on 1, 3, 9, 10, 14, 15, 29, and 30 October; 1, 6, 7, 11, 13, 15, 19, 26 27 and 29 November; 3, 4, 6, 10, 12 December 2002; and 10, 14, 16, 29, and 31 January 2003. These sessions were all held in presence of the accused, his defense attorneys, Miodrag Brkljac, Zivojin Jokanovic, and Nikola Radosavovic, and the International Public Prosecutor, Thomas Hickman, in the District Court of Prizren, except for the hearings on 7, 21 and 22 November 2002. The hearings on 21 and 22 November were held in the District Court of Belgrade in a public session in the presence of the International Public Prosecutor, defense counsel, Miodrag Brkljac. A portion of the hearing on 7 November 2002 was closed to the public due to the confidential and sensitive nature of the information presented to the Court.

The sessions held on 21 and 22 November 2002 in the Belgrade District Court were scheduled at the request of the defense counsel in order 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. On 7 November 2002, the accused waived his right to be present at the hearings in Belgrade District Court and because the interests of the accused would be represented by his defense counsel at the hearings, this Court determined that his presence was not required at the hearings in Belgrade District Court, pursuant to Article 330(3) of the LCP.

During the course of the proceedings, the defendant and the following witnesses were heard in Prizren District Court:

(1) **Andjelko Kolasinac**- 1, 3, and 9, October 2002;
(2) **Myhedin Bekeri** – 9 October 2002;
(3) **Sylejman Bala** – 9 October 2002;
(4) **Qazim Ceska** – 10 October 2002;
(5) **Hysen Canziba** – 10 October 2002;
(6) **Ismet Cmega** – 14 October 2002;
(7) **Hilmi Derguti** – 14 October 2002;
(8) **Naser Hoxha** – 15 October 2002;
(9) **Bejtullah Hoxha** – 15 October 2002;
(10) **Ismet Kollari** – 15 October 2002;
(11) **Muhamed Kollari** – 15 October 2002;
(12) **Samir Rama** – 29 October 2002;
(13) **Rexhep Rexha** – 29 October 2002;
(14) **Xhemali Jaha** – 30 October 2002;
(15) **Muharrem Jaha** – 30 October 2002;
(16) **Myhedin Miftari** – 1 November 2002;
(17) **Ahmet Shabandula** - 1 November 2002;
(18) **Mizahir Shabani** – 6 November 2002;
(19) **Zyber Miftari** – 7 November 2002;
(20) **Musa Raba** – 7 November 2002;
(21) **Halil Sharku** – 11 November 2002;

(22) **Nesim Spahiju** – 11 November 2002; (the truck)
(23) **Hasan Sokoli** – 13 November 2002;
(24) **Vehap Vehapi** – 13 November 2002);
(25) **Hajrullah Thaqi** – 15 November 2002;
(26) **Bajram Vuciterna** – 15 November 2002;
(27) **Petar Dedic** – 19 November 2002;
(28) **Luka Ulamovic** – 19 November 2002;
(29) **Sava Saric** – 19 November 2002;
(30) **Milisav Grkovic** – 19 November 2002;
(31) **Hajredin Rexha** – 26 November 2002;
(32) **Veton Miftari** – 26 November 2002;
(33) **Skender Sharku** – 27 November 2002;
(34) **Myhedin Sharku** – 27 November 2002;
(35) **Zyber Zeka** – 3 December 2002;
(36) **Nysret Mullabazi** -4 December 2002;
(37) **Fejzulla Sokoli** – 6 December 2002;
(38) **Destan Mullabazi** – 10 December 2002;
(39) **Zivko Moravcevic** – 10 December 2002;

At the hearings held at Belgrade District Court on 21 and 22 November 2002, the following witnesses gave their testimony:

(1) **Branka Furjanovic** – 21 November 2002
(2) **Bozidar Mihajlovic** – 21 November 2002
(3) **Trajko Milicevic** – 21 November 2002
(4) **Zvonimir Kolasinac** - 21 November 2002
(5) **Radomir Simic** – 22 November 2002
(6) **Krsta Soric** – 22 November 2002
(7) **Bozidar Micic** – 22 November 2002

The witness statements given on 21 and 22 November 2002 were read out during the course of the proceedings at the Prizren District Court on 4 and 6 December 2002, respectively.

During the course of the proceedings at the main trial at the Prizren District Court, the statements of the following witnesses were read out:

(1) **Slavica Vitosevic –** 12 December 2002 (Statement from the first main trial (MT1) given on 28 May 2001, pages 73 – 74)
(2) **Dusan Manitasevic -** 12 December 2002 (Statement from MT1 given on 28 May 2001, pages 76 – 77)
(3) **Jasmina Stanojevic -** 12 December 2002 (Statement from MT1 given on 28 May 2001, pages 78 – 79)
(4) **Eqrem Mullaaliu –** 29 November 2002 (Statement given before the Investigating Judge on 21 October 1999)
(5) **Xhemile Krasniqi -** 12 December 2002 (Statement from MT1 given on 23 May 2001, pages 61 – 62)
(6) **Bajram Oruqi –** 6 December 2002 (Statement before the Investigating Judge 22 February 2000 and MT1 given on 10 May 2001, pages 42-43)
(7) **Zdravko Grkovic –** 12 December 2002 (Statement from MT1 given on 8 June 2001, pages 96 – 97)
(8) **Selami Shehu –** 10 January 2003 (Statement before the Investigating Judge on 22 February 2000 and statement from MT1 given on 10 May 2001, page 41.)

During the course of the proceedings of the main trial at the Prizren District Court, the following evidence was submitted by the International Public Prosecutor and entered into evidence:

(1) Statute of the Municipality of Orahovac, dated 18 November 1992.
(2) Letter of Andjelko Kolasinac to the Government of Serbia, dated 8 July 1998 (Attachment No. 2 to the Minutes of 3 October 2002).
(3) Letter of Radomir Simic dated 17 April 1999 (Attachment No. 1 to the Minutes of 3 October 2002.
(4) Summons for Zyber Zeka for the 24 April 1999 meeting and signed by Andjelko Kolasinac as the Commander of the Headquarters of the Civilian Protection.
(5) Inventory of Andjelko Kolasinac home, dated 20 August 1999.
(6) The accused's Statement to the UNMIK police given on 22 and 23 August 1999.
(7) Letter to the President of the District Court written by the Defense, dated 3 May 2000.
(8) Letter from Dedic M. Zoran, dated 22 August 1999 concerning the request for the return of different things.
(9) Summon-Information-Order, dated 25 February 1993 (Attachment No. 1 to the Minutes of 10 January 2003).

During the course of the proceedings of the main trial at the Prizren District Court, the following evidence was submitted by the Defense Counsel and entered into evidence:

(10) Decision, dated 30 August 1995, concerning employment of Andjelko Kolasinac.
(11) Decision on annual leave, dated 10 July 1995.
(12) Order on the Establishment of the Civilian Protection Headquarters, dated 22 February 1999.
(13) Decision of Deputy Federal Minister of Defense, dated 9 May 1999.
(14) Amendments to the Order on the Establishment of the Civilian Protection Headquarters, dated 10 April 1999.
(15) Health card of the accused and information from Mitrovica Detention Center concerning the health condition of the accused.
(16) Receipt for material means received by Kolasinac from Section of Defense Orahovac, dated 8 May 1999. (Attachment no. 1 to the Minutes of 6 December 2002.)
(17) Health Insurance Card of Andjelko Kolasinac, valid from 16 January 1996 until 31 December 1998. (Attachment no. 2 to the Minutes of 6 December 2002.)

During the course of the proceedings of the main trial at the Prizren District Court, the following evidence was submitted by various witnesses and entered into evidence:

(1) Summons of the Army of Yugoslavia for Ismet Cmega (Attachment No. 1 to the Minutes of 14 October 2002).
(2) Summons for the 24 April 1999 meeting for Myhedin Sharku, signed by Andjelko Kolasinac as Commander of the Headquarters of the Civilian Protection. (Attachment No. 1 to the Minutes of 27 November 2002.)

During the course of the proceedings of the main trial at the Prizren District Court, the following evidence was submitted by both the International Public Prosecutor and the Defense Counsel and was entered into evidence:

Exhibit No.:

(30) Green bag containing 3 full magazines and a cleaning kit and
(31) Leather bag from India with the following items found in the small pocket of the bag: a picture of icon called "Trojerucica", five pieces of medicine "Novalgetol", a small photo holder with picture of Barbie Doll, 12 small pictures of different icons;
(32) One Clip with 8 rounds of 9 mm and twelve 38 caliber shells;
(33) Rifle with bayonet was not found in the box;
(33a) Ten rounds of 7.62 mm ammunition;
(34) Camouflage shirt with Serbian patch, Heavy new coat with Serbian patch, two green uniform dress shirts, one pair of camouflage trousers and one green tarp
(35) Pair of military boots, black in color;
(36) Two full magazines.
(38) Brown leather bag containing one pair of black leather gloves and a cosmetic mirror;
(40) 22 caliber rifle 2340, serial No. 880234, one 22 caliber shell.
(41) Military knife, Serial No 430910 with marking K3, with a full magazine
(42) AK 47 Serial No. 430910 with two full magazines;
(43) Pistol with Serial No. 98422 with eight rounds and leather holster
(44) Pistol with Serial No. 91842 model 70, Zastava and one box of 25 shells
(45) Green wooden ammunition box, damaged;
(46) Plastic bag containing 5 shells 20mm, DM43, five cartridges ATM 7.9 mm. (Plastic bag contains only 3 cartridges 7.9mm instead of the official listed 5.)
(47) Plastic bag with one butt of a magazine (loading strip);
(48) Plastic bag with one shell from Gulinov Anti-Aircraft gun 30mm;
(49) Plastic bag with one capsule for a hypodermic syringe.

During the course of the proceedings of the main trial at the Prizren District Court, the following documents were submitted as evidence, but were accepted by the Court for reference only:

(1) The Bagilishema verdict of the International Criminal Tribunal for Rwanda (ICTR), submitted by the defense.

(2) The OSCE report "As seen As Told," submitted by both the defense counsel and the International Public Prosecutor.

Finally, during the course of the proceedings of the main trial at the Prizren District Court, the defense counsel furnished the following statutes and regulations to the Court:

(1) Regulation on the Organization and Work of the Bodies of the Republic During the State of War, Official Gazette of the Republic of Serbia, No. 13 Belgrade, 24 March 1999, pages 337-339;
(2) Annex I – Statute of the Municipality of Orahovac, Official Gazette of the Autonomous Province of Kosovo and Metohija, No. 38, 14 September 1964.
(3) Annex II - Statute of the Municipality of Orahovac, Official Gazette of the Socialist Autonomous Province of Kosovo, No. 21, 4 June 1976.
(4) Annex III – Decision on Amendments to the Statute of The Municipality of Orahovac, Official Gazette of the Socialist Autonomous Province of Kosovo, No. 7, 28 March 1988.

(5) Annex IV – Decision on Total National Defense, Official Gazette of the Socialist Autonomous Province of Kosovo, No. 7, 28 March 1988.
(6) Annex V - Decision on Amendments to the Statute of The Municipality of Orahovac, Official Gazette of the Socialist Autonomous Province of Kosovo, No. 6, 9 March 1990.
(7) Annex VI – Decision on Amendment to the Decision on Taxation of Personal Income, Earnings and Property, Official Gazette of the Socialist Autonomous Province of Kosovo, No. 11, 28 June 1991.
(8) Annex VII – Law on Territorial Organization of the Republic of Serbia and Local Self-Government, Official Gazette of the Republic of Serbia, No. 47, 3 August 1991.
(9) Annex VIII – Statutory Decision of Orahovac Municipality, Official Gazette of the Autonomous Province of Kosovo and Metohija, No. 5, 22 May 1992.
(10) Annex IX - Statute of the Municipality of Orahovac, adopted 18 November 1992, Official Gazette of the Autonomous Province of Kosovo and Metohija, No.10, 14 December 1992
(11) Annex X – Law on Defense of Republic of Serbia, Official Gazette of the Republic of Serbia, No. 45, 27 July 1991.
(12) Annex XI – Decree on the Set-Up and Functioning of Civil Defense, Official Gazette of the Republic of Serbia, No. 21, 15 April 1992.
(13) Annex XII – Regulation on the Organization and Carrying Out the Work Obligation, Official Gazette of the Republic of Serbia, No. 34, 27 May 1992.
(14) Annex XIII – Regulation on Material Obligation for the Needs of Defense, Official Gazette of the Republic of Serbia, No. 34, 27 May 1992.
(15) Annex XIV – Law on Defense of the FRY, Official Gazette of the Federal Republic of Yugoslavia, No. 43, 27 May 1994.
(16) Annex XIVa – Law on the Army of Yugoslavia, Official Gazette of the Federal Republic of Yugoslavia, No. 43, 27 May 1994.
(17) Annex XV – Regulation on the Organization and Carrying Out the Work and Material Obligation, Official Gazette of the Federal Republic of Yugoslavia, No. 52, 1 July 1994.
(18) Annex XVI - Regulation of the Organization and Training of Civil Defense Units and on Measures of Protection and Rescue of Civilian Population and Material Goods, Official Gazette of the Federal Republic of Yugoslavia, No. 54, 8 July 1994

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, Albanian and English, as necessary.

II. ANALYSIS OF THE WAR CRIMES CHARGES AGAINST KOLASINAC

The indictment charges the accused with War Crimes against the Civilian Population under Article 142(1) of the CCY. [1] 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(1) of the CCY refers to a range of proscribed acts, including: (a) displacement or forced de-patriation; (b) illegal detention; (c) the application of measures of intimidation and terror; (d) collective punishment; (e) forcing forced labour; (f) the confiscation of property; (g) looting of the property of the population; and (h) the illegal and self-willing destroying and taking possession of property in great scale, which is not justified by military needs, all of which were alleged in the Second Amended Indictment.

Article 142(1) also requires that war crime be in violation of "regulations of international law during war, armed conflict or occupations…." Accordingly, this statement restricts the application of Article 142 to the extent that any of the acts proscribed are also in violation of regulations if international law. As such, application of Article 142(1) must be made in connection with international law applicable to Kosovo in 1989, pursuant to UNMIK Regulation 1999/24. Such international law includes each of the Geneva Conventions and the applicable Protocols, including the Geneva Convention (IV) Relative to the Protection of

[1] As noted in the District Court decision for the first main trial, there exist various versions of Article 142. The first version became effective in 1976. Article 142 was amended in 1990, Official Gazette of the SFRY 38/90 (6 July 1990), to change the substance of the provision, but not the maximum sentence. In 1993, Article 142 was amended to provide for a maximum sentence of 20 years of imprisonment, reflecting the abolishment of the death penalty under the SFRY Constitution. (Official Gazette of SFRY 37/90.) The International Public Prosecutor has charged Kolasinac with violations of the 1993 version. Essentially, all of the prohibited acts alleged in the Second Amended Indictment are contained in each version of the Article. Thus, although the question as to which version is applicable law under UNMIK Regulation 1999/24, as amended by UNMIK Regulation 2000/59 is somewhat academic, this Court nevertheless addresses it here and has determined that the 1993 version is the applicable law in Kosovo for the following reasons.

Under UNMIK Regulation 1999/24 the applicable law in Kosovo is that law that was in force on 22 March 1989. However, Section 1.4 of UNMIK Regulation 2000/59 states in pertinent part, "[i]n criminal proceedings, the defendant shall have the benefit of the most favourable provision in the criminal laws which were in force in Kosovo between 22 March 1989 and the date of the present regulation." The Regulation is deemed to have entered into force as of 10 June 1999, pursuant to Section 3.1. The "most favorable provision" refers to the range of potential penal sanctions. The 1976 version permits 5 years of imprisonment up to the death penalty. However, once the death penalty was abolished by UNMIK Regulation 1999/24, the maximum sentence would by default be 20 years, because Article 38 of the CCY provides that twenty years of imprisonment may be given in lieu of the death penalty. The 1993 version permits a sentence of only 5 to 20 years of imprisonment. Thus, it would appear that the two versions are the same in terms of potential penal sanctions and that the 1976 version would apply. However, because the Second Amended Indictment also alleges Article 174 of the CCK in connection with Article 142 of the CCY, this Court's analysis does not end there.

Article 174(3) of the CCK, Aiding a Perpetrator After He Has Committed the Criminal Act, provides "[w]hoever aids the perpetrator of a criminal act for which a death penalty is prescribed, shall be punished with one to ten years of imprisonment." Article 174(3) provides the highest sentence available for a violation of Article 174. Article 174(3) cannot apply to the 1993 version of Article 142 because the death penalty does not apply at all. On the other hand, the death penalty is specifically provided for under the sentencing guidelines for the 1976 version. This Court interprets Article 174(3) as applying to those provisions which previously provided for the death penalty, even though the death penalty was abolished under UNMIK Regulation 1999/24. Given this, the 1993 version of Article 142 of the CCY is more favorable to the defendant.

Civilian Persons in Time of War (1949) (hereinafter the Geneva Convention), the Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of International Armed Conflicts (8 June 1977) (hereinafter Additional Protocol I to the Geneva Convention), and the Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflict (1977) (hereinafter the Additional Protocol II to the Geneva Convention). The Socialist Federal Republic of Yugoslavia (hereinafter SFRY)[2] was a party to each of these Conventions in 1989, and thus these Conventions are applicable law in Kosovo and were applicable to the Federal Republic of Yugoslavia (FRY) in 1999 during the NATO bombing campaign.[3]

Thus, to find a defendant guilty of a war crime under Article 142, CCY the following elements must be proven: 1) the existence of a war or armed conflict; 2) the victims of the acts proscribed by the statute are civilians; 3) the defendant was member of a military, political or administrative organization of a party to the conflict 4) the defendant ordered, performed the criminal acts; and 5) the defendant acted with either direct or indirect premeditation; 6) the commission of said act or acts violated international law effective at the time of the war or armed conflict; 7) there existed a nexus between the defendant's criminal acts and the armed conflict.[4]

A. ELEMENT ONE: THE EXISTENCE OF AN ARMED CONFLICT.

Pursuant to Article 142(1), 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. Thus, Article 142(1) encompasses both international and internal armed conflicts.

Since, Article 142 must be read in conjunction with regulations of international law during war, this Court must make reference to the Geneva Convention, governing international armed conflicts, as well as Common Article 3 of the Geneva Conventions, and the Additional Protocol II to the Geneva Convention, governing armed conflict not of an international character. Again, to the extent that the acts proscribed by Article 142(1) are not in violation of international law, including the Geneva Conventions specified above, then criminal liability may not attach to such acts.

The Court notes that the criminal liabilities that attach under international law are different for international armed conflict under the Geneva Convention, and that of internal armed conflict under Common Article 3 of the Geneva Conventions and the Additional Protocol II to the Geneva Convention. This is acknowledged specifically in the Commentary to Article 142 of the CCY.[5] However, because this Court determines that both an

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[2] In 1989, the Federal Republic of Yugoslavia, The Former Yugoslavian Republic of Macedonia, Croatia, Slovenia and Bosnia and Herzegovia comprised the Socialist Federal Republic of Yugoslavia (the SFRY). This Court would note that FRY, which came into existence in 1992, is now officially known as "Serbia and Montenegro,"as of 4 February 2003.

[3] This Court would note that under the 1974 SFRY Constitution, Article 210, and FRY Constitution of 1992, Article 16, treaties which are ratified are self-executing and directly applicable by the courts. Many would also argue that the Geneva Conventions have become customary international law and applicable to FRY in that sense during the relevant time period.

[4] Article 142 CCY. *See also,* Ljubisa Lazarevic, *COMMENTARY ON THE CRIMINAL LAW OF THE FEDERAL REPUBLIC OF YUGOSLAVIA,* 5th Edition (1995) (hereinafter "Commentary to Article 142") (an act may be qualified as a war crime only if it violates international criminal law).

[5] The Commentary to Article 142 states in pertinent part:

international and internal conflict existed during all relevant periods alleged in the Second Amended Indictment, as discussed below, further analysis of the differences is not necessary. Instead, to the extent required, the international law related to both international and internal armed conflict will be referenced with respect to the relevant war crimes charges against Kolasinac.

Under international law, it is undisputable that an armed conflict is international if it takes place between two or more States. In the case of an internal armed conflict that breaks out within the territory of a State, it may become international or be international in character alongside an internal armed conflict if (1) another State intervenes in that conflict through its troops or alternatively if (2) some of the participants in the internal conflict act on behalf of that other State.[6]

This Court finds that both an internal and international armed conflict existed at all relevant times alleged in the Second Amended Indictment, April through May 1999. It is undisputed that an internal armed conflict existed in Kosovo and the Prizren region, including the Rahovec and Malishevë municipalities 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, April through May, 1999.

Moreover, it is undisputed that an armed conflict of an international nature existed in Kosovo during the period in question as soon as NATO began its campaign against the Serb forces in Kosovo in March 1999. In particular, on 24 March 1999, NATO forces began air strikes against Serb forces in Kosovo and the FRY declared war on that same day. The NATO air campaign was not suspended until on 10 June 1999 when the UN Security Council passed Resolution 1244. Accordingly from 24 March 1999 through 10 June 1999 it is undisputable that an international armed conflict existed in Kosovo, including the Rahovec and Malishevë municipalities during the relevant periods.

> War crime against civilian population can also be performed in the conditions of civil war, i. e. when it is a non-international armed conflict. In that case, however, according to the 1949 Geneva Convention and the Supplementary Protocol with the Geneva Conventions on the Protection of the Victims of Non-International Armed Forces (Protocol II), the regulations of international war law are applied in limited scope, i. e. the ban of only some of the activities stated in this Article is stipulated. The ban includes the attacks against the life and physical integrity, in particular murder in all forms, injuries, torture and causing suffering, inhumane treatment, humiliating and diminishing treatment, taking hostages, deprivation of the right to a correct and impartial trial, rape, forced prostitution etc. Other activities from this Article, which are not included in the mentioned convention and the supplementary protocol, could not, in case of a civil war, be qualified as a war crime, but, probably, as another criminal act from the federal or republic legislation. It is necessary to mention here that, according to the Supplementary Protocol with the Geneva Conventions on the Protection of the Victims of War of International Armed Conflicts dated 1977 (Protocol I), also those armed conflicts in which the peoples are fighting against colonial domination and foreign occupation and against racist regimes, using the right of the people to self-determination are considered international armed conflict (and not civil war). The stated regulations on the application of the regulations of international war law to internal conflicts refer only to such armed conflicts which, in their scope and character, can be compared with a war, and they do not refer to the cases of internal unrest, isolated rebellions sabotage actions, and other sporadical acts of violence which represent a violation of the national right of the respective state, and not a violation of the regulations of the international law.

[6] *Prosecutor v. Dusko Tadic*, Case No. IT-94-1-A, ICTY App. Ch., 15 July 1999, paragraph 84. (Hereinafter *Tadic* Appeal Judgement).

As such, this Court finds that an armed conflict of both an internal and international character existed during the relevant time period, as required by Article 142 of the CCY.

B. ELEMENT TWO: THE VICTIMS ARE CIVILIANS AND PROTECTED PERSONS UNDER INTERNATIONAL LAW.

The Court next addresses whether victims of the acts alleged in the indictment were members of the civilian population. Article 142 of the CCY contains no definition of "civilian population." Therefore, the court relies upon the definitions of civilian population found in the Geneva Convention, Additional Protocol I to the Geneva Convention, and Additional Protocol II to the Geneva Convention. The Geneva Convention defines protected persons under Articles 4, 13 and 20. As clarified under Additional Protocol I to the Geneva Convention, generally civilians enjoy the protection against effects of hostilities. Thus, civilians are non-combatants and the presence of non-civilians among a civilian population does not alter the character of the population.[7]

Furthermore, the requirement that the persons to be protected must not be nationals of the adversary or the occupying power in whose hands they find themselves is not to be applied strictly. In the complexity of present day international armed conflicts that are inter-ethnic in character, ethnicity rather than nationality may be determinative of national allegiance. As such, allegiance to a party to the conflict and control by that party over persons in a given territory is crucial in determining whether the victims are protected persons in a case such as the international and internal conflict in Kosovo in March through June 1999.[8]

The court finds there is no dispute that the victims of the acts relevant to this case were civilians under Article 142 and "protected persons" under the Geneva Convention and Additional Protocols I and II to the Geneva Convention. These individuals were taking no part in any hostilities and there is no testimony or any other evidence submitted to this Court to indicate that the victims could be characterized as anything other than civilians. Even though there may have been members of the KLA in or around the Rahovec municipality at the time of the relevant events, that does not change the fact that the victims in this case were civilians. Moreover, the Court is quite satisfied that the Serb forces were exercising control over and instituting force against the Kosovar Albanians in the territory of Kosovo, qualifying the Kosovo Albanians as protected persons under the Geneva Conventions and Additional Protocols I and II to the Geneva Convention.

In light of the above analysis and the fact that defense counsel did not dispute this issue, the Court finds it is indisputable that the victims of the relevant alleged acts were civilians.

C. ELEMENT THREE: THE DEFENDANT WAS A PARTY TO THE CONFLICT.

The Commentary under Article 142 of the CCY specifically addresses the requirement that the perpetrator be a party to the conflict, as required under international law. It states as follows:

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[7] *Prosecutor v. Kunarac, Kovac & Vukovic,* It-96-23-T & IT-96-23/1-T, Judgment (22 February 2001), para. 425. (Hereinafter *Kunarac* Trial Judgment.)
[8] *Tadic* Appeal Judgment, paras., 164-166, 168.

> For that reason, the perpetrator of this act may be only a member of a military, political or administrative organization of the side in the conflict, as well as each person in its service. A person who would, outside of the organizational system seen this way, perform some of the activities stated in this Article (e. g. murder, plunder of property and similar), would not be held liable for a war crime, but for a respective criminal act, regardless of the act being performed during war, armed conflict or occupation.

Interestingly, under international law, it is not an absolute requirement that the perpetrator be a member of the military, political or administrative structure of a party to the conflict. Thus, not only military personnel, members of government, party officials or administrators may be held liable for war crimes, but also industrialist and businessmen, judges and prosecutors have been held criminally liable for war crimes. If the individual does not belong to the armed forces, such perpetrator can bear criminal liability only when there is a link between them and the armed forces. Thus, under international law, perpetrators include "individuals who were legitimately mandated and expected as public officials or agents or persons otherwise holding public authority or *de facto* representing the Government to support or fulfill war efforts."[9]

Kolasinac acted under various roles immediately preceding the NATO bombing and during the relevant time period for April and May 1999, during the NATO bombing campaign. Kolasinac testified that he was President of the Municipal Assembly for Rahovec, that he was also a lawyer with the agricultural combine, PIRO/ORVIN, that he was Commander of the Headquarters for Civilian Protection, and that he was a military reservist without rank.

As is discussed in more detail with respect to each component of the war crimes charged, it was in his capacity as a reserve member of the military and Commander of the Headquarters of the Civilian Protection that Kolasinac acted with respect to the war crimes charged. Thus, under any analysis, Kolasinac meets the threshold of acting as a party to the conflict.

1. President of the Municipal Assembly.

Kolasinac testified at trial that when the NATO bombing campaign began in March 1999, Kolasinac was President of the thirty-one (31) member Municipal Assembly of Rahovec. In his capacity as President of the Municipal Assembly (a position which many refer to as "Mayor"), Kolasinac stated that he did not have competence over the police or military and therefore could not prevent the actions of the police or military. As he explained at trial, the Ministry of the Interior had jurisdiction over the police and the Ministry of Defense had jurisdiction over the military. In connection with his competencies as President of the Municipal Assembly, several versions of the Statute of the Municipality of Rahovec were submitted to this Court for reference. A review of those statutes indicates that *de jure*, the President of the Municipal Assembly would not have power over the police or military. In addition, the uncontested testimony adduced at trial indicated that when the NATO bombing began in March 1999, the Municipal Assembly was abolished and work done in connection with the previous competencies of the Municipal Assembly were done by the five member Executive Council, comprised of Zoran Grkovic (President), Jovan Djuricic (Vice President), Petar Dedic, Trajko Milicevic and Dragisa Velikic. Thus, this Court does not find that

[9] *Prosecutor v. Kayeshima and Ruzindana*, Case No. ICTR-95-1-T, ICTR T. Ch. II, 21 May 1999, para. 175.

Kolasinac's alleged acts during the relevant time periods were done in his capacity as President of the Municipal Assemby.

2. Lawyer with the Agricultural Combine -Piro/Orvin.

Kolasinac also testified at trial that during the time he was President of the Municipal Assembly, he continued his position as a lawyer with the agricultural combine, also known in various times as, Piro or Orvin, and that it continued throughout the relevant time period of April and May 1999. The director of Piro was Zoran Stanishiq, who one witness believed to be closely associated with the police headquarters. (See testimony of Eqrem Mullaaliu.)

It is interesting to note here, that the Report issued by the International Crisis Group, entitled "Reality Demands: Documenting Violations of International Humanitarian Law in Kosovo 1999" (hereinafter ICG Report), which provides an in depth analysis of the human rights violations in Kosovo, including specific municipalities, reports that Serb forces were stationed at various points within Rahovec during the NATO bombing campaign, including the buildings of the Piro complex.[10]

3. Commander of the HQ of Civilian Protection of Rahovec.

Kolasinac also testified that he was appointed Commander of the Civilian Protection of Rahovec during the war.[11] According to the Order on the Establishment of the Civilian Protection Headquarters, dated 22 February 1999, and Amendment to the Order on the Establishment of the Civilian Protection Headquarters, dated 10 April 1999 (Exhibits 12 and 14 submitted by the Defense) a Civilian Protection Headquarters was set up for the territory of each municipality. The Civilian Protection Headquarters were established at the organizational units of the Federal Ministry of Defense, which has competence over the military. In Rahovec, the Headquarters of the Civilian Protection was located at the Municipal building, while the Department of Defense and the Territorial Defense were located at the Cultural building. (See testimony of Radomir Simic.)

The purpose of the Civilian Protection Headquarters is set forth in paragraph 3 of the Order and although composed of six parts, remains somewhat broad.[12] It states in part as follows:

a. Monitor, analyze and assess the level of threat and vulnerability of the territory by the ravages of war, natural and other disaster and other threats.
b. Proposing of the undertaking of necessary measures for protection and the rescuing to the competent authorities, in order to prevent, alleviate, or

[10] See p. 134.
[11] It is important to note here that "CIVILNA.ZASTITA" /Serbian/ and "MBROJTIA CIVILE" /Albanian/ can equally be translated into English as "Civilian Protection" or "Civil Defense".
[12] This Court would note that the Law on Defense of the Republic of Serbia, Official Gazette of the Republic of Serbia, No. 45/1991, dated 27 July 1991, Section VI, Article 68, sets forth that "[c]ivil defense, as an aspect of defense, is organized, prepared and carried out as a system of protection and rescue of people, material, and cultural goods and assets from wartime devastation, natural disasters, technical-technological and other major threats in war and peace." Protection and rescue includes under Article 73 such things as sheltering of people, caring for vulnerable people and victims, protection from demolition and rescuing from ruins, and "sanitation."

eliminate the consequences of the ravages of war, natural or other disasters and other threats;

Thus, although the specific functions of the Headquarters of Civilian Protection are rather broad, it is clear that it is an arm of the Federal Ministry of Defense, which has power over the military. It is also equally clear that the Headquarters of the Civilian Protection is involved in the assessment of threats to the territory during war and in undertaking to prevent, eliminate or alleviate the consequences of war. What the stated purpose of the civilian defense is and what it is actually used for is not necessarily the same in this case, as discussed in more detail below. Notably, no Kosovar Albanians were involved in the Civilian Protection.

The Order and Amendments to the Order regarding the establishment of the Civilian Protection Headquarters also indicate that as a rule, the presidents of the local government executive bodies are appointed commanders of the Civilian Protection Headquarters. Civilian Protection Chiefs of Staff are selected from executives of the organizational units of the regional Federal Ministry of Defense bodies. The Commander of the Civilian Protection Headquarter nominates and dismisses the assistants to the Civilian Protection Chiefs of Staff. Thus, while it appears that the Commander of the Headquarters of the Civilian Protection answers to the Federal Ministry of Defense, his powers appear to be limited to those directly under his supervision within the Headquarters of the Civilian Protection.

While Kolasinac's memory seemed a bit vague as to the actual dates of his appointment, the documentary evidence revealed the following:

- By order of the Federal Ministry of Defense, dated 22 February 1999, the Head of the Defense Section proposed Kolasinac as the Commander of the Headquarters of the Civilian Protection and Radomir Simic as the Chief of Staff of the Headquarters. (See 17 April 1999 letter from Radomir Simic, signed on behalf of the Defense Section of the "Municipal Assembly of Orahovac, Secretariat for People's Defense" – Exhibit 3 submitted by the International Prosecutor)
- Kolasinac signed summonses to various citizens of Orahovac in his capacity as "Commander of the Municipal Headquarters of Civil Defense" for the meeting on 24 April 1999. (Exhibit 4 submitted by the International Prosecutor)
- On 9 May 1999, a formal decision was issued by the Deputy Federal Minister of Defense indicating that Kolasinac was appointed Commander of the Headquarters of Civilian Protection for the territory of Orahovac municipality and Radomir Simic, an employee of the Federal Ministry of Defense, Department of Defense in Orahovac, was appointed Chief of Staff of the Headquarters of Civilian Protection for the territory of Orahovac Municipality. (Exhibit 13 submitted by the Defense.)

Thus, at a minimum, it was clear to Kolasinac as of April 1999 that he would likely be appointed as the Commander of the Headquarters of Civilian Protection. This was confirmed again on 10 April 1999 by way of the Amendment to the original Order on the Establishment of the Headquarters of the Civilian Protection, and yet again by the 17 April 1999 letter signed by Radomir Simic as an employee of the Department of Defense of Orahovac. Indeed, the summonses issued by Kolasinac for the 24 April 1999 meeting indicated that Kolasinac was already acting in his capacity as Commander of the Headquarters of Civilian Protection.

Accordingly, this Court finds that during the relevant time period, Kolasinac was acting in his capacity as the Commander of the Headquarters of the Civilian Protection.

4. Military Service.

It is uncontested that Kolasinac was in the military during the war, but the testimony regarding Kolasinac's military rank is not conclusive. Kolasinac testified that he was in the military reserve and that he had no rank. In fact, a receipt dated 8 May 1999 from the Section of Defense of Orahovac indicates that an automatic pistol and ammunition was issued to Kolasinac, and he was listed in the rank of a soldier. (See Exhibit 16 submitted by the Defense, attachment 1 to the trial minutes from 6 December 2002.) Zdravko Grkovic, who was the Commander of the Military Territorial Unit, testified that Kolasinac was not competent to give orders to him and that Kolasinac was only a reservist. He stated that apart from being Commander of the Headquarters of Civil Defense, Kolasinac had no other military related tasks.

Several other witnesses, on the other hand, testified that Kolasinac had the rank of a Captain. (See for example the trial testimony of Nysret Mullabazi, Fejzullah Sokoli, Xhemali Jaha.) Others testified that they were not sure what his rank was, but that his uniform had a rank on it. (See trial testimony of Hasan Sokoli) To the contrary, Myhedin Sharku testified that Kolasinac had a military rank, but he did not know what rank because during the war, military ranks were hidden. Descriptions given regarding his uniform are not even consistent. Myhedin Miftari explained that Kolasinac wore different kinds of uniforms and sometimes wore a blue uniform with a cap with a white symbol. (See also the trial testimony of Myhedin Miftari.)

The trial testimony is similarly inconsistent as to whether Kolasinac carried his gun during the relevant time period. Kolasinac denies carrying his gun, while others testified that they saw him carrying his weapon at certain times. (See trial testimony of Destan Mullabazi, Ahmet Shabandula and Musa Raba.)

Regardless of his rank or whether he carried a weapon, it is undisputed that Kolasinac was acting during the relevant time periods in his capacity as a party to the conflict as the Commander of the Headquarters of the Civilian Protection and as a military reservist.

D. ELEMENTS FOUR, FIVE AND SIX: PREMEDITATED ORDERING OR COMMITTING ACTS CONSTITUTING WAR CRIMES AGAINST THE CIVILIAN POPULATION IN VIOLATION OF ARTICLE 142 AND INTERNATIONAL LAW.

The indictment charges Kolasinac with the following acts of war crimes: (a) displacement or forced de-patriation; (b) illegal detention; (c) the application of measures of intimidation and terror; (d) collective punishment; (e) forced labor; (f) the confiscation of property; (g) the looting of the property of the population; and (h) the illegal and self-willing destroying and taking possession of property in great scale, which is not justified by military needs. The acts giving rise to these violations are varied and are discussed in connection with each of the allegations.[13]

[13] Although several acts are alleged in the Second Amended Indictment, these alleged acts give rise to only one criminal act of war crimes against the civilian population. See the Commentary to Article 142 of the CCY, which specifically states that:

With respect to each of the alleged acts, this Court will first determine whether the act proscribed is also in violation of existing international law. Next, this Court will examine the criminal liability of the accused in terms of whether the accused ordered or committed the proscribed acts. At the same time, this Court must examine the possibility that the accused is criminally liable under the theories of complicity, aiding, and the doctrine of command responsibility. Finally, the Court will evaluate the element of intent in relation to the alleged acts.

1. Background of the Conflict in Kosovo During the NATO Bombardment.

It is impossible to understand the basis for the allegations against Kolasinac as contained in the Second Amended Indictment without some sense of the conflict in Kosovo generally and in particular in the area of Rahovec and its surrounds during the NATO bombing campaign and just prior. The OSCE Report, entitled "Kosovo/Kosova As Seen, As Told" (hereinafter the OSCE Report), submitted to the Court by both defense counsel and the International Public Prosecutor as evidence, but accepted by the Court as reference only, provides a comprehensive background of the internal and international conflict in Kosovo. The Court refers to this Report, as it was submitted to the Court for reference by both Kolasinac's defense counsel and the International Public Prosecutor.

a. The Mass Deportations of Kosovar Albanians.

The OSCE Report, Chapter XIV, explains the expansiveness of the deportations. Between March and June 1999 forces of the FRY and Serbia forcibly expelled some 863,000 Kosovo Albanians from Kosovo. Of these, 783,000, stayed in Albania, the former Yugoslav Republic of Macedonia, Montenegro or Bosnia-Herzegovina. In fact, the OSCE Report estimates that 90% of the Kosovar Albanian population was displaced in 1999. The OSCE Report goes on to state that:

> the outflow of Kosovo Albanians as refugees resulted from systematic and widespread expulsions carried out throughout Kosovo by the Serbian forces. Once the OSCE-KVM left on 20 March 1999 and in particular after the start of the NATO bombing of the FRY on 24 March, Serbian police and/or VJ, often accompanied by paramilitaries, went from village to village and, in the towns, from area to area threatening and expelling the Kosovo Albanian population. Those who had avoided this first expulsion or had managed to return were then expelled in repeat operations some days or weeks later. Others who were not directly forcibly expelled fled as a result of the climate of terror created by the systematic beatings, harassment, arrests, killings, shelling and looting carried out across the province. Refugees arrived at the borders of Kosovo in convoys several thousand strong on foot or carried by tractors, and on trains and buses, these last two provided and organized by the police or other Serbian authorities.

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.

b. Looting of Property of the Kosovar Albanians.

Chapter XII of the OSCE Report explains the common occurrence of pillaging and looting that took place in Kosovo during the war.

> Especially in the period of the escalation of the armed conflict from 20 March, deliberate destruction of civilian property, looting and pillage were defining characteristics of the actions of the Yugoslav and Serbian forces. These attacks on property appear to have had a threefold purpose: they were meant to weaken and undermine the Kosovo Albanian population, to serve as an additional profit incentive for the military and security forces and their collaborators, and to destroy houses to ensure that the population did not return after expulsion.

The OSCE Report concluded "that in Kosovo civilian property was systematically damaged or destroyed and looting and pillage was a common occurrence."

c. The Circumstances of Rahovec and its Immediate Surrounds Creating Fear Among its Citizens.

The OSCE Report, Part V, also provides a very detailed description of the circumstances surrounding the conflict in various municipalities, including Rahovec during 1998 and the NATO bombing campaign from March to June 1999. While the emphasis herein lies with the conflict as of March 1999, it is sufficient to state that immediately prior to the NATO bombardment, there was heightened activity by both Serb forces and the UCK in the municipality. As the OSCE pulled out in late March 1999,

> there was a high level of anxiety among civilians in the municipality as harassment and intimidation increased. Fighting soon spread and intensified over a wide area of the municipality shortly after the start of NATO air strikes against the FRY. As a result of co-coordinated actions by Serbian forces, Kosovo Albanians were forced from their homes in Orahovac town and from villages in all parts of the municipality. Thereafter their experiences as recounted were typical of the general patterns of human rights violations affecting the forcibly displaced all across Kosovo (see Chapter 14, Forced expulsion). Many Kosovo Albanians who were forced out of Orahovac municipality were transported on buses and trucks and taken south through Prizren and Zur/Zhur, from where many people were made to walk the last kilometres to the border crossing into Albania. Others took to the mountains, in some cases eventually walking the whole way to the borders with Albania or the former Yugoslav Republic of Macedonia.

(See OSCE Report, Part V, Rahovec Section.)

According to the OSCE Report, in Rahovec, between 20 and 24 March 1999, the Serb military and police began a campaign of intimidation. By 25 March 1999, the police VJ and paramilitary were entrenched in a campaign of killings, looting and burning of property. Freedom of movement was severely restricted, with the imposition of a curfew. The next day, Serbian forces entered the town and ordered people to leave.

In the surrounding villages during this same time frame, there were reports of massacres in the villages of Bela Crkva/Bellacerke, Celina/Celine, Nogavac/Nagafc, Brestovac/Brestoc, Velika Krusa/Krushe e Madhe and Mala Hoca/Hoce e Vogel, where

hundreds of Kosovar Albanian villagers were murdered by Serb forces within only a few days time. (See Part V of the OSCE Report generally.)

The OSCE Report also indicates that in April 1999, the VJ reportedly attempting to encourage Kosovo Albanians back to the town, only for people to find that the next day the police were registering Kosovo Albanians apparently in preparation for expelling them towards Albania. Moreover, at the same time there were rumors of a "black list" and reports of the targeting of professionals or of people connected to the LDK or UCK.

Consequently, there was a significant flight of the Kosovar Albanians from Rahovec town. Some left out of fear, while many others were ordered to leave, sometimes within 15-30 minutes. Some fled to the nearby mountains. Still others went into hiding in their homes.

The above summary cannot begin to describe the horror faced by the Kosovo Albanians who were being subject to widespread and systematic human rights abuses and deportations. It is, nevertheless, the backdrop from which the above allegations derive against Kolasinac for War Crimes Against the Civilian Population.

2. Forced Labour Charges.

With respect to the charge of forced labour, the Second Amended Indictment states in pertinent part:

> On 24 April 1999 Kolasinac held the first of a series of meetings which Kosovar Albanian leaders in Rahovec were required to attend in which he told them that they must organize groups of persons of Albanian ethnicity in their communities to perform forced labour and in fact more than 500 people were eventually subjected to this forced labour during the remainder of April and a portion of May, 1999. These meetings occurred between 24 April 1999 and 12 June 1999. Some of this forced labour lasted for several days, some as long as 50 days, in fact ending only when the war ended and Kolasinac and his accomplices were no longer in power. Armed Serb police and military personnel kept the forced labourers from leaving until they were allowed to leave. He engaged in coercive acts, such as threatening the use of police and military forces if the Kosovar Albanian leaders failed to organize their community for forced labour.

In essence, the Second Amended Indictment alleges that Kolasinac ordered, committed, aided and abetted, and acted in complicity in organizing forced labour: (a) for the cleaning of Malishevë; (b) for two separate instances of the pruning of vineyards; (c) and for the digging of trenches. Each of these allegations is evaluated below

a. The Law on Forced Labour.

Although forced labour is prohibited under Article 142 of the CCY, there is very little clarification in the Commentary to Article 142. Given the application of regulations of international law during war to Article 142 of the CCY, this Court refers to the Geneva Convention, which prohibits forced labor during war at Articles 40, 51 and 95[14]. Article 40 states that:

[14] Article 40 falls under Section II regarding aliens in the territory of a party to the conflict. Article 51 falls under Section III regarding occupied territories. Article 95 falls under Section IV regarding regulations for the treatment of internees. For purposes of this analysis, This Court refers to Articles 40 and 51 and the most relevant.

> Protected persons may be compelled to work only to the same extent as nationals of the Party to the conflict in whose territory they are.
>
> If protected persons are of enemy nationality, they may only be compelled to do work which is normally necessary to ensure the feeding, sheltering, clothing, transport and health of human beings and which is not directly related to the conduct of military operations.
>
> In the cases mentioned in the two preceding paragraphs, protected persons compelled to work shall have the benefit of the same working conditions and of the same safeguards as national workers in particular as regards wages, hours of labour, clothing and equipment, previous training and compensation for occupational accidents and diseases.

Article 51 of the Geneva Convention also states that:

> The Occupying Power may not compel protected persons to serve in its armed or auxiliary forces. No pressure or propaganda which aims at securing voluntary enlistment is permitted.
>
> The Occupying Power may not compel protected persons to work unless they are over eighteen years of age, and then only on work which is necessary either for the needs of the army of occupation, or for the public utility services, or for the feeding, sheltering, clothing, transportation or health of the population of the occupied country. Protected persons may not be compelled to undertake any work which would involve them in the obligation of taking part in military operations. The Occupying Power may not compel protected persons to employ forcible means to ensure the security of the installations where they are performing compulsory labour.
>
> The work shall be carried out only in the occupied territory where the persons whose services have been requisitioned are. Every such person shall, so far as possible, be kept in his usual place of employment. Workers shall be paid a fair wage and the work shall be proportionate to their physical and intellectual capacities. The legislation in force in the occupied country concerning working conditions, and safeguards as regards, in particular, such matters as wages, hours of work, equipment, preliminary training and compensation for occupational accidents and diseases, shall be applicable to the protected persons assigned to the work referred to in this Article.
>
> In no case shall requisition of labour lead to a mobilization of workers in an organization of a military or semi-military character.

In addition, Common Article 3 to the Geneva Conventions provides that "[p]ersons taking no part in the hostilities … shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria." Additional Protocol II to the Geneva Convention elaborates further at Article 4 that:

> 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 I 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;…
>
> (f) slavery and the slave trade in all their forms;
>
> (g) pillage;
>
> (h) threats to commit any or the foregoing acts.

Slavery, as prohibited under Article 4, Section (f), has been interpreted by the UN International Law Commission to include forced labour.[15]

Although this Court relies primarily upon the Geneva Conventions and its Additional Protocols to give form to the prohibition against forced labor during war, it would also note that the prohibition of forced labor is addressed generally in the Forced Labour Convention (FLC), which entered into force in 1932 and was originally ratified by Yugoslavia in 1933.[16] Pursuant to the 1974 Constitution, the FLC was applicable law in the FRY during the conflict in 1999. It should be noted that the FLC is not binding upon its party members to actually abolish forced labour, but rather "to undertake to suppress the use of forced or compulsory labor."[17] Nevertheless, the Court relies in part upon the FLC for definitional purposes. The FLC Article 2 defines forced labour as "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily." Other well established instruments of international human rights law prohibit forced labor, including the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) and the Slavery Convention.[18]

Based upon the above provisions, the unifying elements of a charge of forced labour must include: (1) the labour is done involuntarily; (2) the labour is forced to be performed

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[15] See the 1996 Draft Code of Crimes Against the Peace and Security of Mankind, Report of the International Law Commission on the work of its forty-eighth session, 6 May-26 July 1996, GA, Supplement No 10 (A/51/10), p 93, Art 18 (Crimes against Humanity) of the Draft Code.

[16] After the disintegration of the SFRY, since the FRY was not considered a successor to the SFRY, it signed and ratified the FLC in 2000.

[17] In addition to the FLC, the Abolition of Forced Labour Convention (the AFLC), entered into force in 1959. While the AFLC does prohibit forced labor, it does not appear the SFRY was ever a party to this Convention.

[18] This Court also refers to the European Convention for the Protection of Human Rights and Fundamental Freedoms, which became the applicable law in Kosovo as of 10 June 1999, pursuant to Section 3 of UNMIK Regulation 1999/24, as amended by UNMIK Regulation 2000/59. Although the ECHR was not applicable law in Kosovo in April and May 1999, it is still persuasive authority on the prohibition of forced labor and its definition. Specifically, Article 4 of the ECHR states that no one shall be required to perform forced or compulsory labour.

without remuneration. Although there exists the defense of forced labour that is normally necessary to ensure the feeding, sheltering, clothing, transport and health of human beings, it must not be directly related to the conduct of military operations. The analysis of these factors must, of course, be done on a case by case basis under the unique facts of each case.

b. Forced Labor In Connection With The Cleansing of Malishevë.

The Second Amended Indictment alleges the following in relation to the cleansing of Malishevë:

> Kolasinac discriminatorily imposed forced labour only upon persons of Kosovar Albanian ethnicity and he used the forced labour of Kosovar Albanians to assist in and aid and facilitate the pillaging, looting, theft and destruction of the valuable personal property of other Kosovar Albanians who had been deported from Kosovo after being forced to leave their property in Malishevo…….These victims of deportation had been directed by Serb authorities to go from their home areas to Malishevo and they had driven their personal trucks, cars and tractors there, loaded with their personal property and after they arrived at Malishevo they were ordered onto busses which took them to other countries. They had to leave their property behind, and thereafter a portion of it was stolen by Serb personnel and the remainder destroyed by loading it onto trucks using the forced labour *supplied by Kolasinac* and dumping it in remote areas and burning it.

i. Facts

To understand the cleansing of Malishevë, the testimony of Hajrullah Thaqi and Xhemile Krasniqi was illuminating. Mr. Thaqi was from Mirusha village and testified that the villages of Burim, Turjak, and Gur a Bardhe were bombed with heavy artillery. The villagers went together to a field in the Gur a Bardhe village so that whatever happened would happen to them all. He testified that they were surrounded by Serb military and were told that this was Serb land and to get ready to go to Albania. The next day they were told to get their things. The police took their money. They were forced to Malishevë and from Malishevë buses were to pick them up to take them to the Albanian border. They went to Malishevë on loaded tractors. When he got to Malishevë he was told that people were burned alive in their homes and cars. He estimated that there were 350,000 to 400,000 people there from six or seven neighboring municipalities, such as Suhareka, Rahovec, and Kline. Everything was left there, including his tractor. All of his money and other things of value were stolen by the police. He was in Malishevë for two days before being sent to Albania. It is undisputed that Malishevë was a center point from where the Kosovar Albanians were deported to Albania and that there they were forced to leave all their belongings before being bussed to the Albanian border. The testimony is undisputed that the area was completely covered with tractors, household goods, and clothes that were left behind during the deportations.

The experience of Mr. Thaqi is confirmed by the testimony of Ms. Krasniqi. She testified that in April 1999, she left her village and went to Drenovc village and then to Crna Vrana, now Gur a Bardhe. She gathered in a field in Gur a Bardhe with other villagers. They were also sent to Malishevë, where she saw many other people already there, followed by many more after she arrived. She had two handbags that she was allowed to take with her. Ultimately a convoy of trucks and busses took them to Albania.

Orders for the cleansing of Malishevë. Kolasinac testified that when the Yugoslav army was present in Rahovec, he met with Lt. Colonel Bozic in the Municipal building on 23 April 1999. Lt. Colonel Bozic asked him to summon people from the Kosovar Albanian civilian population to a meeting on 24 April 1999 and that they should not have been involved in the conflict. Kolasinac stated that he sent out summonses to eighteen (18) Kosovar Albanians that he knew to be respectable members of the community and not involved in the conflict. Kolasinac signed the summonses as the Commander of the Headquarters for Civilian Protection.

Several witnesses testified regarding receiving a summonses for the meetings, including Myhedin Sharku, Zyber Zeka, Bejtullah Hoxha, Myhedin Bekeri, Sylejman Bala, Qazim Ceska, Xhemali Jaha, Mizahir Shabani, Musa Raba, Halil Sharku, Hasan Sokoli and Selami Shehu. Virtually without exception, each of the witnesses testified that they were terrified not to respond to the summonses. Given the recent occurrences in the area, their fear was understandable. Eqrem Mullaaliu testified that after the NATO bombing campaign started at the end of March 1999, the Serbs burned houses, looted, and forced people to flee. He stated that the Serb population of Rahovec, as well as those in uniform, looted the houses of those that were forced to flee. Mr. Mullaaliu saw columns of people fleeing Rahovec in their tractors, in cars or on foot because of the Serb terror campaign. Xhemali Jaha testified that on 15 April 1999, the police and army entered Rahovec, entering the houses of citizens and taking away approximately eighty or ninety innocent civilians to the Albanian border. Myhedin Bekeri testified that fifty to sixty people were arrested in the days prior to receiving the summonses and those people were sent to work in the Prizren region.

On 24 April 1999, the day of the meeting, about seventy five Kosovar Albanian citizens were arrested, including two that had been summoned to the meeting, Sylejman Bala and Selami Osa. (See testimony of Sylejman Bala) Qazim Ceska testified that he was too afraid to go to the first meeting because he saw police coming to his house and had seen the military and paramilitary in his area in the previous days. Mizahir Shabani testified that on the day of the meeting his neighbor, Nadir Mustafa, was killed as the police were forcefully taking people from their houses. Given the circumstances surrounding the summonses, the vast majority of the witnesses felt compelled to go to the meeting out of fear that they may suffer severe consequences should they not attend.

24 April 1999 Meeting. From the various testimonies, it appears that in attendance from the Serbian side at this meeting were: Andjelko Kolasinac; Radomir Simic; Lt. Colonel Bozic, who was from the Yugoslav Army; Bogoljub Soric, who was Head of the Secretariat for Internal Affairs; and Dusko Vujicic, who was Commander of the Police of Rahovec. While it is undisputed that Kolasinac was in a military uniform at this meeting, the various trial testimonies are less clear as to whether he was carrying a gun. Before the meeting started it is clear from all the testimony that the Kosovar Albanians in attendance complained about the arrests and particularly about Sylejman Bala and Selami Osa and asked that these two men be released. Radomir Simic testified that Kolasinac told Lt. Colonel Bozic that the two civilians who had been taken by the MUP needed to be released and they were. This is also confirmed by Kolasinac's secretary at the time, Slavica Vitosevic.

Kolasinac testified that when the meeting commenced, he introduced Lt. Colonel Bozic to the Kosovar Albanians attending the meeting and "gave the floor" to him. The testimony of various witnesses indicates that Kolasinac explained to them that they had been called as highly influential people in the municipality and they were to gather people together to do different work. This is not disputed.

Kolasinac testified that Lt. Colonel Bozic asked for help with the return of residents from the village of Turjak, who had fled to the mountains, but that the Kosovar Albanians at the meeting refused, explaining that they had no influence over these villagers. This is not disputed. However, Bajram Oruci and Selami Shehu both testified that they did not want to help bring the approximately 20,000 villagers back because they were concerned that it could be a plan to entrap them and massacre them in their houses.

Kolasinac also testified that Lt. Colonel Bozic asked those summoned to the meeting were asked to assist with matters for the Civilian Defense and that they ultimately agreed to do so. It is not disputed that they ultimately agreed to assist, but this Court finds that the overwhelming evidence demonstrated that their agreement was obtained through threats and intimidation.

Many of the witnesses that had been summoned to the meeting testified that Lt. Colonel Bozic was threatening. (See testimony of Myhedin Sharku, Bejtullah Hoxha, Zyber Zeka, Mizahir Shabani, Musa Raba, Xhemali Jaha, and Halil Sharku.) Bejtullah Hoxha stated that Lt. Colonel Bozic told them that he did not know why Rahovec had not suffered as much as the surrounding villages. He proceeded to threaten that if he heard even a shout from them, he would massacre even a baby in a cradle. This was confirmed by Misahir Shabani, who testified that one of the military superiors threatened "if you help KLA or if any of our soldiers will be killed, then we will kill even the babies." Halil Sharku testified that Bozic stated if there were any KLA collaborators in the room, they would not see the end. Sylejman Bala testified that one of the Serb authorities stated that anyone that gave aid to KLA would be executed. Mizahir Shabani testified that Kolasinac told them that "you go and do this task or two policemen will be sent to organize the people." Similarly Xhemali Jaha testified that Kolasinac told them that if they did not organize the people, the police or military would do it. Myhedin Sharku testified that Bozic also told them that if they did not organize the people, the police would go door to door to take the people by force.

The witnesses for the defense that were in attendance at the meeting uniformly testified, quite to the contrary, that all those in attendance were happy to be there and voluntarily wished to assist in the work needed to be done. Radomir Simic testified that he believed that the Kosovar Albanians were happy to assist so that they could move about freely. Mr. Simic's belief appears to this Court logically nonsensical, since the Kosovar Albanians that were forced to work were guarded by Serb military. He explained later in his testimony that they were guarded not to force them to do the labour, but to protect them from the KLA, who might try to kidnap them. If that latter is true, then it does not make sense that the Kosovar Albanians would be willing to risk their lives to assist. This could hardly be considered "moving about freely."

26 April 1999 Meeting. Kolasinac testified that the Headquarters for the Civilian Protection received orders to clear the Municipality of Malishevë and on the 25th of April he was told to call upon the Albanians that had attended the previous meeting. Radomir Simic was more specific and testified that the orders came from Lt. Colonel Bozic. As such, Kolasinac sent summonses out for the meeting on 26 April 1999. Once again, those summoned attended the meeting out of fear for their lives. Qasim Ceska testified that he was informed that he should attend the meeting or he would be forced by the police.

In attendance at this meeting were Kolasinac, Radomir Simic, Zoran Grkovic (President of the Executive Council) and Vitko Mihajlovic (Deputy President of the Municipal Assembly.) Again Kolasinac and Radomir Simic were in military uniform. Essentially, at this meeting the Kosovar Albanians were ordered to ensure the participation of

at least thirty (30) to fifty (50) to "cleanse the ground" in Malishevë. Musa Raba testified that Kolasinac told them at the meeting that if they did not undertake the organization on their own, then the police or the military would do it.

The various testimonies are inconsistent as to whether the cleaning of Malishevë was discussed at the meeting on 24 April or 26 April 1999. The Court finds this inconsistency of no importance. What is clear to this Court is that several highly influential and well educated Kosovar Albanians testified regarding this meeting and their testimonies were all fairly consistent and notably credible. Moreover, each of the witnesses knew Kolasinac fairly well. Kolasinac testified that he specifically chose people with whom he had frequent contacts and also repeatedly point out to the Court that he had good and friendly relations with each of these witnesses. Under such circumstances, the Court concludes that given the good relationships between the witnesses and the accused, there would be no reason to lie to the Court.

More to the point, it is clear to this Court that the Kosovar Albanians that attended the meetings felt threatened and afraid not to cooperate with those in charge from the police, the military and the Headquarters of the Civilian Protection. In order to avoid being forced from their homes by the police and military, they agreed to organize people in their areas to undertake the forced labour. (See testimonies of Myhedin Bekeri, Xhemali Jaha, Mizahir Shabani). Their agreement to organize the people for forced labour was not voluntary.

Organization of the Groups. Those persons in attendance at the meetings were obligated to organize groups of between thirty to fifty people to cleanse the grounds in Malishevë. Those witnesses that organized the work for Malishevë included Qazim Ceska, Myhedin Bekeri, Xhemali Jaha, Mizahir Shabani, Musa Raba, Halil Sharku, and Myhedin Sharku. From their testimony, it is clear that they organized the work only to prevent severe consequences. Qazim Ceska testified that he organized the groups in such a way that only one member of any given family would go, in case there were consequences. He stated that he went with his group to town where they were put into trucks and taken to Malishevë and that the people were treated like animals. Myhedin Bekeri similarly organized the work, but did not participate in the work. He testified that he took part in the organization process in order to prevent the police and the military from entering their houses and taking them by force to perform the labour. Xhemali Jaha similarly testified that he organized the work to prevent further torture. Mizahir Shabani stated that he did organize labor because he had no other choice and that those people that agreed did so to avoid being taken by the police by force.

Cleaning of Malishevë. Kolasinac testified that the cleaning of Malishevë began on the 27th and concluded on the 2nd or 3rd of May and that each group worked for about two days each. The testimonies indicated that approximately thirty to fifty people were involved in the labour on any given day.

Kolasinac stated that he himself went to Malishevë during the cleaning process "to check on the conditions of the institutions" on 1, or 2, or 3 May 1999. Kolasinac testified that he saw all the tractors lined up and that he went to the Outpatient Clinic, where he saw that all kinds of things were scattered all over, including blankets, cushions, equipment and papers. He stated that he did not know who owned the tractors. This Court notes Kolasinac's noticeable unease and hesitance in testifying at what he actually saw in Malishevë and thanks the defense counsel for his candor in acknowledging that the tractors were not the property of the police or the army, but rather of the civilian population.

Radomir Simic, Krsta Soric and Trajko Milicevic had the duty to organize and oversee the work. Radomir Simic, as Chief of Staff of Civilian Defense, was obligated as part of his duties to oversee the work at Malishevë. He made the work schedule, which lasted about six days. He also had to go to Malishevë with Bozic to check on the work. He testified that twenty to thirty guards were there. Krsta Soric also testified that as Commander of Civilian Defense Unit, which was a part of the organizational structure of the Headquarters of the Civilian Defense, it was his duty to organize and supervise the work at Malishevë. Although he stated that he participated in the work, this Court does not accept this statement to mean that he worked like the forced laborers. Radomir Simic also testified that among the Kosovar Albanian workers, there were seven or eight Serbs that were drivers. But, he explained they also participated in the work. As above, this Court cannot accept this statement to mean that they worked as the forced labourers did. Trajko Milicevic received orders from Krsta Soric to supervise the work. As such, he visited the site with Krsta Soric and Branko Micic to oversee the work.

Those witnesses that took part in the actual cleaning included: Bajram Vuciterna, Hilmi Derguti, Hasan Sokoli, Vehap Vehapi, Fejzullah Sokoli. The laborers were told to gather in the courtyard of the municipality where they were carted off in trucks. Hilmi Derguti testified that on the first day, his group of thirty-three gathered in the courtyard of the municipality of Rahovec. He stated that Kolasinac and Simic told them that they had to clean the grounds of Malishevë. He knew most of the people that were cleaning in Malishevë and they ranged in age between twenty-three and seventy-five and they went because they were afraid that the young Kosovar Albanians would be taken away. This was confirmed by the testimony of Hasan Sokoli. The labourers were transported in the back of trucks.

It is undisputed that there were hundreds of trucks and tractors that had been abandoned by the Kosovar Albanians being deported and that clothes and household goods were everywhere. Radomir Simic testified that he saw tons of blankets, clothes, mattresses and other household goods that he described as garbage that was probably taken to a ditch and burned. Xhemali Jaha testified that when those from his group returned, they reported that Malishevë was a catastrophe and that there were even corpses in the streets. In fact, all the clothes and discarded items were loaded onto trucks, which were taken to a side road and thrown away. (See testimony of Hilmi Derguti and Bajram Vuciterna.) Trajko Milicevic confirmed that the usable and non-usable goods were separated. The usable goods were loaded onto trucks and during the loading of the trucks, the guards were placed fifty meters away. Many of the usable things were brought to the cellar of the Piro/Orvin Company. The non-usable goods were burned.

In addition, Hilmi Derguti testified he saw approximately 250 abandoned tractors and Bajram Vuciterna testified that he counted over 357 tractors. Trajko Milicevic helped to fix tractors that had broken down. Trajko Milicevic attempted to have this Court believe that the 250 to 357 tractors that were abandoned in Malishevë, were abandoned by Kosovar Albanians in Malishevë because they were either broken down or out of gas. This Court would find it an incredible coincidence that all of these tractors happened to run out of gas or break down in the same location. Radomir Simic testified that the tractors were taken to Piro/Orvin Company and to a place near a school in Malishevë. Trajko Milicevic testified that they took lists of the vehicles.

Each of the witnesses that took part in the forced labor testified that their work lasted two to four days, with the exception of Bajram Vuciterna and Vehap Vehapi, who were required to work for seven days. It was the Albanians that did the manual labour and that the Serbs were guarding them or acting as drivers. Hilmi Derguti also testified that all the

manual labor of loading the trucks was done by Albanians and the Serbs drove the trucks. (See also the testimony of Vehap Vehapi.) Even Radomir Simic confirmed that the majority of the workers were Albanians. Not one witness testified that they were paid for their work.

The testimony of the workers is also confirmed by those organizers who received reports about the work from their family and friends. Similarly, Bejtullah Hoxha's brother, Muharrem, told him that clothes and household items were everywhere. The Serbs only drove the trucks and they wore military uniforms and guarded the Albanians. Myhedin Sharku's brother also reported that covered trucks were used for transportation and the police escorted the trucks when valuables were being transported.

Guards. It is clear from the totality of the testimony of several of the witnesses that the guards were not there to protect the Kosovar Albanians, but rather to make sure that they did the work they were ordered to do. Zdravko Grkovic testified that he was in charge of the military workers that were engaged to "secure" the persons who were working there. He stated that it was necessary because of KLA activities and so he got approval from his superiors to send military staff for security reasons. Other defense witnesses similarly testified that the guards were used to protect the Albanians from being kidnapped. (See testimony of Radomir Simic) This Court does not find this testimony credible, as discussed above, it would not make sense that the Kosovar Albanians would be willing to voluntarily perform the required labour at such a risk to their lives.

On the contrary, the Kosovar Albanians that were forced to work testified that the guards were not there to protect them, but to make sure they did the work. Zyber Zeka testified that he was not afraid of being kidnapped by KLA, but was afraid of being killed by the police, the paramilitary or the Serb forces. Hilmi Derguti testified that that they were guarded by men from the military police, the police and civil protection. This testimony was supported by all the other Kosovar Albanian witnesses that took part in the cleansing of Malishevë. Hasan Sokoli testified that "Serbs were like chiefs there, giving orders and driving trucks." Myhedin Bekeri's brother informed him that they were told that if they attempted to escape they would be killed. Myhedin Sharku's brother went to work and told him that they were constantly guarded by police and army. Although Fejzullah Sokoli testified that he was happy to come out of hiding, he also testified that he was guarded by the military and could not refuse to do the work because the police were around.

Purpose. The purpose of using forced labour for the cleaning of Malishevë cannot be said to be to ensure the feeding, sheltering, clothing, transport and health of human beings. Witnesses for the defense testified that the area simply had to be cleaned. The Kosovar Albanian witnesses testified that the purpose was to clean up the traces of the mass deportations undertaken by the military. (See testimony of Bejtullah Hoxha.) Some witnesses indicated that the Red Cross was planning a visit and so the work was done in advance of that in order to clean traces of the mass deportations. (See testimony of Zyber Zeka.) Although it is obvious to this Court that the area had to be cleaned, the purpose of cleaning the area was to clean the traces of the mass deportations undertaken by the military. In the process, the Serbs in charge of the work took what was valuable and destroyed those things that had no value.

ii. Analysis of Forced Labour.

As indicated above, the main elements to evaluate for forced labor include: (1) the labour is done involuntarily; and (2) the labour is forced without remuneration. In addition, such forced labour must not be directly related to military operations.

The labour was done involuntarily. The Court has reviewed all the evidence submitted in this case and has determined that the labour exacted from the citizens in relation to the cleaning of Malishevë was involuntary. The determination of whether protected persons laboured involuntarily is a factual question that must be considered in light of all the relevant circumstances, which may include the following:

> The consent or free will of the victim is absent. It is often rendered impossible or irrelevant by, for example, the threat or use of force or other forms of coercion; the fear of violence, deception or false promises; the abuse of power; the victim's position of vulnerability; detention or captivity, psychological oppression or socio-economic conditions.[19]

The testimony and other evidence submitted to this Court makes it quite clear, beyond any reasonable doubt, that those that went to the meetings, organized the labourers and those that performed the labour all did so involuntarily. Those summoned to the meetings did so out of fear that there may be severe repercussions. At the meeting, the Kosovar Albanians were confronted with a panel of high-ranking Serb military personnel and Serb police, which were the very groups that were terrorizing the Kosovar Albanians. Kolasinac was in uniform, and although his rank was vague, Lt. Colonel Bozic, whose rank was apparently obvious, also led the meeting. Several of the witnesses testified to Lt. Colonel Bozic's threatening statements and demeanor. Moreover, high-ranking members of the police led the meeting, including Boguljob Soric, who was Head of the Secretary for Internal Affairs, and Dusko Vujicic, who was Commander of the Police of Rahovec. The very collection of these Serb police and military men in one room filled with only Kosovar Albanian citizens served as a source of intimidation.

Those that organized the labour and those that agreed to perform the labour were very clear that they did so only out of fear about what might happen if they did not. Indeed they were told that if they did not, the police would come to their houses and take them forcibly. Understandably, they felt it safer to comply, rather than risk the consequences. Furthermore, this Court is under no illusion that the guards were placed there to protect the Kosovar Albanians. Under the circumstances surrounding this forced labour, ninety percent of the Kosovar population had been or was in the midst of being displaced and/or deported. The Serb guards if anything were placed there to ensure that the labourers did the work as instructed, to ensure that the valuables were safely transported for use by the Serb forces, and to protect the Serb military personnel that were overseeing the work. Certainly, the labourers testified that they were threatened by the guards not to leave. Thus, this Court finds that the work was performed by use of threat and intimidation by the Serb military and police in attendance at the meetings, by those overseeing the work under the command of Kolasinac, and by those military personnel guarding the area during the work. In short, the work was in all respects forced.

The labour was not remunerated. The evidence submitted to this Court uniformly indicated that the forced labour for cleaning Malishevë was not paid. Although there was evidence to indicate that the labourers were fed at least minimally, they were not paid for their days of hard work. There is simply no evidence to contradict this conclusion.

The labour was not done for humanitarian needs, but was directly related to military operations. The Court has also concluded that the forced labour was directly related to military operations. In no way can it be said that the forced labour in relation to the

[19] *Kunarac* Trial Judgment, para. 542.

cleansing of Malishevë was done to ensure the feeding, sheltering, clothing, transport and health of human beings. The forced labour was organized and ordered through the military and its unit, the Headquarters of the Civilian Protection. In particular, Lt. Colonel Bozic ordered that the Kosovar Albanians organize and perform the labour. The testimony is quite clear that the Headquarters of the Civilian Defense was in charge of the project. The testimony of Radomir Simic and others confirms this point. The Headquarters of the Civilian Defense was an organizational unit of the Federal Ministry of Defense, which has competence over the military. None of the labour required was for assisting in such humanitarian needs as shelter, feeding of the population or clothing them. Instead, the labour was used to clean the traces of the mass expulsions of the kosovar Albanians at the hands of the Serb forces. These Kosovar Albanian labourers were forced to confront the stark and harsh reality of the forced deportations and pillaging done to their own people, to see the devastation done by the Serb forces, to see burned out cars and even corpses, and to be forced to clean it up in order to destroy what was not valuable and to organize all the valuables for the Serb forces. This can hardly be said to be for humanitarian purposes. It is clear that the labour was used as part of the overall military operations.

Accordingly, based upon the entirety of the evidence submitted, this Court finds that the use of Kosovar Albanian labour for the cleansing of Malishevë, was forced labour in violation of Article 142 of the CCY, as well as the Geneva Convention and Protocol I to the Geneva Convention.

iii. Kolasinac's Criminal Liability For the Forced Labour.

Ordering or Committing Pursuant to Article 142 of the CCY. The Second Amended Indictment specifically alleges that Kolasinac is guilty of ordering and committing war crimes against the civilian population. Indeed, the manner of performing a war crime under the language of Article 142 of the CCY relates to the ordering or carrying out of forbidden activities or the implementation of such prohibited activities. In ordering a war crime, the act of ordering alone is sufficient. It is not necessary that there be an action upon the order or that the order has been implemented. Accordingly Article 142 of the CCY finds criminal liability against both a person who has issued the order for performing the prohibited activities and the person who actually performs the prohibited activities.

In this case, however, there is no hard evidence submitted to this Court either in the form of testimony or documentary evidence to indicate that Kolasinac actually ordered the Kosovar Albanians to perform forced labour in connection with the cleaning of Malishevë. It is clear that he summoned the Kosovar Albanians to the meeting, where orders were eventually given by Lt. Col. Bozic to perform the forced labour. Thus, this Court cannot find Kolasinac criminally liable for the actual ordering of forced labour.

Complicity. 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. In connection with the cleansing of Malishevë, this Court finds that Kolasinac acted in complicity because by summoning the Kosovar Albanians, who were compelled to organize the groups for forced labor, he performed an essential role in committing the criminal act of forced labour. He also took part in the meetings wherein the citizens were told how to organize the labour and he actually went and observed the work first hand.

Aiding. Under Article 24 of the CCY, Kolasinac may be found to have aided in the perpetration of the war crimes alleged above if he is found to have given advice or

instructions on how a criminal act could be carried out or providing means for the perpetration of a criminal act, removing obstacles to the perpetration of a criminal act, as well as the previously promised covering of a criminal act or of a perpetrator or of the means that were used for a criminal act, or of traces of a criminal act, or of objects that were obtained through a criminal act. However, as aiding is absorbed in complicity, there is no need to refer separately to Article 24, since this Court has already found Kolasinac criminally liable in complicity.

Command Responsibility. The Second Amended indictment alleges that "Kolasinac failed to take any action or make any attempt to use his authority to halt the killing and deportation of Kosovar Albanians, as well as the plundering and looting and burning of their homes. Nor did he use his authority or attempt to use his authority to report such crimes to higher authorities, or to protest these illegal actions, or to discipline or report for discipline those involved."

Although this paragraph raises the spectrum of the doctrine of command responsibility it does not appear that the Second Amended Indictment alleges command responsibility in connection with the allegation of forced labour. Regardless, this Court need not address it here, since the Court already found Kolasinac criminally liable for complicity in relation to forced labour in Malishevë.

Intent. Under Article 11 of the CCY, a perpetrator may only be found to be criminally liable if he/she committed the criminal act with premeditation or through negligence. Negligence will only suffice for criminal liability where it is stipulated by law. Article 142 of the CCY does not permit criminal liability for negligence. As such, premeditation is required. Article 13 of the CCY defines premeditation to be where "the offender is conscious of his/her act and wants its commission or when s/he is conscious that a prohibited consequence might result from his/her action or non-action and consents to its occurring." Thus, premeditation is defined to include both direct and indirect premeditation.

It is important to note that under Article 142 of the CCY, the defendant need not have known that his conduct was in violation of international law. The Commentary states as follows:

> Considering the nature of incriminated activities, this criminal act, as a rule, may be committed only with direct intention, but in some cases the possible intention shall be sufficient (e. g. with murder or violation of physical integrity i.e. health). The perpetrator need not be aware that with his actions he violates the regulations of the international law. The violation of the international law in the description of this criminal act is an objective condition of liability which particularly determines the character and framework of illegality of this criminal act, in the sense that the act must also be illegal according to international law.

The Court notes that under international law, the intent required for war crimes requires only that there exist a reckless intention that can be assimilated to serious criminal negligence, with recklessness defined as the taking of excessive risk.[20]

[20] *Prosecutor v. Tihomir Blaskic*, Case No. IT-95-14-T, T. Ch. I of the ICTY, 3 March 2000, para. 152; *Prosecutor v. Zejnil Delalic, Zdravko Mucic, Hazim Delic, and Esad Landzo* (*Celebici* case), Case No. IT-96-21-T, ICTY T. Ch. II *quater*, 16 Nov. 1998, paras. 437-439.

This Court finds that, under the CCY and under international law, Kolasinac acted with direct intent, such that he was conscious of the fact that by summoning and organizing the Kosovar Albanians to form groups for labour to cleanse Malishevë, that this labour was obtained by force. Kolasinac, as Commander of the Headquarters of the Civilian Defense, was in charge of the cleansing of Malishevë. He was part of a group of high ranking military and police that led the meeting ordered by the Serb military and he had organized only Kosovar Albanians to perform the labour.

He was well aware of the situation in Malishevë and even saw it first hand, although reluctant to speak openly about it. Kolasinac also was aware of the magnitude of the work to be performed, as he knew how many people to organize for the labour. Kolasinac is obviously a bright and well-educated man. As President of the Municipal Assembly and subsequently Commander of the Headquarters of the Civilian Defense, it would be ridiculous for this Court to believe that he did not know exactly what was going on around him, and in particular that Malishevë was being used as a center point for the forcible deportation of the Kosovar Albanians by the Serb forces and for the forced abandonment of all their earthly belongings. Indeed, the testimony of several witnesses demonstrates that he was well informed about what was going on around him. Given the totality of the evidence before this Court, there is no other reasonable conclusion but that Kolasinac fully intended to use intimidation to force the Kosovar Albanians to perform the labour to clean Malishevë, that he knew that the was part of the overall Serb military operations, and that there was no intention to pay the Kosovar Albanians for all their work.

As such, this Court finds beyond a reasonable doubt that the defendant, Kolasinac, is guilty of forced labour in connection with the cleansing of Malishevë in violation of Article 142(1) of the CCY.

c. Forced Labour in Connection with the Pruning of the Vineyards.

The testimony concerning the pruning of the vineyards is much less detailed than that in relation to the cleaning of Malishevë, apparently because it came in succession to the forced labour in Malishevë, as well as the registrations that the same witnesses were required to organize, as discussed in more detail below.

i. Facts

Trajko Milicevic testified that he asked Kolasinac to take action to prune the vineyards. He stated that this request was done not at a meeting, but in the presence of some civilians. Kolasinac agreed. Both Radomir Simic and Krsta Soric, both of whom worked within the Headquarters of the Civilian Defense, testified that the pruning of the vineyards also came under the scope of their duties.

Meetings. Those summoned to the 24 and 26 April 1999 meetings continued to be summoned in connection with work organized by the Headquarters of the Civilian Protection. In essence, once the initial tone was set informing the Kosovar Albanian citizens that their participation in the labour would be required either by peaceful means or by force of the police or military, the remaining meetings that were held to seek labourers, were held under the same ultimatums. The meeting for the pruning of the vineyards was called in the beginning of May 1999 at the behest of Kolasinac again. Kolasinac opened the meeting and called for the pruning of the vineyards. (See testimony of Petar Dedic and Hasan Sokoli.) Petar Dedic attended at least one meeting regarding the pruning of the vineyards. Each of the

witnesses involved in the organization and the labour testified that the vineyards were normally pruned in February, but due to the conflicts, the vineyards had not been pruned.

Organization. Once again, certain members of the Kosovar Albanian community were obligated to organize the labour to prune the vineyards in the Rahovec area. Those witnesses that were involved in the organization of the labour, included Qazim Ceska, Bejtullah Hoxha, Xhemali Jaha, Mizahir Shabani, Musa Raba, Hajredin Rexha, Myhedin Sharku, and Zyber Zeka. Zyber Zeka testified that lists of the participating Kosovar Albanians were submitted to the municipality on a daily basis.

Labour. The actual labour was done by approximately 200 Kosovar Albanian labourers per day. (See testimony of Trajko Milicevic.) Over six hundred Kosovar Albanians were enlisted in total. (See testimony of Xhemali Jaha.) The work lasted approximately ten days. (See testimony of Radomir Simic, Trajko Milicevic and Krsta Soric.) Those Kosovar Albanian witnesses that testified regarding the actual work include Muharrem Jaha and Hasan Sokoli. The Serb witnesses that oversaw the work, included Milislav Grkovic, Radomir Simic and Krsta Soric. Milislav Grkovic testified that he took part in the pruning of the vineyards as a "leader" of one of the groups and that each group had one Serb acting as a leader. Krsta Soric, testified that Serbs were participating in the work. This Court cannot possibly equate the work that was being done by the Kosovar Albanians with the work that was done by one Serb leader per group that was simply overseeing the work.

Mizahir Shabani testified that after the 8th of May no one would participate in the pruning of the vineyards because of the murder of the Sharku family. Zyber Zeka explained that after seven families were killed, they worked once more. After that, Kolasinac and the others organizing the work discontinued the work.

Serb or Kosovar Albanian Vineyards. This Court notes that the testimony regarding the ownership of the vineyards that were pruned is inconsistent. Milislav Grkovic testified that the vineyards being pruned were largely Albanian vineyards, as the Serbs had already pruned their own. Petar Dedic testified that both Serb and Kosovar Albanian vineyards were pruned. Other witnesses testified that it was mostly Serb vineyards that were pruned. (See testimony of Zyber Zeka.)

Whether it was Serb or Kosovar Albanian vineyards that were pruned is not relevant. It is evident from the information submitted to this Court that the mass deportations undertaken by the Serb forces were intended to force the Kosovar Albanians out of Kosovo and the destruction and looting of their property was intended to force them out for good. Thus, it appears to this Court, that the pruning of the vineyards was intended to benefit the Serbian population that remained in Rahovec, not the Kosovar Albanians that were forcibly deported.

Guards. The testimony of the Kosovar Albanian witnesses demonstrates that they did not voluntarily undertake the work on the vineyards. First, they thought that the work was useless. They also testified that they were at all times surrounded by guards to ensure that they would not leave. Indeed, Muharrem Jaha testified that they were required to walk to the vineyards led by Serbs driving in tractors and guarded by Serbian soldiers armed with Kalashnikov rifles. Hasan Sokoli testified that the army guarded them and told them that they could only move to a certain point and that they could go no further. This was confirmed by the testimony of Halil Sharku and Bejtullah Hoxha. None of the witness testimony could be taken to mean that the guards were there to protect them.

Yet, the defense witnesses still testified that the Kosovar Albanian labourers did the work entirely voluntarily. Radomir Simic testified that the security was undertaken in the same manner as for the Malishevë cleaning. Milislav Grkovic, on the other hand, testified that he only saw guards once and that there was no need for the guards. He then contradicted himself by testifying that the UCK may attack the labourers, but he did not know why. He testified that he did not believe that the Kosovar Albanians were forced to do the work and added that it was in their best interests to do the work. His credibility is, however, severely questioned by the internal contradictions in his statements and the fact that he further testified that he had heard nothing about deportations or mass murders. Petar Dedic testified that the guards were necessary in order to protect the workers from the KLA, since there were both Serbs and Kosovar Albanians working. This statement runs in stark contrast to the statement of Milislav Grkovic that only a few Serbs participated as leaders of the groups. He also stated that he worked with Kolasinac in an Albanian vineyard, but testified that no guards were necessary because they were in a Serb enclave, where there was no danger of KLA. It would appear to this Court just to the contrary, that Serb enclaves were in particular in need of protection from the KLA. Moreover, Petar Dedic also took the incredible position that although he saw Kosovar Albanians leaving and he knew they were going to Albania, but he did not know why. Based upon his contradictory statements, this Court finds Petar Dedic's testimony inherently unreliable.

ii. Analysis of Forced Labour

As with the analysis done in relation to forced labour in the cleansing of Malishevë, *supra*, this Court finds that the work performed was done involuntarily, that the work was never remunerated, and that the work was not done for humanitarian needs, but for the benefit of the Serbs that remained.

As discussed *supra*, the presence of the Kosovar Albanians at the meetings was obtained through threat of force and fear of violence. Again, those holding the meetings were Serb leaders and they held the meetings shortly after the threatening meetings held in connection with the cleansing of Malishevë. Thus, these meetings were a continuation of the threatening meeting held to obtain the forced Kosovar Albanian labour. Those that organized the labourers on such a mass scale (200 people per day) did so to avoid the potential ramifications against the remaining Kosovar Albanians in the municipality. Those that participated in the labor did so out of fear that they may be forced to perform the labour by the police under violent circumstances or face other severe consequences. Once again, those performing the labour were Kosovar Albanians and those supervising and guarding were Serbian. Thus, this Court finds, as with the forced labour at Malishevë, that the labour was obtained involuntarily.

Second, just as was the case with the forced labour in Malishevë, the labourers were not remunerated.

Third, the work was not done for humanitarian purposes. It is evident to this Court that pruning the vineyards would not ensure the feeding, sheltering, clothing, transport and health of human beings. Rather, based upon the evidence submitted and the reference materials provided to this Court, it is evident that the forced labour was required to benefit the Serb population that remained after the bulk of the Kosovar Albanians had been deported. Thus, there is no defense of humanitarian necessity.

Accordingly, based upon the entirety of the evidence submitted, this Court finds that the use of 600 Kosovar Albanians for the pruning of the vineyards, was forced labour in

violation of Article 142 of the CCY, as well as the Geneva Convention and Protocol I to the Geneva Convention.

iii. Kolasinac's Criminal Liability

As with the analysis of Kolasinac's liability in connection with the cleansing of Malishevë, this Court finds that Kolasinac acted in complicity in organizing the forced labour for the pruning of the vineyards and that he did so with direct intent.

Although there is some testimony to indicate that Kolasinac opened the meeting to order and called for the pruning of the vineyards, the testimony is not clear that he actually made the orders. Thus, this Court does not find that Kolasinac ordered the forced labour. The evidence does demonstrate, however, that Kolasinac at least acted in complicity in calling and participating in the meetings to organize the Kosovar Albanian population for forced labour in pruning the vineyards. For the same reasons discussed in connection with the cleansing of Malishevë this Court finds that Kolasinac acted in complicity in the forced labour charge in relation to the pruning of the vineyards. For this reason, this Court need not address potential liability for aiding or command responsibility.

Kolasinac intended to act in complicity in organizing forced labour for the pruning of the vineyards. Kolasinac also knew exactly what he was doing by calling the meeting for the pruning of the vineyards. He had called each and every one of the meetings where the labour of the Kosovar Albanians was sought by threat and intimidation. He knew that there was no intention to pay these workers and he knew that this work was not being done out of humanitarian necessity. In short, he acted with direct intent in organizing the Kosovar Albanians for forced labour.

Accordingly, this Court finds beyond a reasonable doubt that the defendant, Kolasinac, is guilty of forced labour in connection with the pruning of the vineyards in violation of Article 142(1) of the CCY.

d. Forced Labour in Connection with the Orvin Vineyards.

i. Facts.

Little testimony was presented on forced labour in relation to the vineyard of the Agricultural Combine, also known as Piro/Orvin. In fact, the only witnesses to testify in regard to the alleged forced labour for pruning the Piro vineyards included Hilmi Derguti, Skender Sharku, and Hajredin Rexha. Hilmi Derguti testified that he was forced to work in connection with the vineyards of the Agricultural Combine for approximately three months until the end of the war. He was summoned to do the work and it would have been signed by the Director of the Agricultural Combine, Zoran Stanishiq. He testified that he transported the people to and from the work and that the bus was full every day, with forty-four (44) seats. Skender Sharku was similarly ordered to work on the Piro vineyards for three months during the war. He too was employed there as a worker, but he stated that he was never paid for his three months of work. He also stated that he was kept there to work under hostage conditions. He testified that about one hundred others were required to work for Piro under similar conditions. Hajredin Rexha testified that he was employed by Piro and was asked to "tie the vines" during the NATO bombing. When he refused, he said that he was fired. Later he received a message from the director of Piro telling him that he was required to work on the Piro vineyards or face the consequences. Ultimately, Hajredin Rexha took part in the

work on the vineyards for two separate plantations and then quit. None of the witnesses were paid for their work.

ii. Analysis/Kolasinac's Criminal Liability.

On the evidence presented to this Court, it is not even clear that the above described work would qualify for forced labour. First, each of the witnesses was employed with Piro in some capacity and it is not clear that the witnesses were not ultimately paid. Second, it is not clear that the actions taken by the director, or any other alleged actor, was done in his/her capacity as a party to the conflict. (See discussion *supra* at Section II C.)

Most notably, not one of the witnesses provided any testimony to indicate that Kolasinac was involved in any manner in the work that they were ordered to do. Based upon the evidence presented to this Court, it appears that the work was ordered by the director of Piro. Nowhere is there any evidence to indicate that Kolasinac was involved in ordering them to work. Kolasinac may well have remained on at Piro as a lawyer there, but the only stated involvement that Kolasinac may have had was in assisting Hajredin Rexha in appealing the decision to terminate him.

Accordingly, even if the above-described labour was unpaid and qualified as forced labour, there is no evidence to find Kolasinac was involved in ordering, aiding or complicity in the forced labour alleged herein. As such, this Court cannot find Kolasinac criminally liable for the alleged forced labour in connection with Orvin vineyards.

e. Forced Labor in Connection with Digging Trenches. [21]

i. Facts

Several witnesses testified to being forced to do labour in connection with digging trenches for approximately sixty days. Those witnesses include, Ismet Cmega, Naser Hoxha, Ismet Kollari, Muhammed Kollari, Samir Rama, Vehap Vehapi and Radomir Simic.

The witnesses generally testified that at the beginning of the NATO bombing campaign, about seventy Kosovar Albanians were taken by the Serb army out of their houses and transported to the Prizren Sports Center where they were required to put on Serbian army uniforms. They were later transported to dig trenches. Those forced to dig trenches worked

[21] This Court would note here that Defense Counsel objected to the introduction of any evidence with respect to the forced labour in connection with the digging of trenches. In fact, the Defense Counsel objected to any evidence in this case in relation to any charges other that the "forced labour, looting and destruction of the property of the population, which is according to the indictment in criminal act under Art. 142 of the CC FRY" in connection with Malishevë (See Defense Counsel Submission, dated 22 October 2002.) Defense Counsel argues that the charges relating to digging of the trenches were not appealed by the International Public Prosecutor and, therefore, the part of the original verdict finding no forced labour in connection with the digging of trenches should stand. This Court considered the argument of Defense Counsel on this point and ruled that the evidence should be submitted on the grounds that the Supreme Court decision overruled the original District Court verdict in its entirety in relation to Kolasinac and remanded the case for a re-trial of the case in its entirety against Kolasinac. Pursuant to Article 390(1) of the LCP this Court is required to take the previous indictment as the basis for trial. New facts and evidence may be submitted at trial under Article 390(2) of the LCP.

Regardless, the point is moot as to the digging of the trenches, as this Court also finds that there is insufficient evidence to find Kolasinac criminally liable for the forced labour in connection with the digging of trenches.

for varying lengths of time. Some were released immediately, such as Ismet Cmega, as they were too old to perform the work. The remaining generally worked from ten to twelve days of forced labour. Some were, however, required to work sixty days. (See testimony of Samir Rama and Vehap Vehapi.) They were guarded by Serb military and told if they tried to leave they would be killed.

ii. Analysis/Kolasinac's Criminal Liability

There is no evidence to suggest that Kolasinac ever ordered, aided or acted in complicity in the forced labour in connection with the digging of trenches. Radomir Simic was the only defense witness that had heard about the digging of trenches, and he explained that this work was done under the competence of the army. Although Muhammed Kollari testified that he brought the forced labour in connection with the digging of trenches to the attention of Kolasinac, it appears that this matter was under the sole competence of the army and that the Headquarters of the Civilian Protection had no involvement whatsoever. As set forth above in connection with Kolasinac's role in the military, there is no evidence to indicate that he had any authority in the military in any capacity except in connection with the Headquarters of the Civilian Protection.

3. The looting of the property of the population and the illegal and self-willing destroying and taking possession of property in great scale, which is not justified by military needs.

The Second Amended Indictment alleges that Kolasinac used the forced labour of Kosovar Albanians to assist in and aid and facilitate the pillaging, looting, theft and destruction of the valuable personal property of other Kosovar Albanians who had been deported from Kosovo after being forced to leave their property in Malishevë. The Indictment goes on to allege that Kolasinac failed to take any action or make any attempt to use his authority to halt the plundering and looting, which raises the charge of command responsibility. Thus, in relation to the pillaging and looting charges, it appears that the Indictment alleges Kolasinac is criminally liable based upon a theory of aiding, complicity, or command responsibility.

a. The Law

Article 142 of the CCY prohibits the looting of the property of the population, as well as the illegal and self willing destroying or taking possession of the property in great scale, which is not justified by military need.

With respect to looting of the property of the population, the Commentary explains that it:

> should be understood as forced taking away of the property of greater value or a series of taking away actions and stealing of the items of a smaller value, in case such unlawful taking away of other persons' items is not another activity from this Article (confiscation, contribution, requisition etc.). Under those conditions, it will also be looting in some cases when the property of the population is taken away without implementation of violence (e.g. taking away the property from the houses, the inhabitants of which have taken shelter/refuge–).

Under the Geneva Convention, Article 33, pillage is prohibited and reprisals against protected persons and their property are prohibited. Pillage is also prohibited under Articles 4 (2) (g), 14 and 16 of the 1977 Protocol II Additional to the Geneva Conventions of 12 August 1949.

With respect to pillage, the Commentary to Article 33 of the Geneva Convention explains as follows:

> The purpose of this Convention is to protect human beings, but it also contains certain provisions concerning property, designed to spare people the suffering resulting from the destruction of their real and personal property (houses, deeds, bonds, etc., furniture, clothing, provisions, tools, etc. …
>
> This prohibition is general in scope. It concerns not only pillage through individual acts without the consent of the military authorities, but also organized pillage, the effects of which are recounted in the histories of former wars, when the booty allocated to each soldier was considered as part of his pay. Paragraph 2 of Article 33 is extremely concise and clear; it leaves no loophole. The High Contracting Parties prohibit the ordering as well as the authorization of pillage. They pledge themselves furthermore to prevent or, if it has commenced, to stop individual pillage. Consequently, they must take all the necessary legislative steps. The prohibition of pillage is applicable to the territory of a Party to the conflict as well as to occupied territories. It guarantees all types of property, whether they belong to private [p.227] persons or to communities or the State. On the other hand, it leaves intact the right of requisition or seizure (6).

As discussed above under the Section on forced labour, Article 4 of the Additional Protocol II to the Geneva Convention also prohibits pillage. The commentary explains that:

> The prohibition of pillage is based on Article 33, paragraph 2, of the fourth Convention. It covers both organized pillage and pillage resulting from isolated acts of indiscipline. It is prohibited to issue order whereby pillage is authorized. The prohibition has a general tenor and applies to all categories of property, both State-owned and private.

Article 53 of the Geneva Convention also specifically prohibits the destruction of real or personal property belonging individually or collectively to private person, except where such destruction is rendered absolutely necessary by military operations. The Commentary elaborates upon this article stating that with respect to personal property, it is intended to "protect civilians by ensuring that the property in their possession as individuals and necessary for their existence (houses, clothing, food, tools and instruments needed in their work, means of transport, etc.) should be saved from destruction unnecessary for the pursuit of the war."

Thus, it is clear that looting and destruction of property is prohibited under international law in both international and internal conflicts.

b. Looting and Destruction of Property in Malisheve.

i. Facts

The facts associated with the pillaging and looting done in Malishevë are already set forth in detail in relation to the cleansing of Malishevë, as discussed above. The most salient facts include the following.

It is undisputed that Malishevë was a catastrophe. There were hundreds of tractors that had been abandoned. Tons of blankets, clothes, mattresses and other household goods had been abandoned. Testimony even indicated that corpses were in the streets.

All the clothes and discarded items that were identified as damaged or "garbage" were loaded onto trucks, which were taken to a side road and thrown away and/or burned. The non-damaged goods were loaded on to trucks and with the loading of the trucks, the guards were placed fifty meters away. Many of the non-damaged items were taken to the cellar of the Piro/Orvin Company.

Testimony reveals that anywhere from 250 to 357 tractors were abandoned in Malishevë. These vehicles were taken to Piro/Orvin Company and to a place near a school in Malishevë and Trajko Milicevic testified that lists of the vehicles were prepared.

Radomir Simic, Krsta Soric and Trajko Milicevic had the duty to organize and oversee the work. Kolasinac stated that he himself went to Malishevë during this process. Radomir Simic also went to Malishevë with Lt. Colonel Bozic to check on the work.

ii. Analysis

After a careful review of the facts and evidence presented to the Court, it is clear that the Serb forces involved in the cleansing of Malishevë engaged in looting and destruction of property. Even the defense witnesses that were required to oversee the work admitted that much of the property was destroyed and the remaining that had any value or use, including hundreds of vehicles, was taken away to Piro/Orvin and other places, which were in the control of the Serb forces.

The factual evidence is further substantiated by the OSCE Report, which indicated that in Kosovo civilian property was systematically damaged or destroyed and looting and pillage was a common occurrence, the main purpose of which was to weaken and undermine the Kosovo Albanian population, to serve as an additional profit incentive for the military and security forces and their collaborators, and to ensure that the population did not return after expulsion.

The looting and destruction of civilian property was similarly happening in Malishevë, by those in charge of the cleansing of Malishevë, the Headquarters of the Civilian Defense.

iii. Kolasinac's Criminal Liability

Although it is clear that the Headquarters of the Civilian Defense was in charge of the cleansing of Malishevë, there is absolutely no evidence to indicate that Kolasinac actually ordered the looting and destruction of property in Malishevë. Moreover, there is no evidence to indicate that Kolasinac either aided or was complicit in the activities of looting and destruction of the property. Thus, this Court analyses Kolasinac's command responsibility.

Command Responsibility – Failure to Prevent War Crimes. The Second Amended indictment alleges that "Kolasinac failed to take any action or make any attempt to use his authority to halt the killing and deportation of Kosovar Albanians, as well as the plundering and looting and burning of their homes. Nor did he use his authority or attempt to

use his authority to report such crimes to higher authorities, or to protest these illegal actions, or to discipline or report for discipline those involved." This allegation raises the issue of the doctrine of command responsibility.

Although Article 142 of the CCY only contemplates "ordering" or "executing" an act, it also specifically acknowledges the application of "regulations of international law during war."[22] Regulations of international law during war to which FRY was a party during the conflict, directly address the doctrine of command responsibility. In particular, command responsibility is addressed in the Additional Protocol I to the Geneva Convention, ratified by SFRY in 1977. The Additional Protocol I to the Geneva Convention became law in 1977 and was applicable law during the relevant time periods in April and May 1999.

Article 86 of Protocol I states:

> 1. The High Contracting Parties and the Parties to the conflict shall repress grave breaches, and take measures necessary to suppress all other breaches, of the Conventions or of this Protocol which result from a failure to act when under a duty to do so.
> 2. The fact that a breach of the Conventions or of this Protocol was committed by a subordinate does not absolve his superiors from penal or disciplinary responsibility, as the case may be, if they knew, or had information which should have enabled them to conclude in the circumstances at the time, that he was committing or was going to commit such a breach and if they did not take all feasible measures within their power to prevent or repress the breach.

Accordingly, this Court finds that the doctrine of command responsibility is made applicable to Article 142 of the CCY by its very acknowledgement of the application of regulations of international law during war.[23]

Pursuant to Article 86 of the Additional Protocol I to the Geneva Convention, to establish culpability under the doctrine of command responsibility, it must be shown that: (1) there existed a superior-subordinate relationship between the defendant and the criminal perpetrators; (2) the defendant knew or should have known of the crimes that had been or were about to be committed; and (3) the defendant failed to take necessary and reasonable measures to prevent the crime or punish the perpetrators.

Superior-subordinate relationship. The threshold in establishing a superior-subordinate relationship is to demonstrate an effective control over a subordinate in the sense of a material ability to prevent or punish criminal conduct.[24] *De jure* power of a commander over his troops who perpetrated the underlying crime is *prima facie* evidence of effective control, which accordingly can be rebutted by defense if evidence is submitted to the contrary.[25]

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[22] Moreover, although not plead in the Second Amended Indictment, the CCY also contemplates criminal liability by omission if the offender abstained from performing an act, which he is obligated to perform under Article 30(2).

[23] Although there exists an issue as to whether the doctrine of command responsibility applies in the context of an internal conflict, this Court need not address the issue here, as the above described acts occurred during an international armed conflict.

[24] *Celebici case*, (Appeals Chamber ICTY) 20 February 2001, para. 256.

[25] *Id.* at para. 197

It is clear that Kolasinac, as Commander of the Headquarters of the Civilian Defense was in charge of organizing the cleaning of Malishevë. His subordinates, Radomir Simic, Krsta Soric, and Trajko Milicevic, had the duty to organize and oversee the work. Kolasinac stated that he himself went to Malishevë to "check on the institutions." In sum, Kolasinac exercised effective control over his subordinates and there was no evidence submitted to this Court to the contrary.

This Court is not finding that Kolasinac had authority over the Serb forces that forced the Kosovar Albanian population out of their houses with all their earthly belongings to the main checkpoint in Malishevë, where they then forced the Kosovar Albanians to leave all their possessions, including their vehicles and household goods, and deported them to Albania and other surrounding States. Although, as the Commander of an organizational unit of the Federal Ministry of Defense, which has competence over the military, Kolasinac did exercise some powers of persuasion over the military. This was evidenced by the fact that he was able to obtain the release of the two arrested persons 24 April 1999 by talking to Lt. Colonel Bozic.

Rather, this Court finds that Kolasinac had effective control over the Headquarters of the Civilian Defense, which was overseeing the work in Malishevë and which was clearly taking all the valuables away for the Serbs and Serb forces and destroying the remaining property of the Kosovar Albanians.

Knew or should have known of the crimes that were being committed. Kolasinac knew or should have known that looting and destruction of the property of the Kosovar Albanians was being undertaken under the supervision of his subordinates. First, Kolasinac himself admittedly surveyed the site and observed the process. Although Kolasinac was obviously reluctant to testify as to what he saw at Malishevë, his subordinates testified that the site was covered with tons of blankets, clothes, mattresses and other household goods, which was described as garbage that was taken to a ditch and burned. His subordinates also clearly testified that the non-damaged goods, including over 250 to 357 vehicles, that were forcibly abandoned were loaded under guard and taken to the cellar of the Piro/Orvin Company, which was reportedly under the control of the Serb forces. Notably, Kolasinac was still employed as a lawyer with Piro/Orvin.

In short, this Court finds that Kolasinac was in command of this process and knew or should have known that the property was being destroyed and looted by his subordinates.

Kolasinac failed to take necessary and reasonable measures to prevent the crime or punish the perpetrators. Kolasinac admittedly went to the site. He saw, just as his subordinates saw, what was being done. Kolasinac could well have ordered that the cleansing of Malishevë be organized to preserve the items for the return of the Kosovar Albanians. Clothes and other goods could have been collected and stored in any one of the municipal buildings in an orderly manner, in anticipation of the return of the citizens to either reclaim the goods left or to claim unclaimed goods for use as necessary. However, it is clear that this was not done because the entire purpose of the systematic deportations was to push the Kosovar Albanians out for good and to take whatever valuables they were forced to abandon in the process.

Thus, this Court finds beyond a reasonable doubt that the defendant, Kolasinac, is guilty, on the basis of command responsibility, of looting and destruction of property in connection with the cleansing of Malishevë in violation of Article 142(1) of the CCY.

4. Displacement or Forced De-patriation

The Second Amended Indictment alleges Kolasinac's involvement in the mass deportations of Kosovar Albanians in Rahovec through the registration of the population, as well as the deportation of specific individuals and their families. The Indictment also alleges that at the same time, Kolasinac failed to take any action or make any attempt to use his authority to halt the deportation of Kosovar Albanians. As such, this Court addresses Kolasinac's criminal liablility for the mass deportations and the specific deportations.

a. The Law.

Under Article 142 of the CCY, forced deportation of the civilian population from the occupied territory, mass-scale or individual, is forbidden, except if it is done for the safety of the population itself, or imperative military needs.

In addition to the prohibition of forced de-patriation contained in Article 142 of the CCY, Article 49 of the Geneva Convention prohibits individual or mass forcible transfers, as well as deportations of protected persons, regardless of the motive.

Similarly, the Geneva Convention Additional Protocol II, Article 17 on the "Prohibition of forced movement of civilians" provides as follows:

> 1. The displacement of the civilian population shall not be ordered for reasons related to the conflict unless the security of the civilians involved or imperative military reasons so demand. Should such displacements have to be carried out, all possible measures shall be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition.
>
> 2. Civilians shall not be compelled to leave their own territory for reasons connected with the conflict.

b. The Two Registration Drives As a Vehicle for Deportation of the Kosovar Albanian Population.

In particular, the Second Amended Indictment alleges that Kolasinac used the leaders of the Kosovar Albanian community that were summoned to the meetings to organize two separate registrations of the population, ostensibly for humanitarian aid reasons. The first registration was intended to provide a simple accounting of the number of persons in each of the households in order to properly provide for humanitarian aid. The second registration, according to the Second Amended Indictment, was ordered to register the first and last names and addresses of all Kosovar Albanians. Although the Second Amended Indictment alleges that Kolasinac admitted to UNMIK investigators that he gave this list, showing exactly who lived where, to the police even though he knew that the police were killing people and that he also offered the list to the military, this evidence was not used against him since the statement to which the Indictment refers was found unreliable, as discussed *infra* at Section IV(A). Thus, Kolasinac ordered, aided or was complicit in the deportation of the Kosovar Albanians in the Rahovec area.

i. Facts

Deportations in Rahovec. According to the OSCE Report, before the 1998-99 displacements, the population of Rahovec town was 84 per cent Kosovo Albanian, 13 per cent Serb and 3 per cent from other national communities. According to the testimony of Myhedin Sharku there were approximately 22,000 residents in Rahovec before the deportation started and he still had the data from the last census, taken in 1981 that there were 13,000 inhabitants in Rahovec at that time out of that 4,041 Serbs. Trajko Millicevic testified that there were 18,000 residents in Rahovec at the time of the last census in 1981, out of that 4,000 Serbs. Although generally a census was to be done every ten years, one was not done in 1991. Myhedin Sharku also testified that Kolasinac told him that the information from the registrations indicated that the remaining citizens of Rahovec included 6,000 Albanians and 3,200 Serbs. The original figure of 22,000 inhabitants was also confirmed by Musa Raba. The conclusion that this Court must draw from this information is that approximately 12,000 Kosovar Albanians had been either deported or killed by May 1999.

Kolasinac acknowledged the mass deportations, though at trial he incredibly stated that he never actually saw people being deported. Kolasinac testified that several Kosovar Albanians had complained and protested that the police were deporting people. In response, he told them that he had no control over the police. So he went to talk to Lt. Colonel Bozic (from the military) to discuss what was happening in the town. He claims that that was all he could do. In fact, the testimony of several witnesses that attended the meetings as summoned by Kolasinac indicates that they complained regularly about the treatment of the Kosovar Albanians and about the deportations. Myhedin Sharku testified that at each meeting they would ask why they were being deported. Kolasinac responded that only those with blood on their hands were deported. Myhedin Sharku testified that noticeably less and less people would show at the meetings because of the deportations.

Registration of the Population. Several Kosovar Albanian witnesses testified regarding the registrations, including Myhedin Bekeri, Qazim Ceska, Bejtullah Hoxha, Xhemali Jaha, Mizahir Shabani, Musa Raba, Halil Sharku, Hasan Sokoli, Hajredin Rexha, Myhedin Sharku, Zyber Zeka, and Fejzullah Sokoli. Several defense witnesses also testified regarding the registrations, including Bozidar Micic, Luka Ulamovic, Sava Saric, Milislav Grkovic, and Zivko Moravcevic.

Bozidar Micic was in charge of the registration. Branka Furjanovic testified that she was the Head of Prizren District. and that they needed an assessment of the population for the distribution of the food supply, since the population had "undergone a serious migration." Notably, she testified that no information regarding gender or age was required. Branka Furjanovic also testified that she did not know the cause of the "migration," opining that it might have been out of fear of the NATO bombardment.

First Registration. Kolasinac testified at trial that at the end of April 1999, he received an order from the district administrator to register the entire population for humanitarian reasons. He then testified that it was the county prefect that came to the municipal administration to undertake the registration for humanitarian aid. Since the municipal assembly was not functioning, the task was given to the Executive Committee, which was still operating during the war. He then stated that the President of the Executive Committee (Zoran Grkovic) came to see him to engage the Kosovar Albanians to perform the registration tasks. It was decided that only the name and number of persons in each household was necessary for humanitarian aid purposes. Kolasinac testified that it was carried out for both Albanians and Serbs in Rahovec and that ultimately the registration list went "to those for whom it was intended."

Once more, Kolasinac summoned the same Kosovar Albanians to a meeting and ordered the registration of the population at the end of April 1999.

The testimony generally confirms that the first registration sought the names of the head of the family and the number of family members. (See testimony of Bejtullah Hoxha, Xhemali Jaha, Mizahir Shabani, Musa Raba, Myhedin Sharku, Zyber Zeka) It is not so clear whether the registration was intended for just Kosovar Albanians or for the entire population of Rahovec. Bejtullah Hoxha testified that when he asked Kolasinac directly whether both Albanians and Serbs should be registered, Kolasinac responded that only Albanians needed to be registered. This exchange was confirmed by Musa Raba. Mizahir Shabani testified that Kolasinac verbally ordered them at the meeting to carry out the registration only for Kosovar Albanians. Hajredin Rexha testified that when he went to Bozidar Micic for materials for the registration, Micic told him that he was to register only Albanians. Xhemali Jaha also testified that only Kosovar Albanians were registered.

Hajredin Rexha testified that the information was given to Bozidar Micic, who was the head of the Department for General Affairs. Bozidar Micic stated that the lists were given to the Executive Committee of the Municipal Assembly of Rahovec.

Although Kolasinac explained that the registration was for use in humanitarian aid, not one of the Kosovar Albanian witnesses believed that explanation and instead they were certain that the registration was for use in deporting all the Kosovar Albanian families. As such, Bejtullah Hoxha testified that they avoided the registration of young boys. Similarly, Fejzullah Sokoli testified that he did not register his sons because he was afraid they would be killed.

Muharrem Jaha testified that after his family was registered in the first registration, on 5 May 1999 the police came with a list and asked for Xhemali Jaha and told him that the Jaha family must leave within one hour, but he did not see the list.

Second Registration. Kolasinac testified that the second registration began at the end of May 1999. He testified that Lt. Colonel Zivojinovic requested that the second registration be done for security reasons. Kolasinac was asked to obtain additional information, including gender and age.

Testimony indicates that Kolasinac again summoned the Kosovar Albanians to a meeting on or about 26 May 1999 and ordered that they organize a registration of the population. (See testimony of Qazim Ceska) Kolasinac again told them that the registration was to be done for humanitarian aid, despite knowing full well that it was not being used for humanitarian reasons.

Musa Raba testified that all personal information was required to be registered in this second registration. Luka Ulamovic testified that the name, middle name, surname and date of birth were required.

In addition, much of the testimony indicates that only Kosovar Albanians were registered. (See testimony of Qazim Ceska, Musa Raba, Hasan Sokoli, Hajredin Rexha, Zivko Moravcevic /first main trial/). However, this is contradicted by other testimony indicating that the registrations were done for both Serbs and Albanians in Rahovec. (See testimony of Luka Ulamovic, Milislav Grkovic, Zivko Moravcevic /retrial/.)

Humanitarian Aid. Kolasinac testified that after KFOR and the Red Cross entered Kosovo, another registration was conducted for purposes of humanitarian aid. Ultimately, Kolasinac acknowledged that humanitarian aid was not distributed, but stated that if the war had gone on much longer he is sure that the citizens would have received humanitarian aid. Indeed, none of the Kosovar Albanian witnesses testified that they received aid. Luka Ulamovic and Sava Saric also testified that they did not receive aid. Interestingly, Milislav

Grkovic stated the aid was given from the house of Miroslav Dedic, but it may have been from the Red Cross.

ii. Analysis of Registrations for Deportations.

From the above evidence, this Court concludes the following. The first registration at the end of April and beginning of May could have been ostensibly ordered for humanitarian aid. The requested information was benign enough, except that even that registration sought the names of the heads of families and the number in each family. Any registration for humanitarian aid would have only needed information regarding the number of persons remaining in Rahovec. Instead, the lists contained enough information to discern which members of the community were Albanian and the numbers in their families and where they were residing. This was all the police or other Serb authorities needed to target Kosovar Albanians for deportations and even killings.

The debate on whether the registrations were made of all persons in Rahovec or only Albanians makes no difference to this Court. It is not difficult to ascertain whether a person is Kosovar Albanian or Serbian from their name in Kosovo.

The second registration appears to have been conducted in late May, a few weeks after the conclusion of the first registration. Kolasinac was ordered to undertake this registration by the Serbian military, Lt. Colonel Zivojinovic, and was told under no uncertain terms that this time it was being done for security reasons. By this time, Kolasinac was quite aware of the massive deportations and killing of Kosovar Albanians in the Rahovec area. How could he not. According to his own information, there was an exodus of over half the population. Kolasinac was repeatedly informed about the forcible deportations by several Kosovar Albanians in his community, but he stated that he was unable to do anything about such deportations because it was under the competence of the military and the police. He also knew that no humanitarian aid was being distributed.

This Court finds, based upon the evidence submitted, that these registrations were being used to identify Kosovar Albanians for forcible deportation. There is simply no other reason for the information sought in these registrations.

iii. Criminal Liability of Kolasinac

While it is arguable that Kolasinac believed that the first registration was to be used for humanitarian reasons (even though it turned out not to be true), he was well aware of the usage for the second registration. Nevertheless, Kolasinac still agreed to mobilize the Kosovar Albanian community to provide to the Serb military a more detailed registration to include the names of all family members, age and gender. Kolasinac did so by lying to the Kosovar Albanians that he summoned to the meeting and telling them again that the registration was for humanitarian aid. The people to whom Kolasinac lied about such a critical matter were people that he considered to be leaders in the community and with whom he had longstanding and amicable relationships.

Based upon the facts adduced in the main trial on this issue, it is clear that Kolasinac was not responsible for ordering the mass deportations of Kosovar Albanians from Rahovec.

This Court does, however, find that Kolasinac's actions demonstrated that he was associated with the deportations on the level of an accomplice. Kolasinac is liable in complicity for the systematic continuation of the deportation through his actions in ordering

the second registration, as it was an essential tool in the forced deportation of the Kosovar Albanians in Rahovec.

Kolasinac acted with direct intent. Kolasinac must have at least known that the second registration was to be used for the forced deportation of the population when he was approached by the military requiring a new registration with information as to ethnicity, age and gender, only a few weeks after the first registration had been carried out. Had he thought otherwise, he would have had no need to lie to the Kosovar Albanians that he ordered to organize the registrations. Knowing this, he called the meeting to order the Kosovar Albanians to organize the registration and assigned the task according to districts.

The Indictment also alleges that at the same time, Kolasinac failed to take any action or make any attempt to use his authority to halt the deportation of Kosovar Albanians, which again raises the issue of the doctrine of command responsibility. However, given that this Court has also found Kolasinac criminally liable in complicity, this Court need not address the charge of command responsibility.

Accordingly, this Court finds beyond a reasonable doubt that the defendant, Kolasinac, is guilty of complicity in the forced deportation of Kosovar Albanians from Rahovec in violation of Article 142(1) of the CCY.

c. The Deportation of Specific persons.

The Second Amended Indictment also alleges that Kolasinac was responsible for the forced deportation of certain specific individuals and their families, including Myhedin Bekeri, Mizahir Shabani, Xhemali Jaha and Muharrem Jaha. In particular, the Indictment alleges that during the course of the meetings held to organize forced labour in relation to the cleaning of Malishevë, the registrations, and the pruning of the vineyards, if one of the Kosovar Albanians summoned to the meeting disagreed with the actions of Kolasinac, that person and his family were thereafter immediately ordered by the police to leave Kosovo, usually within hours. Though not specifically alleged, the implication is that Kolasinac ordered, aided, or was complicit in the deportation of these individuals and their families.

Although it is not clear from the Second Amended Indictment, it would appear that the International Public Prosecutor has also alleged a similar fate with respect to the family of Nysret Mullabazi. The Indictment alleges that Kolasinac came to the home of Nysret Mullabazi on Rahovec wearing a military uniform of captain and that he told Destan Mullabazi and Nysret Mullabazi that he came to take the truck parked in Mullabazi's yard. The truck was the property of Nesim Spahiu, a neighbor. The following day, Kolasinac sent two persons to get the truck. Three days later, on 28 April 1999, the Mullabazi family was ordered by Serb police to leave their homes within 15 minutes and leave Kosovo. As a result, approximately 80 people from the Mullabazi families left for Albania.

i. Facts.

Myhedin Bekeri testified that he had a meeting with Kolasinac around 1 May 1999 to complain about the deportations. He explained that these deportations were in contravention to their agreement on 24 April 1999 at the first meeting between the Kosovar Albanian community and Kolasinac. Kolasinac replied that he had no competence to intervene and could not deal with such issues. Shortly thereafter, he stated that he went home and a police patrol of five men came to his house to deport him. Despite the allegations in the complaint, he states that he did not connect his deportation with his conversation with Kolasinac. Indeed no evidence was submitted to connect his deportation to Kolasinac in any manner.

Xhemali Jaha testified that the citizens of Rahovec came to him and asked him to speak to Kolasinac. So on 5 May 1999 he went to see Kolasinac to ask him to do something to stop the terrorization of the Kosovar Albanian community. Kolasinac responded that he could not do anything. Petar Dedic came into the meeting and Xhemali Jaha explained that he was terrified that they would be massacred and asked for help. He received no help. Muharrem Jaha, Xhemali's brother, testified that while he was gone eight police came to his house and addressed him by name. They had a list and ordered the Jaha family to leave within one hour. Again, despite the allegations contained in the Second Amended Indictment, Xhemali Jaha testified that he did not know if there was any connection between his conversation with Kolasinac and his order for deportation. Again no evidence was submitted to support such a connection.

Contrary to the allegations of the Second Amended Indictment, Mizahir Shabani testified that he left Kosovo for Albania on his own accord on 8 May 1999, without any threats or orders for deportation.

Nysret Mullaabazi testified that Kolasinac came in uniform to his home to ask for the keys to the truck that was in his yard and informed him that the army needed the use of the truck. The truck was owned by his neighbor and they did not have the keys. The next day a driver and mechanic came to pick up the truck. Three days later, six police came to his home to tell him to leave for Albania and that he had to leave within fifteen minutes. Nysret Mullabazi testified that the men were from Serbia and not Rahovec. Again, no evidence was submitted to this Court to establish a direct connection between Kolasinac and the deportation of the Mullaabazi family.

i. Analysis/ Criminal Liability of Kolasinac.

Based upon the evidence submitted, there is no evidence that would directly connect these specific deportations to Kolasinac. This Court has already found Kolasinac criminally liable in complicity for the systematic deportations of the Kosovar Albanians based upon his organizing of at least the second registration in Rahovec. Accordingly, this Court does not find Kolasinac criminally liable for the specific deportations alleged above.

5. The Confiscation of Property

It appears that the Second Amended Indictment alleges that Kolasinac was involved in the confiscation of property, specifically a truck, from Nesim Spahiu. The Second Amended Indictment alleges that Kolasinac came to the home of Nysret Mullabazi on Rahovec wearing a military uniform of captain and that he told Destan Mullabazi and Nysret Mullabazi that he came to take the truck parked in Mullabazi's yard. The truck was the property of Nesim Spahiu, a neighbor. As alleged, the following day, Kolasinac sent two persons to get the truck.

a. The Law

Article 142 of the CCY specifically prohibits the confiscation of property during war. The Commentary to Article 142 states that:

> requisition (providing the food supplies, clothes and transport or providing services in labour force) may be requested for the needs of the occupation army but only in local dimensions, and taking into consideration economic power of the country and the

needs of civilian population. The requisition shall be illegal unless paid in money, and if this is not possible, the value taken away must be covered by a certificate.

Under international law, any form of deprivation of property, including theft and requisition is considered appropriation. In order for an appropriation to rise to the level of a war crime, it must not be carried out extensively, unlawfully, wantonly and without justifiable military necessity. [26]

b. Facts

The witnesses to this charge include Nesim Spahiu, Petar Dedic, Nysret Mullabazi and Destan Mullabazi.

Nysret Mullaabazi testified that Kolasinac came in uniform to his home to ask for the keys to the truck that was in his yard and informed him that the army needed the use of the truck. The truck was owned by his neighbor and they did not have the keys. The next day a driver and mechanic came to pick up the truck. Destan Mullabazi testified that on 14 April 1999 Kolasinac came in uniform together with his deputy Zoran Grkovic and he asked for the keys of the truck. He got he key from the neighbor's sister and handed it over to the accused who told them, that within an hour he would send somebody to pick up the truck. A person, whom he knew as Pera Dedic came to do so. It appears from the testimony of Petar Dedic, that the two men who came for the truck were Petar Dedic and Zoran Grkovic. The keys were handed over to them for use during the war for the needs of the financial police. Zoran Grkovic gave them a receipt for the use of the truck. Petar Dedic testified that he was not aware that Kolasinac had come by the day prior. Nesim Spahiu testified that after the war, the keys were returned by Zoran and the truck was in the same condition, except that the batteries were missing.

Kolasinac denies any involvement.

c. Analysis/Kolasinac's Criminal Liability

Even if this Court were to accept as true that Kolasinac was somehow involved in the confiscation of this truck, it does not appear to this Court, under the fact submitted, that the acts would constitute a war crime under Article 142 or the relevant international law. This Court would note that it has already found Kolasinac criminally liable under the theory of command responsibility for the looting and destruction of property that occurred during the cleaning of Malisheve.

The taking of the property during the war, providing a receipt for the appropriation of the property and returning the property promptly after the war as justified by military necessity, would make this appropriation appear lawful. However, even if the taking of the truck were considered to be unlawful and not justified by military necessity, the facts submitted do not show an extensive or wanton appropriation.

Thus, this Court finds Kolasinac not guilty of the confiscation of the Spahiu truck in violation of Article 142(1) of the CCY.

6. Illegal Detention

[26] *Blaskic*, para. 157

The Second Amended Indictment alleges that Kolasinac ordered or perpetrated illegal detention in violation of Article 142(1) of the CCY. It, however, sheds no additional light on the allegation as a separate charge. This Court can only assume that the allegation was meant in connection with each of the allegations of forced labour, already analyzed above. This Court already found Kolasinac guilty of forced labour in connection with the cleansing of Malisheve and the pruning of the vineyards. Since the illegal detention charge is a part of the forced labour charge, this Court does not find Kolasinac guilty of a separate charge for illegal detention in violation of Article 142(1) of the CCY.

7. The Application of Measures of Intimidation and Terror.

The Second Amended Indictment also alleges that Kolasinac ordered or perpetrated the act of application of measures of intimidation and terror in violation of Article 142(1) of the CCY. Again, it sheds no additional light on this allegation as a separate charge. This Court can only assume that the allegation was meant in connection with each of the allegations of forced labour, already analyzed above. This Court already found Kolasinac guilty of forced labour in connection with the cleansing of Malisheve and the pruning of the vineyards. Since the application of measures of intimidation and terror is a part of the forced labour charge, this Court does not find Kolasinac guilty of a separate charge for the application of measures of intimidation and terror in violation of Article 142(1) of the CCY.

8. Collective Punishment.

The Second Amended Indictment also alleges that Kolasinac ordered or perpetrated the act of collective punishment in violation of Article 142(1) of the CCY. Again, it sheds no additional light on this allegation as a separate charge. This Court can only assume that the allegation was meant in connection with each of the allegations of forced labour, deportations, and looting and destruction of property already analyzed above. Since collective punishment against the Kosovar Albanian population would form a part of the forced labour, deportation, looting and destruction of property charges for which this Court has already found Kolasinac guilty, this Court does not find Kolasinac guilty of a separate charge for collective punishment in violation of Article 142(1) of the CCY.

D. ELEMENT SEVEN: NEXUS BETWEEN KOLASINAC'S ACTS AND THE ARMED CONFLICT IN KOSOVO.

Under international law, generally there must be a nexus between the crime and the armed conflict and this is also an implicit requirement under Article 142 of the CCY.

The Appeals Chamber in *Prosecutor v. Kunarac* (12 June 2002) explained the requirement of a nexus between the conflict and the prohibited acts quite well at paragraphs 57-59:

> There is no necessary correlation between the area where the actual fighting is taking place and the geographical reach of the laws of war. The laws of war apply in the whole territory of the warring states or, in the case of internal armed conflicts, the whole territory under the control of a party to the conflict, whether or not actual combat takes place there, and continue to apply until a general conclusion of peace or, in the case of internal armed conflicts, until a peaceful settlement is achieved. A violation of the laws or customs of war may therefore occur at a time when and in a place where no fighting is actually taking place. As indicated by the Trial Chamber,

> the requirement that the acts of the accused must be closely related to the armed conflict would not be negated if the crimes were temporally and geographically remote from the actual fighting. It would be sufficient, for instance, for the purpose of this requirement, that the alleged crimes were closely related to hostilities occurring in other parts of the territories controlled by the parties to the conflict.
>
> 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 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.

Accordingly, the Appeals Chamber set out certain factors that may be considered by a court in determining whether or not the act in question is sufficiently related to the armed conflict. Those factors include: the fact that the perpetrator is a combatant; the fact that the victim is a non-combatant; the fact that the victim is a member of the opposing party; the fact that the act may be said to serve the ultimate goal of a military campaign; and the fact that the crime is committed as part of or in the context of the perpetrator's official duties.

Each of these factors have been discussed at length in the preceding analyses and it is clear to this Court based upon all the evidence submitted that there was a very definite nexus between Kolasinac's acts and the internal/international armed conflict in Kosovo during the NATO bombing campaign. This Court has already found that Kolasinac was indeed a combatant, as defined under international law and as discussed at greater length above. This Court has also already found that the victims were all non-combatants. The victims, all Kosovar Albanians, were obviously in opposition to the Serb party that was conducting a widespread and systematic attack upon the Kosovar Albanians and attempting to push them all out of Kosovo during the NATO bombing. As described in more detail above, each of the acts - forced labour; looting and destruction of property of the Kosovar Albanian civilians; and deportation of the Kosovar Albanians – was precisely conducted as part of the main military campaign against the Kosovar Albanians. Finally, Kolasinac committed each of these acts in his official duties as Commander of the Headquarters of Civilian Protection, which was an organizational unit of the Federal Ministry of Defense.

Accordingly, there existed a clear and unmistakable nexus between the acts perpetrated by Kolasinac and the internal/international armed conflict in Kosovo during the relevant time period, the NATO bombing campaign.

III. ANALYSIS OF CHARGE OF CONCEALING THE TRACES OF THE DEPORTATION OF CIVILIANS.

The Indictment charges Kolasinac with aiding a perpetrator after he has committed a criminal act under Article 174 of the CCK in relation to the charge of deportation of civilians pursuant to Article 142 (1) War Crime Against the Civilian Population. Article 174 of the CCK provides the following:

> (1) Whoever harbors a perpetrator of a criminal act, or by concealing the tools, or traces, or in any other way helps him not to be found, or any person who

> harbors a convicted person or undertakes other actions intended to prevent the enforcement of the imposed penalty, security measure or educational measures of referral to an educational facility or an educational-corrective institution, shall be punished with up to one year of imprisonment.
>
> (2) Whoever aids a perpetrator of a criminal act for which the penalty of over five years of imprisonment is prescribed shall be punished with three months to three years of imprisonment.
>
> (3) Whoever aids the perpetrator of a criminal act for which a death penalty is prescribed, shall be punished with one to ten years of imprisonment.[27]

Article 174 is made applicable law in Kosovo pursuant to UNMIK Regulation 1999/24, as amended by UNMIK Regulation 2000/59.

In connection of the charge of concealing the traces of deportation through the destruction of the property of the deported people, the Court must acquit the accused because he has been found guilty in the criminal act itself. Therefore, Kolasinac cannot be convicted for the aiding of a perpetrator of the same criminal act.

The Court has already found that one of the purposes of the cleansing of Malishevë was to conceal the traces of the deportation. During the NATO bombardment, the long lines of Kosovo Albanians leaving Kosovo was well reported in the media. Indeed, it could hardly be hidden from the world. However, Malishevë was emblematic of the operations of the Serb forces in the systematic expulsion of the Kosovar Albanians. A view of the catastrophe in Malisheve by the media or international organizations would have served to confirm the horrors of their forcible deportations. Indeed, the Serbs had good reason to hide the traces of the forced deporations in Malishevë. Zyber Zeka testified that the Serbs present at the meeting regarding the cleansing of Malisheve told them that a group from the Red Cross would come. Bejtullah Hoxha further explained that the delegations from Prishtinë/Priština frequented the roads between Prizren and Rahovec, hence the need to hide the traces. These witness testimonies confirm that the aim of the cleaning of the roads in Malishevë was the hiding of the traces of deportation.

To this day, the Serbs do not admit to having forcibly deported the Kosovar Albanians. This is made evident by the testimony of each of the defense witnesses, including Branka Furjanovic, who testified that the Kosovar Albanians left Kosovo voluntarily or out of fear of NATO bombing.

Nevertheless, as stated above, this Court cannot find Kolasinac guilty in this criminal act, based upon the legal principle of absorption.

IV. ANALYSIS OF THE CHARGE OF CONCEALING THE BODIES IN MASS GRAVES.

In relation to the charges of aiding a perpetrator after he has committed a criminal act under Article 174 of the CCK, the indictment alleges that Kolasinac provided such aid by assisting in the creation of mass graves for those civilians murdered in a brutal and cruel manner by others during the war. The Second Amended Indictment also appears to allege that Kolasinac is guilty of aiding or assisting the Serb authorities after they have committed

[27] See note 1 *supra*.

the criminal act of murder in connection with specific murders carried out in a brutal and cruel manner. Both of these charges are evaluated herein.

Article 30 (2) (1) states that whoever takes another person's life in a brutal or cruel manner will be eligible for a term of imprisonment of at least ten years or death penalty.[28]

A. MASS GRAVES

In relation to the charge against Kolasinac for concealing of the bodies in mass graves, the Second Amended Indictment specifically alleges that Kolasinac received orders from a local police official who wanted Kolasinac to find a place to put the dead bodies and that Kolasinac admits to arranging for a mass grave to hide the bodies of forty to fifty people that he knew to have been killed by the police.

1. Facts

Kolasinac testified at the main trial that he was not aware of any mass graves or mass killings. He then stated that he was aware of some mass graves that were from the first offensive in July 1998 and that he found out about them much later.

His trial testimony runs in stark contrast to a previous statement given to UNMIK police on 22 August 1999. Under UNMIK Regulation 2002/7, applicable law in Kosovo pursuant to UNMIK Regulation 1999/24, a written record of an interview may be considered in rendering a decision in criminal proceedings, where the appropriate procedures were followed and where the parties have been given an opportunity to examine the witness. With respect to Kolasinac's statement given to the UNMIK police, this Court finds that the relevant procedures were followed by the police, pursuant to Section 2 and 3 of UNMIK Regulation 2002/7. The Court notes that although the heading of the document states "Witness statement," Kolasinac was given the correctly instructions as a suspect. Accordingly, this statement is admissible evidence.

The accused was confronted with this statement. In the statement, Kolasinac states that he received an order from the local police, Dusko Vujicic, who wanted him to find a place to put dead bodies. The order was given to him orally at the beginning of May 1999. In his statement, he said Stanisa Milenkovic told him that it was the local police who were killing people. The mass graves were prepared in an area called Muslim graveyard. Kolasinac then drew a map of two areas of mass graves that were not far from each other. He stated that he thought there were forty bodies at one site and fifty at the other and that he could show the police where they were. In response to the question "When did you find this information out about the mass graves?" Kolasinac stated, "After this had started. In April of this year 1999." This last statement is internally inconsistent with respect to the earlier part of his interview and creates confusion about whether he had organized the mass graves and when. There were no clarifying questions. Based upon this internal inconsistency, it appears to this Court that there may have been a problem in the translation in the interview in August 1999. For this reason, the credibility of the statement is called into question and this Court cannot rely upon this statement in rendering its decision.

[28] Pursuant to UNMIK Regulation 1999/24, as amended by UNMIK Regulation 2000/59, the death penalty has been abolished. Thus, the significance of the previous punishment of the death penalty arises only in relation to its connection with Article 174(3) of the CCK, which would allow for a heightened punishment.

2. Analysis/Kolasinac's Criminal Liability.

The only evidence before this Court is the testimony of Kolasinac and his statement. No further evidence was submitted in the form of reports regarding the mass graves, the identities of those persons buried there, or any forensics to determine when the persons were killed or the bodies buried. No evidence was submitted in the form of testimony from those who may have interviewed Kolasinac. No other witness testimony was provided.

As such, the only evidence that this Court may rely upon in rendering its decision is the testimony given by the defendant at the main trial. Accordingly, this Court must accept as true that Kolasinac knew about certain mass graves, but was informed about them in April 1999 and that he was not involved in organizing their preparation. Based upon this evidence, this Court cannot find Kolasinac criminally liable for aiding a perpetrator after he has committed a criminal act of murder.

B. SPECIFIC MURDERS

The Second Amended Indictment alleges that Ahmet Shabandula and members of his family were accosted in a stable by Serb personnel during the NATO bombing in 1999. Shabandula's three sons were murdered by these personnel, but he and a boy were spared. Allegedly, the Serbs called Kolasinac on a radio and Kolasinac told them to spare Shabandula and the boy. The Second Amended Indictment concludes that this evidences Kolasinac's complicity in the crimes against the civilian population.

Although not in the Second Amended Indictment, the International Public Prosecutor also submitted evidence in the form of witness testimony from Myhedin Miftari and his grandson, Veton Miftari, which appears to have been submitted also to show Kolasinac's complicity in war crimes against the civilian population.

The Second Amended Indictment does not allege that Kolasinac was complicit in war crimes against the civilian population that included murder. This Court has already found Kolasinac criminally liable as complicit in certain acts of war crimes against the civilian population, including forced labour, deportations, and looting and destruction of property. Killing of the population was not charged in the context of the war crimes charge. Thus, this Court is left to evaluate these allegations in the context of the charges of aiding a perpetrator after he has committed a criminal act of murder.

1. Kolasinac's Alleged Complicity in Concealing the Murder of Ahmet Shabandula's Three Sons.

a. Facts

Ahmet Shabandula testified that on 29 March 1999 he and his grandson went to the stables to see his three sons. At the stables, soldiers stopped and searched them. They took his ID and his wallet with 500 DEM and then threw his ID away. One of the soldiers was standing next to him talking to a man on his walkie-talkie. The soldier explained everything to this man. Ahmet Shabandula heard the man on the other end of the radio say: "Do whatever you want, but release the old man and the kid." He believed the voice to be that of Kolasinac. He also heard the soldier say "Is that you, Djeko?" After the conversation was over, the soldiers instructed him to take his grandson and go home. He picked up his ID and left with his grandson. He walked only three meters away when he heard the outbursts of

automatic guns. When he turned around, they shouted to him "Go home or we will kill you too!"

Ahmet Shabandula went to his house and then headed straight to Kolasinac's house. Since they were neighbors, he wanted to ask Kolasinac for help, but only Kolasinac's mother was at home. He went three or fourt times to Kolasinac's house that day, but Kolasinac did not respond. On the way to Kolasinac's house, he met Zivko Moravcevic and told him what had happened with his sons. Zivko Moravcevic confirmed Ahmet Shabandula's statement.

Ahmet Shabandula could not recover the bodies of his sons that day. Five or six days later he went back and found the bodies burned. He went to see Commander Cerovic, who instructed him to go home and said that he would let him know when to pick up the remains. He waited for about an hour and went back to the stable, but by that time they had already taken the bodies away and buried them in the Muslim graveyard.

Kolasinac objected to the statement of the witness denying any involvement in the killing of Ahmet Shabandula's sons.

b. Analysis/Kolasinac's Criminal Liability.

The Court found Ahmet Shabandula a very reliable witness whose testimony was not lead by any ill-feeling of revenge despite his enormous loss. More than three years after the tragic event his deep sadness was clearly observable to the Court. It is true that he did not mention the incident with the walkie-talkie when he gave his statement to the investigative judge. During the trial session he mentioned the discussion through the walkie-talkie, but only when he was explicitly asked by the public prosecutor, who was the man the soldier was talking to through the walkie-talkie, he named Andjelko Kolasinac. This small detail also confirms that he had no intention to blame the accused. As he stated, he did not mention this before the investigative judge because it did not come to his mind at that time.

Nevertheless, this Court cannot find his testimony sufficient to prove Kolasinac's involvement in any way in the killing of his sons. It could not have been excluded with certainty that he was mistaken in recognizing the voice, as the voice through a walkie-talkie is usually distorted. In addition, there was no evidence at all that could link Kolasinac to the movement of the bodies. The witness himself stated that he reported to Commander Cerovic, and he was unable to contact Kolasinac. There is no evidence that the accused had any kind of role in the murder of Ahmet Shabandula's three sons or the burial of their remains.

As such, this Court cannot find Kolasinac guilty in relation to the murder of Ahmet Shabandula's three sons

2. Kolasinac's Alleged Complicity in Concealing Other Murders.

a. Facts.

Myhedin Miftari testified that during the NATO campaign, he had seen Kolasinac in his neighbor's house, Ljubomir Simic, at least every other day gathering and celebrating with important military and police persons. He testified that he could hear them, but had to "exert extra effort" to hear. He testified that the guests at Ljubomir Simic's planned the actions for the following day, such as "which place to go to kill people," and celebrated the result of the day by drinking, singing, and shooting guns in the air. Myhedin Miftari testified that he heard

that they had informed Kolasinac about every action and Kolasinac was giving orders to the police.

Veton Miftari, Myhedin Miftari's grandson, confirmed the statement of his grandfather as to the gatherings and celebrations and that Kolasinac was there five to six times. He testified that they made plans as to who to kill the following day. Indeed, their neighbors, Ismail Bekeri and Hidajet Cena, were killed by the Serbian police soon after such a gathering. He added that not only these murders were planned in the yard of Ljubomir Simic, but "all the murders in Orahovac…because this used to be the base of the policemen."

Kolasinac denied that he had been in Ljubomir Simic's house or yard in the period of 1998 and 1999 and claims to have never set foot on that street.

b. Analysis/Kolasinac's Criminal Liability

The Court found Myhedin Myftari's testimony unreliable, as he proved to be bias towards Kolasinac. In addition, his trial testimony contained major contradictions as compared to his statement given before the investigative judge. Moreover, his grandson did not confirm the details of Myhedin Myftari's testimony. Also during the confrontation with Kolasinac, Myhedin Miftari, despite several instruction by the Court, did not look into the eyes of the accused, especially at those parts where the presence and role of Kolasinac was discussed.

Veton Myftari's testimony appeared equally unreliable. It was obvious to the Court that Veton Myftari's statement regarding the presence of Kolasinac at the gatherings had been adjusted to his grandfather's statement. Moreover, it was clear from the testimony of Veton Myftari that he was not certain about the identity of Kolasinac and he could not have seen or heard as much as he would like this Court to believe. The Court has no doubt that such gatherings and celebrations took place at Ljubomir Simic's house. However, this Court has serious doubts that Kolasinac took part at these celebrations.

Because of the inherent unreliability of the statements of Myhedin and Veton Myftari, and the fact that no other evidence was submitted in relation to the claimed connections between Kolasinac and certain murders in Rahovec, this Court cannot find Kolasinac guilty of concealing other murders in Rahovec.

V. PENAL SANCTIONS

In determining the duration of punishment, the Court evaluated all mitigating and aggravating factors.

The panel has taken as a mitigating factor, that the accused had no previous conviction and as aggravating factor, the grave consequences of his criminal acts.

In the Court's view, the punishment of eight years of imprisonment completely fulfills the legal prerequisites, since the law envisages a sentence from five to twenty years of imprisonment. The eight years of imprisonment imposed is sufficient to cover the extent to which Kolasinac was found guilty of war crimes against the civilian population.

VI. FURTHER DECISIONS

A. DETENTION

Pursuant to the order of a local investigating judge, Andjelko Kolasinac was arrested on 20 August 1999 and has remained in detention since that date to the present. Pursuant to this Court's Verdict entered on 31 January 2003, the detention of the accused, Kolasinac, shall continue until this verdict becomes final, pursuant to Article 353, Paragraphs 6 and 7, in connection with Paragraph 1 of the LCP. Pursuant to Article 353 (1), the extension of detention of Kolasinac is mandatory until the verdict becomes final. Accordingly, this Court issued a separate Detention Order on 3 February 2003.[29]

B. CREDIT FOR PRE-TRIAL CUSTODY

The time spent in custody since 20 August 1999 is credited in the imposed inprisonment, pursuant to Article 351, paragraph 6 of the LCP.

C. COSTS OF CRIMINAL PROCEEDING

Based on Article 96, Paragraph 1 and in connection with Article 95, Paragraph 2, item 6 of the LCP and Article 98, Paragraph 4, of LCP, due to the economic situation of the accused Andjelko Kolasinac, the panel has decided that he is obliged to pay 1000 Euro as a judicial lump-sum within 15 days after this verdict becomes final but he is relieved of the obligation to pay the costs of the criminal proceedings.

Legal Remedy

An appeal may be filed in written form against this verdict through the District Court of Prizren to the Supreme Court of Kosovo within fifteen days from the date of delivery of a copy of the verdict, as per Article 359 of the LCP.

District Court of Prizren
31 January 2003, C. Nr. 226/2001

Prepared in English, an authorized language.

Recording Clerk
Maria Lenie Velasquez

Presiding Judge
Hajnalka Karpati

H.K./C.F.

[29] This Court is cognizant of the fact that the accused has been in detention since 20 August 1999, for a total of approximately three and one half years. Defense Counsel previously alleged that this detention was in violation of the European Convention For the Protection of Human Rights and Fundamental Freedoms (ECHR) Article 5(3), the applicable law of Kosovo, as set forth in UNMIK Regulation 1999/24, as amended by UNMIK Regulation 2000/59. In a Decision on Detention, dated 13 December 2002, this Court found that the detention of the accused was reasonable according to Article 5(3) of the ECHR. No facts or circumstances have changed in this case since that decision that would militate against a finding of reasonableness of the length of detention for Kolasinac. Rather, this Court is now obliged by the language of Articles 353 of the LCP to order the accused's detention until the verdict becomes final.