

KOSOVSKA MITROVICA/MITROVICË DISTRICT COURT
C.C. No. 48/01

Mitrovica District Court with the panel (hereinafter the Court) composed of International Judge, Catherine Marchi-Uhel, Presiding Judge, Judge Leonard Assira and Judge Emine Kakiqu (and her alternate, Judge Kada Bunjaku) as members of the panel; Catherine Dagenais as Court recorder in the criminal case against the accused Miroslav Vuckovic, charged with committing, in complicity, the criminal offence of War Crimes and participating in a joint criminal design for the purpose of committing war crimes, contrary to Article 142 as read with Article 22 and 26 of the Criminal Code of the Socialist Federal Republic of Yugoslavia (CCY) as made applicable by UNMIK/REG 1999/24, as prescribed in the new indictment¹ filed on 10 October 2002 and as amended by the Public Prosecutor on 18 October 2002, and subsequent to oral, public trial hearings held on 4, 28, 29, 30 January and 1, 27, 28, 29 March and 29, 30 April, 16 May, 5, 10, 25, 26 and 27 June, 8 July, 5, 6, 8, 9, 12, 13, 29 and 30 August, 2, 3, 4, 5, 16, 17, 19, 20, 23, 24, 27, 30 September and 8, 10, 11, 18, 21, 24 October 2002 in the presence of the Mitrovica Public Prosecutor's Office represented by the International Prosecutor, Philip Alcock, the Accused and his Defence Counsel, Miodrag Brklac, Nikola Radosavović, Miro Delević and representative of the injured parties, Xhafer Maliqi, on 25 October 2002

IN THE NAME OF THE PEOPLE

ruled and publicly declared the following

VERDICT

The accused, MIROSLAV VUČKOVIĆ, nicknamed 'Mosa' the son of Momcilo and Borka (maiden name Jevtić), born on 22 September 1948 at the village of Gornji Suvi Do, a Serbian Kosovar of Mitrovica Municipality. A widower with two sons, literate and working as a driver for the Medical Centre, having completed technical high school. He completed his military service at Kovin in 1967, is of middle economic status and without previous convictions and has been in detention since 23 August 1999.

Pursuant to Article 351 of LCP is GUILTY

¹ Previous indictment, C. No. 22/99 dated 29 November 1999 as amended on 4 January 2002.

BECAUSE

As part of an armed group of civilians, some of whom were Yugoslav Army reservists; and being closely associated with them and other Yugoslav Army members acting on behalf of the Yugoslav armed forces, especially during the period 14 April to 22 April 1999 when the worst village attacks occurred; at times (between September 1998 and 9 May 1999) where, in the territory of Kosovo, a state of internal armed conflict existed between the KLA and the armed forces of the Federal Republic of Yugoslavia, , both armed forces being under a responsible command, and exercising control over parts of the territory of Kosovo that enabled them to carry out sustained and concerted military operations and whilst an international armed conflict co-existed alongside the internal armed conflict during the period 24 March 1999 to 9 May 1999, and a nexus existed between the acts committed and the armed conflict; committed the following acts the victims of which were members of the civilian population:

1. Illegal and self-willed destruction of property, as per Article 142 in conjunction with Article 22 of the CCY and encompassed by Article 147 of the Fourth Geneva Convention of 1949 (Grave Breach).

Consisting in acting in complicity with others, damaging and destroying others property, namely by fire, projectiles, explosions or other means between 1 April 1999 and 10 May 1999 of houses in Guševač/Gushavc, belonging to Jakup Sahiti, Abit Sahiti, Xhevat Zeka, Selim Sahiti, Alit Sahiti, Miran Sahiti, the Islamic Priest Jonuz Sahiti, Ragip Sahiti, Mursel Sahiti, Veselj Sahiti, Agim Sahiti, Adem Sahiti, Hetem Sahiti, Hamit Sahiti, Xhevat Sahiti, Ekrem Sahiti, Lutfi Beka, Bejtullah Sahiti, Afrim Sahiti, Dibran Sahiti, Shaban Sahiti, and many other houses within the said villages and in Vinarce together with sheds, barns, storehouses, garages and other outbuildings and together with the destruction and damage of numerous vehicles, -bales of hay, implements, household appliances and other household goods and furnishings and the killing of livestock, all being the property of either the persons named above or other Kosovar Albanian inhabitants of the said villages.

2. Stealing on a large scale of property, as per Article 142 of the CCY in conjunction with Article 22 of the CCY and as encompassed by Article 4, Paragraph 2(g) of Additional Protocol II (1977) to the Geneva Conventions of 1949:

Consisting of acting in complicity with others, on many occasions during the period of 1 April 1999 to 9 May 1999 committed the pillage of cars, tractors and other vehicles of various kinds, farm cultivators and other farming implements, satellite dishes, televisions and other electronic equipment, household appliances and other household goods, fittings and furnishings, horses, cattle and other livestock and other movable property by forcibly entering houses and other buildings in Guševač/Gushavc, Vinarce and into lands annexed to those villages which belonged to a large number of Kosovar Albanian villagers, including houses and lands in Guševač/Gushavc belonging to Abit Sahiti, the Islamic Priest Jonuz Sahiti, Xhevat Sahiti, Mursel Sahiti, Lutfi Beka, Ekrem Sahiti, Shaban Beka, Hetem Sahiti and Imer Rushiti, on such a scale that trucks, tractors and other vehicles were often necessary to enable their transport from the plundered properties.

3. Application of measures of intimidation and terror and endangering the safety of other persons, as per Article 142 of the CCY in conjunction with Article 22 of the CCY and as encompassed by paragraph 1 (a) of Common Article 3 to the Geneva Conventions of 1949, Article 4, Paragraph 2(a) of Additional Protocol II (1977) to the Geneva Conventions of 1949:

Consisting in acting in complicity with others,

On or about the night of 24 September 1998, from the evening through to the morning, by the firing of various types of rifles and other weapons, some firing tracer bullets, into the village of Guševač/Gushavc, where a large number of persons were gathered, to the extent that caused fear, intimidation and panic amongst the inhabitants of Guševač/Gushavc and prompted some to flee or make preparations for flight.

From 1 March 1999 to 9 April 1999, in a place where large numbers of persons were gathered, namely in or around the villages of Guševač/Gushavc by the regular firing of rifles and other firearms at and towards people and buildings in or around that village in the morning and the evening from a hill overlooking the village and regardless of whether the village properties and lands were populated and causing constant fear, intimidation and panic daily to the Kosovar Albanian villagers, prompting some of them to desist from working their lands and to flee the village or consider doing so.

From 10 April 1999 to 9 May 1999, causing general danger by arson, explosions and other dangerous acts or means, in places where large numbers of persons were gathered, namely in or around the villages of Guševač/Gushavc and Vinarce by the firing of various types of weapons including mortars and firearms at and towards people and buildings in these areas and by the burning of many of their houses and outbuildings regardless of whether they were populated including the houses in Guševač/Gushavc of Jakup Sahiti, Abit Sahiti, Xhevat Zeka, Selim Sahiti, Alit Sahiti, Miran Sahiti, the Islamic Priest Jonuz Sahiti, Ragip Sahiti, Mursel Sahiti, Veselj Sahiti, Agim Sahiti, Adem Sahiti, Hetem Sahiti, Hamit Sahiti, Xhevat Sahiti, Ekrem Sahiti, Lutfi Beka, Bejtullah Sahiti, Afrim Sahiti, Dibran Sahiti, Shaban Sahiti, and many other houses in the said village as well as in Vinarce together with sheds, barns, storehouses, garages and other outbuildings, causing terror and mass evacuation of the inhabitants of these villages.

Through these acts, committed in complicity with others, the criminal act of war crimes pursuant to Article 142 and 22 of the CCY and in violation of rules of international law.

Based on Articles 33, 38, 41 paragraph 1 of the CCY and Articles 351 and 353 of the LCP the Court

RULES

To impose on a punishment of 12 years of imprisonment;

Pursuant to Article 50 of the CCY, the time Miroslav Vučković has spent in detention from the time of his arrest on 23 August 1999 (793 days) is to be deducted from his sentence.

The injured parties are invited to launch a civil law suit as to their claim for civil compensation.

Pursuant to Article 95 paragraph 2 item 6 of the LCP, the lump sum part of the cost of the criminal proceedings shall be levied at 500 euros, the more specific costs to be calculated at a later stage pursuant to Article 96 of the LCP;

Pursuant to Article 353 paragraphs 1 and 6 of the LCP and by separate decision the detention of Miroslav Vučković is extended pending the verdict coming into effect.

THE PROCEEDINGS

The accused was heard on 28 and 29 January 2002

The following witnesses were heard during the main trial:

Hetem SAHITI (29 January 2002), Abedin JASHARI (30 January and 1 March 2002), Agron SAHITI (27 and 28 March 2002), Selman AVDIU (29 March, 3 and 29 April 2002), Shemsi SAHITI (30 April, 16 May 2002), Lufti SAHITI (5 and 10 June 2002), Gani BEKA (10 and 25 June 2002), Xhevat ZEKA (26 and 27 June 2002), Ekrem BEKA (8 July and 5 August 2002), Xheladin SAHITI (6 and 8 August 2002), Selim SAHITI (12 August 2002) Nuradin BEHAMI (13 August 2002), Dr Drita FAZLIU (29 August 2002), Dr Agim PECI (29 August 2002), Bahri KLISURICA (30 August 2002), Hysni STRANA (30 August 2002), Vladimir ILIC (2 September 2002), Predrag MILANOVIĆ (3 September 2002), Dragisa RISTIĆ (3 September 2002), Savo MARINKOVIĆ (4 and 5 September 2002), Miodrag RADONOVIĆ (5 September 2002), Zorica RADOVIĆ (16 September 2002), Ljilja DRAGOVIĆ (17 September 2002), Sahit OSMANI (17 and 27 September 2002), Vlastimir ČVETKOVIĆ (19 September 2002), Radmila ATANASIJEVIĆ (20 September 2002), Vladimir SMIKIĆ (20 September 2002), Indira MORALIĆ (23 September 2002), Zivorad MEDELJKOVIĆ (23 September 2002), Drasko KNEŽEVIĆ (24 September 2002), Aleksandar VASIĆ (24 September 2002), Gordana NIKOLIĆ (27 September 2002), Kurt SPUR (8 October 2002). On the request of the Defence and with the approval of the Prosecutor, two witnesses were heard by the Presiding Judge and Judge Leonard Assira in the presence of the International Prosecutor, Philip Alcock, and Defence counsel, Nikola Radosavović, at the premises of the “Palace of Justice” in Belgrade pursuant to Article 330 of the LCP. These witnesses, Mico KRAGOVIC, nickname Šole (25 September 2002) and Bogoljub Jevtic, nickname Cico (25 and 26 September 2002) were named by several injured parties as having taken part in some of the acts the accused is charged for and were unlikely to appear before the Mitrovica District Court. Copies were taken of their military books and were entered into the record as evidence.

Colonel Richard HEASLIP was heard as an expert in military issues on 10 October 2002.

Pursuant to Article 333 paragraph 2, the Court decided, after the parties consented, that the statements of the following witnesses given at previous stages of the proceedings be considered read into the record. They were respectively read during the trial sessions of: 27 September 2002 (Fehmi SAHITI², Agim SAHITI³, Tafil SAHITI⁴, Ajet SAHITI⁵); 30 September 2002 (Hysni SAHITI⁶, Nexhmedin SAHITI⁷, Xhevat SAHITI⁸, Abit SAHITI⁹, Hamit SAHITI¹⁰, Bejtullah SAHITI¹¹, Veselj SAHITI¹², Stahinja DENOVIĆ¹³, Gradimir JEVTIĆ¹⁴ and Vesna PEROVIĆ¹⁵; 11 October 2002 (Veselj HASANI¹⁶ and Ardian Sahiti¹⁷)

² Statement given at the investigating stage on 01/10/99 and during the main trial on 20/11/00.

³ Statement given at the investigating stage on 15/09/99 and during the main trial on 31/08/00.

⁴ Statement given at the investigating stage on 29/09/99 and during the main trial on 13/11/00.

⁵ Statement given at the investigating stage on 01/10/99 and during the main trial on 17/11/00.

⁶ Statement given at the investigating stage on 06/10/99 and during the main trial on 20/11/00.

⁷ Statement given at the investigating stage on 06/10/99 and during the main trial on 03/11/00.

⁸ Statement given at the investigating stage on 30/09/99 and during the main trial on 03/11/00.

⁹ Statement given at the investigating stage on 30/09/99 and during the main trial on 13/11/00.

¹⁰ Statement given at the investigating stage on 30/09/99 and during the main trial on 15/11/00.

¹¹ Statement given at the investigating stage on 29/09/99.

¹² Statement given at the investigating stage on 01/10/99.

¹³ Statement given during the main trial on 10/01/01.

¹⁴ Statement given during the main trial on 10/01/01.

¹⁵ Statement given during the main trial on 11/01/01.

¹⁶ Statement given at the investigating stage on 17/09/99.

The Court decided after agreement with the parties to conduct an ocular inspection pursuant to Article 330 (2) of the LCP. The ocular inspection took place on 26 and 27 August 2002¹⁷. The purpose of the ocular inspection was to familiarise the Court with the location of various events; to locate the positions of perpetrators and witnesses during these various events, to visualise the movement of persons and to test the credibility of witnesses by confirming the physical locations of where they said they were and what they could have seen from that location. The ocular inspection was attended by the Court, the International Prosecutor, the accused, one Defence Counsel, a court recorder, interpreters and an UNMIK forensic photographer. The witnesses called to attend the ocular inspection were Selman Avdiu, Gani Beka, Shemsi Sahiti, Hetem Sahiti, Ekrem Sahiti, Abedin Jashari, Lutfi Sahiti, Selim Sahiti and Xhevat Zeka.

On 2 September 2002, pursuant to Article 42 item 5 of the LCP, the Court dismissed the Article 39 item 6 of the LCP motion filed by Defence Counsel alleging that Mrs. Emine Kaqiku was impartial as it was filed after the commencement of the main re-trial.

On 6 September 2002, following a decision pursuant to Article 330 (2) of the LCP made during the trial session of 5 September, the Presiding Judge and the International Prosecutor, assisted by the court recorder, Gilian Paines, and the interpreter, Aleksander Zivanović, in the absence of Defence counsel, Nikola Radosavović who was duly invited on 5 September 2002, made an on-the-spot inquest at the Mitrovica North Hospital to access documents relevant to the re-trial. The documents related to the accused's activities as a driver for the Medical Centre during the period covered by the Indictment. Full co-operation was provided to the Court by the staff of the hospital. Copies of the documents consisting of work attendance sheets of the driver's pool for September 1998, March, April, May and June 1999, as well as fuel receipts were provided, attached to the Court file and copies of all documents were provided to the parties.

On 8 October 2002, the Court announced its decisions on various motions filed by Defence Counsel. The Court rejected their motion to order that a medical expertise be conducted on the accused and partially agreed with their motion to admit as evidence the case file, No. 58/2000, of the proceedings conducted against Radovan Apostolović before the Mitrovica District Court. The Court admitted as evidence in the re-trial record, the verdict of acquittal of Mr Radovan Apostolović. The Court further rejected the Defence's motion to conduct an expertise to date the wooden plank embedded on a grave, allegedly that of Vahide Zeka, and rejected their proposal to call Ragip Sahiti as a witness. The above-mentioned decisions can be found in the court record of the session of 8 October 2002.

The procedure of presentation of evidence was closed on 18 October 2002.

APPLICABLE LAW

The Court considered the evidence in relation to Article 142 of the CCY Code which reads as follows:.

'Whoever in violation of rules of international law effective at the time of war, armed conflict or occupation, orders that civilian population be subject to killings, torture, inhuman treatment, biological experiments, immense suffering or violation of bodily

¹⁷ Statement given during the main trial on 11/11/00.

¹⁸ Security was provided by UNMIK Team Mike and KFOR.

integrity or health; dislocation or displacement or forcible conversion to another nationality or religion; forcible prostitution or rape; application of measures of intimidation and terror, taking hostages, imposing collective punishment, unlawful bringing in concentration camps and other illegal arrests and detention, deprivation of rights to fair and impartial trial; forcible service in the armed forces of enemy's army or in its intelligence service or administration; forcible labour, starvation of the population, property confiscation, pillaging, illegal and self-willed destruction and stealing on large scale of a property that is not justified by military needs, taking an illegal and disproportionate contribution or requisition, devaluation of domestic currency or the unlawful issuance of currency, or who commits one of the foregoing acts, shall be punished by imprisonment for not less than five years or by the death penalty¹⁹.

INDICTMENT:

The indictment filed by the Prosecution focuses on the commission, participation in or acting in complicity with others in the following factual incidents:

On or about 15 April 1999 in the village of Gušavac/Gushavc at the house of Xhevat Zeka, the accused in concert with his two sons, Bozur Bisevac, Mico Kragović and others, allegedly murdered Vahide Zeka either by intentionally burning Vahide Zeka to death or by killing her and then burning down her home and her remains.

On or about 15 April 1999, in the village of Gušavac/Gushavc at the house of Selim Sahiti, the accused individually, and in concert with Bozur Bisevac and others, allegedly murdered Fazile Sahiti either by burning her to death or by killing her and then burning her house and her remains.

On a date between 14 April 1999 and 10 May 1999 in the vicinity of the village of Zhabar, together with two other men, allegedly seized and unlawfully detained Agron Sahiti. They allegedly first detained him in a dwelling and then in a stable and bound his wrists with wire or flex and beat him repeatedly and cruelly over a lengthy period. The accused also allegedly hit him on his back with a rifle butt causing sustained injury and pain and allegedly struck and wounded him on the forehead with a knife. Together with his accomplices, the Accused allegedly pushed the Agron Sahiti's head into dough, removed his trousers and discussed with his accomplices whether they kill him. The accused allegedly also ill-treated and beat other Kosovar Albanian captives in Mr Sahiti's presence causing him further distress and trauma.

On or about 17 April 1999 at or near the village of Vinarce, in the vicinity of the main street, a group of armed men, of which the accused and Bozur Bisevac were members, allegedly collectively shot at Abedin Jashari. Mr Jashari was struck and shot through the upper part of his body by one of their bullets. The said shot was fired with the requisite intent to kill which the accused, being part of the group, would have shared, whether or not he actually fired the specific bullet that struck Mr Jashari.

That between 1 April 1999 and 10 May 1999, the accused allegedly destroyed by fire, projectiles, explosions or other means, houses in Gušavac/Gushavc, belonging to Hetem

¹⁹As a result of the abolishment of the death penalty, the applicable law foresees a maximum of 20 years of imprisonment, as per Article 142 of the CCY read with Section 1.5 of UNMIK Regulation NO. 1999/24 as amended by Section 1.6 UNMIK Regulation NO. 2000/59. However, in accordance with Section 1.4 of UNMIK/REG 2000/59 Article 38(2) of the CCY applies as it is more favourable to the accused.

Sahiti, Jakup Sahiti, Abit Sahiti, Shaban Beka, Fadil Sahiti, Tafil Sahiti, Agron Sahiti, Zenullah Hajdari, Imer Sadiku, Hajdar Hajdari, Beslim Sadiku, Xhevat Zeka, Selim Sahiti, Miran Sahiti, Ijet Sahiti, the Islamic Priest, Ragip Sahiti, Mursel Sahiti, Veselj Sahiti, Agim Sahiti, Afrim Sahiti, Adem Sahiti, Gani Beka, Lutfi Beka, Lutfi Sahiti, Ekrem Beka, Xhevat Sahiti, Rifat Beka, Xheladin Sahiti, Dibran Sahiti, Negjmedin Sahiti, Bislim Rushiti, Qezim Rushiti, Fehmi Sahiti, Daklan Hajdari, Dibran Hajdari, Sadik Sahiti, Idriz Hajdari, Sherif Hajdari, Adem Hajdari, Selim Hajdari, Fazile Sahiti, Sherif Beka, Mexhmet Beka, Hakif Sahiti, Bejtullah Sahiti, Sokol Sahiti, Shemsi Sahiti, Shaban Sahiti and many other houses; and of houses in Vinarce, belonging to Abedin Jashari, Nuredin Jashari, Hakif Jashari, Hashim Jashari, Seljman Avdiu, Rrahim Mustafa, Bilall Musliu and many other houses; and of houses in Vidomiriq/Vidomirić and many other houses within the said villages together with sheds, barns, storehouses, garages and other outbuildings and together with the destruction and damage of numerous vehicles, bales of hay, implements, household appliances and other household goods and furnishings and the killing of livestock, all being the property of either the persons named above or other Kosovar Albanian inhabitants of the said villages,

On numerous occasions between 1 April 1999 and 10 May 1999 the accused, in the company of others, allegedly stole, with violence, or robbed, in a particularly grave, dangerous and impudent manner whilst possessing weapons or dangerous tools and using the helpless or troubled situation of other persons, cars and tractors and other vehicles of various kinds, farm cultivators and other farming implements, satellite dishes, televisions and other electronic equipment, household appliances and other household goods, fittings and furnishings, horses, cattle and other livestock and other movable property by forcibly entering the houses and other buildings in Vidomiriq/Vidomirić, Gušavac/Gushavc, Vinarce and into lands annexed to those villages which belonged to a large number of Kosovar Albanian villagers, which included houses and lands in Gušavac/Gushavc belonging to Abit Sahiti, Seljman Avdiu, the Islamic Priest, Xhevat Sahiti, Mursel Sahiti, Lutfi Beka, Shaban Beka, Xhafer Rushiti, Xheladin Sahiti, Hetem Sahiti and Imer Rushiti.

On or about the night of 24 September 1998 in a place where a large number of persons was gathered, namely in or about the village of Gušavac/Gushavc the accused allegedly participated in the firing of various types of rifles and other weapons, some firing tracer bullets, into the Village of Gušavac/Gushavc from the evening through to the morning to an extent which caused fear, intimidation and panic amongst the inhabitants of Gušavac/Gushavc and prompted some to flee or make preparations for flight.

From 1 March 1999 to 9 April 1999 in a place where large numbers of persons were gathered, namely in or around the village of Gušavac/Gushavc the accused allegedly participated in the regular firing, morning and evening, of rifles or other firearms at and towards people and buildings in or around that village from a hill overlooking the village regardless of whether the village properties and lands were occupied causing constant daily fear, intimidation and panic as a result on the part of Albanian villagers in Gušavac/Gushavc and prompting some of them to desist from working their lands and to flee the village or consider doing so.

From 10 April 1999 to 10 May 1999 in places where large numbers of persons were gathered, namely in or around the villages of Vidomiriq, Gušavac/Gushavc and Vinarce the accused allegedly participated in the firing of various types of weapons including mortars and firearms at and towards people and buildings in these areas and by the burning of many of their houses and outbuilding regardless of whether they were occupied including houses in Gušavac/Gushavc of Hetem Sahiti, Jakup Sahiti, Abit Sahiti, Shaban Beka, Fadil Sahiti, Tafil

Sahiti, Agron Sahiti, Zenullah Hajdari, Imer Sadiku, Hajdar Hajdari, Beslim Sadiku, Xhevat Zeka, Selim Sahiti, Miran Sahiti, Ijet Sahiti, the Muslim Priest, Ragip Sahiti, Mursel Sahiti, Veselj Sahiti, Agim Sahiti, Afrim Sahiti, Adem Sahiti, Gani Beka, Lutfi Beka, Lutfi Sahiti, Ekrem Beka, Xhevat Sahiti, Rifat Beka, Xheladin Sahiti, Dibran Sahiti, Negjmedin Sahiti, Bislim Rushiti, Qezim Rushiti, Fehmi Sahiti, Daklan Hajdari, Dibran Hajdari, Sadik Sahiti, Idriz Hajdari, Sherif Hajdari, Adem Hajdari, Selim Hajdari, Fazile Sahiti, Sherif Beka, Mexhmet Beka, Hakif Sahiti, Bejtullah Sahiti, Sokol Sahiti, Shemsi Sahiti Shaban Sahiti and many other houses and of houses in Vinarce of Abedin Jashari, Nuredin Jashari, Hakif Jashari, Hashim Jashari, Seljman Avdiu, Rrahim Mustafa, Bilall Musliu and many other houses and of houses in Vidomiriq and many other houses within the said villages together with sheds, barns, storehouses, garages and other outbuildings causing terror and mass evacuation of the villages by their inhabitants.

CHRONOLOGY

The present chronology aims at putting the criminal acts the accused is charged with, namely the events having taken place in the Mitrovica Region during the period covered by the indictment, into their context.

Although heavy fightings had already taken place in July and August 1998 between the security forces of the FRY and the Kosovo Liberation Army (KLA) in various areas of Kosovo (see part related to the armed conflict below), the relationship between Albanian and Serbian villagers of Suvi-Do/Suhodoll and Gušavac/Gushavc appears to have been satisfactory until September 1998. Afterwards, while the overall situation in Kosovo was deteriorating, various violent incidents affecting both communities in that area occurred even before the start of the NATO bombing campaign, and intensified thereafter.

It is established that in September 1998, the upper part of Suvi-Do/Suhodoll where 8-10 Serb houses are located (250 metres from the forest on the hill separating Suvi-Do/Suhodoll and Gušavac/Gushavc) was attacked. The nearest houses exposed to the forest were damaged, namely the ones owned by Rade Babovic, Miroslav Vuckovic and the house of Vladimir, Jovica and Bogdan Denevic. The exact origin of the attack was unknown but the Serb villagers logically attributed it to the Albanian side without being sure whether KLA forces were involved and whether their neighbouring Albanian villagers supported them or not²⁰.

Albanian witnesses testified that in the evening of 24 September, groups of Serbs, including neighbours from Suvi-Do/Suhodoll and the accused, shot at the Gušavac/Gushavc village from the ridge of the above-mentioned hill until the morning, using automatic and semi-automatic guns as well as machine guns without injuring anyone.

While villagers from both villages felt particularly in danger and started considering finding safer places in particular for the elderly, women and children, negotiations were taking place, aimed at discussing the situation and finding a way to stop this violence. Activists from both communities were involved. The Albanians participating to that negotiation included Istref Jashari, Shahin Hajdari and Selman Avdiu, while the Serbian participants included Trifko Apostolovic, Radovan Apostolovic, Mico Kragovic and Vukomir Jevtic. A mutual agreement to avoid further violence would have been reached during the meeting. However, some Albanian witnesses testified that in spite of moderated views expressed by various Serb villagers attending the meeting, Rade Babovic and the accused, who did not attend it, would have been against the said agreement²¹.

²⁰ See testimony of Mico Kragovic and Bogoljub Jevtic.

²¹ See in particular, testimony of Shemsi Sahiti and Gani Beka.

On 1st January 1999, two Serbs were killed in Suvi-Do/Suhodoll. At around 2 or 3 am, one Serbian villager from Suvi-Do/Suhodoll was escorting a friend from Mikronaselje, who had spent New Year's Eve with him. They never managed to reach their destination. Traces of blood were found on the pavement and the water supply pump station, nearby lower Suvi-Do/Suhodoll and their bodies were found on the other bank of the Iber in the vicinity of the football stadium. This created panic in the village of Suvi-Do/Suhodoll and the council of the local community met on several occasions in order to envisage how to protect the civilian population. Plans were made to evacuate the population to Zvecan in case it would happen again²².

According to the OSCE Report Kosovo As Seen As Told²³, following the talks in Rambouillet, France (6-23 February 1999), there was a significant build up of Yugoslav Army (VJ) forces throughout Kosovo, leading to arming civilians, as reported by the OSCE Kosovo Verification Mission (KVM) daily reports. Also the training of reservists as well VJ "exercises" were observed (see below).

OSCE KVM officers, on two occasions, observed passengers of the bus servicing Kosovska Mitrovica towards Vinarce being mistreated at a checkpoint in Suvi-Do/Suhodoll (a bus that was mostly used by Albanians). The first time was in late February when a blue dressed group, police, took the people out of the buses and treated them very badly. The second time was in early March, a VJ checkpoint with two Pinzgauers blocked the road so that vehicles had to zig-zag around them, and on that occasion 10 to 12 people (soldiers) of the regular army were there. They also witnessed nearby on the same day two or three uniformed reservists and three civilians all armed and walking on the road; they were carrying AK-47s²⁴.

By mid-March approximately, an OSCE liaison officer²⁵ to the KLA was involved on various occasions in negotiations with the KLA with respect to the release of 3 to 4 Serbs who had disappeared and succeeded on two occasions. The same officer also testified having seen 3-4 times, while moving around in the night in Mitrovica, black-clothed people with their heads covered. They were heavily armed and working in groups of three to four people. He also saw civilians armed on several occasions in the north of Zvecan, in Leposavic and Zubin Potok.

On 12 March 1999, a big exercise started with the regular army. Cannons were placed south of Mitrovica²⁶, north of Vushtrri and on the hills west of Mitrovica, all pointed to the area in between the two towns where the KLA operated. In the beginning it was an exercise involving reservists and they were using blank ammunition but after approximately 8 to 10 hours, they switched to real ammunition. So the area in between the two positions was badly hit and first black-dressed people moved in. The blue uniformed people, police depending on the Ministry of Interior (MUP), were controlling the access to the area south of where the cannons were positioned. The goal was apparently to clear the area from the Serbian border all the way down to Pristina in a wide band. After the black-dressed people had entered the area, the leftovers such as televisions and refrigerators were carried out by the militaries that went in after. The shells contained a lot of explosives and during the attack houses started to burn. People, cattle and horses were killed in the attacks. A couple of these black-dressed

²² See testimony of Mico Kragovic.

²³ See page 8 of 17, English version of the excerpt of that report admitted as evidence.

²⁴ See testimony of Kurt Spur, former KVM officer.

²⁵ Same witness Kurt Spur when acting as a liaison officer.

²⁶ The cannon for the southern part was taken from the military base in Kosovska Mitrovica/Mitrovicë and placed on the site.

people took out an obviously pregnant woman, cut her open, took out the baby and raped her.²⁷

Further East in the Bajgora/Bajgore area, there was a strong KLA presence, and – as of March 1999 – it was controlled by the 141st brigade of the KLA. During the last week of March 1999, thousands of displaced persons from the Municipality of Podujevo took shelter for five weeks, nearby the KLA positions which were frequently attacked²⁸. Although he met only a few KLA officers in the mountains when he negotiated the above-mentioned release of Serbs, the above-mentioned liaison officer met on several occasions, several hundreds of KLA people attending the training that took place in Bajgora/Bajgore and which included education in guerrilla warfare and a certain kind of military discipline. The witness testified that reports from his colleagues stated there were other areas within Kosovo where there were larger concentrations of KLA fighters.

Albanian witnesses testified that between the 1st of March and the beginning of April 1999, shootings directed at Gušavac/Gushavc and apparently aimed at creating panic amongst the Albanian population took place mornings and evenings from the hill separating Gušavac/Gushavc and Suvi-Do/Suhodoll. The accused was seen amongst others on various occasions as being on the hill during the attacks and taking part to it. No one was injured until 15 April 1999, however several villagers of Gušavac/Gushavc left the village, others located in the lower part of the village desisted from working their lands and had to find safer locations in the upper part of the village during the attacks²⁹. A few houses in Gušavac/Gushavc were set on fire one to two weeks before the NATO bombing started on 24 March 1999. This was the case of the houses belonging to Agron, Tafil and Fadil Sahiti. By the end of March 1999, the village of Qabra was attacked. Arsons continued in the first part of April in Gušavac/Gushavc until the main attack on the village.

Almost unanimously³⁰, the Albanian witnesses who gave evidence placed the main attack conducted against Vidomiric³¹ and Gušavac/Gushavc on 15 April 1999. They explained in details how Vidomiric was attacked in the morning, a few hours before the village of Gušavac/Gushavc, and how most of the villagers fled towards Vinarce while a few remained in the village and described how it was attacked. They described in particular, intense shelling from use of a mortar placed on the Vidomiric hills, the entrance of armed forces including the accused, shooting from all directions as well as arson of most houses in the upper part of the village as well as in a lesser proportion in the lower part and looting.

The witnesses testified that the burning of houses continued the following day(s) and that after they escaped from Gušavac/Gushavc they found shelter in Vinarce hoping that it would end. However, after 3-4 days the Albanian villagers from upper and lower Vinarce as well as those having found shelter there were chased away during an attack conducted by Serbs, which included the accused.

²⁷ See testimony of Kurt Spur who was observing with powerful binoculars, hidden up in the mountains from approximately 2 - 2.5 kms from the most southern position. Asked about the spirit and discipline of the reservists compared to the regular VJ soldiers, the witness assessed it as poor (i.e. their uniforms were dirty, buttons missing they were not shaved and their behaviour was not very soldier-like, as a bunch of fighters just brought in, under fairly free discipline.

²⁸ See above-mentioned OSCE Report page 11 of 17, English version of the excerpt admitted as evidence.

²⁹ See in particular the testimony of Shemsi Sahiti who observed from the four-story house of Xheladin Bahtir with his cousin Lutfi Sahiti and others; see also the testimony of Tafil Sahiti.

³⁰ Selim Sahiti hesitated between 15 and 16 April and Selman Avdiu also was unclear about it.

³¹ The attack against Vidomiric had already started on 14 April.

From Vinarce, the Albanian villagers crossed the Ibar River by foot, cars, tractors, carts and other vehicles and headed towards Zhabar. There, at the place called Transkosova where the Danish KFOR's camp is now, the police stopped them, took their money and other values and put them in a convoy of more than 100 vehicles supposed to go to Albania but that convoy was actually stopped en route and returned to Zhabar. The police were shooting and two persons were killed on the Zhabar side of the Ibar. Several young men afraid of being killed avoided the convoy and found shelter in the Grmova hill. From there, several witnesses observed looting and burning taking place in Gušavac/Gushavc and Vinarce until early May, when Grmova was attacked from Vinarce with mortar and other light weaponry and they took shelter in another safer place.

By the end of April 1999, an ambulance from the Mitrovica Health Center was attacked on its way back from Pristina. Two drivers were injured and a third one Milan Grujic was shot in the head and died³². Other similar incidents were reported by Serbian witnesses who gave evidence. For example, on 6 May, near the hospital on the South side of Mitrovica a police officer was shot dead near the bus station and one night an ambulance driver managed to escape from an ambush. Someone had dialed the emergency number 94 asking for help and when he arrived at the place indicated in the Albanian part of Mitrovica (Bair quarter) persons wanting to abduct him pointed pistols at him³³.

Meanwhile, by the end of April 1999, the VJ offensives from the east and west of the Bajgora area gained territory and the KLA reportedly relinquished control, while displaced persons in the area were caught in crossfire, and on one occasion, they were deliberately targeted by the Yugoslav forces.³⁴

WITNESSES' CREDIBILITY

The court found that the records taken during the investigating hearings were in general, insufficiently reliable. They contained a particularly brief summary of the witnesses' statements, without any clarification, even when obviously required, in order to understand the meaning of the statements in question. Moreover the fact that several witnesses, such as Xhevat Zeka who gave to the French Gendarmes important information such as the finding of remains, believed to be human in one of his burned houses, were never called as witnesses and the fact that no forensic investigations were requested led the court to consider that the investigating judge was certainly working in a hurry as claimed by many Albanian witnesses, and conducted the investigation in a rather slash dash manner. The first trial panel obviously decided to hear the numerous witnesses proposed by the prosecutor without entering into too many details with few exceptions, and denied the defense's right to call witnesses with three exceptions. During the re-trial, the International Prosecutor had chosen to call less witnesses and more time was spent in hearing these witnesses in detail. They were called at an ocular inspection in order to test their credibility. Moreover, the court heard all the witnesses proposed by the defense, and its international members heard in Belgrade two witnesses named by Albanian witnesses as accomplices³⁵. It must also be stressed that problems of translation were often raised requiring clarification on the spot with the assistance of the witnesses, the Kosovar panel member, the accused and his defense council speaking Kosovar Albanian when present. This raised, from the very first re-trial session, numerous objections

³² See contradiction between the accused' statement (28 January 2002) who gives the impression that he was in the ambulance during the ambush while it results from the testimonies of Savo Marinković and Predrag Milanovic that he was at the hospital at the reception of the surgical ward.

³³ See testimony of Dragisha Ristic, driver, Medical Centre Kosovska Mitrovica/Mitrovicë

³⁴ See above mentioned OSCE Report page 11 of 17, English version of the excerpt admitted as evidence.

³⁵ Without being properly informed by the defense that the two witnesses in question were actually still residing in Kosovo but feared to be heard in Kosovska Mitrovica/Mitrovicë.

from the accused, claiming that the Kosovar panel member was attempting to influence Albanian witnesses.

The court did not follow the approach recommended by the defense in its closing speech³⁶ that basically questioned all the statements given by Albanian villagers from Vinarce and Gušavac/Gushavc as a whole, as they would have all been influenced by the arrest of the accused broadcasted on TV combined with ethnic prejudice. The court considered the possibility that ethnic hostility due to the nature of the crime and expectation for conviction after the accused's arrest might have occurred. However, the court was not convinced by the theory of a conspiracy against the accused in the present case. Most of the witnesses admitted that until the attacks conducted against their villages they had a good relationship with the accused who speaks fluently Albanian, knows the Albanian culture and used to be helpful to several of them since he started his activity as an ambulance driver. The court considered that the version of the accused being a "scapegoat" in the present case does not match with his background and was of the opinion that, the fact that he suffered from a very serious accident more than 20 years ago as a result of which he limps, that he is a widower who took care of two children alone for many years would inspire his neighbours' sympathy rather than jealousy.

The court also took into account the fact that the great stress and fear to which the witnesses were exposed when having to abandon their homes while escaping danger, seeing their homes set on fire and their properties destroyed or looted or discovering it afterwards, while some villagers and/or close relatives were still missing after their return, might have diminished the accuracy of their perception and recollection of events. Therefore, the court considered the discrepancies between witnesses' testimony and previous statements, as well as discrepancies with established facts and addressed the issue of credibility as to each witness rather than as a whole.

The court decided not to rely on the testimony of the following witnesses for various reasons: Selman Avdiu placed the accused as having taken part in the transportation with a lorry of dead bodies of Albanian villagers and their burial in the cemetery of Gušavac/Gushavc on 20 May 1999, at a time where the accused was detained (from 10 May-10 June 1999, see below the alibi of the accused). Although the court admitted as reliable the testimony of witnesses obviously confused with dates throughout their statements, such as Abedin Jashari, this was not the case with Selman Avdiu. This witness testified in such a methodic and precise way following the chronological flow of events that the court could not believe that the above-mentioned discrepancy was the result of a mistake. Similarly, the testimony of Agron Sahiti who after having indicated that his abduction had taken place in March 1999, insisted upon the fact that it indeed occurred by the end of May 1999, was considered as insufficiently reliable. This witness' testimony also contained various discrepancies (see factual assessment of the facts related to Agron Sahiti's abduction and torture). The panel decided not to rely on the testimony of Lutfi Sahiti as he placed the accused together with Radovan Apostolovic at a time (15 April 1999) where the latter was considered by another trial panel to be hospitalized as substantiated by medical documents. The reason why the statements given by Xheladin Sahiti and Osman Sahiti were not relied upon by the court is due to numerous contradictions in their respective statement, the fact that the former admitted that his memory was not clear anymore and the important confusion of the latter.

The court clarified certain apparent contradictions amongst witnesses' statements and therefore relied on the statements in question. This is the case for instance with the witness Hetem Sahiti. Some suspicion was initially raised as to the reliability of his statement in that

³⁶ See N. Radosavovic's closing speech.

he described the events related to his house during the first and the re-trial and how he observed the accused, Bozhur and their sons from the forest between Gušavac/Gushavc and Vinarce while at the investigating stage he said he had seen the smoke from his house but not who burned it. Actually, it was clarified during the re-trial as well as during the ocular inspection that he knew that the initiators were Mosa, Bozhur and their children as mentioned in the investigating record, because he saw them arriving by car and entering his house before it was set on fire, but he did not see who set it on fire.

More details on credibility assessments are incorporated under the relevant factual assessments below as a result of which the court decided to rely upon the testimonies of Ekrem Beka, Hetem Sahiti, Abedin Jashari, Selim Sahiti, Shemsi Sahiti and Gani Beka as to the villagers having witnessed the events. The court also found credible the testimonies of the Serb and Albanian witnesses working at the hospital. As to the testimonies of Mico Kragovic and Bogoljub Jevtic, who denied having been present with the accused at any time indicated by the above-mentioned Albanian witnesses during the attacks against Gušavac/Gushavc and Vinarce and denied the presence of army and police checkpoints and armed civilians in Suvi Do/Suhodoll even before their incorporation as reservists in the village and at times were such presence was witnessed by KVM observers, the court considered that both witnesses were actually trying to avoid incriminating themselves.

FACTUAL ASSESSMENT

The attack against Gušavac/Gushavc village, September 1998³⁷.

Shemsi Sahiti testified that on 24 September 1998, at around 20.15 hours, half an hour before it became dark, a group of Serb neighbours and some other members came up to a certain point, about 50m in a direct line (as the crow flies) above their (Albanian villagers) houses on the hill between Gušavac/Gushavc and Suvi Do/Suhodoll. The distance along the ridge of the hill is about two or three kms. They started shooting at the lower part of Gušavac/Gushavc, it lasted until 4.30 a.m. They shot with automatic and semi-automatic guns and machine guns. The witness identified the weapons in question as being similar to the one shown in Exhibit 10³⁸, Pictures A & C, while the machine gun (“mitraloz”) is missing. At the moment the accused came out with his group it was probably 15-20 metres but when it got dark the witness could not observe anymore. There was much shooting coming from that airline and the witness assumed that there was a large number of persons forming several groups on the flat part of the hill (about 500m) as well as along the mountainous ridge. The witness described one of the groups being led by the accused carrying an automatic gun (as on above-mentioned Picture A). He wore from the waist down dark clothes and on top a vest. With the accused were Bogoljub Jevtic (Cica), Sole Kragovic, Steva’s son, Rajko Apostolovic, Bozur, Nikola and Aca. These were the people the witness recognized as they were his neighbours but there were many other people there. The witness clearly saw the accused with an automatic gun but he did not see him shooting as it was dark when the shooting started. No-one was injured but there were bullet holes in some of the houses. No houses were burnt but the witness assumes that they were trying to make them leave their houses.

³⁷ **Envisaged under Counts 5 & 6 in the amended indictment dated 10 October 2002.** See context in which the attack took place.

³⁸ Representing various types of weapons.

Gani Beka³⁹ testified that at around 19.00 hours, he drove passengers from Mitrovica and arrived in upper Vinarce at approximately 20.00 hours. The passengers disembarked and he went back to his house in Gušavac/Gushavc. On the hill above the school the Serbs from Suvi Do/Suhodoll (he could only distinguish and identify the accused as he was close to him) started shooting with all types of weapons and they hit the bus. The accused had an automatic gun, but the witness did not see him shooting. He saw him walking following the path, limping (he did not have crutches), but he was not going anywhere. He remained positioned on the hill close to a bush from where he could observe everyone going towards the school and was giving orders. All of them were well positioned and hiding and they were shooting from the hill of Gušavac/Gushavc. He parked the bus on the street the whole night and went towards the school. The witness initially thought that they were only aiming at the bus, but that night they shot during the whole night until the morning. One could see the tracer of the bullets. As it was getting darker he could not recognize anyone but the accused who was very close to him. He was giving orders to the others. The next day the witness continued working in spite of the bus condition.

Selim Sahiti confirmed that one night, he did not recall the date and the month, from 20.00 hours until 5.00 hours there were all sorts of shots. They did not stop at all. They came to the hill at the border of the village of Suvi Do/Suhodoll and Gušavac/Gushavc and they shot all night at the border. There were no victims. The witness is aware that the day following that night there were attempts made to talk to the Serbs from Suvi Do/Suhodoll about this event.

Findings:

As to particular elements of credibility regarding the way the three Albanian witnesses describe the event in question, the court took into consideration the fact although they describe the presence of the accused carrying an automatic weapon during the attack, Shemsi Sahiti and Gani Beka are moderated in their testimony as they do not claim having seen the accused shooting and admit that no-one was injured as a result of the attack. Therefore the court trusted these witnesses when they claimed that the accused was present during the attack. Selim Sahiti who corroborates the existence and circumstances of the attack does not name the accused at all in that part of his testimony.

Although the Serb witnesses heard on this issue (Bogoljub Jevtic and Mico Kragovic) denied having heard about such an attack, the panel believes that it really occurred and was actually a reprisal that immediately followed the previous one conducted against the upper part of Suvi Do/Suhodoll. Witnesses from both sides concur that the day following the attack (Albanian witnesses referring to the attack against Gušavac/Gushavc and Serb witnesses to the attack against Suvi Do/Suhodoll), activists from both sides met at the house of Trifko Apostolovic in Suvi Do in order to discuss the situation and try to find a peaceful agreement.

Due to the intensity and length of the attack as described above the court considered that it amounts to application of measures of terror and intimidation. Even though no physical injuries resulted from the attack the fact that it was directed towards an inhabited village, that some houses were hit clearly demonstrate that it also endangered the safety of the persons present. In spite of the fact that the accused was not described as having been seen shooting, the fact that he was present, carrying a weapon in a group of armed persons shooting clearly showed that he shared the common purpose of creating panic amongst the Albanian villagers as a revenge from the attack conducted against the upper part of the village where he lived.

³⁹ Owner of a transportation firm "Buses Ariani" he used to drive one of the buses in the area of Vinarce, Gušavac/Gushavc, Suvi Do/Suhodoll and Kosovska Mitrovića/Mitrovicë.

The shootings from the hill from March until the beginning of April 1999⁴⁰

Shemsi Sahiti testified that from 1 March the accused usually in company of Bozhur and their two sons, Steva's nephew and some other persons started attacking them again, twice a day with weapons, every day, in the morning (09.00 hours - 09.30 hours) and in the evening at approximately 18.30 hours. The accused used the weapons seen on Picture A (Exhibit 10). The witness saw them shooting at the Albanian houses from a distance of about 30-50 metres from his own house. He observed this from the third floor at the house of Xheladin Bahtir with Skender Sahiti, Lutfi Sahiti and Xheladin Bahtir, from a distance of about 30 m away on an airline. They were together with the intention to observe what was happening and saw very well that the accused and his son were shooting and Bozur was down on the street while Steva's nephew was up there with the accused. The witness acknowledged in response to a question of the defense that he could not see exactly who was shooting: "*I don't know whom of those three persons were shooting but this is where the shooting came from*", "*I was not looking at who specifically shot.*" Until the 15th April no-one was wounded. As a result of these attacks it was impossible to continue living in that place (the school area) so they went to his uncle (Selim) to only sleep at his house, 500m away. They went there from 1 March. In the mornings they would be attacked so they would have to withdraw and then in the afternoons they were attacked again and would have to withdraw and go back to Selim's house. The witness' house is very close to the group that was coming and so they were in danger. According to the witness, the accused and the others intent was to force them to leave the place. On the way, in the street, they did not dare to take a detour because of the shooting. At his uncle's place they felt further away from danger and therefore safer. Selim's house was 1km away from the group who moved 500m everyday. They were behind that hill and most of the fields belonged to the Serbs; there are also some Albanian houses there from where the Albanians were expelled a long time before 1 March. So they were staying on that part of the terrain, which was their part of the terrain, from where they shot. During the period before 15 April 1999, the accused and members of his group came often almost every day to the cemetery with the first aid vehicle but did not enter any house, they were only observing. The witness added that the accused was leading the group and this lasted until 15 April when the village of Vidimiric was attacked. The witness and other Albanian villagers were in contact with a Serb neighbour from Vinarce, who said that on 14 April some of the people from Suvi Do/Suhodoll did not want to get involved with them but the accused and his group did not want to give up and this person advised them that it was not safe for them anymore and therefore they should go to some safer place as he couldn't help them anymore.

Selim Sahiti corroborated the statement of the previous witness in that he testified that since the beginning of March 1999 the accused and his sons would go out in the hill behind the school and shoot with weapons in the direction of their houses. He confirmed having observed such shooting taking place from the hill, late in the afternoon. During that period it was not possible to get close to that area.

Findings: The court found established the participation of the accused together with others to the regular firing of weapons, morning and evening, every day during the period in question. Those attacks did not cause injuries but were directed at an area where large numbers of persons were gathered, and obviously aimed at generating insecurity amongst the Albanian villagers, caused fear and panic and resulted in prompting some of them to desert the area and others to consider doing so.

⁴⁰ Envisaged under Counts 5 & 6 in the amended indictment dated 10 October 2002

As to the burning of outbuildings and other destructions as well as lootings⁴¹

Several witnesses testified about the burning of numerous houses, as well as sheds, barns, storehouses, garages and other outbuildings in the villages of Vidomiric, Gušavac/Gushavc and Vinarce and the destruction and damage of numerous vehicles, bales of hay, implements, household appliances and other household goods and furnishings and the killing of livestock, all being the property of the owners of the houses in question as well as other Albanian inhabitants of the said villages during the period between 1 April and 10 May 1999, with massive burning taking place on or about 14, 15 and 16 April. Testimonies concur as to the fact that some houses were burned on several occasions. None of the witnesses heard however, testified to having seen the accused taking part to the attacks conducted against Vidomiric village on 14 and 15 April.

The accused's direct participation to specific burnings and destructions is described in particular by the following witnesses: Ekrem Beka, Hetem Sahiti, Abedin Jashari, Selim Sahiti, Shemsi Sahiti; his participation to lootings is described by Ekrem Beka, Hetem Sahiti, Gani Beka, Shemsi Sahiti. Their statements are corroborated by the fact that the Serbian Police found at his house in Suvi Do on 9 May 1995, a number of items ranging from vehicles to household appliances⁴². The accused did not deny that items were found at his house in Suvi-Do/Suhodoll although he claimed that some of the items in question belonged to him or his family and that others were brought by militaries without his approval. No evidence was provided by the defense to support that argument and although the panel admits that some of the items in question might belong to him the fact that number of similar items were found clearly corroborates the accusation of looting (four cars, 14 television sets, five stove, etc...).

The court did not take into account the burning of Agron Sahiti's house, described by Agron himself since it took place two weeks before the NATO bombing campaign and therefore at a time not covered by the amended indictment under its Count 3. In addition, such facts would not have been covered by Article 4, Paragraph 2(g) of Additional Protocol II (1977) to the Geneva Conventions of 1949 related to pillage only, neither by Article 147 of the Fourth Geneva Convention of 1949 (Grave Breach), applying only in times of international armed conflict. The same goes with the burning of Fadil and Tafil Sahiti's houses described by the same witness as having occurred one week before the NATO bombing campaign.

As to the burning of Jakup Halit, Miran, Jonuz, Hamit and Hetem Sahiti's house (beginning April 1999)⁴³:

Ekrem Beka testified that Jakup's house was set on fire on four occasions and that he witnessed it once when it took place in the early evening. On the other occasions he only saw the smoke without seeing who set the house on fire. He was with his father and cousin (Jahja) who died in the war. They were drawing water from a well, 30m behind their house. He looked up to the hill and with his 'naked eyes' saw 4-5 persons (all armed but not in uniforms) walking down from the small hill near Jakup's house, they went very quickly to the house. There was the accused (easily recognizable, taller than the others, bigger than now, limping), as well as a shop owner. He had no idea what they were going to do until they saw the smoke. He did not see who went back to the hill, as there was a lot of smoke. Jakup's house was not finished when it was burnt. During the ocular inspection Ekrem Beka located his compound as well as the well from where he observed the burning of Jakup Sahiti's house

⁴¹ Envisaged under Counts 3, 4, 5 & 6 of the Indictment dated 10 October 2002

⁴² The exact list of items confiscated has been admitted into evidence by the trial panel during the trial session dated 18 October 2002.

⁴³ Envisaged under Counts 3, 5 & 6 of the Indictment dated 10 October 2002

(see PA40). The witness indicated that the haystacks set in front of the well and obstructing the view were not there and the big trees had no leaves at the beginning of April 1999. Due to the presence of the haystacks, it was decided to take a view of the hill over Jakup's house, where the witness said he saw the accused and others carrying weapons, from the fence along the road (PA41 and PA42). A view was taken from that place in direction of the hill, showing French gendarmes carrying weapons without raising them. Asked whether he was able to distinguish the weapons at the time, the witness said "yes, kalashinov type". Asked whether he could now distinguish which ones among the gendarmes had weapons he did answer, but only after the gendarmes had been asked to hold up their weapons and he answered that he might have seen the weapons while they were moving. The defense considered that the credibility of the witness was therefore affected. However, the court considered that such a conclusion could not be drawn. Although the panel assessed that weapons were not visible from this distance on the day of the ocular inspection (midday, a cloudy day, end of August) when held by the Gendarmes along their dark colored uniform, the weather conditions and the intensity of the light at the time of the crime (early evening in early April) might have significantly increase the capacity to see a weapon specially held by people in movement.

Hetem Sahiti described the burning of Jakup's house before his own house was burnt down. There was a strategic point on the hill with trenches and they had their bases there, sometimes Mosa, sometimes his sons and sometimes Bozur. The day he observed one of the burnings of Jakup's house, he was at his uncle's house. They (the accused but not Bozhur on that day) went down the hill and burned Jakup's house. This burned house can be seen today. According to the witness, after Jakup's house was burned, Halit, Jonuz, Miran and Hamit's houses were burned too by the accused, his sons and Bozur. The accused wore a military hat but he did not remember what clothes he had but it was civilian.

Abedin Jashari testified that he went to his fields in Gušavac/Gushavc, close to the cemetery and stayed there in order to observe. By midday, he recognized the accused over the school on the hill from his field. The accused remained on the hill (he had a green vest and black pants, the witness recognized him due to the way he walks) while two guys (he did not recognize them but was later told by the villagers they were Nikola and Aca) came down the hill (he observed from about 150m airline). He could see them up to a certain point. After about 10 – 20 minutes, he saw the smoke coming out of Jakup Sahiti's house although he could not see the house or who entered because of the neighbourhood of Sahitovic. After he saw the smoke the two returned to meet the accused on the hill. During the ocular inspection the witness located the place from where he observed the hill and Jakup's house burning (See P50) as well as the place (see P51) where the accused stood on the hill, firstly with his sons before the sons moved down between the trees seen on P51. Asked by the defence how he recognized it was Mosa, the witness as in his previous statement indicated that he did not recognize them at the time but was told by the villagers later. Ask how he recognized Mosa, the witness said, from the way he was walking.

Selim Sahiti also confirmed having witnessed several attempts to set the house of Jakup Sahiti on fire. One evening, a Monday (date unknown), he saw Aca, Milos, the accused and Bozur. The accused stood at the hill, while his two sons and Bozur's entered the house of Jakup and set it on fire. At the place where Mosa was staying at the hill, there were also trenches where the military was staying. The witness was somewhere at the edge of the asphalted road, about 20-30 metres behind the fence, approximately at mid-distance between the school and the bridge as it was clarified during the ocular inspection⁴⁴. Selim Sahiti located the position on

⁴⁴ See P47: view taken from the middle of the road from the place shown on P46, in direction of the hill. French gendarmes showing where Mosa's and Bozhur's sons were on the hill. P48: view in direction of the entrance of

the road Gušavac/Gushavc –Suvi Do/Suhodoll from where he saw Mosa’s and Bozhur’s sons going down the hill several times and entering Jakup’s house as well as the accused standing at the hill between Suvi Do/Suhodoll and Gušavac/Gushavc ⁴⁵. He recognized the accused because of his limp and could see the others hair colour. Reminded by the defense that at the first trial he stated that it was around 4 pm, the witness indicated that from four o’clock it started to get darker, days being shorter, but there was enough light to see what he described. He did not move nearer to observe because they were shooting.

The court did not consider that the differences noticed between the statements of the witnesses regarding the burnings of Jakup Sahiti’s house affected their credibility as this house, the closest to the hill, was clearly set on fire on various occasions and the witnesses might well not describe the same event as to that house burning.

Burning and looting of the houses belonging to Xhevat, Mursel, Ekrem, Lutfi, Shaban Sahiti⁴⁶.

Ekrem Beka testified that he used binoculars when observing what was happening at Xhevat Sahiti’s house (from about 1,000m - he was about 50-100m above his house on a small hill). It was after the burning of Jakup’s house. He watched Xhevat’s house being looted and it was done by Bozur with his son, the accused and his son and a person he described as being an athlete. Mosa stood at the entrance gate to the compound whilst the others went in and out carrying out the household goods. The witness clarified that there was a wall around the house and one couldn’t see exactly what was going on inside. Mosa also went in and out of the compound. The witness could not say what exactly had been looted as he had not been into Xhevat’s house and did not know exactly what Xhevat had – but it was brief, only for a few seconds and it was difficult to see but the goods were packed into carts. After the looting they set the house on fire and it took a long time to burn. In the beginning he and his cousin only saw the smoke and it took a while to see the flames. He did not see who and how they set the house on fire but saw the smoke before they all left together at the same time.

Ekrem Beka also testified that a day or two or three after Jakup’s house was burned, in mid-April, a dark coloured (green) civilian car (maybe Opel) arrived and 3-4 persons, maybe more, including the accused and Bozhur climbed out. The witness does not know whether the accused’ and Bozhur’s sons were there. They were shooting (automatic, couldn’t see exactly but it was a short rifle) in the air and they could not see. The witness and his cousin Jaja who were afraid hid themselves for 15 minutes. They all had weapons and the accused and Bozur were wearing black civilian clothes, the other two were wearing blue police uniforms, the usual uniforms for the past ten years. The witness stood behind his house but was higher than when he watched the looting of Xhevat’s house. Mursel’s house was close to his house and after that house was burned they could only travel at night, during the day only around the village. They (all four) entered the courtyard of Mursel Sahiti (this family and that of Xhevat’s family were in Vinarce as Gušavac/Gushavc was empty) and then Ekrem’s house (his family was not there, but in Vinarce) was looted and burned. The burning of Mursel’s house did not happen on the same day as Xhevat’s house was burned. The looted goods were packed into the car. They did not see as much as they saw in Xhevat’s house and therefore could not see what they took, but saw a few things in their hands for a brief moment.

the school of Gušavac/Gushavc taken from place shown at P46. P49: view in direction of the electric cabin of Gušavac/Gushavc near the bridge, taken from the place shown at P46.

⁴⁵ See also P46: showing Selim squatting down along the fence. The witness indicated that he moved from that position to the middle of the road in order to observe.

⁴⁶ **Envisaged under Counts 3, 4, 5 & 6 of the Indictment dated 10 October 2002**

After a day, the village was full of armed persons and the accused was among them. These people came in civilian cars and came in different groups and not all at the same time near the cemetery of Gušavac/Gushavc entrance. In the beginning/mid-April, the neighbourhood of 'Beka' started to burn down with Lutfi Beka's house.

According to Ekrem Beka, Lutfi's house was set on fire first after it had been looted of white goods, furniture and carpets. The determination of the types of goods was taken from an oral translation of his statement read out in Albanian. The witness was by the side of the river Ibar where there is a small mountain and, together with his cousin, he was watching with binoculars at a distance of 700-800 metres. The road is nearby. There were several groups, he did not count them, coming from the direction of Suvi Do/Suhodoll. Lutfi's house is surrounded with a main road going to the entrance of the compound, the road then leads to the other villages. They could see the main gate but could not see the entrance to the door very well. They were all together with Bozur and others that entered Lutfi's yard. He could see the accused enter because Lutfi's house is higher up. When Lutfi's house burned there were large smoke clouds. During the ocular inspection Ekrem Beka located Lutfi Beka's house (PA36: Entrance of Lutfi Beka's house) and indicated that at the time of the crime the brand new roof that can be now seen on the left hand side did not exist. Having gone along the path of Ferat Zeka's house and crossed a field, Ekrem Sahiti located the place at the fence close to the Ibar from where he observed hidden the burning of Lutfi Beka's house (PA37: view of Ekrem Beka at that place. PA38: Close up view of the same). He located the approximate place where he was standing when he observed the looting at Shaban's house (PA39. The witness indicated that the red house seen on that view did not exist at that time). It must be stressed that the attitude of the witness during the ocular inspection showed a real effort to locate the very place from where he was observing along the fence, although he could have easily pointed at a place from where the view towards Lutfi Beka's compound was obviously better. His description of the burning and looting was found compatible with what could be seen from the location where he testified having observed. In particular, the witness had a good view of the above-mentioned road and the entrance of the compound.

Ekrem Beka testified that Shaban's house was burned next and was also looted. At the investigative stage Ekrem Beka had stated "*completely looted*", asked during the re-trial to specify what he exactly meant, he said that they (Ekrem and his cousin) did not see them exactly looting as there was a big confusion and so they couldn't concentrate only on that. Shaban's house was burned afterwards but there were houses that were not burned as they did not have anything inside. Shaban's house doesn't have a main gate. It has its own road and one could see the house clearly. When he came back that evening, it had been completely looted but only partially burned. When Lutfi's house burned there were large smoke clouds and as there was also lighter smoke/smoke of a different colour, they knew it was Shaban's house. They could see the front door of his house until the smoke started coming out. The accused went into Shaban's yard. There were a number of persons in front of the house, some who entered and others who stayed outside. He saw the accused enter Shaban's house. He knows him very well and he is tall.

Ekrem Beka testified that his house is near Rifat's house. The accused and the others came across the fields straight into his house which stood further away from the other houses in the middle of the fields. His house is partially surrounded by a fence but from where he was observing it was not surrounded neither by fence or wall. It has two floors and is located behind the well. His house is positioned in the middle of the village near the cemetery. When he saw the accused involved in the burnings, he saw him coming from the school side not the Vidomiric side. The accused was together with the others who crossed the field. He saw the accused in his yard that has many trees with separate entrances to the various floors and they

all entered onto the second floor that they burned first. The witness later said that he only saw them burning the first/ground floor but did not see how and then there was a large explosion. Due to its distance (house) they only looted a small amount and then burned the house.

The main attack against Gušavac/Gushavc on 15 April 1999⁴⁷

Almost unanimously⁴⁸, the Albanian witnesses who gave testimony placed the main attack conducted against Vidomiric⁴⁹ and Gušavac/Gushavc on 15 April 1999. The witness Gani Beka in particular explained in detail how Vidomiric was attacked in the morning, a few hours before the village of Gushevac (also confirmed with less details by Shemsi Sahiti⁵⁰ and Hetem Sahiti).

Shemsi Sahiti described how people were fleeing from Vidomiric in tractors and horse carts. Gani Beka described that at around 8 am he heard shooting and shelling and saw Vidomiric in flames. Gani Beka met Selman Avdiu in the mountains in the direction of Vidomiric and they positioned themselves at the large field (Fusha e Madhe where the French KFOR is now) in order to observe, using binoculars. There was a big group of people in military clothes (about 30 persons according to Gani Beka) positioning a mortar in the trenches on the hills of Vidomiric so that it would hit Gušavac/Gushavc⁵¹. For about an hour they shelled Gušavac/Gushavc with this mortar (Ekrem Beka who was far away, could hear the mortar sound), then the paramilitaries carrying weapons went down towards Gušavac/Gushavc through a valley.

They stopped in a field for a while, apparently planning the next attack and headed towards the village shooting weapons. Gani Beka testified that he saw the accused, Kragovic and Bozur standing whilst the others (unknown) were sitting on the grass. At that time, Aca (the oldest son of the accused) was in his father's company but they separated later. The nature and intensity of the attack in Gušavac/Gushavc is confirmed by Shemsi Sahiti who claims that it was coming from all sides and that it was very intensive and involved all sorts of weapons, in addition to the above-mentioned mortar. The witnesses described the group of men that entered Gušavac/Gushavc coming from Vidomiric as wearing different kinds of military clothes⁵², police uniforms⁵³ as well as civilian clothes⁵⁴.

The witnesses are some of the few men who remained in Gušavac/Gushavc during the attack while most of the villagers had fled towards Vinarce. They described how the attackers came from several directions as well as the various locations from where they managed to observe the events: Gani Beka testified that he hid by a stream of water in the neighbourhood of Xhevat Zeka's compound, from there he saw the group of paramilitaries separating into two groups. They, including the accused, had automatic weapons. One group, including the accused, Aca and Bozhur went towards the upper slope hill, while the other group, including Kragovic, aka

⁴⁷ **Envisaged under Counts 3, 4, 5 & 6 of the Indictment dated 10 October 2002**

⁴⁸ Selim Sahiti hesitated between 15 and 16 April and Selman Avdiu also was unclear about it.

⁴⁹ The attack against Vidomiric had already started on 14 April.

⁵⁰ Shemsi Sahiti observed from Selim Sahiti's house which he thought being safer than his house in the school neighbourhood (lower Gushevac).

⁵¹ Gani Beka located the place near the French KFOR antenna (see PA45) from where they observed the group in question. See also PA46 and PA47 as 100 metres down the place where according to Gani Beka the group stopped at the hill, while another group came down along a path that is not visible from the place where the participants to the ocular inspection stopped, as it is hidden by a line of trees on the right hand side of PA46, but that was visible according to the witness from where he was standing near the French KFOR antenna.

⁵² According to Selim Sahiti the accused wore a military type uniform and hat on that day, Shemsi Sahiti testified that it was blue or black and according to Gani Beka, Shole wore military clothes also.

⁵³ According to Selim Sahiti.

⁵⁴ According to Gani Beka and Selim Sahiti.

Shole went towards the stream in the lower part of the village. After a while Gani Beka went to the vineyards on the hill over Xhevat Zeka's compound from where he observed until the evening, when they started to withdraw. Shemsi Sahiti saw about 15 men close to the place where he was staying amongst which he recognized Mosa, Aca, Bozhur and Koma's son. Selim Sahiti, who remained in the village for one or two hours after his family fled towards Vinarce, described the paramilitaries, including the accused and other neighbours entering Gušavac/Gushavc from three sides after the attack on Vidomiric (the white, arable field; the lower southern part of Vidomiric and the "lugu" valley (Iudimave) that stretched from southern Vidomiric to the village).

Witnesses also described the various acts committed in the village on that day, as well as the participation of the accused and others in the attack. This included shooting, looting, arsons as well as the killing of two old women Vahide Zeka and Fazile Sahiti who were never seen alive after the attack.

Gani Beka testified that, in one group, he observed Bozhur using the tractor of Ymer Rashiti⁵⁵ starting to carry out and loot everything left to eat in the village, while others including the accused were shooting continuously. He also testified that the eldest son of the accused took Abit Sahiti's truck. He further described how the two groups who had separated earlier met and looted all valuable items and how Qazim Rashiti's Mercedes was set on fire as they couldn't unlock it.

Gani Beka described how the accused and others entered the Xhevat Zeka's compound as well as the burning of the house where the remains of Vahide Zeka were found. Xhevat Zeka testified on the description of the events in question made by his aunt Bahtije who remained in the compound with Vahide and her brother Brahim until the moment the above-mentioned house was set on fire. Selim and Shemsi Sahiti described how the accused and others entered the compound as well as the fact that the house where Fazile Sahiti was left in was immediately set on fire⁵⁶.

The witnesses described how most of the houses of the upper part of Gušavac/Gushavc were set on fire one after the other on that day. Thereafter, some houses of the lower part got burned too (school area). This included the houses of Mursel Sahiti, Veselj Sahiti, Agim Sahiti, Bejtullah Sahiti, Afrim Sahiti, Ragip Sahiti and Adem Sahiti⁵⁷, Xhevat Zeka⁵⁸, Selim Sahiti⁵⁹, Dibran Sahiti⁶⁰. Shemsi testified to having seen the accused enter the houses or compounds of Selim Sahiti, Hamit Sahiti as well as of Jashari and Beka at the cemetery's neighbourhood, and that having followed the accused and his son Aca, Bozhur and his son Nikola and some others, he could see that they burned as many houses as they could. He also testified that five more houses were burned in the school area.

As to the events at Xhevat Zeka's and Selim Sahiti's compounds⁶¹

The accused's participation to the burning of houses which were part of these compounds is established through various direct and indirect testimonies. The testimonies in question not only refer to houses being set on fire but also to the fact that Vahide Zeka, Xhevat's mother as

⁵⁵ Gani's cousin and neighbour.

⁵⁶ See below under sub count 1 the part related to Fazile Sahiti's killing.

⁵⁷ See testimony of Shemsi Sahiti.

⁵⁸ See testimony of Xhevat Zeka, Gani Beka.

⁵⁹ See testimony of Shemsi Sahiti and Gani Beka.

⁶⁰ See testimony of Selim Sahiti.

⁶¹ **Envisaged under Counts 1, 3, 5 & 6 in the amended indictment dated 10 October 2002**

well as Fazile Sahiti, Selim Sahiti's mother would have been in the houses when they were set on fire and have not been seen alive since then.

The defense argued that re-adjudicating during the re-trial the killings of both women as referred to under Count 1 of the indictment would breach the prohibition of *reformatio in pejus* pursuant to Articles 378 and 390 paragraph 4 of the LCP due to the fact that the first verdict was appealed by the accused and the prosecutor only with regard to the sentence. The international prosecutor opposed this argument in that the initial indictment did not specially refer to the killings in question and there would have been no acquittal in the first verdict in that respect, contrary to the opinion expressed by the International Prosecutor representing the Kosovo Public Prosecutor.

Although the first trial panel did not formally acquit the accused regarding the alleged killings, it expressly adjudicated the issue at stake in the following terms in its reasoning and consequently did not include the corresponding facts in its enacting clause under the charge of genocide: “ *The court specially analysed the description of the fact in the part of the indictment that has to do with the burning of Fazile Sahiti and Vahide Zeka in their houses, and concluded that this is not proven with no sondle evidence even the witnesses Selim Sahiti, Ragip Sahiti and partially Selman Avdiu , Shemsi Sahiti and Naim Sahiti and Ragip Sahiti were trying to convince the court that that happened, In the enlightening and verification of this fact exist only the allegations on which ground the court could not make a decision, since there is no material evidence that the bodies of these two women are found or identified. Even more so, it makes more suspicious the incriminating act the statement of the witness Ragip Sahiti who during the investigating proceedings and in the main trial steps over the objective reasoning, emphasizing that he allegedly saw the accused holding by the hair the severed head pf his step mother Fazile. The court did not believe this part of the statement since the report of the French Gendarmerie tells that by examining the bones found in the house of Selim Sahiti, it is ascertained that they are not of human origin*”⁶². Whether or not the first trial panel rightly considered itself seized of the matter as a result of amendments to the indictment made during the main trial, it clearly adjudicated the matter.

Therefore, in spite of the new evidence obtained calling for such a re-assessment of the facts in question and although it would fall under the qualification of war crime, the court considered that re-adjudicating them would modify the verdict to the detriment of the accused in view of the legal assessment of the acts in question and therefore constitute a breach of the above-mentioned provisions.

For the above-mentioned procedural reasons, the court will not assess the criminal responsibility of the accused regarding the alleged killings of Vahide Zeka and Fazile Sahiti. However, as some of the witnesses testimonies were disbelieved in that respect during the first trial as the proof of the death of the women had not been brought and as the Supreme Court considered that this affected the overall credibility of the witnesses in questions, the court decided to reassess the issue of credibility with a particular attention.

As to the burning of Zhevat Zeka's house

Gani Beka⁶³ testified that on 15 April 1999, after Gušavac/Gushavc had been shelled for about an hour and fifteen minutes, the paramilitaries separated in two groups. One went towards the steep hill and the other towards the stream of water. The first group shot from the

⁶² The English translation is particularly poor but is part of the court file and therefore was not amended.

⁶³ Gani Beka gave a statement to the French Gendarmes on 18 September 1999, but was not heard as a witness prior to the re-trial

hill while the other went in the lower part of the neighbourhood. Mosa was shooting continuously while Bozhur started carrying everything left for eating in the village, using Ymer Rashiti's tractor. After Qazim Rushiti's Mercedes was set on fire as they could not unlock it (see below under sub count), the witness saw Mosa leading and Bozur going into the upper neighbourhood of Gušavac/Gushavc. There they started shooting again as the witness assumed that they were scared that someone was still there and they went into Xhevat's house (from the description given by the witness according to which Mosa went inside and Bozur was in the garden up to the door, the panel believes that the witness meant "*the compound*"). The witness saw one of the old ladies (Bahtije) leaving the house when the shooting started, but not the other one (Vahide). Mosa himself went inside. He was shooting. Then Mosa went outside and started setting the house on fire. The witness does not know whether Mosa used a gun or just set the house on fire. The witness could not see what happened inside the house. He also described Sholle as being close-by but without entering the garden and did not see Mosa's son entering the house. The witness observed from a vineyard⁶⁴ located up on a steep hill about 50 meters airline. There was no wall and one can see the garden clearly. When they saw that nobody was left they started to burn the houses and there were about 30 houses burnt from 11am to 6pm the same day in the upper part of the village. Only his house and the one of Abit's son, Hetem were not burned there. About 50 houses located in the lower part of the village close to the school were not burned either.

According to Xhevat Zeka's testimony⁶⁵ he and four members of his family⁶⁶ as well as neighbours were forced out of Gušavac/Gushavc on 15 April 1999 at around 9 o'clock and went on foot to Vinarce. The witness indicated that they decided to leave when they saw the paramilitaries (about 40) who had burned Vidomiric coming down to the field. He could not see them well because of the distance⁶⁷. His uncle Brahim Rexhepi⁶⁸, as well as his aunt Bahtije Zeka initially decided to stay with his mother Vahide Zeka but they were eventually chased by the accused and others while his mother was never seen alive again.

Everything Zhevat knows about what happened at his house on 15 April 1999, he learned it from Bahtije who told him that she stayed with Brahim until the house got burned and they were chased away (hearsay). As to the house burning, what Bahtije allegedly told Xhevat can be summarized as follows: "*Mosa and Bozhur set the house on fire using pistols, they shot their automatic weapons*". Zhevat indicated that Bahtije could not distinguish between weapons and that she remained in the cattle stable⁶⁹, part of his compound, for several weeks. When KFOR entered on 12 June, she went to them and they brought her to the hospital where she stayed for about seven months. She was traumatised and would not be capable to testify now, but on 16 April she was. Brahim could not tell Zhevat anything as he had already lost his mind since he lost members of his close family on Bajram's day. He died after the war. On the 16th in the morning Xhevat Zeka returned to Gušavac/Gushavc, he could then see that his house was completely burned down and the fire was extinguished. During the ocular

⁶⁴ See PA20, position in the bushes of his vineyard, from where Gani Beka observed the events and PA21: view of Xhevat Zeka's compound from that position.

⁶⁵ Xhevat Zeka gave a statement to the French Gendarmes on 20 September 1999. He was not heard as a witness before the re-trial.

⁶⁶ His wife Vahide, his daughter-in law Sadjie Zeka, Smajl and Vilson Zeka.

⁶⁷ During the ocular inspection, the witness located the place where he stood in his field when he watched the paramilitaries coming from Vidomiric on 15 April 1999 and photos were taken: PA9. PA10: from PA9, view of the valley towards which the witness pointed, the way the paramilitaries approached from. PA11: close up of the valley.

⁶⁸ Brahim died 20 days after the end of the war.

⁶⁹ See PA18.

inspection, the witness confirmed that the various bullet holes visible on two sides of his house were made by the paramilitaries on 15 April⁷⁰.

The witness explained that on 16 April, he did not try to find the remains of his mother on his own because there was too much bricks, ceiling, building materials and other rubble. The rubble had fallen into the basement⁷¹. The basement was built with stones and the floor was of bricks and built in 1973. As he knew that she was there (Bahtije had told him) he had no reason to go. He used utility workers. In the basement of the destroyed house on 20 September 1999, they found remains, stopped working and notified them (at that time they were settled in a building called Mitromount). The witness notified KFOR and the Gendarmes came. There was a small quantity of bones (they looked like cinders/crystals – the flesh had gone and it was only the bones left; they were joints – knees and elbows) and there was a plastic bag with a few of her clothes that she (Vahide) had packed to take with her. It was difficult to distinguish and it looked like two fists together. The witness also found slippers belonging to his mother⁷². The family was advised by KFOR or the Gendarmes to bury the remains and did it in the Gušavac/Gushavc graveyard.

As no expertise appeared to have been undertaken at earlier stages of the proceedings, the trial panel ordered an exhumation, an autopsy of the remains buried by the Zeka family as well as an extraction of DNA from the human bones found and a comparison with DNA samples from members of the Zeka family.

The exhumation, anthropological examination and autopsy⁷³ of the remains found by the workers cleaning the destroyed house on 20 September 1999 and buried by Vahide Zeka's family revealed that the remains examined are human⁷⁴ (with the exception of two bone fragments from an unidentified mammal). The human bones are very incomplete, fragmented and show various stages of exposure to the fire. The anthropological examination concluded that the remains belong to one adult; sex could not be determined⁷⁵; age is estimated of more than 50 years old (between 50 and 90). No evidence of ante-mortem or peri-mortem trauma was recorded, but the state of preservation and alteration of the bone due to the fire exposure must be taken into consideration as a hindering factor. As to the thermal alteration, they range from combustion to 'calcination' (color of bones: white, bluish, gray and black). Brain tissues reduce to cremation slug. The pattern of thermal alteration seems to be consistent with that of a body exposed to the fire while soft tissue was adherent. An example of this is the presence of fragments of the epiphysis of a femur while the mid-shaft of both femora were not substantially altered. This is consistent with a pattern of burning in which the least exposed areas of the bones burn first and the most protected, burn after (i.e. trochanteric compared to the epiphyseal area of femur). The latter implies that the cremation of the remains was not total and the incompleteness of the remains was apparently caused by the selective collection of remains at the scene (i.e. the collection of most identifiable fragments) rather than by fire.

DNA samples were taken (left and right petrous portion, one epiphysis of humerus, and three cranial fragment). However, the court was informed on 18 October 2002 by the forensic team

⁷⁰ See Photos PA12 and PA19.

⁷¹ See PA15 destroyed house where according to the witness Bahtije said that Vahide was brought and killed; PA16 close up view of the place where the slippers of his mother were found among the bricks and PA17: Place where the remains were found.

⁷² See Photo PA16.

⁷³ Conducted by the UNMIK Office of Missing Persons and Forensics (OMPF).

⁷⁴ Six fragments of skull are present (frontal, occipital, right temporal, left temporal, mandible), fragment of left scapula, fragments of right and left femur, fragments of tibia, fragment of pelvis, fragments of vertebrae. Miscellaneous : 25 fragments of skull, 18 fragments of spine, 21 fragments.

⁷⁵ This individual shares generic female and male characteristics and make the estimation of sex ambiguous.

in charge, that the attempt to extract DNA from the samples in question was not successful due to their state and exposure to fire.

Findings: The court finds established that the reasons that led the first trial panel to disbelieve the witnesses, who had described the burning of Xhevat Zeka's house, in that such description included a reference to the death of Vahide Zeka, when no corpse could be found no longer exist, as it is now established that burned human beings belonging to a person aged between 50 and 90 years old were recovered.

The direct participation of the accused to the attack conducted at the Zeka family's compound is clearly established by Gani Beka who saw the accused shooting and setting the house on fire. As to other elements of credibility, the court takes into account the fact assessed during the ocular inspection that the vineyard on the hill above Xhevat Zeka's compound indicated by Gani Beka as the location from where he observed the house being set on fire offers a view compatible with the description he gave of the events.

Burning of Selim Sahiti's house

The son of Fazile Sahiti, Selim, testified that he was at the gate of his compound on 15 or 16 April 1999, when he saw those coming from the direction of Vidomiric at a distance of 100 to 150 metres. He recognized the accused because of his limp but not the others. At the investigating stage the witness said that he saw Mosa and his sons as well as Bozhur but at the main trial he clarified that he only assumed that Bozhur was there because him and Mosa were always together. According to the witness the accused wore a military like uniform and hat on that day. It was not police clothes neither civilian clothes. The witness testified that his mother could only hardly move. When he saw them arriving, he told his mother that he had to go; he was alone in the house with his mother and had no way to carry her with him. But, as she was an old lady he did not think they would do anything to her. The witness crossed the road in front of his compound and hid behind a fence. From the fence he could not see the main gate of the compound. He moved further down and saw the accused at the gate kicking the gate and entering first followed by others. Other people, dressed with military and police like clothes, did not enter the courtyard. He could not see what happened behind the compound's wall. Asked during the ocular inspection whether the gate to the compound remained open or not, the witness firstly said that yes and then that it was closed but not locked (the interpreter heard the witness saying first that it was slightly open). He heard that they were shooting once or twice when they entered the courtyard and he saw the smoke coming out of the house immediately after. Other houses were burnt on the same day in the upper part of the village. He heard shots of all sorts in the village and they launched mortars. He remained hidden ten to fifteen minutes and left for Vinarce, it was approximately 4:00 pm. The witness confirmed that the attack against Gušavac/Gushavc started in the upper part of the village and that he stayed in his house until they arrived at his house at around 4:00 pm. The witness also confirmed having seen on his way to the fence, Shemsi and Lutfi Sahiti as they were escaping about 100 metres going down the road⁷⁶. He added that on the same night, around 10:00 pm, he attempted to go back to his house as the shooting appeared to have stopped, but he was prevented from doing so as the shooting started again when he reached the area of the river Ibar. There was a lot of smoke still. The witness and his family then

⁷⁶ See various photos of the compound P1, P2, P3 and P4 as well as photos of the outside and inside of the house (rebuild as it was before it was burned) where Fazile was when Selim saw her for the last time P5, P8, P9 and P10. See also the photo of the place where Selim was standing when he saw the group approaching his house: P12 and the view taken from that place in the direction from where the group was coming according to the witness: P13. P 15 shows Selim on his way to the fence, opposite side of the road and P17, the place where he stopped when he heard the shootings. Finally, P20, shows the place where Selim was standing on his way to the fence and P21 and P22, the place where Lutfi and Shemsi Sahiti were at that time.

stayed two to three weeks in Zhabar, in Grmova. The witness confirmed that when he tried to find traces of his mother after the war she had disappeared and was never seen again. They found some bones in the burned house where his mother was when he saw her for the last time but was told by 'the experts' that they were animal bones and they threw them away in the river.

According to Shemsi Sahiti, Selim's house was set on fire at around 1. pm or 2. pm (it was 4. pm according to Selim Sahiti). Shemsi Sahiti testified that he was hiding with his cousin Lutfi Sahiti near the house of Bejtullah Sahiti (corresponds to the area where Selim said having seen them) behind a wall observing the situation. According to Shemsi he had stayed in the same place for one to two hours before but he did not observe the events at Selim's compound for more than 10-15 minutes. From there, the street and the gate of Selim's house can be seen (this was confirmed during the ocular inspection). This is the place from where Shemsi testified having seen the accused and Bozhur coming to Selim's house. There were others as well but he did not recognize them. The accused wore blue or black clothing and had an automatic gun and Bozhur held up his automatic gun. Mosa entered the compound of Selim Sahiti whilst Bozhur stayed at the gate on the street guarding. He could not see behind the wall what happened inside the compound, but shortly after they heard a burst of fire (an automatic gun) coming from inside Selim's house and in a few minutes flames came out of the house. Shemsi testified that once the house was on fire the accused came out of the compound and together with Bozhur went in the direction towards the house of Ragip Sahiti. He heard the accused saying to Bozhur "*let's go, it is finished*". According to the witness, the gate at Selim's compound remained open until they left⁷⁷. Shemsi Sahiti added that while withdrawing towards the cemetery he saw the accused and Bozhur as well as two of their sons and five to six more people.

Although the court decided (see above witness credibility) not to rely on the evidence provided by Selman Avdiu, it considered the evidence related to the burning of Selim's house as it could, prima facie, appear to conflict with the evidence given by Selim and Shemsi Sahiti in that he describes the arrival of the accused from a direction opposite to the one indicated by the two other witnesses. Selman Avdiu testified that he went to the house of Kadri Beka and watched all the houses burning one after the other whilst hiding behind some fences and walls. The first ones to enter the village and burn the houses were the accused and Bozhur. This time, they started from the village cemetery and went upwards towards the middle of the village. He saw the accused entering into the narrow path to Selim's house and very soon after the house started burning⁷⁸. However, it is unclear whether what the witness described above corresponds to the event described by Selim, Shemsi and Lutfi Sahiti, the day of the main attack on Gušavac/Gushavc (15 April 1999) at which Fazile Sahiti disappeared. Firstly, from his testimony at the re-trial it appears that the witness places what he observed on 16 April. Secondly, the witnesses confirmed that many houses were set on fire on several occasions and Selman Avdiu testified that the burning of houses in the village continued the next day.

⁷⁷ See P29: view of the place located by Shemsi at the corner of the wall belonging to Bejtullah Sahiti's compound, from where he observed the events at Selim Sahiti's place, indicating that Lutfi was standing by. See also P30: View from that place in the direction of the main gate to Selim's compound.

⁷⁸ See P31, place from where Selman Avdiu first saw Mosa and Bozhur moving close to the electric cabin and saw Mosa taking the road that leads to the upper part of the village. See also P33: view from the fence from where Selman said that he saw Mosa (without Bozhur) moving along the above-mentioned road and P34: close up view. The witness indicated that he later on moved along the fence. See also P35 (and P36: close up view): Selim's compound from a place where Selman said he hid in order to observe. The witness indicated that at that time the vegetation allowed good sight inside the courtyard.

Contrary to the first trial panel, the panel considers that the credibility of Selim and Shemsi Sahiti as witnesses is not affected by the fact that the remains recovered by Selim's family after the burning of the house were described as animal remains by the gendarmes (report dated 19 October 1999, page 1, established by MDL/Chef Ventura). Firstly, the report does not mention whether all the remains found were tested neither does it indicate the name(s) and qualification of the person(s) having made such a conclusion. No judicial expertise appears to have been ordered either and the remains having been later on thrown away, the re-trial panel could not order such an expertise as it did regarding the remains found by the Zeka family. Therefore, the panel considers that the above does not as such exclude the possibility that a human being died in the house in question on the day it was set on fire and does not affect the credibility of the witnesses having testified to the contrary.

Findings: The court found established that the accused was one of the men who entered Selim Sahiti's compound armed with an automatic weapon and that, shortly after the witnesses heard shots the smoke started to come out of the house. Although no eye-witness saw which one(s) of the men having entered the compound actually set the house on fire, many of the witnesses heard during the re-trial described how most of the houses of the upper part of Gushevac were set on fire one after the other. Therefore, the court is convinced that the accused and the other men having entered the compound, shared the common purpose of setting on fire the house in question.

The burning and looting of Abit Sahiti's houses⁷⁹

Hetem Sahiti, Abit's son, testified that his father's houses were burnt on the first day of the attack against Vidomic and Gušavac/Gushavc when they entered the village from the mountains. He saw the burning of the four houses, a stable and a garage. His father was a rich man. Hetem explained that they loaded the furniture onto the truck (cannot remember who was driving but unclear whether he could see this in the first place) and set the house on fire and burnt it down. The Mercedes truck, mark 913 was left there and after the house was burnt down they took the truck⁸⁰. He stated that the accused and his sons took the truck, Bozhur also was there. The witness was several 100 metres away by a water stream, he saw them when they entered the house (compound).

During the ocular inspection, Hetem Sahiti was brought to the neighbourhood of his father's house and located the place where he was standing when he heard the shootings as well as the various directions from where the shootings took place (PA25 as well as PA26, PA27 and PA28). The witness also located the place where he saw the accused on his way back from his father's house (PA29) and the place where he (Hetem) stood with his mother and children (PA30 is taken from the view that the witness had from PA25, when he saw the accused, Bozhur and others at the place located at PA29). The witness indicated that at that time there was no vegetation, no leaves. Upon question he answered that he could only recognize the accused and Bozhur but that there were in total 3-4 individuals, Bozhur was nearby, others were coming down, some hay was burned over there, he only saw the smoke but assumed that they did it. The witness indicated that he did not witness the house of Abit being set on fire. However, he saw it still burning the following day. At that time the truck was still in the garage. The witness stressed that his father also witnessed his house and other properties being set on fire as well as his truck being stolen. His father was hiding on the road behind the

⁷⁹ **Envisaged under Counts 3, 4, 5 & 6 of the Indictment dated 10 October 2002**

⁸⁰ See the view taken from the yard of Abit's compound as well as the garage where according to Hetem Sahiti, his father's truck was parked before it was stolen: PA31. PA32: second view from the left hand side of the same compound.

first house at the left hand side at the entrance of the compound. About ten days after Hetem saw them loading the stuff, he saw them taking animals at the school and loading them onto the truck they took from his father. That second time he was further away.

Gani Beka saw when Abit Sahiti's truck was taken away. It was in a garage. They tried to turn the engine on and they couldn't. They pushed it to the water stream; he could not see what happened at the stream but he saw when they took it. There were five or six people; one of them was Mosa's son. At that time the accused was armed and he was walking around the truck. He was trying to get into the truck. After they took the truck to go down they managed to get the engine going. After they took the truck to the stream, the accused came to the upper neighbourhood. Then there was shooting and the truck remained there until they returned after burning the upper neighbourhood. Mosa was shooting continuously without a break from one point to the other point. Not without purpose; he wanted to be secure. They were covering themselves with fire till he reached the point from the lower to the upper neighbourhood. It takes about 10 minutes. At approximately 6.30 pm they started to bring all the items they had taken in the village into one place. They collected and loaded the items into a tractor and truck. As it rained much those days they suffered great pains to load everything. At 8.30 or 9pm they began to withdraw.

Gani Beka also testified to having seen Bozur getting into the tractor taken from Ymer Rashiti that was full and driving it away. He saw the accused when he came up with Bozur from the neighbourhood. They were armed and they were shooting, until they came to the other neighbourhood. They, including the accused, were shooting continuously with automatic weapons. When the burning finished, they looted. They took everything of value, anything they could take in the village. They took the direction of Vidomiric and they went towards the place where the mortar was placed and they went towards Suvi Do/Suhodoll. He observed the looting from a vineyard (see above under the burning of Xhevat Zeka's house). In an airline it is not more than 50 metres. First of all the accused and Bozur looted and then they burned.

Other lootings and burnings after the 15 April 1999:

Gani Beka testified that on 17th April (the panel keeps in mind however that the witness is often confused as to dates), he saw the accused (wearing the police type blouse with patches, otherwise all days he was dressed as a civilian) coming from Suvi Do/Suhodoll on the asphalt road pushing a bicycle with Strahinje's son with blond hair. The accused had a weapon in his hand. The witness saw the accused outside the stable, on the main road towards the school and the Hoxha's house. The Hoxha's house and the school are parallel. Ymeri's tractor arrived. The witness was above the school and couldn't see the driver but 3-4 persons were in the tractor cabin. They stopped it. They (5-6 persons) went inside the Hoxha's house and took everything they could find. He only could recognize the accused and Strahinje's son. There was a wall around the house.

Hetem Sahiti testified that his house was burnt on 20 April after he left the village on 17 April (the panel assessed, taking into account his testimony related to the events at his father's house, that the witness does not appear very reliable on dates and believes that the witness actually left with his family on the day of the main attack against Gušavac/Gushavc). He was standing in a field on the hill between Gušavac/Gushavc and Vinarce (closer to Gušavac/Gushavc) and saw the accused with his sons and Bozhur (around 400m landline & 300m airline) coming from the direction of the upper part of the village with a Russian made Lada station-wagon, there were others who were on foot but he didn't know them. When they entered the gate of his compound, there was shooting two or three times, and then they

entered the house and set fire to it. They also burnt the food for the livestock. Then they turned their car on and just left. He saw other houses that were set on fire that day belonging to neighbours around the electricity transformer. During the ocular inspection, the witness located his compound as well as the place from where he observed the event (see PA33 and PA34: view the witness had from PA33 as well as the place where the Lada, from which the accused went out before entering the house was parked). He added that he saw the smoke from the house a few minutes after the accused entered. The house had cement floor, everything inside was burned; he also saw the food for livestock burning (two haystacks were in front of the house and one behind) and the tractor was taken. Asked how he recognized it was the accused, the witness said that he had a beard and was limping but had no crutches.

Shemsi Sahiti testified that from Vinarce he observed looting from the water stream where the border is between Gušavac/Gushavc and Vinarce from where one can clearly see the neighbourhood at the school and a considerable part of the old part of the village. He also observed from Grmova. That took place between 15 April and 5 May. He saw the accused driving the truck stolen from Abit 3-5 times a day, on which stolen and electrical appliances were loaded. The truck was covered, there was a fridge, freezers, TV, couches, stoves, beds, cows. He also saw the truck being had been loaded and gave the following example. It was close to the house of Raif Jashari, in his field they brought 50 cows and he saw Bozur, Mosa and some others load the truck with cows, the truck was full of cows. That truck of Abit's was specially designed to transport cows, as Abit was a cow trader. They brought the cows from the Jashari neighbourhood and brought them to Raif's field.

Every day they would also burn houses. He observed it while stationed in Grmova and Zhabar. He would follow the situation all the time, moving around (200-500 metres maximum away watching unassisted) and saw that the accused was the leader and main organizer of this paramilitary group. He was able to see that cars and trucks were being driven most of the time. Along with the accused were Bozur, their sons and other persons as well.

During the ocular inspection Shemsi Sahiti located from the Danish KFOR Camp (former Transkosova) the road on Grmova hill from where he observed the lootings from a road on Grmova hill (above the right hand side of house seen on PA55). The witness indicated that the tent where they had shelter was located 100 metres above that spot upper on the hill. From that spot the witness observed Gušavac/Gushavc and Vinarce, he saw the truck and looting from several places, he also observed the gathering of livestock, the shelling of grenades from the Serbian neighbourhood of Vinarce without knowing who exactly did it. He saw the accused with his group coming close to a small bridge on the evening of 1 May 1999. The accused was with his two sons Aca and Nikola, Bozhur and his son as well as two others. They were gathering livestock and loading it on the truck driven by the accused.

The attacks conducted in Vinarce and following events

Various witnesses testified that after they escaped from Gušavac/Gushavc they found shelter in Vinarce for 3-4 days hoping that it would end, but there were attacks everyday and then the people from upper and lower Vinarce were chased away as well.

Shemsi Sahiti describes a serious attack that took place in Vinarce on 20th April when they were in the middle of Vinarce. It was coming from all sides and the accused came along the road with others, they were shooting and the villagers (including the witness, his brother and sisters, his wife, 3 children, and sisters-in law) were expelled to the other side of the river. From Vinarce they crossed the Ibar River that separates Zhabar from Vinarce. At the location where the Transkosova parking is, the police were waiting. All kinds of vehicles, cars, trucks

and tractors were parked there. The police asked them to approach claiming that they were to protect them but eventually took all the money and other values they had with them. The Albanian villagers were put in a convoy of more than 100 vehicles, told that they would go to Albania but were eventually stopped at Shipol as the border with Albania was allegedly blocked and sent back to Zhabar. The accused was in Vinarce with those chasing them; he was not at transkosova. The police were shooting, two persons were killed on the Zhabar side of the Ibar.

As to the wounding of Abedin Jashari⁸¹

Abedin Jashari testified that he was injured by mid-April, probably 17 April. It was mid-day in Vinarce and he was standing in the main street in front of his brother's house⁸² with his cousin Hakif Jashari while villagers coming from the direction of Gušavac/Gushavc where fleeing, saying that they were forced to leave. The witness stopped in front of his gate to observe what was happening. At a moment he heard a shot that hit him in the chest and exited under the chin. The witness stayed for about 70 days in Grmova after being wounded and did not go to the hospital. He could not provide a medical certificate but the scares of his wounds are still visible especially under his chin.

Asked to describe what happened prior to the incident the witness explained that a Yugo car with a woman and a young boy asked him the way to Montenegro. The car went and returned after 20-30 metres and a few minutes later (during the ocular inspection he said 20 minutes) he saw a group of Serbs coming including the accused and Bozhur⁸³. They were on the border between Gušavac/Gushavc and Vinarce and started shooting in their direction. Although the witness confirmed that he was 100% sure he was shot by this group he did not see the accused shooting. Asked why he did not mention his wounding, reported by other witnesses, when he was heard by the investigating judge and during the first trial, the witness stated that he did not want to accuse Mosa regarding his wounding, as he did not see who did it. The accused and other members of the group wore blue police vests while others wore military like uniforms.

The testimony of Selman Avdiu is examined as it contains descriptions of the event partly conflicting with the count of attempted murder. He places Abedin Jashari's wounding on 18 April 1999. He testified that on that day he went again to the hill close to the houses of Beka wanting to see if the houses of Gušavac/Gushavc would be set on fire as well or if the attack would start towards Vinarce, his village. That day the movements seemed not so spontaneous but more severe. When the accused, Bozur and others came close to the electric cabin near the cemetery, he saw that they were setting out on the road towards Vinarce. He then came down closer to the houses in the Jashari neighborhood (about 30 houses & 400m from the village). As he moved closer to the houses, the first ones he saw clearly were the accused and Bozur when they came in front of Muhamet Ymeri's house⁸⁴. Most of the inhabitants had left the neighbourhood. Mosa and Bozur were both shooting weapons in the direction of the road, without the witness knowing whom they were aiming at. After a few moments voices and cries of people were heard. The witness suspected someone had been killed. He started running very fast and went to the main road away from where Mosa and Bozur were. That is when he saw Abedin Jasari was wounded. He was holding one hand to his right breast and

⁸¹ **Envisaged under Count 2 of the Indictment dated 10 October 2002.**

⁸² See photo PA49.

⁸³ See PA50, the place located by Abedin Jashari as from where he was wounded as the place where a bus is parked on and also PA51, the place where he saw the accused behind the place where the bus is parked, exactly at the place where a tractor is now on the photo.

⁸⁴ See photo PA50, the place behind the bus in front of Muhamed Ymeri's house as the place where Selman Avdiu saw the accused when himself was at the hill.

two people were holding him. He saw the bullet had entered the lower part of Abedin's chin and his clothes were covered with blood. Abedin's brother Nuredin was holding his left arm. They sent him to the house of Muj Ujkani⁸⁵ and he received 1st aid from a doctor (FNU Berani).

Asked during the ocular inspection whether Mosa and Bozhur were part of a group, the witness indicated that firstly there were the two of them and he watched them moving from the electric cabin up to Muhamed Ymeri's house. Some others were further away. He heard shooting and immediately after cries of people. Asked how long it took him to see Abedin Jashari was wounded, the witness answered the time it took him to come down the hill and reach the place where Abedin Jashari stood. Asked by the Prosecutor how safe it was for him to come down that hill at the time when Serbs were shooting, the witness answered that when he came down there was a fence and also that the column of Albanian families leaving the area was not further than 200 metres. Asked how he recognized the accused and Bozhur the witness mentioned the accused's beard as well as the fact he walked and limped. Asked by the defence what Bozhur wore, the witness indicated that both had paramilitary uniforms.

Findings: Although it is not disputed that Abedin Jashari was indeed wounded and it clearly results from the above-mentioned testimonies that the accused as well as Bozhur and others were seen on the same day (17 or 18 April 1999) in the vicinity of Muhamet Ymeri's house, shooting in the direction of the road at a time close to the moment where Abedin Jashari was wounded, the court considered that it could not be established beyond reasonable doubt that the shooting in question took place at the very moment where the group seen by Abedin Jashari shooting at him wounded him. From Selman Avdiu's statement there is a possibility that the accused and Bozhur shot in the direction of the road before reaching the group that shot at Abedin Jashari and there is no evidence that the accused shot again after he joined the group as the victim did not see him shooting. However, the fact that the accused together with Bozhur and others in Vinarce, were armed and were shooting in the main street at a time where a large number of civilians were present is found to be proven.

The subsequent events:

Shemsi Sahiti as well as other young men did not join the convoy for fear that they could possibly get killed. Shemsi observed it from a distance of 100 metres and he withdrew with others towards the Grmova mountains where they stayed until early May. At that time they got attacked again and took shelter in another safer place. Grmova was attacked with mortar and other light weaponry. It was surrounded by all of the forces (500 people, maybe more or less – but the witness did not see whether persons from Suvi Do were in these forces). At that time some people from Suvi Do/Suhodoll where in Vinarce in some Serb houses (Lala's house and neighbouring ones). Grmova was attacked from that direction with mortars as well as from the aqueduct from Shipol. Shemsi Sahiti could hear the shooting as well as the mortar and whistle of the shelling.

Ekrem Beka testified that from Vinarce on 18/19 April (unsure about the date), they were forced by the Serb forces to go on a convoy after the shooting and shelling forced them to head in the direction of Zhabar. At Transkosova, they were stopped by Serbian forces who took their money and robbed them. It was Serbian police in dark blue and lighter blue uniform, the regular police uniform for ten years. The whole village (including his father) and refugees crossed the river Ibar heading in the direction of Peja but were stopped near Istok,

⁸⁵ Abedin Jashari could not leave with a car so he stayed with his wife in a hole in the gravel. Once the convoy had crossed the Ibar River the water level started to rise so that it was impossible to leave in the night or cross in another direction.

stayed 2-3 nights and then directed back to Zhabar. He did not join the convoy and his family explained him later what happened. With his cousin they stayed at Grmova. They saw paramilitaries in uniform together with civilians. He saw Serbs in uniform and armed Serbs who were their neighbours after the village of Gušavac/Gushavc was emptied. They could observe the villages of Vinarce (saw the accused there) and Gušavac/Gushavc from Grmova. He saw the accused armed in a police like uniform (although he could not see his trousers only his upper body) on a motorbike. This was the only occasion when he saw him on a motorcycle otherwise he was driving an ambulance vehicle. During the war, he did not specially see the accused driving but saw many vehicles and trucks without seeing neither the driver nor the passengers. He left Grmova and joined his family around the beginning of May.

The abduction and torture of Agron Sahiti⁸⁶

Agron Sahiti places the incident in question in Zhabare at the end of May⁸⁷ (date unknown but after the NATO bombing had started and after the burning of his house in Gusavac), around 2.30 pm, after he/they (he uses both) had left the courtyard of a house (most probably a compound as he stated that "*The Ujkani family was in the smaller house*") where people had taken refuge. He saw the accused with two other persons. Mosa was wearing civilian trousers, a hat and had a longer beard than he has presently. As the two other persons were masked (but not Mosa) he couldn't recognize them, they wore police uniforms of a dark blue colour. All had weapons.

The witness testified that the accused pushed him and he fell, that he hit him on the back with the butt of a rifle. Negjat and Dan Ujkani and a friend of his were in the living-room and they (the accused and the masked men) pushed him/them in (it is unclear whether the witness meant he alone or he and the three others). There was dough and they pushed their heads into it and the accused hit the witness with the side of a knife, on the centre of his forehead between his eyes. After they (all three) tied their hands with electrical flex wire, they took them inside into a bedroom and started beating them. The others were lying on the couches and they had blood all over their faces. They kept them in the house till 5.30 pm and then took them outside and Miroslav said "*look at the sun, is it warming enough?*". The accused and the two others took them to the barn and stayed in the courtyard. The witness thought that they were aiming to kill them as they had talked to each other on whether to kill them inside the room or at the barn, ordering them to get out. The witness managed to escape from the barn from a window in the barn (but previously said there was only a door) and jumped into a stream. There was a shot (unclear whether it was at him or only in the air). He is also unclear as to whether the three men could see inside the barn (they were outside but they could see, it was dark inside). The witness then testified having met Avdi, an old man from Zhabare, at the end of the stream, who cut the wire holding his hands with a knife. The witness rested with Avdi for a little while and went down towards Tamnik.

In the evening, the witness returned to the place (his children were still in the house). It is unclear as to whether he went there alone or with others as his testimony differed from the first trial where he had stated that he had gone with others, whereas in the retrial he stated that he had gone alone. The witness mentioned Sahit (Osmani) from Zhabare as having gone with 'them' that evening of his beating and then again after 7 days and witnessed the later burial of the men.

⁸⁶ **Envisaged under Count 2 of the Indictment dated 10 October 2002.**

⁸⁷ During the first trial the witness had also placed the incident in March. However, prompted by the Defence he insisted that the incident actually took place at the end of May.

During his spontaneous statement the witness said that at around 9.30 in the evening, he learnt that Nedjat and Dan Ujkani and the other had been murdered but later he said that he saw the three of them had been strangled with wire. This makes one doubt whether he learnt this or saw this. They found their bodies that evening but did not dare to move them. They came back after a week and the bodies were still there. They were stinking. They put them into a horse-drawn cart. This was with Sahit and many others.

They buried them in front of the house where they were staying, close to a mosque. When they were buried they still had the wire on the neck and one of them had had their eyeballs removed. However, the Ujkani family exhumed the bodies later and reburied them in the regular cemetery in Vinarce.

Sahit Osmani testified that at the time he had returned from Germnik (area of Kosovo close to the Albanian border), he was told in the mountains that dead bodies had been found in Zhabare. He felt sorry for them and decided to bury them. He found four dead bodies in the stable of the Hoxha (muslim priest) in Zhabare. The bodies tied-up by ropes and chains and cut off on the throat and the abdomen were smelling. They (but asked to tell who was with him the witness said that he was alone) found the men massacred, put them with the help of two KLA men (but the witness denied that any KLA men had been there) in his horse cart and buried them in the graveyard in Shipole. The witness denied having seen Agron Sahiti on the day he found and buried the dead bodies. He also confirmed that when he came back from Germnik, Avdi Mirani was found dead, tied up at an apple tree and that once Agron Sahiti came to his house (a few days after they had found the dead bodies) Agron said having been beaten by the police and his face was bruised. He also told Sahit that he was chased by the police.

As to the credibility of the two witnesses' statements, the court stresses that generally Agron Sahiti is constantly contradicting himself, i.e. not only as to the very date of the event, but also as to whether the other victims were in the house when he was allegedly brought in by the accused and two others or whether they were all outside; did he escape on the way to the barn or through a window (initially the only opening was the door); was there a shot at him or was the shot into the air. The witness also mentioned for the first time during the re-trial that his mother had been wounded in the neck by the accused. Therefore the court found his testimony insufficiently reliable. Sahit Osmani spontaneously told the court that he faced problems since he had been beaten by the police during the war and he handed over to the court a quite confusing document according to which no pathological electro cerebral activity could be registered. He is obviously very confused with dates and distances: for example, he evaluates the distance between Xhabare and Shipole as two metres and the distance between Germnik (that he places at the Albanian border) and Xhabar as 200 metres. He also stated that he went to Germnik with a wheelbarrow and that it took him about three hours; he places his own beating by the police during the war but adds that it was a year ago. The court considered that although very confused, Osman Sahiti does not appear attempting to lie. Therefore, the court believed Osman Sahiti when he testified that he saw dead bodies in a state of advanced decomposition at the stable of the Hoxha in Zhabar and that some time after he helped to bury them. Agron Sahiti told him that he had been beaten by the police and could see the traces on his face.

Findings: The above-mentioned partial⁸⁸ corroboration of Agron Sahiti's statement does not suffice to establish beyond any reasonable doubt that the accused took part to the abduction

⁸⁸ Osman Sahiti testified that there were four dead bodies while Agron Sahiti testified that they were three. Sahit Osmani did not witness the abduction of Agron neither the conditions of his detention, evasion neither the

and beating of Agron together with the masked men. Furthermore, Agron Sahiti eventually insisted on placing the event at the end of May 1999, at the time where it is established that the accused was detained.

THE ALIBI OF THE ACCUSED

The accused' s physical condition

The accused firstly argued that being practically an invalid he could not have committed the facts supporting the crime he is charged with. He described his condition as follows: *“I cannot stand on the full weight of my foot, only on my toes and can only walk with the help of these crutches (pointing at the crutches he uses in court). I cannot run. My foot is in this condition since 1970, I suffer pains and as you can see, my leg just before I nearly had it amputated, my hand is broken and I have a steel pin in my shoulder. Being a serious invalid as I am, could I have committed all the combat activities, to jump over fields and creeks, run through forests, being practically an invalid. The tendons have contracted and my leg is shortened by 10cms. (...) For several years now I cannot walk without crutches. I have an open wound on my foot so when it is weeping I cannot walk but when it improves slightly I can walk without crutches”*.

The accused' s physical condition is further described by Doctor Aleksandar Vasic, heard as a witness during the re-trial. Doctor Vasić is an orthopedic surgeon, also Professor at the Medical faculty of Kosovska Mitrovica. He examined the accused for the first time in the summer 2000 and saw him since then several times until a few months ago. He had access to his medical file including X-rays. He described the medical consequences of the car accident the accused had in 1970, i.e. multiple injuries of his limbs, legs and hands, certain of which still remain (including the most serious one on his left foot ‘dorso flexi’, the infection “Osteo-Myletis” of a bone on his foot and the one under his knee). He also described the burns later faced by the accused. Asked whether an expert could in his view determine what was the accused' s ability in 1998-1999, Doctor Vasić insisted upon the deterioration of the accused' condition since 1970, summarizing the situation as follows: He had certainly more difficulties in 1998-1999 than before and he certainly has more difficulties nowadays than in 1998. Doctor Vasic explained that although he did not see how the accused arrived when he examined him for the first time in the summer 2000, his physical condition already required the use of two crutches. When confronted with the evidence of other witnesses called by the accused' s defence, doctor, nurses, drivers and other hospital staff according to which in 1998-1999 he only occasionally used a crutch or a stick apparently depending on the pain suffered, Doctor Vasić commented that this would have been a negligent attitude of a man who did not like to use a tool, up to the moment when he had pain and was forced to use it whether he liked it or not. The panel considered⁸⁹, due to the extensive evidence provided by Doctor Vasić as well as the fact that the prosecutor clearly stated that he did not intend to challenge that evidence, that it did not appear necessary to order a medical expertise.

Findings: The court considered that the physical condition as above described did not prevent the accused from performing his work as a driver at the hospital. The court found that he could walk, climb stairs though with difficulty and that, if he would be seen wearing a crutch or a stick on days where the pain of his leg was more important, he could walk without crutches and would often be seen doing it even by witnesses proposed by the defense. The court is convinced that he could obviously stand at a hill, shoot, walk down a hill without

presence of the accused. Both witnesses also disagree as to the very place where the dead bodies were initially buried.

⁸⁹ See decision inserted in the record of the trial session dated 8 October 2002.

running, enter compounds, set houses on fire and assist others in looting goods including driving a truck where accomplices would place looted items. Therefore, the court found that although proven to be real, the physical disability of the accused was compatible with the commission of the crimes he is charged with.

The accused' s living conditions

The accused secondly argued that he lived in a common law marriage with Vesna Perovic since 14 February 1998 and resided with her in the apartment she inherited from her parents, in Mitrovica, Filip Visic Street until his arrest on 23 August 1999. When his mother who was still residing in their house in Suvi Do/Suhodoll fell ill and was almost paralyzed, his sister took her with her in Leposavic on 21 March 1999 until she died on 28 May 1999. Since his children were juveniles in 1999 (Aca was 15 years old and Milos 13 years old), and there was no one to take care of them he took them to his other sister (Milica)'s place in Doljane on 22 March 1999. During the war period he only went to the village of Suvi Do/Suhodoll for the burial of his mother. He is not aware of what happened in the villages during the war as he lived in Mitrovica town and due to his work at the hospital he was not allowed to move around.

Findings: The court accepted that the accused lived in common law marriage with Vesna Perovic since 1998. But the court did not believe that the accused, whose mother was ill and frequently hospitalized, did not visit her and his children during the time they spent in Suvi Do/Suvidoll at a time where the security situation in the village was difficult (see chronology above). He had access to a vehicle and the distance between Kosovska Mitovica/Mitrovicë and his village is not such (a few kilometers) that he would have been prevented from doing so. During the war, the court is convinced that the accused had full opportunity and interest in going back to the villages where reliable witnesses testified that he was seen committing the crimes retained in the enacting clause. Even if he had as claimed sent his children with his sister in Doljane a few days before the NATO bombing started, the court considered that nothing prevented him from being assisted by his older son, seen by several witnesses during a few attacks and in particular on 15 April 1999.

The accused' s working conditions

Before the war, as a driver, he was specialized in long distance trips. When the war broke out, he, as an hospital driver, was on duty 24 hours per day from 7 am to 7 am the following morning, since other drivers were mobilized in the military. They could not leave their premises without previously reporting to their superiors and were checked at the gates. There were doctors on call at their homes and they would pick them up to bring them back to the hospital. They were basically covering Mitrovica and Svećan areas. When on duty, they were waiting in a room on the right hand side at the hospital. He was driving a Lada ambulance car and when on call, it was parked in front of his apartment in Mitrovica, ready to leave at any time upon call. At that time the so-called medical commissions were not working at all and no-one was getting permission to go from Kosovo to Belgrade for treatment, because they would not treat anyone without permission from the commission. Therefore the drivers only took those cases to be hospitalized in Belgrade as emergency.

The following information results from the assessment of hospital' s records copied during the on the spot inquest conducted on 6 September 2002 and in particular monthly attendance sheets submitted by the head of the car pool to the finance department for drivers payment purpose:

According to the September 1998 attendance sheet, from 17 until 30 September 1998, the accused was under measure of temporary suspension. Confronted to this information as well as to the testimony of Dr. Agim Peci according to which, the accused had been submitted to a disciplinary measure (without year/date indication), Miroslav Vučković admitted that he was suspended by decision of the Deputy General Manager of the Health Center Milan Ivanovic. According to the accused, this came as a reaction to his refusal to drive to Niš engineers supposed to fix X-ray devices. The accused was informed that there were KLA formations on the way in the Podujevo area and he did not want to drive that road back at night. Mr. Ivanovic would have been offended by his refusal made in front of third parties and told him *'from this very moment you are suspended from work'* and a day or two after he asked the Head of the car pool to take the car keys from the accused.

As some confusion initially resulted from apparent contradictions between the testimony made by the witness Agim Peci according to which the above-mentioned disciplinary measure could have consisted of transferring the accused to the Vucitrn/Vushteri Health Centre and the one made by the witness Dragisha Ristic, driver, according to which the transfer in question was due to needs and did not constitute a disciplinary measure, clarification was sought from the accused. He confirmed that the above-mentioned measure of suspension and his transfer to Vucitrn/Vushteri Health Centre were two separate events. The second one occurred in 1997 or 1998 (but the accused later indicated that he worked in Vucitrn/Vushteri until 4 December 1998⁹⁰) and was due to the lack of ambulances in Vucitrn/Vushteri. The accused's statement to that respect was eventually confirmed by Mr. Cvetkovic, the manager of the center.

According to the March 1999 attendance sheet, the accused appears on annual leave from 1st until 28th March. Asked whether he considered it as an accurate record, the accused agreed only partially. According to him, he was not on leave for such a long period. He had several days off given as compensation because he had worked overtime and could not be paid for that. They were marked as annual leave, because of the laws on labour.

According to the April 1999 attendance sheet, the accused was on duty (24 hours) at the hospital on 3,6, 9, 12, 15, 18, 21, 24, 27 and 30 April 1999. In addition, a receipt had been established by the finance department, signed by the accused, according to which he had received cash for fuel on 15 April 1999. The witness Gordana Nikolic confirmed after having checked the presence of her initials on the document in question that she had issued it and although she could not remember at what time this happened as it was long ago, she testified that this was for sure during her working hours between 7 am and 3 pm.

Hospital employees familiar with the above-mentioned system of work attendance sheets on force were asked to comment on their reliability:

Savo Marinković, head of the car pool during the war stated the following: *"As head of the car pool, I was deciding and ordering on who worked where. I decided on shifts and I decided who was going to do the long distance trips. It could have happened that I could not follow up what was going on as I was also on the road. They were driving when I was not there but I was informed of it I was supposed to sign for the daily fees etc. I did make shifts that a driver should work 24 hours a day or every third day. As to the payment sheets: That is for 24 hours they wrote it like that because of the payment because those 8 hours are paid more than the 16. That is why it is written 16 plus 8. On the same document after one day which a pay is mentioned there are two days before a new shift, those two days are days off, had we to work those two days it would be too much, they were working 24 hours a day then they rested for two days and then they worked again. During those two days due to the situation we worked*

⁹⁰ A date the accused could not forget as his accident in 1970 occurred on the same date.

when it was necessary during those two days and so the drivers had to notify where they were on those days if they were needed”.

Asked to comment the April 1999 working sheet, Zivorad Medeljkovic, driver, stated the following; *“The case is that although it does not say so, there was a case I worked for 48 hours without being replaced, however the document says I was replaced after 24 hours shift by Miroslav Vuckovic, but that was an internal agreement that we enter such data into this document because of the situation we worked in. An internal arrangement, every shift had to be covered regardless whether a driver was physically capable or not, drivers were sometimes absent doing other tasks or duties. (...). When it comes to the drivers who were on call there was no system where they would be rewarded for their overtime, extra work apart from these 24 hours. We had a sort of an agreement with our superior, when we needed a day off we got it without it being on paper. The shift had to be on paper that is why the sheet looks like that”.*(...) *During the war we were not dealing with papers very much. We just had a schedule and we worked at the health centre and the hospital. People on the road were getting a daily fee for eight hours. They were also paid travel expenses, but that was it. We had the sheet with shifts. Those who were coming we would mark 8 hours. They had to come otherwise we would not function. There was one single paper for all of us, the monthly shift schedule.”*

Asked to comment on the system as such, Radmila Atanasijevic, nurse, gave the following example *“My name would be recorded from 7 in the evening and 7 in the morning. Then if a colleague called me and said she could not come, I could not leave before my colleague comes to continue. Such cases are never recorded on the time sheet. We used to do it as a favour to each other”.*

Findings: The court considered that in spite of the hospital records showing the accused as being on duty at the hospital on 15 April, there is consistent evidence that the records in question, established for payment purpose were not necessarily accurate. It happened that employees, including drivers had to extend their own tour of duty in order to cover for others’ absence and that this would not necessarily be reflected on the duty sheet. The relative reliability of the documents in question was in a sense claimed by the accused himself with respect to his absence from work during the month of March 1999. Actually, no witnesses placed the accused at the crime scene during the attack on Vidomiric but only after it, prior and during the attack on Gušavac/Gushavc. Although the accused obviously came to the hospital on 15 April 1999 between 7 am and 3 pm, he had the opportunity of driving to the crime scene during the day, either during his tour of duty or prior the start of it.

The accused’s custody from 9 May until 10 June 1999

At the final stage of the presentation of evidence, the defense submitted a decision dated 10 June 1999, brought by the then president of the District Court Miroslav Ivanovic, ordering the release of the accused in the investigating case number Kv. 213/99 conducted for aggravated theft.

The court hardly obtained an explanation from the defense as to how it became in possession of this important document⁹¹, missing in the original file kept at the Mitrovica District Court and part of the Court file in the war crime case. The Coordination Center for Kosovo and Methoija certified, at the Court request having delivered it to the defense without really answering the above-mentioned question.

⁹¹ See record of the trial session dated 11 October 2002

Nevertheless, the court decided to admit it as evidence and to rely on it, as it was not up to the accused to prove the authenticity of a court document bearing original signature and stamp. The prosecution accordingly modified the indictment and the court took this document into consideration when assessing witnesses' credibility.

THE EXISTENCE OF AN ARMED CONFLICT

Article 142 proscribes that the conduct of the accused must be committed, “[...] *in violation of rules of international law effective at the time of war, armed conflict or occupation.*”

From the commentary on Article 118 of the Criminal Code of the Federal Republic of Yugoslavia (CCY)⁹²: The term war refers to a specific relation between countries characterized by the use of armed force. As a rule, a war is waged on a large scale and with the use of considerable military potentials between the warring parties. An armed conflict also implies the use of armed force. It may occur between two or more countries (then it is similar to a war), or within a single country.

The court holds that although the jurisprudence of the International Criminal Tribunal of the Former Yugoslavia (ICTY) is not binding on the court, it may be persuasive. The ICTY defined an armed conflict as follows:

*“an armed conflict exists whenever there is [...] protracted armed violence between governmental authorities and organized armed groups or between such groups within a State. International Humanitarian Law (IHL) applies from the initiation of such armed conflicts and extends beyond the cessation of hostilities until [...] in the case of internal conflicts, a peaceful settlement is reached”*⁹³.

The term ‘armed conflict’ suggests the existence of hostilities between armed forces organized to a greater or lesser extent⁹⁴, and has to be distinguished from “[...] internal disturbances by the level of intensity of the conflict and the degree of organization [...]”⁹⁵.

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, sabotage⁹⁶.

Rules of international law applicable to internal armed conflicts are CA3 and Additional Protocol II. The definition of conflict in terms of Article 1 of APII part I is: *“must take place in the territory of a party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol”*⁹⁷.

The Prosecutor alleges that at all times relevant to the indictment, a state of internal armed conflict existed between the KLA and the armed forces of the FRY, in the territory of

⁹² Ljubisa Lazarevic, Commentary of the CCY, 1999 “Savremena Administracija” Belgrade

⁹³ *P. v. Tadic*, Appeal on Jurisdiction Judgment, Case No. IT-94-1-A73.1, Ap Ch, 2 October 1995, para. 70.

⁹⁴ *P vs. Akayesu*, Trial Judgement, Case No. ICTR-96-4-T, Trial Chamber I, 2 September 1998, para. 620.

⁹⁵ *P vs. Akayesu*, Trial Judgement, Case No. ICTR-96-4-T, Trial Chamber I, 2 September 1998, para. 625.

⁹⁶ Commentary by Franjo et.al. (1995-5th ed.) para. 3

⁹⁷ Article 1 – Material field of application.

Kosovo. Both armed forces were under responsible command, exercising control over part of the territory of Kosovo, to enable them to carry out sustained and concerted military operations. An international armed conflict co-existed alongside the internal armed conflict during the period 24 March 1999 to 12 June 1999.

As to the co-existence of an international and an internal armed conflict, the ICTY established that:

*“It is indisputable that an armed conflict is international if it takes place between two or more States. In addition, in the case of internal armed conflict breaking out on the territory of a State, it may become international (or, depending upon the circumstances, be international in character alongside an internal armed conflict) if i) another State intervenes in that conflict through its troops, or alternatively if ii) some of the participants in the internal armed conflict act on behalf of that other State.”*⁹⁸

Is it important to distinguish between the conduct and the time the acts were committed to ascertain whether they were committed during an internal or international armed conflict or both. The time period covered by the indictment can be broken down into two parts. Firstly, the time period from September 1998 to 24 March 1999 and secondly the time period from 24 March to 9 May 1999. The court finds it important because of the following reasons. Firstly, the analysis of the armed conflict in Kosovo can conveniently be broken down according to these two time periods and secondly, depending on how the armed conflict is categorized, the conduct that can be considered to be in violation of rules of international law as required by Article 142 may differ. Furthermore, rules of international law are applied in a limited scope during an internal armed conflict. Activities from Article 142, which are not included in Common Article 3 to the Geneva Conventions of 12 August 1949 (CA3) and Additional Protocol II to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of non-international armed conflicts (Additional Protocol II) could not, in case of a civil war, be qualified as a war crime, but as another criminal act from the federal or republic legislation.⁹⁹

With respect to the difference between internal and non-international armed conflict's: such a distinction is based on the differing intensity of the conflicts.¹⁰⁰ Neither CA3 nor Article 1 of the APII establishes a criterion for a non-international conflict. Both Articles apply on the basis of objective criteria, not in the subjective assessment of the parties, and will apply once it has been established that there exists an internal armed conflict that fulfills their respective pre-determined criteria¹⁰¹. The *Akayesu* Trial Chamber found it necessary and reasonable to establish the applicability of both CA3 and APII individually, therefore it will not suffice to apply CA3 and take for granted that APII is automatically applicable¹⁰². Where alleged offences are charged under both CA3 and APII, which has a higher threshold, the Prosecutor will need to prove that the criteria of applicability of, on the one hand, CA3 and, on the other, APII have been met¹⁰³.

Evidence presented

⁹⁸ P. v *Tadic*, Appeals Chamber Decision on Jurisdiction 1995, para 84.

⁹⁹ Commentary by Franjo et al. (1995-5th ed.) para. 3

¹⁰⁰ P vs. *Akayesu*, Trial Judgement, ICTR-96-4-T, Trial Chamber I, 2 September 1998, para. 602.

¹⁰¹ P vs. *Akayesu*, Trial Judgement, ICTR-96-4-T, Trial Chamber I, 2 September 1998, para. 603.

¹⁰² P vs. *Akayesu*, Trial Judgement, ICTR-96-4-T, Trial Chamber I, 2 September 1998, para. 607.

¹⁰³ P vs. *Akayesu*, Trial Judgement, ICTR-96-4-T, Trial Chamber I, 2 September 1998, para. 618.

As to the nature of the forces in presence, the above-mentioned OSCE report¹⁰⁴ describes the regional structures of the KLA, its division into seven Zones with a Central General Staff Commanding whose influence varied with the political climate and Zone in question. The report points at the fact that placing this organization into a standard military format could be misleading as for example “Companies”, in some cases, were larger in number than “Brigades”. The report insists upon the existence of a full administrative structure (education, culture, health, economic affairs) including a “policing” element. It describes KLA tactics as a combination of partial hit and run guerilla tactic, as well as ambushes with holding of villages by means of trenches. Agim Ceku who had war experience from Croatia arrived as Commander in April 1999. Colonel Heaslip confirmed the above-mentioned organization supplementing it by his assessment of the existence of effective command structure through KVM experience of negotiating with the KLA the release of abducted VJ soldiers¹⁰⁵.

The expert concurs with the OSCE report according to which in addition to the Yugoslav army forces, including “regulars” and “reservists” there were irregular forces¹⁰⁶. One of the three armies forming the Yugoslav forces, contained the 52nd Corps, based in Pristina was subordinated to the third army centered in the southern Serb town of Niš. The OSCE estimated that the strength of the 52nd Corps (including Military Police) was higher than 9,068 as per the Clark-Naumann Agreement of 25 October 1998. Prior to spring 1998, the VJ was not used in actions against the KLA. The situation changed when the VJ became actively involved in supporting the Ministry of Interior (MUP) forces. With the arrival of the OSCE KVM in October 1998, the VJ initially restricted their involvement in operations against the KLA, although VJ forces were present during some MUP operations. With the exception of the border region, the MUP retained primacy for the security of Kosovo. The MUP forces are described by the expert as very organized and armed. Under the Special Forces they had the Special police unit, Border Police Unit and Antiterrorist Unit. It was very organized well-trained and very thorough when they choose to exercise. The OSCE report also mentions the “militia” as the most common group cited by Kosovo Albanian refugees. Equipped with light machine guns and armoured personnel carriers, they were identifiable by their dark blue camouflage clothing. During the period of the KVM the militia was observed manning checkpoints as well as operating against the KLA.

Besides regular armed forces, the OSCE report establishes that armed men were reported to the OSCE KVM human rights division by Kosovo Albanians refugees as “paramilitaries”. The VJ Commander in Kosovo Lt.- Gen. Patkovic denied that there were paramilitary or special volunteer units operating independently. On the other hand the report states that it is likely that on a number of occasions there was confusion in distinguishing between armed local civilians and organized paramilitaries originating from outside Kosovo.

Asked to comment on the difference he made between paramilitary groups and the others VJ soldiers including reservist, the police (under the MUP), the witness Kurt Spur¹⁰⁷ stated that based on his experience, the difference can be seen in the way they fight and their agenda when they go in; i.e. the paramilitaries are to spread terror, the police are there to keep law and order and prepare a safe environment for military transport to take place, and the regular army is there to carry out the fighting. As part of the whole picture, civilians used by the armed forces have the local knowledge of who is where or when and the reservists are there to

¹⁰⁴ Pages 6-7 of 12, English version.

¹⁰⁵ See also Kurt Spur testimony in Chronology.

¹⁰⁶ Referred to as ‘volunteers’ and ‘armed civilians’ in the OSCE report in question.

¹⁰⁷ Major in Royal Danish Air Force, OSCE Chief of Logistics; As an observer he was in Iraq in 1989, and Kurdistan, Iraq/Kuwait 1993-94, verifier in Kosovo in 1999 and then in June 1999 East Timor, then last year in January came back to Kosovo with KFOR.

take care of fixed positions or local areas where they stay for a long time whereas the regular army is moving.

The court found that there is consistent evidence that the KLA opposed to the Yugoslav governmental authorities during the period covered by the indictment constituted dissident armed forces which, under responsible command, exercised control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement relevant International Humanitarian Law.

It is not disputed that the armed conflict between NATO states and FRY constituted an international armed conflict. It started on 24 March 1999 at the beginning of NATO's air campaign, and lasted at least until 12 June 1999, when FRY forces withdrew from Kosovo at the end of NATO's air campaign.

As to the situation between the Yugoslav armed forces and the KLA during the period covered by the indictment, the following relevant excerpts of the UN Security Council's Resolutions and Secretary General's Reports were admitted as evidence:

- Resolution 1199 (1998) dated 23 September 1998.

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

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

- Resolution 1244 dated 10 June 1999:

"The Security Council

Determining that the situation in the region continues to constitute a threat to international peace and security, ..."

...

Demands in particular that the Federal Republic of Yugoslavia put an immediate and verifiable end to violence and repression in Kosovo, and begin and complete verifiable phased withdrawal from Kosovo of all military, police, and paramilitary forces according to a rapid timetable, with which the deployment of the international security presence in Kosovo will be synchronised;

Paragraph 9:

Decides that the responsibilities of the international security presence to be deployed and acting in Kosovo will include:

- (a) deterring renewed hostilities, maintaining and where necessary enforcing a ceasefire, and ensuring the withdrawal and preventing the return into Kosovo of Federal and Republic military, police and paramilitary forces, except as provided in point 6 of annex 2,*
- (b) demilitarising the Kosovo Liberation Army (KLA) and other armed Kosovo Albanian groups as required in paragraph 15 below. ..."*

- Report Of the Secretary General, prepared pursuant to resolution 1160 (1998) dated 4 September 1998.

“III. Situation In Kosovo.

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

Humanitarian concerns

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

- Report of the Secretary General prepared pursuant to Resolution 1160 (1998), dated 3 October 1998.

“III. Situation in Kosovo

Hostilities

5. *During the reporting period, fighting in Kosovo continued unabated. Government security forces conducted offensives in the various parts of Kosovo including the areas of Licovac, Glogovac and Cicavica. In the week following the adoption, on 23 September 1998, of Resolution 1199 (1998), the forces in fact intensified their operations, launching another offensive in the Drenica region and in the Suva Reka –Stimlje-Urosevac triangle. Those operations have reportedly resulted in the displacement of some 20,000 additional people. Smaller operations were conducted by the Serbian Security forces in the Prizren area. Fighting continued on 28 and 29 September, contrary to the statement of the Serbian Prime Minister, Mr. Marjanovic, on 28 September that anti-insurgency operations in Kosovo had been completed and that peace reigned in Kosovo.*

6. *Military activity seemed to wind in the last days of September. There was evidence of heavily armored formations returning to their barracks. On 29 September, Federal Minister for Foreign Affairs Zivadin Jovanovic assured me that troops were returning to the place of their permanent location. According to the most recent reports, military forces withdrew from the Drenica and Prizren areas on 1 October and observers indicated a decrease in activities of the security forces. However, the Secretariat is still receiving information that the Government’s armed presence remains significant and that the operations of the special police continue.*

Human Rights

10. *While the victims of the conflict are overwhelmingly ethnic Albanians, Kosovo Serbs are suffering as well. There have been a number of reports of the kidnapping and killing of Serbian and Albanian civilians by Kosovo Albanian paramilitary units.”*

- Report of the Secretary General prepared dated 17 March 1999

“Humanitarian and Human Rights Situation in Kosovo

5. *While clashes between the Serbian security forces and Kosovo Albanian paramilitary units continued at a relatively lower level, civilians in Kosovo are increasingly becoming the main target of violence acts.”*

In addition to the above-mentioned UN official documents, the excerpt of the OSCE report “Kosovo as seen as told”, admitted as evidence, describes in details the following¹⁰⁸: the fighting in 1998; the fact that the cease-fire agreement called for in UN Resolution 1199 of 23 September 1998, prohibiting ground advances or confrontations between the KLA and the Yugoslav forces did not prevent a number of reactive operations by the latter against the former infiltration along the Albanian border in December 1998; the occupation and reinforcement of former VJ trenches overlooking the main route in Kosovo from Serbia proper by Podujevo/Podujeve followed by VJ “exercises” in the vicinity; three days of fighting as a result of which the VJ was once again in control of the ground and then open hostilities in March 1999, following the talks in Rambouillet (6-23 February 1999) as part of which the VJ attack described by the witness Spur and the expert Heaslip in the area between Mitrovica and Vucitrin (12 March), as well as a VJ attack against the KLA South East of Prizren (11 March), large security operations including the use of tanks, mortars and special combat police in Klina/Kline Municipality (14 March); artillery attacks involving 50 VJ soldiers supported by four tanks and two anti-aircraft artillery vehicles against Vrbnica/Verniuce, South Mitrovica (mid-March).

The same report recalls that OSCE-KVM withdrew from Kosovo on 20 March 1999 before the NATO air and missile campaign and that by March 1999, the Yugoslav military/security forces were coping with two tasks: defeating the KLA and preparing for an attack by NATO. This involved securing the border areas with an emphasis on the west of Kosovo and the border with Albania as it was a possible route for NATO to enter as well as a particularly active KLA area. Strategic routes, such as the road north from Pristina to Podujevo were cleaned by shelling of the alongside villages. The security forces extended their push on Drenica and areas west of Kosovo. While combating the KLA in the hills and villages, the security forces attempted to deny the KLA their base of support including non-military supplies. This meant the forced displacement of Kosovo Albanians from villages in known KLA areas and the pursuit of internally displaced persons in the hills, particularly the targeting of men of fighting age. By late April, it was believed that the Yugoslav military and police in Kosovo numbered at least 40, 000, with assistance from elements of the Yugoslav Second Army based in Montenegro.

The expert Colonel Richard Heaslip¹⁰⁹ confirmed that the main engagements in the area of Mitrovica Region in December 98 took place in the area of Podujevo where the KLA was very active, he also referred to the incident described in details by the witness Kurt Spur related to the VJ exercise that turned into an attack conducted by the Yugoslav armed forces in area between Vushtri and Mitrovica on 12 March 1999.

¹⁰⁸ Pages 7, 8 and 10 of 12, English version.

¹⁰⁹ Member of the Irish Defence Forces, Head of the Activation Team of OSCE KVM in December 1998 and then Chief of Liaison Branch of Kosovo. His tour of duty lasted until 20 March when the KVM withdrew; served in Cyprus for 6 years during different tours of duty; two tours of duty in Lebanon; he served in Israel conflict and in Beirut during the war there in 1982.

The Court considered that there is consistent evidence that protracted armed violence existed between the Yugoslav armed forces and the KLA during the period covered by the indictment whose intensity and degree of organization is to be distinguished from internal disturbances, isolated rebellions and sabotage.

Findings: On the basis of the above-mentioned evidence the Court finds that between September 1998 and 24 March 1999 the accused's acts were committed during an internal armed conflict and that between 24 March 1999 and 9 May 1999 they were committed during an internal armed conflict co-existing alongside with an international armed conflict.

THE MOTIVATION OF THE ACCUSED

Due to the fact that the accused denies having committed the crimes he is charged with the Court can only guess what was his real motivation.

There is consistent and reliable evidence both from Albanian and Serbian witnesses that the accused had a good relationship with his Albanian colleagues as well as Albanian patients and that this attitude did not change during the time he worked at the hospital¹¹⁰. Even Albanian witnesses from the village of Gušavac/Gushavc, with very rare exceptions, admit that they had good relations with the accused until the period covered by the indictment. The accused is described as knowing the Albanian culture and socializing with Albanians whose language he speaks fluently.

Therefore the Court did not consider that the accused's actions were motivated by ethnical hatred against Albanian but rather by nationalism and patriotic feelings exacerbated by the situation of armed conflict and the very attack against the upper part of his village where his house is located, which took place in September 1998 and was attributed to the Albanian side whether KLA or not. The Court also took into consideration the fact that this attack against his village took place at a time where he had been suspended from his work by a decision of the Deputy manager of the Health Center and that the attitude showed by the accused when recalling that event during the re-trial proves that he was affected by this decision considered as an injustice.

The court was convinced that the involvement of the accused in the acts described in the enacting clause increased with the deterioration of the overall situation and the increased violence in his close environment, i.e. killings in lower Suvi Do/Suhodoll in January 1999 and later attacks against hospital staff in April.

THE RELATIONSHIP BETWEEN THE ACCUSED AND THE YUGOSLAV ARMED FORCES

In order to assess what were the relationship between the accused and the Yugoslav armed forces, it appears necessary to describe what was the overall situation resulting from the situation of armed conflict in Kosovo at the time covered by the indictment. To that respect the following excerpts of reports of the UN Secretary General appear relevant:

- Report of the Secretary General prepared pursuant to Resolution 1160 (1998), dated 3 October 1998.

“III. Situation in Kosovo

¹¹⁰ See in particular his attitude when driving a new-born Albanian child to the hospital described by Liljiana Dragovic's testimony.

Hostilities

7. *The desperate situation of the civilians remains the most disturbing aspect of the hostilities in Kosovo. I am particularly concerned that civilians increasingly have become the main target in the conflict. Fighting in Kosovo has resulted in a mass displacement of civilian populations, the extensive destruction of villages and means of livelihood and the deep trauma and despair of displaced populations. Many villages have been destroyed by shelling and burning following operations conducted by federal and Serbian government forces. There are concerns that the disproportionate use of force and actions of the security forces are designed to terrorize and subjugate the population, a collective punishment to teach them that the price of supporting the Kosovo Albanian paramilitary units is too high and will be even higher in future. The Serbian security forces have demanded the surrender of weapons and have been reported to use terror and violence against civilians to force people to flee their homes or the places where they had sought refuge, under the guise of separating them from fighters of the Kosovo Albanian paramilitary units. The tactics include shelling, detentions and threats to life, and finally short notice demands to leave or face the consequences. There have been disruptions in electricity and other services, and empty dwellings have been burned and looted, abandoned farm vehicles have been destroyed and farm animals have been burned in their barns or shot in the fields. For example international observers witnessed Serb troops looting and burning houses in the Suva Reka area on 27 September.*

8. *The level of destruction point clearly to an indiscriminate and disproportionate use of force against civilian populations. As of mid-September, an estimate 6,000 to 7,000 buildings in 269 villages had been severely damaged or destroyed by shelling and deliberate burning in the Serb forces main areas of operations. Information available to me from reliable sources covered only villages- not cities- in western and central Kosovo. If the rate of destruction observed in the first two weeks of September were to continue, an estimated total of 9,000 homes in nearly 300 settlements would be uninhabitable (without significant reconstruction) by early November.*

- Report of the Secretary General dated 17 March 1999

“Humanitarian and Human Rights Situation in Kosovo Violence

4. *The humanitarian and human rights situation in Kosovo remains grave. The general insecurity, combined with continuing and unpredictable outbreaks of violence, has resulted in a cycle of displacement and return throughout Kosovo. During the reporting period, targeted killings of civilians, summary executions, mistreatment of detainees and new abduction cases were reported almost daily. Since 20 January, the office of the United Nations High Commissioner for Human Rights has registered more than 65 cases of violent death including one in custody. The Office’s background investigations of targeted violence further confirmed the observations expressed in my previous report that the nature of violent activity in Kosovo, which has now spread to urban areas has increased the number of persons who live in fear of being directly affected by violence or arbitrary treatment”.*

The above-mentioned OSCE report admitted as evidence¹¹¹ claims evidence of Yugoslav forces carrying out classic “horse shoe” move by surrounding villages on three sides (involving, police, paramilitaries, VJ and armed civilians), after they were shelled early in the morning, and establishment of checkpoints at the exit of the village where displaced persons were robbed of any money while fleeing.

¹¹¹ Page 10 of 12 of the excerpt in question, English version.

The OSCE reported that following the talks in Rambouillet, France (6-23 February 1999), there was a significant build up of Yugoslav Army (VJ) forces throughout Kosovo, leading to the arming of civilians¹¹². Kurt Spur testified that as an OSCE KVM officer he witnessed the presence of two or three uniformed reservists and three civilians all armed and walking on the road, carrying AK-47s in the village of Suvi-Do/Suhodoll in March 1999. He also witnessed the presence of police and military checkpoints on several occasions in February and March 1999 at which bus passengers were badly treated¹¹³. The critical area of Suvi-Do/Suhodoll, Guševać/Gushavc and Vinarce was obviously considered as a sensitive one, due to the proximity of Serb/Albanian villages and Police officers told the OSCE KVM that the road along the Ibar by which Suvi-Do/Suhodoll and Guševać/Gushavc are located was frequently used by the KLA and that was why a checkpoint had been established.

Findings: The court considered firstly that the quantities and types of weapons described by various witnesses as early as 24 September 1998 and even more in April 1999 demonstrate that the villagers of Suvi-Do/Suhodoll must have been provided with such a military equipment by the Yugoslav armed forces.

The court secondly considered the fact that on the days of the main attacks on Vidomiric, Guševać/Gushavc and Vinarce heavy equipment such as mortars was used and there was a significant military presence on the hill of Vidomiric, in particular. Reliable testimony establishes that after the mortar shelling of Guševać/Gushavc from Vidomiric's hill, the accused as well as other Suvi-Do/Suhodoll civilians and reservists¹¹⁴ were seen planning the next step of the attack against the village and the entrance of armed civilians and militaries.

The methodic actions conducted in April in Vidomiric and Guševać/Gushavc, preceded in March by regular firing from the Suvi-Do/Suhodoll hills, aimed at creating panic amongst the Albanian villagers clearly demonstrate that the purpose was the evacuation of the villagers. The fact that after a few days once having found shelter in Vinarce the villagers were again attacked and had to cross the Ibar river and were awaited by men in police uniforms at Transkosovo, deprived from their values and convoyed in the direction of Peja before being stopped en route, while those having found shelter in the Germova hills of Zhabar were also shelled, shows that their evacuation was not the goal of only a handful of armed Serb civilians but rather was a common purpose shared by these civilians, including the accused, with the armed forces. Such practices as described above were present at other times and places throughout Kosovo during the internal conflict.

Although there is consistent evidence that looting took place, getting benefit from the looting does not appear to have been the main purpose of the accused. As it was accompanied with large scale burnings, the court is convinced that ultimate goal was the evacuation of the Albanian population from the region and it was aimed at preventing their return. Therefore the court found that the accused in spite of his civilian activity as an hospital driver, was acting in concert and on behalf of the Yugoslav armed forces.

The panel did not consider that the accused was the leader of the attacks but rather took an active part to it. His excellent knowledge of the Albanian villagers and Albanian language, the fact that he had good relations with them until September 1998 and was frequently visiting them was obviously an asset for the commission of the criminal acts in question.

¹¹² See page 8 of 17, English version of the excerpt of that report admitted as evidence.

¹¹³ See testimony of Kurt Spur, former KVM officer.

¹¹⁴ Such as Mico Kragovic

THE NEXUS BETWEEN THE ACTS COMMITTED AND THE ARMED CONFLICT

The court already explained that the accused acted in concert and on behalf of the armed forces and that their common purpose was the evacuation of the Albanian population from the region and that looting properties and setting them on fire were clearly aimed at preventing the return of the population in question. Therefore the court considered that the actions of the accused were not only facilitated by the existence of an armed conflict but were closely linked with its existence and extent.

The Court found no definite answer as to the reason why the accused was eventually arrested in May 1999 by the Serbian Police. Whether it was the result of policy changes following orders as evoked by the Prosecution and aimed at stopping the most grievous abuses committed by the armed forces, or rather lack of communication between the investigative police and other police forces or even the result of a personal revenge, it is a fact not disputed by the accused, (although he denies being the author of the looting), that a large number of items were found at his place in Suvi Do/Suhodoll and motivated his arrest.

THE VIOLATION OF INTERNATIONAL LAW

SFRY ratified 1949 Conventions and its Additional Protocol II in 1978.

Illegal and Self willed destruction of property not justified by military necessity and carried out unlawfully and wantonly is prohibited by Article 147 of the Fourth Geneva Convention of 1949 (Grave Breach), applicable to international armed conflicts.

Stealing large scale of property, is prohibited by Article 4, Paragraph 2(g) of Additional Protocol II (1977) to the Geneva Conventions of 1949.

Application of measures of intimidation and terror and endangering the safety of other persons, are prohibited by paragraph 1 (a) of Common Article 3 to the Geneva Conventions of 1949 (prohibiting violence to life and persons) and Article 4, Paragraph 2(a) of Additional Protocol II (1977) to the Geneva Conventions of 1949.

Although the principles codified in Common Article 3 to the Geneva Conventions of 1949 were to constitute the minimum core applicable to internal conflicts, the ICTY considered that they are so fundamental that they are regarded as governing both internal and international conflicts¹¹⁵. Common Article 3 therefore applies to armed conflicts occurring in the territory of one Party to the Convention, each party to the conflict shall be bound to apply as a minimum that (*inter alia*) persons taking no active part in the hostilities, including members of the armed forces, shall in all circumstances be treated humanely without any diverse distinction, and a number of acts prohibited are at any time and in any place including violence to life and person, in particular, murder of all kinds, mutilation, cruel treatment and torture.

CIVILIAN VICTIMS

It is not disputed that the victims in the present case were civilian villagers of Guševač/Gushavc and Vinarce.

¹¹⁵ *P vs. Delalic, Mucic, Delic and Land "Celebici Case"*, Appeal Judgement, Case No. ICTY, Appeals Chamber 20 February 2001, para. 143.

SENTENCING

Deciding upon the type of criminal sanction and on the duration of the sentence, the court had in mind the limits prescribed by the applicable law as well as the purpose of the punishment. The court took into consideration the following aggravating and mitigating circumstances, pursuant to Articles 33, 41 and 42 of the CCY. As aggravating circumstances, the court considered the scale and intensity of the attacks to which the accused took part as well as its psychological and material consequences for the victims who had to flee their homes in order to protect their lives and lost houses and other belongings; the fact that the accused did not express any regrets. As mitigating circumstances, the court considered the fact that the accused is disabled, widower father of two children and was never sentenced before. Therefore, the court decided to impose a sentence of 12 years of imprisonment as a punishment, taking into account pursuant to Article 50 of the CCY the time the accused spent in detention since the 23 August 1999, until the verdict will come into effect.

RIGHTS OF THE INJURED PARTIES TO COMPENSATION

The representative of Shemsi Sahiti, Agron Sahiti, Tafil Sahiti, Abit Sahiti, Ragip Sahiti, Abedin Jasari and Selman Avdiu injured parties requested a compensation in the amount of 260,000 Euros as well as a temporary security measure pursuant to Article 112 of the LCP forbidding the accused to dispose of his real estate located in Suvi Do/Suhodoll.

The court considered not being in a position to grant the above-mentioned security measure as the civil procedures aimed at determining the ownership rights related to the real estate in question are still pending. As no documents were submitted to the court in order to estimate the loss faced by the above-mentioned injured parties, the court decided to invite them as well as the injured parties who were not represented in the procedure to launch a civil law suit as to their claim for civil compensation.

COST OF THE PROCEEDINGS

Pursuant to Article 95 paragraph 2 item 6 of the LCP, the lump sum part of the cost of the criminal proceedings shall be levied at 500 Euros, the more specific costs to be calculated at a later stage pursuant to Article 96 of the LCP;

It was thus determined as in the enacting clause pursuant to Article 351 of the LCP.

Recording Clerk

Presiding Judge

Catherine Dagenais

Catherine Marchi-Uhel

Legal Advise: Appeal against this decision is permitted within 15 days of the delivery of the written verdict.